

\_\_\_\_\_ COURT OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

-----X

THE PEOPLE OF THE STATE OF NEW YORK

AFFIRMATION

-against-

Index No. \_\_\_\_\_

[NAME],

Accused.

-----X

\_\_\_\_\_, an attorney admitted to practice in the State of New York, who is the attorney of record for the accused \_\_\_\_\_, hereby affirms under penalties of perjury, pursuant to CPLR 2106, that the facts set forth herein are true:

1. I am a member of the law firm \_\_\_\_\_, attorneys for the accused herein. I make this affirmation in support of the within motion.

2. The sources of my information and belief are conversations with the accused, a review of the court file, and my own investigation.

3. This accused is charged with \_\_\_\_\_ and related offenses.

4. I have spoken to my client to obtain the information necessary to prepare for his defense. Unfortunately, the indictment, [include here any sources of information received to date, such as the People's voluntary disclosure form, the items supplied in the Bill of Particulars, the information disclosed in their response to the Demand for Discovery, etc.] [does / do] not adequately inform the accused of the exact nature of the charges pending against him.

5. There is no other method by which I can obtain the information necessary to prepare for trial.

6. All of the information requested is necessary for the proper preparation of the trial in this matter. Without such information, the accused cannot adequately conduct a defense.

### **I. MOTION TO INSPECT, REDUCE OR DISMISS**

7. The accused is charged with having committed the crime(s) of \_\_\_\_\_. It is respectfully submitted that the evidence before the grand jury was not legally sufficient to establish any of the offenses charged or any lesser included offense. Therefore, it is respectfully submitted that each and every count of the indictment charging the accused with a crime must be

dismissed or reduced. [Include here any facts upon which you base your request to dismiss or reduce any or all counts as facially defective or duplicative.]

## **II. MOTION TO TRANSCRIBE AND INSPECT THE GRAND JURY MINUTES**

8. The accused requests transcription and inspection of the grand jury minutes to determine [include from the following, as appropriate to the facts at bar: to determine if the People improperly summarized the testimony in a misleading or improper manner, if the legal instructions were recorded and consistent with all applicable theories of law, if there was impermissible cross-examination of the accused during his testimony, if there are any particular elements of an offense that you believe may not have been proven by legally competent evidence in the grand jury, if there was a failure to charge an applicable point of law, if any improper persons were present while evidence was being presented, if the indictment was modified before or after the indictment was voted, if the evidence was legally sufficient to sustain the charges in the indictment or any lesser included charge, or, in the alternative, to reduce the charges to conform to the proof that was actually submitted (CPL § 190.65)].

9. It is respectfully submitted that the evidence submitted to the grand jury was insufficient and inadequate, as a matter of law, and that therefore, the indictment must be dismissed, or in the alternative, reduced to the lesser included charges.

## **III. MOTION TO SUPPRESS STATEMENTS**

10. The accused now moves to suppress the statement he allegedly made to law enforcement officers on the ground that any such statement was involuntarily made within the meaning of CPL § 60.45(2)(b), and in violation of the accused's rights pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966).

11. The accused contends that he was questioned by law enforcement authorities without being properly advised of his *Miranda* rights.

12. Upon information and belief, the accused was in custody when such questioning occurred. The accused maintains that any statement made while he was in custody was without the benefit of proper *Miranda* warnings and thus must be suppressed.

13. The accused further asserts that his initial arrest was without the requisite probable cause, and that any statement thereafter must be suppressed as the fruit of the initial illegality, *Dunaway v. New York*, 442 U.S. 200 (1979).

14. The accused therefore requests that the Court suppress any statements he allegedly made to law enforcement officers, or, in the alternative, that a hearing be ordered to determine the admissibility of any statement at trial, *People v. Huntley*, 15 N.Y.2d 72, 255 N.Y.S.2d 838 (1965).

## **IV. MOTION TO SUPPRESS EVIDENCE**

15. The accused now moves to suppress the physical evidence seized in this case. Said evidence was seized unlawfully in violation of the accused's constitutional rights derived from the United States Constitution, Fourth and Fourteenth Amendments, and art. 1, § 12 of the New York Constitution, and *Dunaway v. New York*, 442 U.S. 200 (1979) and *Mapp v. Ohio*, 367 U.S. 643 (1961).

16. In the alternative, the accused requests that the Court order a hearing on the issues raised herein.

17. The accused was arrested without probable cause, and [state what property was seized and from what location] without permission.

18. The accused had a reasonable expectation of privacy in the area searched and did not consent to any search by law enforcement officers.

19. The accused contends that he did not commit the crime charged, or any other crime, and was not engaged in any unlawful activity at the time the officers approached him. The search of the accused and seizure of the alleged evidence was therefore unlawful. [See *People v. Mendoza*, 82 N.Y.2d 415, 604 N.Y.S.2d 922 (1993) for examples of sufficiency of pleadings to mandate a pretrial "Mapp" hearing to suppress physical evidence seized.]

20. The exclusionary rule enunciated in *Mapp v. Ohio*, 367 U.S. 643 (1961), prohibits the use of any evidence which is the direct or indirect fruit of an illegal search and seizure.

## **V. MOTION TO SUPPRESS IDENTIFICATION**

21. Defense counsel has received notice from the district attorney that a police-arranged identification procedure (a show-up, line-up and/or photo spread) was conducted during the investigation of this case.

22. This procedure of identification was a police-arranged procedure which took place after the accused was in custody. No attorney for the accused was present at this procedure. The likelihood of misidentification and the possibility of an unreliable identification are issues to be considered by the Court. The in-court identification may be tainted by the initial show-up and thus defense seeks a hearing to determine whether the eyewitness should be permitted to identify the accused at trial. *United States v. Wade*, 388 U.S. 218 (1967).

23. Therefore, it is respectfully requested that a hearing be held to determine whether testimony as to the out-of-court identification as well as a prospective in-court identification should be admitted at trial (*Manson v. Brathwaite*, 432 U.S. 98 (1977)).

## **VI. BILL OF PARTICULARS**

24. Attached hereto and made a part hereof is the Request for a Bill of Particulars made pursuant to CPL § 200.95. While I do not anticipate that the People will refuse to comply with this request, I hereby incorporate said request in order that it may be before this Court for a ruling pursuant to CPL § 200.95(5) in the event of the People's refusal.

## **VII. DISCOVERY**

25. Attached hereto and made a part hereof is the Request for Discovery made pursuant to CPL § 240.20. While I do not anticipate that the People will refuse to comply with this request, I hereby incorporate said request in order that it may be before this Court for a ruling pursuant to CPL § 200.95(5) in the event of the People's refusal.

## **VIII. SANDOVAL**

26. The accused may testify at trial. The accused hereby moves to suppress all reference by the People, during cross-examination of the accused, to any prior arrests or convictions, his parole status, and any prior bad acts, charged or uncharged, pursuant to *People v. Sandoval*, 34 N.Y.2d 371, 357 N.Y.S.2d 849 (1974).

27. The accused further requests that the district attorney be ordered to apprise him of all arrests, convictions, bad acts or pending cases of which the People are aware, so that the *Sandoval* issue can be fully and fairly determined prior to trial. CPL § 240.43.

## **IX. SEVERANCE**

28. The accused respectfully requests that the trial in this matter be severed from that of his co-defendant [cite legal reasons why severance should be granted, such as confessions that cannot be properly redacted, irreconcilable defenses, cross-examination of the accused who has prior bad acts, etc].

## **X. DISMISSAL IN THE INTEREST OF JUSTICE**

29. The accused respectfully requests that these charges be dismissed for the following reasons: [see CPL § 170.40 or 210.40 for the statutory criteria].

## **XI. SPEEDY TRIAL**

30. The accused was arraigned on [date]. More than [90 days / 6 months] have elapsed. The People failed to announce their readiness to proceed to trial within the statutory period. The accused did not cause or consent to any of the adjournments except for the following periods which still result in a delay of more than [90 days / 6 months], [date] to [date] for purposes of filing motions, [date] to [date] for purposes of plea negotiations [etc.].

31. That the delay caused by the District Attorney has prevented the accused from being afforded his constitutional right to a speedy trial. [See *People v. Taranovich*, 37 N.Y.2d 442, 373 N.Y.S.2d 79 (1975) and apply to your facts.]

32. That the instant charges should therefore be dismissed due to the denial of the accused's statutory and/or constitutional right to a speedy trial.

## **XII. RESERVATION OF RIGHTS**

33. Pursuant to CPL § 255.20(3), the accused respectfully reserves his right to make further motions until a reasonable time after the Motions for Discovery and Bill of Particulars have been answered on grounds that could not have been raised in the original omnibus motion.

WHEREFORE, your deponent respectfully requests this Court to grant the relief sought herein and such other and further relief as to this Court may seem just and proper.

Dated: \_\_\_\_\_, New York  
[Date]

Respectfully Submitted,

s/ \_\_\_\_\_  
[Signing Attorney's Name]  
[Attorney's Address]  
[Attorney's Telephone No.]

Sample