

STATE OF NEW YORK
JUSTICE COURT

COUNTY OF WESTCHESTER
TOWN OF

PEOPLE OF THE STATE OF NEW YORK,

Plaintiff,
-against-

NOTICE OF MOTION
TO DISMISS SIMPLIFIED
TRAFFIC INFORMATION

LOUIS S.,

Defendant.

PLEASE TAKE NOTICE, that upon the annexed duly verified Affidavit of Matisyahu Wolfberg, and on all papers and proceedings had herein, the undersigned moves this Court for an Order Dismissing simplified traffic information # LQ 275177 0

DATED: November 18, 2004

Very truly yours,

Matisyahu Wolfberg
Attorney at Law

To: Justice, TOWN OF XXX

STATE OF NEW YORK
JUSTICE COURT

COUNTY OF WESTCHESTER
TOWN OF

PEOPLE OF THE STATE OF NEW YORK,

Plaintiff,

-against-

ATTORNEY'S AFFIDAVIT
IN SUPPORT OF MOTION
TO DISMISS SIMPLIFIED TRAFFIC
INFORMATION

LOUIS S.,

Defendant.

Matisyahu Wolfberg, Esq., being duly affirmed, deposes and says:

I am an attorney retained by the defendant and movant herein to apply to this court for an order dismissing simplified traffic information # LQ 275177 0 based on the following:

1. N.Y.C.P.L. § 150.40(2) requires that the court must dismiss the accusatory instrument in question.
 - a. The accusatory instrument was neither timely filed nor was it filed in the proper court. Pursuant to N.Y.C.P.L. § 150.50(1) "A police officer or other public servant who has issued and served an appearance ticket must, at or before the time such appearance ticket is returnable, file or cause to be filed with the local criminal court *in which it is returnable* (emphasis added) a local criminal court accusatory instrument charging the person named in such appearance ticket with the offense specified therein." The accusatory instrument in question, as served on the defendant, was made returnable in Town of Somers Court on September 25, 2003. (See Exhibit "A") The Police Officer who issued the accusatory instrument, did not file the summons in the Town of Somers Court. Therefore, the Police Officer did not "at or before the

time such appearance ticket is returnable, file or cause to be filed with the local criminal court in which it is returnable.” The accusatory instrument was neither timely filed nor was it filed in the proper court.

- b. It is now impossible to file an accusatory instrument, which is sufficient on its face. Pursuant to N.Y.C.P.L. § 150.50(2) “If such accusatory instrument is not sufficient on its face, as prescribed in section 100.40, and if the court is satisfied that on the basis of the available facts or evidence it would be impossible to draw and file an accusatory instrument which is sufficient on its face, it must dismiss such accusatory instrument.”
 - i. The accusatory instrument is not sufficient on its face. Pursuant to N.Y.C.P.L. § 150.40(1) “An appearance ticket must be made returnable in a local criminal court designated in section 100.55 as one with which an information for the offense in question may be filed.” The appearance ticket alleges that the offense occurred in the Town of XXX yet the summons was made returnable in “Town of Somers.” (See Exhibit “A”) Therefore the appearance ticket is facially insufficient because it was not made returnable in the local criminal court where information could be filed.
 - ii. The Statute of Limitations has run. N.Y.C.P.L. § 30.10(2)(D) provides that “A prosecution for a petty offense must be commenced within one year after the commission thereof.” The alleged offense occurred in August of 2003, which is well over year ago. It is therefore impossible for the Police Officer to file an accusatory instrument, which is sufficient on its face, because the statute of limitations has run for this offense.

- c. Under these circumstances, N.Y.C.P.L. § 150.50(2) requires that the court must dismiss the accusatory instrument.
- 2. N.Y.C.P.L. § 170.35(1)(a), also provides a basis for the Court to dismiss the summons based on its being facially insufficient.
 - a. Pursuant to N.Y.C.P.L. § 150.40(1) “An appearance ticket must be made returnable in a local criminal court designated in section 100.55 as one with which an information for the offense in question may be filed.” The appearance ticket is facially insufficient because it was not made returnable in the local criminal court where information could be filed. The ticket was made returnable in the Town of Somers.
 - b. Therefore the court has a basis to dismiss the summons based on N.Y.C.P.L. § 170.35(1)(a),
- 3. The court lacks Jurisdiction.
 - a. The accusatory instrument was made returnable in the Town of Somers.
Thus, the Town of XXX has no jurisdiction over this matter.

WHEREFORE, it is prayed that the relief sought in the Notice of Motion and the defendant’s moving Affidavit be granted.

Matisyahu Wolfberg
Attorney at Law

STATE OF NEW YORK
JUSTICE COURT

COUNTY OF WESTCHESTER
TOWN OF

PEOPLE OF THE STATE OF NEW YORK,

Plaintiff,

AFFIDAVIT OF SERVICE

-against-

LOUIS S.,

Defendant.

Matisyahu Wolfberg, Esq., an attorney duly admitted to practice law affirms under penalties of perjury the following to be true:

1. I am not a party to the action to which the affirmation of service is attached.
2. I am over 18 years of age.
3. On November 18, 2004, I served the attached papers, more particularly described as a Motion Dismiss Simplified Traffic Information by depositing a true copy thereof in a post-paid wrapper, in an official depository under the exclusive care and custody of the U.S. Postal Service in New York State, addressed to the following person at the last known address set forth after his name:

New York Police Officer XXX

Dated: Spring Valley, NY
November 18, 2004

Matisyahu Wolfberg
Attorney at Law

Exhibit "A"

UT-3.6 SP (8/01) New York State • Department of Motor Vehicles

LQ 275177 0 **UNIFORM TRAFFIC TICKET**

NEW YORK STATE POLICE

Last Name (Defendant) _____ First Name _____

Number and Street _____ City _____ State _____ Zip Code _____

City **New York** State **NY** Zip Code **10023**

Client ID Number _____

U.S. State **D** Class **1** Date Expires **1/20/04** Date of Birth **10/30/72** Com. Ven. _____

Plate Number _____ Reg. Type **MS** Color **BR** Make _____

Vehicle Year/Make _____

Weekday **SAT** Date of Offense **06/03/03** Time **3:14 P**

Street Name **ON T 684** Hwy Type **N/A**

IN VIOLATION OF **Sec 160 Sub B** Other Law _____

Description of Violation **Speed** MFN **71** PZ **653**

Officer's Signature _____

NCIC/DRI _____ DIV/Troop _____ PCT/Zone _____

Officer's Last Name (Print) _____ Badge/Shift _____

YOU ARE HEREBY DIRECTED TO APPEAR IN THE
 City _____ Court **IN** OF **Sauve**
 Address _____ State _____ Zip _____

Date **7/25** YEAR **03** AT **8:00** M

A plea of guilty to this charge is equivalent to a conviction after trial. If you are convicted, not only will you be liable to a penalty, but in addition your license to drive a motor vehicle or motorcycle, and your certificate of registration, if any, are subject to suspension and revocation as prescribed by law.

Upon conviction you may be subject to a mandatory surcharge in the amount prescribed by law. Your failure to respond may result in a warrant for you or suspension of your driver license and/or a default judgment against you.

U.S. DOT # _____

LQ 275177