

**STATE OF NEW YORK
BATAVIA CITY COURT: COUNTY OF GENESEE**

Hon. Durin B. Rogers, Presiding

**The People of the State of New York,
Plaintiff**

Decision and Order

Docket No. CR-01744-20

vs.



Defendant.

**Appearances: Ana Lovis, Esq. appearing on behalf of Victor Mui, Esq.
Genesee County District Attorney's Office**

**Federick Peterson, Esq.
Benjamin Goldman Law Office for the Defendant**

FACTUAL BACKGROUND

The Defendant is charged with a violation of Vehicle and Traffic Law [VTL] § 1129 (a), Following Too Closely alleged to have occurred on 10/21/2024. The Defendant has been represented by two attorneys of record. A motion seeking to dismiss this matter claiming a violation of CPL 30.30 was filed by defense and denied by the Court pursuant to the authority of *People v. Galindo*. Despite being represented by counsel, a Supporting Deposition was first requested on April 29, 2026. The request by the Defendant over 6 months after the issuance of the appearance ticket was still timely made pursuant to CPL 100.25 and not objected to by the People. The Supporting Deposition filed with this Court at the request of the Defendant and made a part of the accusatory instrument states as follows:

“... Patrol was dispatched to the scene of a three vehicle accident. Based on the information provided by the drivers and evidence presented, it was determined the defendant [sic] failed to leave adequate space and struck the vehicle in front of him....”

An additional 710.30 notice attached states in pertinent part “See BWC for statements made by the defendant stating his foot slipped off the brake leading to the accident.”

Defendant now moves this Court to dismiss the charge on the following grounds:

1. No Personal Knowledge. The Defendant argues that the Batavia Police Officer did not witness the accident or the Defendant’s driving prior to the accident; therefore, the Officer did not know whether the Defendant was driving too closely. Issuing a traffic ticket for an unwitnessed offense is prohibited under Criminal Procedure Law [CPL] §140.10 (1) and *People v. Genovese*, 156 Misc 2d 569 (Justice Ct 1992).
2. Supporting Deposition Fails to List All Elements of the Charged Offense. The Defendant argues that the Supporting Deposition fails to provide *non-hearsay* allegation for each element of the alleged violation consistent with CPL §100.40 (1) and, as such, is facially insufficient and must be dismissed pursuant to CPL §170.30.
3. Supporting Deposition is Facially Insufficient. The Defendant asserts that the Supporting Deposition fails to provide information on every element of the alleged violation that would give reasonable cause to believe the charged offense was committed; therefore, the charge should be dismissed.

The Court makes the following findings individually and collectively.

NO PERSONAL KNOWLEDGE

The Court find the Defendant’s argument that the charge of VTL 1129(a) should be dismissed claiming that law enforcement was not personally “present” nor “viewed” the charged

conduct, is not compelling under the circumstances of this case. The Court denies Defendant's motion on these grounds.

FACIAL INSUFFICIENCY

The Court determines the Defendant's motion on the grounds set forth in 2 and 3 above collectively as the same involves necessarily an argument of facial insufficiency. It is a fundamental principle of our system of justice that before a defendant can be convicted or even charged with a crime or a violation carrying criminal penalties, the conduct charged must be clear and unequivocal. Yet, for a simplified traffic information to be legally sufficient, the factual portion of information must meet certain requirements. See generally *People v. Goris*, 2025 NY Slip Op 50495. It is statutorily dictated that a simplified traffic information has different, and lesser, requirements for facial sufficiency than a misdemeanor information when charged alone (*People v DeRojas*, 180 Misc 2d 690, 691 [App Term, 2d Dept, 9th & 10th Jud Dists 1999]). A simplified traffic information is sufficient on its face when it substantially conforms to the form prescribed by the Commissioner of Motor Vehicles (*see* CPL 1.20 [5]; 100.25 [1]; 100.40 [2]; *People v Ramos*, 77 Misc 3d 132[A], 2022 NY Slip Op 51243[U] [App Term, 2d Dept, 9th & 10th Jud Dists 2022]). "It need not provide on its face reasonable cause to believe defendant has committed the offense[s] charged " *See People v Nuccio*, 78 NY2d 102 [1991]. However, once a supporting deposition is requested and provided, it must contain "allegations of fact, based either upon personal knowledge or upon information and belief, providing reasonable cause to believe that the defendant committed the offense or offenses charged" (CPL 100.25 [2]; *People v Anand*, 2019 NY Slip Op 51875[U]; *People v Delprete*, 62 Misc 3d 128[A], 2018 NY Slip Op 51872[U]). And the supporting deposition served on a

defendant in connection with a simplified traffic information may contain hearsay allegations. People v Carpenter, 65 Misc 3d 132[A], 2019 NY Slip Op 51605[U]. While generally anyone may assert factual allegations in a supporting deposition to supplement and support, or tend to support, an accusatory instrument, even if based on hearsay (*see* CPL 100.20), a supporting deposition to a simplified traffic information provided pursuant to CPL 100.25 (2) must be executed only by the complainant police officer and, on its own, must provide reasonable cause to believe that the defendant committed the offense or offenses charged, even if merely based on information and belief.

The charge pending against the Defendant is grounded in VTL § 1129 (a), Following Too Closely. VTL § 1129 (a) states, “The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon and the condition of the highway.” The Supporting Deposition states, in pertinent part and paraphrased here, that a patrol was dispatched to the accident scene and based on statements from the drivers and other evidence, determined that the Defendant struck the vehicle ahead due to following too closely. The Supporting Deposition does not provide the patrol’s basis for determining the distance between vehicles, their speed, traffic conditions, or even roadway conditions. Anand 2019 NY Slip Op. 51875. Even read in a light most favorable to the People, the officer’s statement that “...*the defendant failed to leave adequate space and struck the vehicle in front of him...*” without more is insufficient to establish reasonable cause to believe a violation occurred and amounts to little more than a conclusory assertion that defendant had violated VTL § 1129 (a). The subsequent CPL 710.30 notice cannot fill the voids of the accusatory instrument or supporting deposition. Further, the Defendant correctly argues that the Supporting Deposition does not provide facts supporting each element of VTL § 1129 (a). *See*

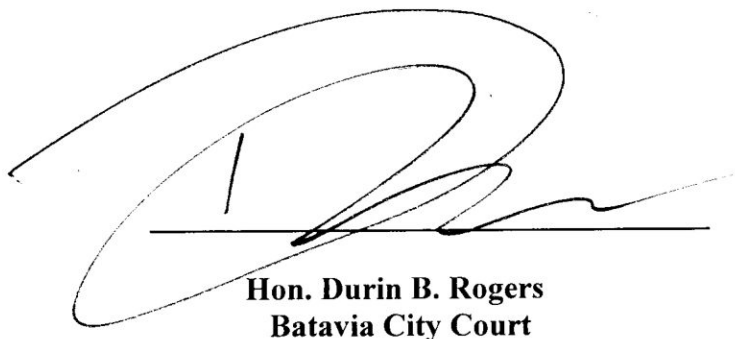
CPL 70.10 (2), 100.25 (2); Delprete, 62 Misc 3d 128 (A), 2018 NY Slip Op 51872 (U); People v Bollag, 42 Misc 3d 149(A), 2014 NY Slip Op 50407 (U) (App Term, 2d Dept, 9th and 10th Jud Dists 2014). There is no factual basis to conclude the Defendant was following another vehicle more closely than was reasonable and prudent for the traffic conditions. *VTL § 1129 (a).*

Consequently, the simplified traffic information and Supporting Deposition charging the Defendant with violating Vehicle and Traffic Law § 1129 (a) is insufficient. *See CPL 100.25 (2).* Further, as the Defendant moved to dismiss the simplified traffic information on facial insufficiency grounds prior to trial, the issue of whether the supporting deposition contained adequate factual allegations was timely and not waived. *See CPL 170.30 (3); People v Beattie, 80 NY2d 840 (1992).*

Based upon the foregoing, the court finds the Simplified Traffic Information along with the filed Supporting Deposition fail to allege facts establishing reasonable cause to believe the Defendant violated VTL § 1129 (a). Accordingly, the Defendant's motion to dismiss for facial insufficiency is granted.

THIS DECISION SHALL CONSTITUTE THE ORDER OF THE COURT

Dated: September 21, 2026



Hon. Durin B. Rogers
Batavia City Court