

**JUSTICE COURT OF THE TOWN OF WEBSTER, MONROE COUNTY, NEW
YORK**

People v. Chandler

201 Mich. App. 611 (Justice Court of the Town of Webster Monroe County New York 1993) · No. Case No.
25110055 · Decided February 26, 2026

OPINION

People v. Chandler 2026 NY Slip Op 26032

THOMAS J. DISALVO, J.

People v Chandler (2026 NY Slip Op 26032) [*1] People v Chandler 2026 NY Slip Op 26032 Decided on February 26, 2026 Justice Court Of The Town Of Webster, Monroe County DiSalvo, J. Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the printed Official Reports. Decided on February 26, 2026 Justice Court of the Town of Webster, Monroe County The People of the State of New York against Gregory W. Chandler, Defendant. Case No. 25110055 Brian P. Green, District Attorney, Monroe County (Carrington Wells of Counsel), for plaintiff. Frank G. Maggio, Rochester, for defendant. Thomas J. DiSalvo, J. Synopsis. This court issued a written decision and order in this case on February 6, 2026 in response to the omnibus motions filed by defense counsel on December 12, 2025. No responding affirmation having been submitted by the People as of the date of said decision and order. The court's decision granted the defendant's motion to dismiss the charges of common law and per driving while intoxicated based on insufficient accusatory instruments pursuant ot CPL §§ 170.3 (1) (a), 100.40 (1) and 100.15. Subsequent to that date of the court's decision and order the People filed with the court a Notice of Cross Motion and Responding Affirmation on February 12, 2026. The matter was returnable on February 18, 2026. Since the court had given the People the right to respond, although the People did not state that they would put in a written response to said motions, this court believes it needs to address the People's response in this supplemental decision and to clarify and expand on its reasoning in reaching its decision relative the issue of sufficiency of the accusatory instruments. Thus this decision is meant to supercede its previous decision in this case. History of the Case The defendant herein was charged with common law driving while intoxicated, VTL § 1192 (3) and driving while intoxicated, per se [FN1] , VTL 1192 (2) . The said offenses were alleged to have been committed on November 9, 2025 at just after midnight on South Avenue in the Village of Webster. The accusatory instruments consisted of two simplified traffic informations, [*2]a fill in the blank supporting deposition and a breath test supporting deposition. An arraignment was conducted on the return date of December 3, 2025. At that time, defense counsel requested an adjournment so he could file motions. Omnibus motions were received on December 12, 2025. Argument of motions took place on January 21, 2026. Said motions requested that the accusatory

instruments herein be dismissed as being insufficient on their face pursuant to CPL §§ 170.3 (1) (a), 100.40 (1) and 100.15. In addition, defendant's motion requested that the People be precluded from using statements made by the defendant to the Webster Police because the CPL § 710.30 notice failed to give the defense proper notice of the statements of the defendant they intended to use at trial. It was also requested that the evidence obtained by the police be suppressed because the police did not have probable cause to stop and/or arrest the defendant. The People's response papers that were received by the court on February 12, 2026, do not address the issue as to whether or not an alleged admission in the attached CPL § 710.30 Notice can be used to determine sufficiency of the accusatory instruments. Facts of the Case. The uniform traffic informations served on the defendant complied with CPL §§ 100.10 (2) (a) and 100.25 (1). Accompanied with said traffic informations is a document labeled "Supporting Deposition/Bill of Particulars", which consisted of three pages. The first two pages were the arresting officer's supporting deposition. The third page was labeled in the top right as "710.30 Notice". The said documents required the deponent to fill in the blanks and to black out various squares that describe what the officer observed. They indicated that the conditions were "dry" the traffic was "light" and the weather was "clear/dark". The reason for the stop was a "crash" and "property damage". The vehicle operation was said to be established by the "officers's direct observation". However, in the same section of the supporting deposition the officer states that the "Defendant was near the vehicle". Probable cause was determined to be based on the "odor of alcoholic beverage", "glassy eyes", "impaired speech" and "impaired motor coordination" all of which was set out by the blackening of the boxes in said section of the supporting deposition. Furthermore, in said section designated "Probable Cause for Arrest", the officer indicated that the defendant performed field tests and also indicated that "Note Card Attached". However, no such note card was made a part of the deposition. The said supporting deposition went on to indicate that oral admissions were made but did not specify what was allegedly said by the defendant. Instead the reader is directed to "See Section 11", which is in the CPL § 710.30 Notice. It was indicated that no preliminary breath test was performed, but that there was no refusal to submit to same by the defendant. Other than the fact that a breath test was subsequently performed by another officer, no other information relative to the condition of the defendant was provided by the supporting deposition. A second police officer executed the breath test supporting deposition. In said deposition it was stated that on November 9, 2025 at 1:43 A.M. he administered a breath chemical analysis which rendered a finding of .16%. It further stated that the arresting officer observed the administration of said test. In the observation portion of said deposition the officer described the defendant as having "poor coordination, bloodshot watery eyes, alcohol beverage [*3]odor". Legal Analysis. Legal Sufficiency - Common Law Driving While Intoxicated . Vehicle and Traffic Law Section 1192 (3) states "No person shall operate a motor vehicle while in an intoxicated condition." An accusatory instrument charging a defendant with common law driving while intoxicated must provide reasonable cause to believe three specific elements. Namely, the accusatory instruments must

allege that the defendant operated a motor vehicle; that the defendant was intoxicated and that the operation and intoxication were simultaneous. [FN2] In order to make a determination of sufficiency, the court must be aware of the standard established by the Court of Appeals which stated "So long as the factual allegations of an information give an accused notice sufficient to prepare a defense and are adequately detailed to prevent a defendant from being tried twice for the same offense, they should be given a fair and not overly restrictive or technical reading". (*People v. Casey* , 95 NY2d 354, 360 , 717 N.Y.S. 2d 88, 91 [2000]) However, in this case there is no allegation that the defendant was sitting behind the steering wheel of his vehicle or that the motor was running. As previously stated, the officer did not check the boxes indicating that the defendant was at the wheel; that keys were in the ignition; that the engine was running or that the engine was warm. Instead he checked the box that stated "the defendant was near the vehicle". Such a recitation of the facts observed by the officer does not establish the first element of common law driving while intoxicated, namely that of operation. "The term "operation" has a very specific meaning under the Vehicle and Traffic Law. It is undisputed that the definition of the term 'operate' as defined in DWI statutes is broader than that of driving and that '[a] person operates a motor vehicle within the meaning of the [statute] when, in the vehicle, he intentionally does any act or makes use of any mechanical or electrical agency which alone or in sequence will set in motion the motive power of the vehicle.' *People v. Alamo* , 34 NY2d 453, 459 (1974) quoting *Matter of Prudhomme v. Hults* , 27 AD2d 234, 237 (3d Dept.1967). Therefore, "criminal liability under section 1192 can attach to conduct dangerously close to driving, as long as that conduct occurs upon locations covered by the statute." *People v. Prescott* , 95 NY2d 655, 662 (2001)." *People v. Lekram* , 57 Misc 3d 1220 [A], 2017 NY Slip Op. 51562 [U] *3[2017]) Nevertheless, the court in *Lekram* dismissed the accusatory instrument charging the defendant with common law driving while intoxicated. It held that "the sole allegations pertinent to the element of operation are that the defendant was seen [*4]sitting behind the wheel of his car in an intoxicated condition with a remote key in his pocket. This Court finds that the allegation that the motor vehicle was operating is conclusory and therefore is not 'a fact of an evidentiary character' (CPL § 100.15[3]; see also, *People v. Dreyden* , 15 NY3d 100 [2010]; *Dumas*, 68 NY2d 729) which supports an element of the offense charged, namely vehicular operation. 'The phrase factual allegations of an evidentiary character' means nonconclusory descriptions of what the deponent personally observed, heard or experienced.' *People v. Concepcion* , 36 Misc 3d 551, 553 (Crim Ct, NY County 2012) citing *Dumas*, supra. '[W]here the fact at issue is a conclusion that derives solely from another fact or facts that have not been alleged, that fact is a conclusory allegation" [FN3] See also, *People v. Lawrence* , 55 Misc 3d 1209 [A], 2017 NY Slip Op. 50474[U] [2017]. In that case the court in dismissing the accusatory instrument noted that "Here the sole allegations pertinent to the element of operation are that the defendant was seen sitting alone in the driver's seat of his car while intoxicated. There are no allegations that the engine was running, that the key was in the ignition, nor even that the defendant was in possession of the keys to his car. Standing alone, the facts

alleged are insufficient to find it reasonably likely that the defendant was operating his car at the time of the charged offenses...." [FN4] In *People v. Kaminiski* , 143 Misc 2d 1089,1094 , 542 N.Y.S 2d 923,924 [1989] the court found the accusatory instruments charging the defendant with common law and per se driving while intoxicated insufficient. In that case the supporting deposition of the arresting officer indicated that she "observed defendant standing near a 1982 Mercury. Deponent further states that she is informed by defendant that defendant was operating the above-mentioned car when a tow truck had collided with defendant's car." [FN5] The court found that the admission of the defendant as to operation could not be used since it would violate the corroboration requirements of CPL. § 60.50. [FN6] The court further held that the fact that the defendant was found next to his vehicle in what appeared to be an intoxicated state was insufficient "to suggest the commission of [a] crime". [FN7] It should be noted that "In *People v. Suber* , 19 NY3d 247 , 946 N.Y.S.2d 552 , 969 N.E.2d 770 (2012), the Court of Appeals held that the 'confession [*5]corroboration rule' of CPL § 60.50 is inapplicable to misdemeanor informations." [FN8] Nevertheless, in this case the admissions allegedly made by the defendant are not set out in the supporting deposition of the arresting officer. As stated previously, the deposition merely states "See Section 11", which is in the 710.30 Notice. That said notice is not a local criminal court accusatory instrument. Local criminal court accusatory instruments are limited to an information; a simplified information, a prosecutor's information, a misdemeanor complaint or a felony complaint. [FN9] Nor could a 710.30 Notice be considered a supporting deposition. Thus the question becomes whether admissions of a defendant that were not set forth in either an accusatory instrument and/or a supporting deposition could be considered by the court in determining the sufficiency of a local accusatory instrument. The Court of Appeals has held "As we recently reiterated,'in evaluating the sufficiency of an accusatory instrument,' a court does 'not look beyond its four corners (including supporting declarations appended thereto)' (*People v. Hardy* , 35 NY3d 466 , 475, 132 N.Y.S.3d 394 , 157 N.E.3d 117 [2020]; see CPL 100.15[3]; 100.40[1][c]; *People v. Thomas* , 4 NY3d 143, 146 , 791 N.Y.S.2d 68 , 824 N.E.2d 499 [2005]). Courts must 'not rely on external factors to create jurisdictional defects not evident from the face of the' accusatory instrument (*People v. Konieczny* , 2 NY3d 569, 576 , 780 N.Y.S.2d 546 , 813 N.E.2d 626 [2004]). Instead, '[w]hether the allegation of an element of an offense is hearsay, rendering the information defective, is to be determined on a facial reading of the accusatory instrument' (Casey, 95 NY2d at 361 , 717 N.Y.S.2d 88 , 740 N.E.2d 233)." (*People v. Slade* , 37 NY3d 127 , 136-137, 148 N.Y.S.3d 413,419-420 [2021]) In accordance with the cases cited herein, the statement that operation was established by the "Officer's Direct Observation" cannot be sustained, when the defendant was merely seen "near the vehicle". The fact that the defendant was near the vehicle, without any other information, does not provide the reasonable cause requirement of CPL 100.40 (1) (b) that " The allegations of the factual part of the information, together with those of any supporting depositions which may accompany it, provide reasonable cause to believe that the defendant committed the offense charged in the accusatory part of the

information." In addition, CPL § 100.40 (1) (c) requires that "Non-hearsay allegations of the factual part of the information and/or of any supporting depositions establish, if true, every element of the offense charged and the defendant's commission thereof." That is not the case herein. As was held in *Lekran* , " there are no factual allegations regarding the position or location of the car or other surrounding circumstances that would allow the Court to reasonably infer the defendant operated his car while he was intoxicated." [FN10] In other words there are no non-hearsay allegations in the factual part of the information that establish the required element of operation. The allegations in the accusatory instrument are simply conclusory in nature. Use of Admissions by the Defendant Set Out in a 710.30 Notice .There does not seem to be any superior court cases that have addressed this issue. In *People v. Anzalone* , 85 Misc 3d 648 ,650, 222 N.Y.S.3d 361 ,364 [Just Ct Orchard Park 2024] held that " Much as a sworn statement—such as, in this instance, a supporting deposition—can be incorporated into an accusatory instrument (see CPL 100.40 [1] [b]; *People v. Hardy* , 35 NY3d 466 , 475, 132 N.Y.S.3d 394 , 157 N.E.3d 117 [2020]), so too does this court believe that the CPL 710.30 notice, when appended to an accusatory instrument, can be considered in determining the validity and sufficiency of such a device (cf . *People v. Thomas*, 4 NY3d 143, 146 , 791 N.Y.S.2d 68 , 824 N.E.2d 499 [2005] [relying upon practice commentaries])." [FN11] That ruling was followed in *People v. Lane* , 85 Misc 3d 1274 [A] 2025 NY Slip Op. 50714[U] *3 [Crim Ct, King County, Berman J. 2025]; *People v. Wilkins* , — N.Y.S. 3d —, 2025 NY Slip Op. 25212 * 4 [Crim Ct, King County 2025, Berman J. 2025] and *People v. F.M.* , 2026 NY Slip Op. 50125[U] *2 [Crim Ct, King County 2025, Berman J. 2026]. This court respectfully disagrees with the holdings in the above cases. Attaching an unverified document, such as a 710.30 Notice, to a set of accusatory instruments does not turn that document into a supporting deposition. In that regard, see *People v. Pelt* , 150 Misc 2d 90 , 596 N.Y.S.2d 301 [Crim Ct, King County, Garnett, J. 1993])In that case the bill of particulars was provided to the defense in response to a demand for a bill of particulars. [FN12] The court stated "It is firmly established that facts contained in a Bill of Particulars may not be employed to supplement the facts in a facially insufficient information. *People v. Alejandro* , 70 NY2d 133, 138 , 517 N.Y.S.2d 927 , 511 N.E.2d 71 [Crim Ct, King County 1987]." [FN13] CPL §§ 100.40 (b) and (c) both refer specifically and exclusively to "an information" and "any supporting depositions". There is no mention in the statute of attaching any other document by reference. [FN14] Certainly if the legislature contemplated the use of other documents to establish the sufficiency of an accusatory instrument it would have included said additional language in the statute. Its failure to do so requires this court to exclude any other documents in evaluating the [*6]accusatory instrument charging the defendant with common law driving while intoxicated. In so doing, this court finds same to be insufficient on its face pursuant to CPL §§ 170.3 (1) (a), 100.40 (1) and 100.15. Legal Sufficiency- Driving While Intoxicated, Per Se. Vehicle and Traffic Law Section 1192 (2) states as follows: "No person shall operate a motor vehicle while such person has .08 of one per centum or more by weight of alcohol in the person's blood as shown by

chemical analysis of such person's blood, breath, urine or saliva, made pursuant to the provisions of section eleven hundred ninety-four of this article." As previously stated, the accusatory instruments herein charging the defendant with driving while intoxicated, per se, consist of the uniform traffic information, the fill in the blank supporting deposition and the supporting deposition breath test administration, which set out the chemical analysis to be .16%. Said deposition is supported by an original certified breath test certificate. Nevertheless, as with the charge of common law driving while intoxicated, the accusatory instruments charging per se driving while intoxicated must satisfy CPL §§ 100.40 (1) (b) and 100.40 (1) (c), relative to the providing reasonable cause to believe the defendant was operating a vehicle in an intoxicated state and to providing non-hearsay allegations of said operation. For the same reasons set forth above, the accusatory instrument and the supporting deposition fail to provide prime facie proof of said operation relative to the charge of per se driving while intoxicated. Conclusion . The defendant's motions to dismiss the accusatory instruments charging the defendant with violating VTL §§ 1192 (3) and 1192(2) as being insufficient on their face pursuant to CPL §§ 170.3 (1) (a), 100.40 (1) and 100.15 are hereby granted. As a result, the remaining motions raised in the defendant's omnibus motions need not be addressed at this time. This constitutes the decision and order of this court. Dated: February 26, 2026 Webster, New York Hon. Thomas J. DiSalvo Webster Town Justice

Footnotes Footnote 1: (Per se is defined as "being such inherently, clearly, or as a matter of law". Merriam-Webster's Collegiate Dictionary, 924 [11th ed 2014]) Footnote 2: (See Gerstenzang, Handling a DWI Case in New York § 16;32 at 817 [2025-2026 ed]) Footnote 3: (Id.) Footnote 4: (Id. at *2) Footnote 5: (Id. at 1089,924) Footnote 6: (Id. at 1093,926) Footnote 7: (Id. at 1094,927) Footnote 8: (Gerstenzang, Handling the DWI Case In New York § 16:38 at 826 [2025-26 ed]) Footnote 9: (Id at § 16:1 at 767) Footnote 10: (Lekram at *4) Footnote 11: (People v. Thomas did not deal with the use of statements of the defendant set out in a CPL 710.30 Notice.) Footnote 12: (Id. at 91,302) Footnote 13: (Id.) Footnote 14: (See also People v. Thomas, 4 NY3d 143,146 , 791 N.Y.S.2d 68,70 [2005], wherein the Court of Appeals stated "an information must set forth the required nonhearsay evidentiary allegations within 'the four corners of the instrument itself' or in annexed supporting depositions".)

THOMAS J. DISALVO, J.

People v Chandler (2026 NY Slip Op 26032) [*1] People v Chandler 2026 NY Slip Op 26032 Decided on February 26, 2026 Justice Court Of The Town Of Webster, Monroe County DiSalvo, J. Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the printed Official Reports. Decided on February 26, 2026 Justice Court of the Town of Webster, Monroe County The People of the State of New York against Gregory W. Chandler, Defendant. Case No. 25110055 Brian P. Green, District Attorney, Monroe County (Carrington Wells of Counsel), for plaintiff. Frank G. Maggio, Rochester, for defendant. Thomas J. DiSalvo, J. Synopsis. This court issued a written decision and order in this case on February 6, 2026 in response to the omnibus motions filed by

defense counsel on December 12, 2025. No responding affirmation having been submitted by the People as of the date of said decision and order. The court's decision granted the defendant's motion to dismiss the charges of common law and per driving while intoxicated based on insufficient accusatory instruments pursuant to CPL §§ 170.3 (1) (a), 100.40 (1) and 100.15. Subsequent to that date of the court's decision and order the People filed with the court a Notice of Cross Motion and Responding Affirmation on February 12, 2026. The matter was returnable on February 18, 2026. Since the court had given the People the right to respond, although the People did not state that they would put in a written response to said motions, this court believes it needs to address the People's response in this supplemental decision and to clarify and expand on its reasoning in reaching its decision relative to the issue of sufficiency of the accusatory instruments. Thus this decision is meant to supercede its previous decision in this case.

History of the Case The defendant herein was charged with common law driving while intoxicated, VTL § 1192 (3) and driving while intoxicated, per se [FN1] , VTL 1192 (2) . The said offenses were alleged to have been committed on November 9, 2025 at just after midnight on South Avenue in the Village of Webster. The accusatory instruments consisted of two simplified traffic informations, [*2]a fill in the blank supporting deposition and a breath test supporting deposition. An arraignment was conducted on the return date of December 3, 2025. At that time, defense counsel requested an adjournment so he could file motions. Omnibus motions were received on December 12, 2025. Argument of motions took place on January 21, 2026. Said motions requested that the accusatory instruments herein be dismissed as being insufficient on their face pursuant to CPL §§ 170.3 (1) (a), 100.40 (1) and 100.15. In addition, defendant's motion requested that the People be precluded from using statements made by the defendant to the Webster Police because the CPL § 710.30 notice failed to give the defense proper notice of the statements of the defendant they intended to use at trial. It was also requested that the evidence obtained by the police be suppressed because the police did not have probable cause to stop and/or arrest the defendant. The People's response papers that were received by the court on February 12, 2026, do not address the issue as to whether or not an alleged admission in the attached CPL § 710.30 Notice can be used to determine sufficiency of the accusatory instruments.

Facts of the Case. The uniform traffic informations served on the defendant complied with CPL §§ 100.10 (2) (a) and 100.25 (1). Accompanied with said traffic informations is a document labeled "Supporting Deposition/Bill of Particulars", which consisted of three pages. The first two pages were the arresting officer's supporting deposition. The third page was labeled in the top right as "710.30 Notice". The said documents required the deponent to fill in the blanks and to black out various squares that describe what the officer observed. They indicated that the conditions were "dry" the traffic was "light" and the weather was "clear/dark". The reason for the stop was a "crash" and "property damage". The vehicle operation was said to be established by the "officers's direct observation". However, in the same section of the supporting deposition the officer states that the "Defendant was near the vehicle". Probable cause was determined to be based on the "odor of alcoholic beverage", "glassy eyes",

"impaired speech" and "impaired motor coordination" all of which was set out by the blackening of the boxes in said section of the supporting deposition. Furthermore, in said section designated "Probable Cause for Arrest", the officer indicated that the defendant performed field tests and also indicated that "Note Card Attached". However, no such note card was made a part of the deposition. The said supporting deposition went on to indicate that oral admissions were made but did not specify what was allegedly said by the defendant. Instead the reader is directed to "See Section 11", which is in the CPL § 710.30 Notice. It was indicated that no preliminary breath test was performed, but that there was no refusal to submit to same by the defendant. Other than the fact that a breath test was subsequently performed by another officer, no other information relative to the condition of the defendant was provided by the supporting deposition. A second police officer executed the breath test supporting deposition. In said deposition it was stated that on November 9, 2025 at 1:43 A.M. he administered a breath chemical analysis which rendered a finding of .16%. It further stated that the arresting officer observed the administration of said test. In the observation portion of said deposition the officer described the defendant as having "poor coordination, bloodshot watery eyes, alcohol beverage [*3]odor".

Legal Analysis. Legal Sufficiency - Common Law Driving While Intoxicated . Vehicle and Traffic Law Section 1192 (3) states "No person shall operate a motor vehicle while in an intoxicated condition." An accusatory instrument charging a defendant with common law driving while intoxicated must provide reasonable cause to believe three specific elements. Namely, the accusatory instruments must allege that the defendant operated a motor vehicle; that the defendant was intoxicated and that the operation and intoxication were simultaneous. [FN2] In order to make a determination of sufficiency, the court must be aware of the standard established by the Court of Appeals which stated "So long as the factual allegations of an information give an accused notice sufficient to prepare a defense and are adequately detailed to prevent a defendant from being tried twice for the same offense, they should be given a fair and not overly restrictive or technical reading". (People v. Casey , 95 NY2d 354, 360, 717 N.Y.S. 2d 88, 91 [2000]) However, in this case there is no allegation that the defendant was sitting behind the steering wheel of his vehicle or that the motor was running. As previously stated, the officer did not check the boxes indicating that the defendant was at the wheel; that keys were in the ignition; that the engine was running or that the engine was warm. Instead he checked the box that stated "the defendant was near the vehicle". Such a recitation of the facts observed by the officer does not establish the first element of common law driving while intoxicated, namely that of operation. "The term "operation" has a very specific meaning under the Vehicle and Traffic Law. It is undisputed that the definition of the term 'operate' as defined in DWI statutes is broader than that of driving and that '[a] person operates a motor vehicle within the meaning of the [statute] when, in the vehicle, he intentionally does any act or makes use of any mechanical or electrical agency which alone or in sequence will set in motion the motive power of the vehicle.' People v. Alamo , 34 NY2d 453, 459 (1974) quoting Matter of Prudhomme v. Hults , 27 AD2d 234, 237 (3d Dept.1967). Therefore, "criminal liability under

section 1192 can attach to conduct dangerously close to driving, as long as that conduct occurs upon locations covered by the statute." *People v. Prescott* , 95 NY2d 655, 662 (2001)." *People v. Lekram* , 57 Misc 3d 1220 [A], 2017 NY Slip Op. 51562 [U] *3[2017]) Nevertheless, the court in *Lekram* dismissed the accusatory instrument charging the defendant with common law driving while intoxicated. It held that "the sole allegations pertinent to the element of operation are that the defendant was seen [*4]sitting behind the wheel of his car in an intoxicated condition with a remote key in his pocket. This Court finds that the allegation that the motor vehicle was operating is conclusory and therefore is not 'a fact of an evidentiary character' (CPL § 100.15[3]; see also, *People v. Dreyden* , 15 NY3d 100 [2010]; *Dumas*, 68 NY2d 729) which supports an element of the offense charged, namely vehicular operation. 'The phrase factual allegations of an evidentiary character' means nonconclusory descriptions of what the deponent personally observed, heard or experienced." *People v. Concepcion* , 36 Misc 3d 551, 553 (Crim Ct, NY County 2012) citing *Dumas*, supra. '[W]here the fact at issue is a conclusion that derives solely from another fact or facts that have not been alleged, that fact is a conclusory allegation' [FN3] See also, *People v. Lawrence* , 55 Misc 3d 1209 [A], 2017 NY Slip Op. 50474[U] [2017]. In that case the court in dismissing the accusatory instrument noted that "Here the sole allegations pertinent to the element of operation are that the defendant was seen sitting alone in the driver's seat of his car while intoxicated. There are no allegations that the engine was running, that the key was in the ignition, nor even that the defendant was in possession of the keys to his car. Standing alone, the facts alleged are insufficient to find it reasonably likely that the defendant was operating his car at the time of the charged offenses...." [FN4] In *People v. Kaminiski* , 143 Misc 2d 1089,1094, 542 N.Y.S 2d 923,924 [1989] the court found the accusatory instruments charging the defendant with common law and per se driving while intoxicated insufficient. In that case the supporting deposition of the arresting officer indicated that she "observed defendant standing near a 1982 Mercury. Deponent further states that she is informed by defendant that defendant was operating the above-mentioned car when a tow truck had collided with defendant's car." [FN5] The court found that the admission of the defendant as to operation could not be used since it would violate the corroboration requirements of CPL. § 60.50. [FN6] The court court further held that the fact that the defendant was found next to his vehicle in what appeared to be an intoxicated state was insufficient "to suggest the commission of [a] crime". [FN7] It should be noted that "In *People v. Suber* , 19 NY3d 247, 946 N.Y.S.2d 552, 969 N.E.2d 770 (2012), the Court of Appeals held that the 'confession [*5]corroboration rule' of CPL § 60.50 is inapplicable to misdemeanor informations." [FN8] Nevertheless, in this case the admissions allegedly made by the defendant are not set out in the supporting deposition of the arresting officer. As stated previously, the deposition merely states "See Section 11", which is in the 710.30 Notice. That said notice is not a local criminal court accusatory instrument. Local criminal court accusatory instruments are limited to an information; a simplified information, a prosecutor's information, a misdemeanor complaint or a felony complaint. [FN9] Nor could a 710.30 Notice be considered a supporting

deposition. Thus the question becomes whether admissions of a defendant that were not set forth in either an accusatory instrument and/or a supporting deposition could be considered by the court in determining the sufficiency of a local accusatory instrument. The Court of Appeals has held "As we recently reiterated,'in evaluating the sufficiency of an accusatory instrument,' a court does 'not look beyond its four corners (including supporting declarations appended thereto)' (*People v. Hardy* , 35 NY3d 466, 475, 132 N.Y.S.3d 394, 157 N.E.3d 117 [2020]; see CPL 100.15[3]; 100.40[1][c]; *People v. Thomas* , 4 NY3d 143, 146, 791 N.Y.S.2d 68, 824 N.E.2d 499 [2005]). Courts must 'not rely on external factors to create jurisdictional defects not evident from the face of the' accusatory instrument (*People v. Konieczny* , 2 NY3d 569, 576, 780 N.Y.S.2d 546, 813 N.E.2d 626 [2004]). Instead, '[w]hether the allegation of an element of an offense is hearsay, rendering the information defective, is to be determined on a facial reading of the accusatory instrument' (*Casey*, 95 NY2d at 361, 717 N.Y.S.2d 88, 740 N.E.2d 233)." (*People v. Slade* , 37 NY3d 127, 136-137, 148 N.Y.S.3d 413,419-420 [2021]) In accordance with the cases cited herein, the statement that operation was established by the "Officer's Direct Observation" cannot be sustained, when the defendant was merely seen "near the vehicle".The fact that the defendant was near the vehicle, without any other information, does not provide the reasonable cause requirement of CPL 100.40 (1) (b) that " The allegations of the factual part of the information, together with those of any supporting depositions which may accompany it, provide reasonable cause to believe that the defendant committed the offense charged in the accusatory part of the information." In addition, CPL § 100.40 (1) (c) requires that "Non-hearsay allegations of the factual part of the information and/or of any supporting depositions establish, if true, every element of the offense charged and the defendant's commission thereof." That is not the case herein. As was held in *Lekran* , " there are no factual allegations regarding the position or location of the car or other surrounding circumstances that would allow the Court to reasonably infer the defendant operated his car while he was intoxicated." [FN10] In other words there are no non-hearsay allegations in the factual part of the information that establish the required element of operation. The allegations in the accusatory instrument are simply conclusory in nature. Use of Admissions by the Defendant Set Out in a 710.30 Notice .There does not seem to be any superior court cases that have addressed this issue. In *People v. Anzalone* , 85 Misc 3d 648,650, 222 N.Y.S.3d 361,364 [Just Ct Orchard Park 2024] held that " Much as a sworn statement—such as, in this instance, a supporting deposition—can be incorporated into an accusatory instrument (see CPL 100.40 [1] [b]; *People v. Hardy* , 35 NY3d 466, 475, 132 N.Y.S.3d 394, 157 N.E.3d 117 [2020]), so too does this court believe that the CPL 710.30 notice, when appended to an accusatory instrument, can be considered in determining the validity and sufficiency of such a device (cf . *People v. Thomas*, 4 NY3d 143, 146, 791 N.Y.S.2d 68, 824 N.E.2d 499 [2005] [relying upon practice commentaries])." [FN11] That ruling was followed in *People v. Lane* , 85 Misc 3d 1274[A} 2025 NY Slip Op. 50714[U] *3 [Crim Ct, King County, Berman J. 2025]; *People v. Wilkins* , ___ N.Y.S. 3d ___, 2025 NY Slip Op. 25212 * 4 [Crim Ct, King County

2025, Berman J. 2025] and *People v. F.M.* , 2026 NY Slip Op. 50125[U] *2 [Crim Ct, King County 2025, Berman J. 2026]. This court respectfully disagrees with the holdings in the above cases. Attaching an unverified document, such as a 710.30 Notice, to a set of accusatory instruments does not turn that document into a supporting deposition. In that regard, see *People v. Pelt* , 150 Misc 2d 90, 596 N.Y.S.2d 301 [Crim Ct, King County, Garnett, J. 1993]]In that case the bill of particulars was provided to the defense in response to a demand for a bill of particulars. [FN12] The court stated "It is firmly established that facts contained in a Bill of Particulars may not be employed to supplement the facts in a facially insufficient information. *People v. Alejandro* , 70 NY2d 133, 138, 517 N.Y.S.2d 927, 511 N.E.2d 71 [Crim Ct, King County 1987)." [FN13] CPL §§ 100.40 (b) and (c) both refer specifically and exclusively to "an information" and "any supporting depositions". There is no mention in the statute of attaching any other document by reference. [FN14] Certainly if the legislature contemplated the use of other documents to establish the sufficiency of an accusatory instrument it would have included said additional language in the statute. Its failure to do so requires this court to exclude any other documents in evaluating the [*6]accusatory instrument charging the defendant with common law driving while intoxicated. In so doing, this court finds same to be insufficient on its face pursuant to CPL §§ 170.3 (1) (a), 100.40 (1) and 100.15. Legal Sufficiency- Driving While Intoxicated, Per Se. Vehicle and Traffic Law Section 1192 (2) states as follows: "No person shall operate a motor vehicle while such person has .08 of one per centum or more by weight of alcohol in the person's blood as shown by chemical analysis of such person's blood, breath, urine or saliva, made pursuant to the provisions of section eleven hundred ninety-four of this article." As previously stated, the accusatory instruments herein charging the defendant with driving while intoxicated, per se, consist of the uniform traffic information, the fill in the blank supporting deposition and the supporting deposition breath test administration, which set out the chemical analysis to be .16%. Said deposition is supported by an original certified breath test certificate. Nevertheless, as with the charge of common law driving while intoxicated, the accusatory instruments charging per se driving while intoxicated must satisfy CPL §§ 100.40 (1) (b) and 100.40 (1) (c), relative to the providing reasonable cause to believe the defendant was operating a vehicle in an intoxicated state and to providing non- hearsay allegations of said operation. For the same reasons set forth above, the accusatory instrument and the supporting deposition fail to provide prime facie proof of said operation relative to the charge of per se driving while intoxicated. Conclusion . The defendant's motions to dismiss the accusatory instruments charging the defendant with violating VTL §§ 1192 (3) and 1192(2) as being insufficient on their face pursuant to CPL §§ 170.3 (1) (a), 100.40 (1) and 100.15 are hereby granted. As a result, the remaining motions raised in the defendant's omnibus motions need not be addressed at this time. This constitutes the decision and order of this court. Dated: February 26, 2026 Webster, New York Hon. Thomas J. DiSalvo Webster Town Justice Footnotes Footnote 1: (Per se is defined as "being such inherently, clearly, or as a matter of law". Merriam-Webster's Collegiate Dictionary, 924 [11th ed 2014]) Footnote 2: (See Gerstenzang,

Handling a DWI Case in New York § 16:32 at 817 [2025-2026 ed]) Footnote 3: (Id.) Footnote 4: (Id. at *2) Footnote 5: (Id. at 1089,924) Footnote 6: (Id. at 1093,926) Footnote 7: (Id. at 1094,927) Footnote 8: (Gerstenzang, Handling the DWI Case In New York § 16:38 at 826 [2025-26 ed]) Footnote 9: (Id at § 16:1 at 767) Footnote 10: (Lekram at *4) Footnote 11: (People v. Thomas did not deal with the use of statements of the defendant set out in a CPL 710.30 Notice.) Footnote 12: (Id. at 91,302) Footnote 13: (Id.) Footnote 14: (See also People v. Thomas, 4 NY3d 143,146, 791 N.Y.S.2d 68,70 [2005], wherein the Court of Appeals stated "an information must set forth the required nonhearsay evidentiary allegations within 'the four corners of the instrument itself' or in annexed supporting depositions".)