

LACKAWANNA CITY COURT
STATE OF NEW YORK : ERIE COUNTY

THE PEOPLE OF THE STATE OF
NEW YORK

v.

NOTICE OF MOTION

[REDACTED]

[REDACTED]
[REDACTED]

YOUR HONOR:

Please take notice that at a term of [REDACTED] City Court held at _____ on January __, 2023 or as soon thereafter as counsel can be heard, the defendant will move to dismiss all counts of both informations on the ground that they are facially insufficient.

Respectfully yours,

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DATED: December __, 2022
Buffalo, NY

TO:

Hon. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

ADA _____
Erie County District Attorney's Office
25 Delaware Ave.
Buffalo, NY 14202

██████████ CITY COURT
STATE OF NEW YORK : ERIE COUNTY

THE PEOPLE OF THE STATE OF
NEW YORK

v.

SUPPORTING AFFIRMATION

████████████████████
████████████████████

████████████████████
██

STATE OF NEW YORK)
COUNTY OF ERIE) ss.
CITY OF BUFFALO)

████████████████████, an attorney licensed to practice in the courts of this State, affirms the truth of the following statements under penalties of perjury.

1. I am counsel for the defendant, who is charged under Docket No. ██████████ with resisting arrest (Penal Law § 205.30), obstructing governmental administration in the second degree (Penal Law § 195.05), and disorderly conduct (Penal Law § 240.20[3]) and under Docket No. CR-04535-22 with resisting arrest (Penal Law § 205.30) and disorderly conduct (Penal Law § 240.20[3]).
2. I make this affirmation in support of my motion to dismiss all counts of both informations on the ground that they are “defective, within the meaning of section 170.35” (CPL 170.30[1][a]).
3. An information is defective, in relevant part, when “it is not sufficient on its face pursuant to the requirements of section 100.40” (CPL 170.35[1][a]). One of the requirements of CPL 100.40 is 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” (CPL 100.40[1][b]).

Docket No. [REDACTED]

4. A person is guilty of disorderly conduct, in relevant part, when, “with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof ... [i]n a public place, he uses abusive or obscene language, or makes an obscene gesture” (CPL 240.20[3]).
5. The Court of Appeals has interpreted the statute to require a **public harm** element (*People v. Baker*, 20 NY3d 354, 360 [2013]).
6. Here, the information alleges that the defendant said to police officers, “fuck you, your mother is a whore, you can suck my dick, get the fuck away from me” in front of the general public at 7:47 p.m.
7. The allegation fails to establish the public harm element.
8. “The significance of the public harm element in disorderly conduct cases cannot be overstated ... [the analysis] turns on consideration of many factors, including the time and place of the episode under scrutiny; the nature and character of the conduct; the number of other people in the vicinity; whether they are drawn to the disturbance and, if so, the nature and number of those attracted; and any other relevant circumstances” (*Baker* at 360).
9. The allegation does not state the number of people in the vicinity or whether they were drawn to the disturbance, let alone that they were “motivated by anything other than curiosity or expressed any inclination to involve themselves in the dispute” (*Baker* at 363). Also, the fact that his statements were directed exclusively at police officers, who are “trained to defuse situations involving angry or emotionally distraught persons ... further undermines any inference that there was a threat of public harm” (*id.*). Finally, the complaint does not state the volume at which the defendant made the statements.
10. Thus, the disorderly conduct count of this information is insufficient on its face.

11. A person is guilty of obstructing governmental administration in the second degree, in relevant part, when he “prevents or attempts to prevent a public servant from performing an official function, by means of intimidation, physical force or interference, or by means of any independently unlawful act” (Penal Law § 195.05).
12. Here, the information alleges the following facts: “The defendant’s nephew stated to Lt. Darmstedter he was scared and wanted to go home. When the defendant saw Lt. Darmstedter talking to his nephew he became irate and forcibly grabbed his nephew. Lt. Darmstedter, patrolman [REDACTED] physically stopped the defendant, his nephew ran out of the store in fear. Defendant chased after him and was told stop but the defendant refused to stop.”
13. The allegation does not adequately explain how the defendant’s actions – grabbing and chasing his nephew – interfered with an official function.
14. Thus, the obstructing governmental administration count of this information is insufficient on its face.
15. A person is guilty of resisting arrest when he “intentionally prevents or attempts to prevent a police officer or peace officer from effecting an authorized arrest of himself or another person” (Penal Law § 205.30).
16. Here, the information alleges that the defendant “did disregard several verbal commands to place his hands behind his back after being told he was under arrest to PI 190.05 [sic] and PL 240.20(3). The defendant did flee from Officers on [REDACTED] The defendant did pull away while officers were trying to place his hands behind his back.”
17. A police officer is authorized to make an arrest for any offense when he has “reasonable cause to believe that such person has committed such offense in his or her presence” (CPL 140.10[1][a]).
18. The allegation fails to explain why the arrest was authorized. For the reasons discussed in ¶ 9 and ¶ 13, the police did not have reasonable cause to arrest the defendant for

either disorderly conduct or obstructing governmental administration, so the arrest was not authorized.

19. Thus, the resisting arrest count of this information is insufficient on its face.

Docket [REDACTED]

20. With respect to the disorderly conduct count, the information alleges that the defendant said to the manager at [REDACTED], “suck my dick, fuck you’s [sic], freedom of speech” in front of officers and a large crowd of people at 3:56 a.m.

21. The allegation fails to establish the public harm element. As with the first allegation, it does not state the number of people in the people in the vicinity or whether they were drawn to the disturbance, let alone that they were “motivated by anything other than curiosity or expressed any inclination to involve themselves in the dispute” (*Baker* at 363).

22. Thus, the disorderly conduct count of this information is insufficient on its face.

23. With respect to the resisting arrest count, the information alleges that after being told that he was under arrest for disorderly conduct, “defendant refused to comply with Officers [sic] commands to turn around and place his hands behind his back. When Officer [REDACTED] did take hold of defendant’s wrist to place it in handcuffs, the defendant did pull away and attempt to flee on foot.”

24. The allegation fails to explain why the arrest was authorized. For the reasons discussed in ¶ 21, the police did not have reasonable cause to arrest the defendant for disorderly conduct, so the arrest was not authorized.

25. Thus, the resisting arrest count of this information is insufficient on its face.

For these reasons, all charges should be dismissed.

[REDACTED]