

STATE OF NEW YORK COUNTY OF WAYNE
LOCAL CRIMINAL COURT VILLAGE OF LYONS

THE PEOPLE OF THE STATE OF NEW YORK

vs.

MOTION TO DISMISS

John Murtari,

Defendant.

SIRS:

PLEASE TAKE NOTICE that upon the included Affidavit of Andrew D. Correia, attorney for the Defendant herein a motion will be made at the Courthouse at Lyons, New York at the Court's convenience for the following relief:

Dismissal of Making Graffiti, Possession of Graffiti Instruments and Trespass charges.

Counsel for the Defendant hereby affirms and says:

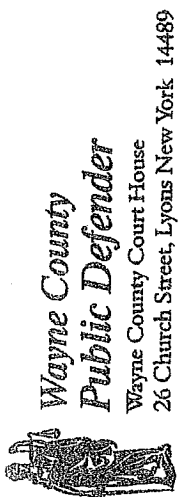
1. I am duly licensed to practice law in the State of New York and am the attorney for the Defendant herein. All facts asserted in this motion are true to the best of counsel's knowledge and belief.

FACTS

2. John Murtari stands accused of Making Graffiti, Possession of Graffiti Instruments and Trespass. It is alleged that on January 27th, 2010 Mr. Murtari wrote in chalk on the wall of the old Wayne County courthouse at 26 Church Street, Lyons. In addition, it is alleged that Mr. Murtari was "walking back and forth on the middle landing of 26 Church Street" and was ordered to remove himself from the property by Deputy Aunkst. When he did not, he was arrested for Trespass.

LEGAL ARGUMENT

3. The complaint must be dismissed as facially insufficient because it does not contain non-hearsay allegations which, if true, establish all the elements of the offense charged and the defendant's commission thereof. People v. Alejandro 70 N.Y.2d 133, 517 N.Y.S.2d 927.



4. **Making Graffiti**: The term “graffiti” is defined by statute [Penal Law 145.60] and requires that a mark be placed upon public property “with the intent of damaging such property.”

Citizens are prohibited from making graffiti on public buildings without permission. The building in question here, 26 Church Street is a public building owned by Wayne County.

5. This charging document alleging Making Graffiti is insufficient because there is no fact alleged which demonstrates any intent to damage any property. Mr. Murtari made no statements indicating he intended to damage property, and writing with chalk does no damage to the property. The misdemeanor complaint must be dismissed as insufficient.

6. **Possession of Graffiti Instruments**: The identical argument applies to the Possession of Graffiti instruments charge. Whatever objects Mr. Mutari had in his possession, it can only become a criminal charge if there is evidence that he possessed those instruments “under circumstances evincing an intent to use...to damage...property.” [Penal Law 145.65] There is no allegation in the charging document with Mr. Murtari possessed any object with the intent to damage property. It is alleged he possessed chalk which he used to write on a wall. There was no intent to damage property and no fact supporting intent to damage property is alleged in the misdemeanor information. Therefore, the information is insufficient and must be dismissed.

7. **Trespass**: At 9:22 AM Mr. Murtari was walking back and forth outside a public building. It is not alleged that he was acting disorderly, that he was creating a disturbance or that he was creating a hazardous condition. He was peacefully present on public property. Deputy Aunkst approached Mr. Murtari and instructed him to leave the public property. Mr. Murtari refused. Mr. Murtari was arrested for Trespass under PL 140.05 as a violation.

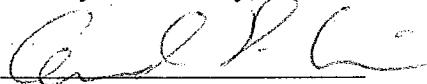
8. There must be some valid reason alleged to exclude a citizen from a public building, and failure to express a reason in the charging documents results in a defective information which must be dismissed. See **People v. Wolff**, 63 Misc.2d 178, 312 N.Y.S.2d 721. In this case, there is no reason alleged which would justify excluding Mr. Murtari from public property, therefore, Deputy Aunkst’s order was not lawful and the charge of Trespass must be dismissed. See also **Ellis v. La Vecchia**, 567 F. Supp2d 601 (USDC, S.Dist., 2008)(Holding that a person acting

peacefully may not be charged with trespass for not abiding by a police order to leave a police precinct.)

CONCLUSION

9. The informations do not lay an adequate foundation for the charges. Therefore, all the informations must be dismissed.

Hereby affirmed on the
4th day of February, 2010.



ANDREW D. CORREIA
Attorney for Defendant