

34 Franklin St.
Lyons, NY 14489
October 7, 2008

Judge Ronald Reinstein
Macedon Town Court
32 Main Street
Macedon, NY 14502

Case No: 08060034 Ticket: BA8090585
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Dear Judge Reinstein,

Attached you will find a motion in regards to my upcoming trial for aggravated unlicensed operation of a motor vehicle. My license was suspended by DMV for not obeying a child support order. The amount overdue is about \$99,000, making me one of the biggest (if not the biggest) deadbeat in Lyons and probably Wayne County. *Some people might read this and say, "Let's nail this dirt-ball!"*

I have personally struggled with how to handle this. It has been a test of my Faith. I cannot not bring myself to say 'guilty' to a crime and then go back to trying to 'hide' and hopefully not get stopped again by police. My only honest and Faithful recourse is to challenge the validity of the law and be ready to accept whatever the consequences may be. I believe laws are invalidated when people step back and say, *"This shouldn't be happening. There is something wrong in what we are about to do."*

While I certainly believe that *"no one is above law"*; I hope we also agree that *"no one's human dignity is beneath the law."* I hope to show I'm a very dedicated parent and son; a person that tried to place the needs of his family above his own; someone who has worked hard his entire life, serving both his country and local community. A moral individual who could not obey a Judge's order and abandon what he thought was best for his family; a person who has spent, on limited income, over \$65,000 in direct support of his son. A higher percentage based on actual income than any support 'guideline' would require. The motion is lengthy and I'll briefly summarize here:

DISMISS in the INTEREST OF JUSTICE – This law was designed to punish parents who don't care about their children. Assistant DA Richard Wunder is from Lyons and has known my family for many years. I have been active in my Church and in charitable activities. I love my son, Domenic, very, very much and bear no ill-will toward my former spouse.

How can support money fall so far behind? *Imagine a support level based on twice your actual income for the last 12 years. Imagine your child being moved to the other side of the country and a former spouse who wants to alienate*

you. Imagine all the travel expenses to see your child and realize they ARE NOT COUNTED as support. Imagine a very wealthy former spouse – your child is not needy, but they want you very much and you love them.

Imagine repeated attempts to get things changed, but you are rebuffed, the courts are too busy. Imagine the best legal advice you get from a Family Court assigned counsel is, “John, just pay the money, you’ll see your son when he’s 18.” It is a terrible system.

If you have time my website has a complete chronology of my 'child support' history, including copies of transcripts and most documents.

http://www.AKidsRight.Org/support_jm.htm

DRIVING IS NOT A ‘PRIVILEGE’ – I have an excellent state driving record with NO tickets in over 10 years. There was no moving violation in Macedon. Lyons is a rural community and I cannot fulfill basic family obligations without a vehicle. The ability to drive should be based on training and safety, not as an easy form of punishment for other civil matters. Unnecessary restriction of my freedom of movement is a violation of individual rights.

DIMINISHED DUE PROCESS - The backdoor connection between Child Support payments and driving is a violation of individual rights to due process. Family Court Support proceedings operate with reduced levels of proof and evidence. I now face criminal charges with no real means of defense. If my license had been suspended due to DWI, speeding, or other traffic violations I would have been protected during those proceedings by strict rules of evidence and a strong burden of proof.

In summary, I am not a dirt-ball, or a deadbeat, or a criminal. Some may think I should plead guilty as a matter of ‘simple fact.’ I ask one question. *Imagine a poor black woman in the 50’s, in Alabama, who does not move to the back of the bus for a white person. She clearly violates the law. Do you expect her to plead guilty to a crime?*

While no one should feel above the law. The law should also respect our rights and the imperative of individual conscience and personal responsibility – especially in issues of family. Using motor vehicle law to punish someone for a perceived shortcoming in family matters is improper.

Respectfully yours,

John Murtari
315-430-2702 (cell)

STATE OF NEW YORK
Macedon VILLAGE COURT

People of the State of New York,

vs.

John Murtari, Defendant

NOTICE OF MOTION

Case No: 08060034

Ticket: BA8090585

PLEASE TAKE NOTICE, that upon the attached affidavit and upon all prior pleadings and proceedings heretofore had herein, a Motion will be made as follows:

DATE, PLACE AND TIME OF MOTION: In front of the Honorable Judge Ronald Reinstein at the Macedon Village Court, Lyons, New York, before this matter comes to trial.

TYPE OF MOTION: Defendant seeks dismissal of the pending charges for one or more of the following reasons.

a) In the Interest of Justice.

b) Finding that driving should not be considered a privilege. The ability to drive should be based on safety issues and motor vehicle control and training. It should not be used as a form of punishment for other civil matters.

c) Finding that the Defendants 'due process' rights were violated by the connection between a Family Court Support proceeding and New York Traffic Law.

Dated: October 7th, 2008

Respectfully submitted,

John Murtari, Defendant
34 Franklin St. Lyons, NY 14489
(315) 430-2702 (cell)

CC: Mr. Richard Healey, Wayne County DA, Hall of Justice, Suite 202, Lyons, NY 14489

**STATE OF NEW YORK
LYONS VILLAGE COURT**

People of the State of New York,

vs.

John Murtari, Defendant

Supporting Text

Case No: 05070051.01

Ticket: LT866460.0

JOHN MURTARI states:

1. I am the defendant in this action, and I make this statement in support of my motion dated October 7th, 2008.

Background of Defendant/Due Process

2. I was born and raised in Lyons. Many people know my family and me. My father, Domenico, was blessed with a son at the age of 64. He loved me very much and while we did not have a lot of money, he did everything he could for me and was always there for me. My parents raised me on limited social security income. We did not have a phone till I was in high school. We did not own a car till I learned how to drive. They had no money to pay for college, but they were always there for me. I was there only child.
3. I was fortunate as a child and stayed out of serious trouble and did well in school. My parents had no money for college, but I won an appointment to the Air Force Academy. I graduated Cum Laude from there with a degree in Astronautical Engineering and went on to Pilot Training and became an Instructor Pilot. I served my country well and was honorably discharged. I voluntarily ended my Air Force career because of my aging parents.
4. At that time many told me not to worry about them, to live my life. That may be fine for some, but it was not for me. I had a responsibility and duty to my parents and I was happy to help them.
5. I love my son Domenic, born in 1993, very much. Being a parent was a great blessing for me. When he was born I started my own business with the goal of having more time to devote to family.
6. An unwanted divorce changed everything. In 1996 a Judge ordered a child support level (\$120/week) based on twice my actual income and ordered me to change jobs so I could make more money. I quote from the Divorce judgment:

“The Court finds that Defendant is capable of earning income in excess of \$40,000.00 per year and, as such, the Defendant shall pay child support in the sum of \$120.00 per week, retroactive to October 1, 1995, plus a pro-rated share of child care and uncovered medical and dental costs for Domenic.”

“The evidence shows that the Defendant has voluntarily chosen to decrease his income in an attempt to start his own business and to be in a position to spend more time during the day with Domenic. At the present time, his business income is unable to support his family obligations... At this time the Defendant teaches part-time at Onondaga Community College and performs volunteer work. The time spent on volunteer work, no matter how commendable, could be better used producing income to support his financial obligations to the family. The Defendant must adjust his priorities in order to adequately provide for his family.”

7. Domenic and I were always very close. He was terrified by the changes and being left with strangers. I had him every other weekend, Thursday-Monday and every Sunday for church (the Judge did recognize how close we were). My business gave me the flexibility to spend all day with him and not need a sitter. I was paying \$60/week, which was realistic based on my actual income, but I was falling behind.
8. In 1998 I petitioned for a support change with inexperienced counsel. It was denied. I had the impression it was because I was involved in a family business and they ‘guessed’ I must be cheating on income. I was not. In that same year my former spouse petitioned the Court to relocate to Colorado to work on her third college degree. She found a degree program only offered at schools west of the Mississippi. Again, with inexperienced counsel, I tried to stop the move. It was granted and no change was made to support levels. The Judge did give me a ‘visit’ for one weekend per month, Spring break, Christmas break, and six weeks in the summer.
9. I feared alienation from my young child as my former spouse blocked written and phone communication. Her family was very wealthy and Domenic was not in need for material things, but he loved seeing Daddy! I exercised my visits as much as finances would allow. To have a home environment we would rent a cabin near the mountains, even my mother, in her 80’s would make the trip. Each weekend was almost \$1000, between plane tickets, renting a car, a cabin for four days, food and some entertainment (Dom loves put-put golf!).
10. I made two weekend trips in the Fall, and two in the Spring: \$3000-\$4000. When Domenic would come to Lyons for Christmas, Spring Break, and the Summer I would fly out both for pickup and return. That turned into three round-trip tickets, hotel for a night, and a car – another \$1000 each trip. \$6000-\$7000/year out of my limited income which was in a range of

\$16,000-\$22,000/year (gross). I had to borrow money and also maxed out two credit cards. This has been going on since 1999.

11. My support payments during this period have averaged only \$50/month which put me even farther behind. In the year 2000 my former spouse brought a violation proceeding against me. I explained my situation to my assigned counsel. He told me, "Just pay the money, you'll see your kid when he's 18." That was not acceptable and the Judge only cared about the payments. I served six months in jail, including Christmas.
12. In 2001 I made another two attempts to get the support level modified and was told there was 'no cause of action'. Even though my son had relocated since the original order. In the past two years I was ready to try again and paid \$1000 to an attorney, but nothing was accomplished.
13. At the end of August, 2005, my mother, Caterina (89), became seriously ill. She spent almost two weeks in the hospital and came home on a stretcher in an ambulance. She was diagnosed as terminally ill and some nurses told me I should send her to a nursing home. I did not want to do that. I remember her great care and love when I was a child. Because I worked at the business I had started years ago, I had the flexibility to work out of home and give her full time care over her last few months. I was helped at home by the Hospice program and the nurses said she had made a great recovery from where she was at the hospital. She was happy; with family and in her own home. If I had chosen to abandon my business, per the Judges order, this would not have been possible.

Domenic was here that Christmas and she enjoyed his company. She passed away in late January of 2006. I was very fortunate he could be here for the Funeral and he helped make it a fitting memorial to her.
14. The money paid on travel has been well spent. Domenic and I have a very strong relationship. Now he is old enough (15) to call me on the phone and we can exchange email. During our visits we have a great time and I'm able to share my experiences with him. We are able to visit family and friends. He certainly has no doubt how much I love and care for him.
15. I have lived very frugally and any extra money is spent for Domenic. Right now I am driving an 88 Dodge Caravan with 295,000 miles. I try to take good care of the vehicle – there is certainly no money for a new car. I am now 52 years old and have nothing saved up for retirement. It is something I can accept, but now the threat of being turned into a jailed criminal for simply driving is an indignity.

16. I have worked hard my entire life and been willing to help the community and others. I volunteered weekly visits for many years at a geriatric center, and also made monthly visits to bring food to a homeless shelter, the Oxford Inn located in Syracuse. Recently Domenic and I have begun to bring food to that same shelter during holidays.
17. I serve as a Lector at my local Church, St. Michael's. I was very honored to be among the parishioners appointed to lead a Sunday Celebration if a Priest could not be present.
18. This experience caused me to become deeply involved in an effort to recognize and protect the Civil Rights of parents to raise their own children. I started a group called AkidsRight.Org – that has slowly grown to over a thousand registered members nationwide. We have a web site, <http://www.AKidsRight.Org/>
19. So many parents become very bitter and angry after a divorce or an experience with Child Protective services. The group tries to take a Faith filled and positive approach and emulate the examples in NonViolent Action most recently made by Gandhi and Martin Luther King. Working for reform does not require hatred or anger, but love and personal sacrifice. As part of my peaceful efforts I have been arrested and jailed on many occasions (the web site has details). But I have earned the respect of almost all the people who met me.

Supporting Financial Evidence

20. Due to an unpaid Federal penalty I was subject to a complete financial examination by the US Attorney for the Northern District of New York, Syracuse. I delivered to them complete financial and personal records. I was also subject to a two-hour deposition regarding my finances on June 7th, 2005.
21. Asst. US Attorneys Mr. William Pease (Chief of the Civil Division) and Mr. Richard Southwick (Criminal Division) conducted the deposition along with a paralegal. A Court reported produced a complete transcript. I give my consent to the release of that material.
22. I believe if called and allowed to testify the attorneys would state that:

Mr. Murtari is not hiding money or concealing resources. He is spending a significant portion of his income on travel to see his son in Colorado, and also to bring his son to New York for Christmas, Spring break, and New Years. Travel alone is approximately \$5000/year. He has been arrested and prosecuted many times at the Syracuse Federal building in an attempt

to get Senator Clinton to meet with parents from his group. His actions have always been peaceful and without any display of anger or hostility.

Summary

23. I certainly do not mean to make light of this situation or to be proud of the many potential driving violations I have accumulated.
24. To repeat: Some say I should plead guilty as a matter of 'simple fact. Imagine a poor black woman in the 50's, in Alabama, who does not move to the back of the bus for a white person. She clearly violates the law. Do you expect her to plead guilty to a crime? We might also expect her to have the Faith to continue her actions and to accept the consequences without anger.
25. While no one should feel above the law. The law should also respect my rights and the imperatives of individual conscience and personal responsibility – especially in issues of family. I believe I have a sincere and well formed conscience regarding my obligations to my family; following any 'order' to do what I do NOT think is right – does not relieve me from moral responsibility. Using motor vehicle law to punish me for a perceived shortcoming in family matters is improper.
26. I too join people who detest 'deadbeat' parents – people who give no thought to their children and care about only themselves. These people should be thrown in jail for failure to care for their children. But they should also be given the protections of criminal procedure, the protection of a jury, and an opportunity to explain what happened. Most importantly, their Civil Right to be an equal & fit parent in the lives of their children should also be recognized.

John Murtari, Defendant
34 Franklin St.
Lyons, NY 14489