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DEC 09 2024

Wheatfield Town Court

County of Niagara  
Town of Wheatfield Court

People of the State of New York )  
 )  
 )  
 -vs- )  
 )  
 )  
 Kevin Riford )  
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**MOTION TO DISMISS THE CHARGE OF**  
**OBSTRUCTING GOVERNMENTAL ADMIN.**  
**(PENAL LAW 195.05) PURSUANT TO CPL § 170.30**  
**& SUPPRESS EVIDENCE PURSUANT TO CPL §**  
**710.20**

Docket No.: 24100028

Kevin Riford, Pro Se Defendant in the above-captioned matter, respectfully submits this Motion to Dismiss the charge of obstructing governmental administration 2<sup>nd</sup> degree (195.05) against him pursuant to CPL § 170.30 and to suppress evidence pursuant to CPL § 710.20. In support of this motion, the defendant states the following:

**I. BACKGROUND**

1. On October 7, 2024, the defendant was charged by the Niagara County Sheriff's Office with Obstructing Governmental Administration in violation of Penal Law § 195.05.<sup>1</sup>
2. The police report indicates that the officers responded to a suspected disturbance, heard through the door, and then made contact with the defendant and others in the residence. The report further states that Katie L. Riford said, "He needs help," and that Kevin Riford slammed the door after saying everything was fine. The report also notes the presence of a knife in a sleeve in the yard and the alleged refusal of Kevin Riford to allow the officers to investigate further. The information alleges that defendant knowingly obstructed government administration when he closed the door and physically resisted arrest.
3. The police report states that the defendant appeared intoxicated with alcohol at the time of the incident.<sup>2</sup>

**II. GROUNDS FOR DISMISSAL**

Defendant respectfully moves to dismiss the charges under CPL § 170.30, on the following grounds:

**A. FAILURE TO STATE AN OFFENSE**

1. **Obstructing Governmental Administration:** The defendant did not act intentionally to obstruct the officers. The police report indicates that the defendant was intoxicated at the time of the incident. This impaired the defendant's ability to form the necessary intent to obstruct the officers (People v. Fisher, 68 A.D.3d 1312 (2d Dep't 2009)). The defendant's alleged actions of obstruction was the result of impaired judgment due to intoxication, not a deliberate intent to obstruct the officers (People v. Kassebaum, 67 N.Y.2d 238 (1986)). The defendant's intoxicated state prevented him from knowingly obstructing governmental administration.

<sup>1</sup> SEE EXHIBIT A – Niagara County Sheriff Accusation, Facts, and Notice (PL 195.05) – (1 page)

<sup>2</sup> SEE EXHIBIT B – Niagara County Sheriff Arrest Report – First Page – (1 page)

## **B. INSUFFICIENT EVIDENCE TO ESTABLISH PROBABLE CAUSE**

The police report mentions a suspicion of a disturbance, but there was no clear evidence of a crime being committed at the time. The statement made by Katie L. Riford ("He needs help") suggests the officers were responding to a welfare concern rather than a crime.<sup>3</sup> The officers had no probable cause to arrest the defendant for obstruction of governmental administration.

The police officers did not have probable cause to arrest the defendant. According to *People v. DeBour*, 40 N.Y.2d 210 (1976), police must have reasonable suspicion or probable cause to justify an arrest. Given the absence of clear evidence to establish a crime, the arrest was unlawful, and the charges stemming from this unlawful arrest should be dismissed.

## **C. INSUFFICIENT ALLEGATIONS OF INTERFERENCE**

Merely refusing to cooperate or closing a door does not rise to the level of obstruction under Penal Law § 195.05. *People v. Offen*, 78 A.D.3d 1081 (2d Dep't 2010), established that lawful police action must be affirmatively hindered by the defendant. The Defendant's alleged actions, at most, amounted to non-cooperation rather than obstruction.

Obstructing Governmental Administration (Penal Law § 195.05): To be found guilty of Obstructing Governmental Administration, the prosecution must prove that the Defendant knowingly and intentionally prevented or attempted to prevent a public servant from performing their official duties (see *People v. Molnar*, 101 N.Y.2d 99, 103-104 (2003)). In this case, the Defendant's actions do not meet the legal threshold for obstruction as they did not substantially interfere with the officers' ability to carry out their duties.

Mere non-cooperation, such as refusing to provide identification or closing the door, does not rise to the level of obstruction (see *People v. Beverley*, 80 A.D.3d 532, 533 (1st Dept. 2011); *People v. Dreyer*, 51 A.D.3d 1159, 1161 (4th Dept. 2008)). In this case, the Defendant did not physically prevent the officers from entering, nor did he engage in actions that would have substantially prevented the officers from performing their duties. Closing the door, an action which, on its own, does not amount to obstruction.

Even if the Defendant was uncooperative during the detention process, this does not rise to the level of obstruction. Obstruction requires a significant and intentional act of interference during the course of a government official's lawful duty, not simply an unwillingness to cooperate or comply with requests. The Defendant's alleged action of closing the door do not equate to actions that legally obstruct the officers' duties (see *People v. Hernandez*, 98 A.D.3d 1063, 1065 (2d Dept. 2012)).

While Resisting Arrest (Penal Law § 205.30) can involve physical resistance, Obstructing Governmental Administration does not. The charge of Obstruction requires active interference with a governmental function, and merely resisting an officer's attempt to detain or arrest is not enough to meet this standard. In *People v. Beverley*, 80 A.D.3d 532, 533 (1st Dept. 2011), the court held that non-cooperation and resistance do not automatically qualify

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<sup>3</sup> SEE EXHIBIT B — Niagara County Sheriff Arrest Report – First Page – (1 page)

as obstruction if the actions do not meaningfully hinder the police officers from performing their duties. The Defendant's alleged conduct, including alleged physical resistance, must be substantial enough to hinder an officer's performance of their official duties—something that did not occur here. The Defendant was not resisting an arrest, as no formal arrest was made at the time of the alleged resistance. When Defendant asked if he was under arrest, Defendant was told he was being detained. The accusation, facts, and notice support Defendants claim of detainment as it states "he prevented Deputy Ross and I from detaining him into hand cuffs".<sup>4</sup>

The law requires more than a refusal to cooperate or physical resistance for a charge of obstruction. In *People v. Santiago*, 87 N.Y.2d 899 (1995), the Court ruled that an individual cannot be convicted of obstructing governmental administration if their actions did not significantly disrupt or interfere with an officer's official duties. Here, the alleged physical resistance and door-closing are minimal actions that did not substantially prevent the officers from performing their duties. The officers were able to (illegally) gain access to the residence and detained the Defendant outside, and there is no indication that the Defendant's alleged actions prevented or delayed the officers from performing any vital law enforcement function.

Physical resistance to detention does not equate to obstruction of justice. The officers' own statements confirm that they were attempting to detain, not arrest, the Defendant at the time of the alleged physical resistance. The Defendant's alleged actions of physically resisting the detention do not rise to the level of obstruction, as detention does not equate to an arrest. In *People v. Mendez*, 92 A.D.3d 857 (2d Dept. 2012), the Court held that a charge of resisting arrest could not be sustained unless there was a lawful arrest. Here, there was no formal arrest, and any alleged resistance was merely to a detention, which is not sufficient to justify a charge of obstruction. Since the Defendant was not clearly informed that he was under arrest, and the officers' actions suggest that the Defendant was merely being detained, the charge of obstruction must fail.

#### **D. LACK OF EVIDENCE OF GOVERNMENT INTERFERENCE**

The officers' actions were not significantly hindered. As held in *People v. Case*, 42 N.Y.2d 98 (1977), the charge of obstruction requires evidence that the defendant physically or actively interfered with lawful governmental administration. The alleged actions of the Defendant—refusing to grant entry and closing a door—fall short of this standard.

For a charge of Obstructing Governmental Administration to stand, the defendant's actions must substantially interfere with the government's ability to perform an official duty. In *People v. Givens*, 92 N.Y.2d 1050 (1998), the Court emphasized that obstruction requires active interference with a law enforcement officer's execution of their duties. The Defendant's alleged physical resistance was isolated, non-substantial, and did not impede the officers' ability to

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<sup>4</sup> EXHIBIT C — Niagara County Sheriff accusation, facts, and notice (PL 205.30) – 1 page

conduct their investigation. Closing the door or resisting detention, without more, does not constitute substantial interference with the police's duties under Penal Law § 195.05.

The Defendant's alleged actions, even if allegedly physical, were not done with the intent to obstruct governmental administration. In *People v. Fisher*, 68 A.D.3d 1312 (2d Dep't 2009), the Court ruled that in cases where intoxication or impaired judgment is involved, a defendant's actions may not rise to the level of intentional obstruction. In this case, the Defendant was reportedly intoxicated at the time of the incident. The Defendant did not act with the specific intent to hinder the officers, and any alleged actions of physical resistance must be evaluated in light of his state of intoxication.

## **E. CONSTITUTIONAL VIOLATIONS**

### **1. Violation of Fourth Amendment Rights:**

- The officers lacked probable cause or exigent circumstances to enter or investigate further. The Defendant's alleged refusal to consent to a search or allow entry was a lawful assertion of his Fourth Amendment rights (*Florida v. Jardines*, 569 U.S. 1 (2013)).
- Penalizing the Defendant for asserting his constitutional rights would be improper and warrants dismissal.

### **2. Violation of Procedural Due Process:**

- The lack of clear communication regarding the alleged offense violates the Defendant's right to procedural due process under the Fifth and Fourteenth Amendments (*Mathews v. Eldridge*, 424 U.S. 319 (1976)).

## **F. ADDITIONAL DEFICIENCIES**

### **1. Over-breadth or Vagueness of Statute:**

- Penal Law § 195.05 must be applied narrowly to avoid penalizing lawful conduct. The Defendant's alleged actions do not fall within the intended scope of the statute. *Kolender v. Lawson*, 461 U.S. 352 (1983), requires that statutes provide clear guidance to avoid arbitrary enforcement.

### **2. Prosecution's Failure to Meet Burden of Proof:**

- The People bear the burden of proving each element of the offense beyond a reasonable doubt. Given the lack of evidence of intent or interference, the prosecution cannot meet this burden (*In re Winship*, 397 U.S. 358 (1970)).
- The prosecution has failed to establish beyond a reasonable doubt that a lawful arrest or obstruction occurred, and therefore, the charges must be dismissed (see *In re Winship*, 397 U.S. 358 (1970)).

### **III. REQUEST TO SUPPRESS EVIDENCE**

The Defendant respectfully moves to suppress the following evidence as inadmissible:

**1. Photographs of Damaged Property:**

- The photographs were taken inside the Defendant's home without a warrant after the arrest, violating the Fourth Amendment and New York constitutional protections.

**2. Video Footage from Inside the Residence:**

- Any video recordings taken during or after an unlawful entry are inadmissible under the exclusionary rule (*Mapp v. Ohio*, 367 U.S. 643 (1961)).

**3. Witness Statements in Video Footage:**

- Statements from the Defendant's mother or sister obtained during an unlawful entry are "fruit of the poisonous tree" (*Wong Sun v. United States*, 371 U.S. 471 (1963)).

**4. Physical Evidence of Damage:**

- Any items seized without a warrant, proper consent, or exigent circumstances are inadmissible as unlawfully obtained evidence.

These pieces of evidence were obtained in violation of the Defendant's constitutional rights and should be suppressed to ensure a fair trial.

### **IV. RELIEF REQUESTED**

**WHEREFORE**, for the reasons set forth above, the Defendant respectfully requests that the Court:

1. Dismiss the charge of Obstructing Governmental Administration pursuant to CPL § 170.30.
2. Suppress all evidence obtained in violation of the Defendant's Fourth and Fourteenth Amendment rights, including but not limited to photographs, video recordings, and witness statements pursuant to CPL § 710.20.
3. Grant any other relief deemed just and proper by the Court.

### **AFFIRMATION IN SUPPORT OF MOTION TO DISMISS**

I, Kevin Riford, the defendant in the above-captioned matter, hereby affirm as follows:

1. I am the Defendant in this case and am making this affirmation in support of my Motion to Dismiss the charge of Obstructing Governmental Administration (Penal Law § 195.05) and to suppress evidence pursuant to CPL § 710.20.
2. The facts set forth in the accompanying Motion to Dismiss and supporting documentation are true to the best of my knowledge, information, and belief. I submit this affirmation in support of the Motion to Dismiss and respectfully request that the Court dismiss the charge and suppress evidence as outlined in the Motion.

## AFFIRMATION OF EXHIBITS

I, Kevin Riford, affirm that the attached Exhibits are true and accurate representations of the materials I am submitting in support of my Motion to Dismiss.

1. **Exhibit A – Police Information (PL 195.05):** The attached police information (Exhibit A) is a true and accurate copy of the report I received from the prosecution during the discovery process. I affirm that this report has not been altered or modified in any way and is being submitted as received.
2. **Exhibit B –Police Report:** The attached police report (Exhibit B) is a true and accurate copy of the report I received from the prosecution during the discovery process. I affirm that this report has not been altered or modified in any way and is being submitted as received.
3. **Exhibit C – Police Information (PL 205.30):** The attached police information (Exhibit C) is a true and accurate copy of the report I received from the prosecution during the discovery process. I affirm that this report has not been altered or modified in any way and is being submitted as received.

**DATED:** November 29, 2024  
Wheatfield, New York

Respectfully Submitted,



Kevin Riford  
Defendant Pro Se  
3038 Michael Drive, North Tonawanda, NY 14120

# **EXHIBIT A**

STATE OF NEW YORK

TOWN

COURT

COUNTY OF NIAGARA

TOWN

of WHEATFIELD

Defendant: NA

Alleged Victim: NA

(Relationship to alleged victim)

(Relationship to defendant)

THE PEOPLE OF THE STATE OF NEW YORK

--VS--

Date of Birth

KEVIN M RIFORD

11/30/1989

Defendant(s)

BE IT KNOWN THAT, by this INFORMATION, GUY FRATELLO,  
as the Complainant herein, STATIONED at NIAGARA CO. SHERIFF,  
accuses the above mentioned Defendant(s), with having COMMITTED the MISDEMEANOR,  
of OBSTRUCT GOVERNMENTL ADMIN-2ND in violation of Section 195.05,  
Subdivision \_\_\_\_\_ of the PENAL Law of the State of New York.  
That on or about 10/07/2024 at about 09:05 PM  
In the TOWN of WHEATFIELD, County of NIAGARA, the defendant(s)  
did intentionally, knowingly and unlawfully commit the misdemeanor of OBSTRUCT GOVERNMENTAL ADMINISTRATION-2ND DEGREE. A person is guilty of obstructing governmental administration when he intentionally obstructs, impairs or perverses the administration of law or other governmental function or 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, or by means of interfering, whether or not physical force is involved, with radio, telephone, television or other telecommunications systems owned or operated by the state, or a county, city, town, village, fire district or emergency medical service or by means of releasing a dangerous animal under circumstances evincing the actor's intent that the animal obstruct governmental administration. Obstructing governmental administration is a class A misdemeanor.

The defendant did knowingly, unlawfully and intentionally commit the crime of obstructing governmental administration when he closed the door on patrol in an attempt to not let us into the home. He also physically resisted arrest.

The above allegations of fact are made by the Complainant herein on DIRECT KNOWLEDGE

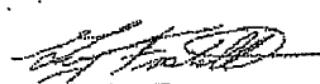
In a written instrument, any person who knowingly makes a false statement which such person does not believe to be true has committed a crime under the laws of the State of New York punishable as a Class A Misdemeanor. (PL 210.45)

Affirmed under penalty of perjury

this 07 <sup>TH</sup> day of OCTOBER, 2024

--OR--

Subscribes and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_

  
COMPLAINANT -

# **EXHIBIT B**


**NIAGARA COUNTY SHERIFF  
ADULT ARREST INFO REPORT**

CASE# 2024-00045965

ARRESTEE INFO	PRISCHER NAME <b>RIFORD, KEVIN, MICHAEL</b>						WARRANT#	TYPE#	
	ARREST TYPE -						SS#	FB#	
	ADDRESS <b>3038 MICHAEL DR NORTH TONAWANDA, NY 14120</b>						PHONE# Cellular Phone- (716)292-8583	DETS#	
	DOB <b>11/30/198934</b>	AGE	SEX <b>M</b>	RACE <b>White</b>	HEIGHT <b>6' 1</b>	WEIGHT <b>180</b>	EYE <b>Brown</b>	HAI COLOR <b>Black</b>	
	ETHNICITY <b>Non Hispanic</b>	RESIDENCE STATUS <b>Arrest - Resident</b>			CONDITION <b>App to be Impaired w/ Alcohol</b>			COMPLEXION <b>Olive</b>	
	GLASSES <b>No</b>	BUILD <b>Medium</b>	MILITARY STATUS <b>Single</b>		PLACE OF BIRTH <b>BUFFALO</b>			CITIZENSHIP <b>U.S. Citizen</b>	
	RELIGION <b>None</b>	EDUCATION LEVEL <b>High School Graduate</b>		EMPLOYED <b>No</b>	OCCUPATION <b>Unemployed</b>			MILITARY SERVICE <b>None</b>	
	SCHOOL OR EMPLOYER <b>UNEMPLOYED</b>				SCARS MARKS TATTOOS (CODE-TYPE-LOCATION-DESC)				

ARREST INFORMATION	ARRESTED BY No	ARRESTED BY Niagara County CAP	ARREST DATE 10/08/2024	ARREST TIME 09:00	STATEMENT None	STATUS Yes	SEARCH WARRANT No
	ARRAIGNMENT COURT Wheatfield Town Court	ARRAIGNMENT JUDGE Presiding	ARRAIGNMENT DATE AND TIME 10/08/2024 09:00		PROPERTY Yes	EVIDENCE Yes	
	RETURN COURT Wheatfield Town Court	RETURN JUDGE Wheatfield - Strenkoski	RETURN DATE AND TIME 10/08/2024 09:00	ARRESTEE STATUS Held			
	ADDRESS OF CRIME <b>3038 michael DR NORTH TONAWANDA, NY 14120</b>	DATE/TIME OF CRIME - 10/07/2024 21:06	ADDRESS OF ARREST <b>3038 michael DR NORTH TONAWANDA, NY 14120</b>	DATE/TIME OF ARREST - 10/07/2024 21:15			
	ARREST TYPE <b>Crime in Progress</b>	ARRESTING OFFICER #1 <b>Fratello, Guy 0096</b>	ARRESTED OFFICER #2				
	# OF OFFENDERS <b>1</b>	# OF VICTIMS <b>1</b>	ON COMPLETED <b>Yes</b>	WEAPON(S) AT ARREST <b>Cutting Instrument</b>	ARREST FOR OTHER AGENCY No		TAKEEN No

CHARGES	COURTS <b>1</b>	ATTEMPT/COMPLT	STATUTE <b>PL 145.10 DF2 CRIMINAL MISCHIEF - 2ND</b>
	COURTS <b>1</b>	ATTEMPT/COMPLT	STATUTE <b>PL 195.05 AM2 OBSTRUCT GOVERNMENTL ADMIN 2ND</b>
	COURTS <b>1</b>	ATTEMPT/COMPLT	STATUTE <b>PL 205.30 AM0 RESISTING ARREST</b>
	COURTS	ATTEMPT/COMPLT	STATUTE
	COURTS	ATTEMPT/COMPLT	STATUTE

ASSOC PERS	NAME	RELATIONSHIP	ADDRESS	PHONE#
	NAME	RELATIONSHIP	ADDRESS	PHONE#
	NAME	RELATIONSHIP	ADDRESS	PHONE#

REMARKS	On 10-08-2024 at approximately 2106 hrs I responded to 3038 Michael Drive for a check 911 call. Upon arrival I rang the Ring door bell. I could here through the door, what sounded like there was some type of Disturbance going on. Katie L. Riford, then opened the door. Katie stated "he needs help". Her brother Kevin M. Riford came up behind her and said everything was okay and slammed the door. I then observed a black knife with a sleeve on it in the grass just to the left of the porch steps. I started to knock on the door again and yelled for someone to open the door. I called for Zone 11 and zone 12 to respond due to the history at the residence and the unknown situation inside,
	Deputy Ross arrived on scene first. Kevin Riford opened the door and was refusing to let us investigate what was going on inside the residence. It became apparent that there was some type of Disturbance going on inside, After repeated verbal commands, Kevin was taken down on the front porch and placed into handcuffs

# **EXHIBIT C**

STATE OF NEW YORK

TOWN COURT

COUNTY OF NIAGARA

TOWN of WHEATFIELD

Defendant: NA  
(Relationship to alleged victim)

Alleged Victim: NA  
(Relationship to defendant)

THE PEOPLE OF THE STATE OF NEW YORK

-- VS. --

Date of Birth

KEVIN M RIFORD

11/30/1989

Defendant(s)

BE IT KNOWN THAT, by this INFORMATION, GUY FRATELLO  
as the Complainant herein, STATIONED at NIAGARA CO. SHERIFF

accuses the above mentioned Defendant(s), with having COMMITTED the MISDEMEANOR,

of RESISTING ARREST In violation of Section 205.30,

Subdivision \_\_\_\_\_ of the PENAL Law of the State of New York.

That on or about 10/07/2024 at about 09:06 PM

in the TOWN of WHEATFIELD, County of NIAGARA, the defendant(s)

*did intentionally, knowingly and unlawfully commit the misdemeanor of RESISTING ARREST. 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. Resisting arrest is a class A misdemeanor.*

**F A C T S**  
*The defendant did knowingly, unlawfully, and intentionally commit the crime of resisting arrest when he prevented Deputy Ross and I from detaining him into hand cuffs. The male fought with patrol, refused to listen to verbal commands, and actively resisted. After being put into handcuffs he continued to resist by laying on the ground and refusing to get into a police car.*

The above allegations of fact are made by the Complainant herein on DIRECT-KNOWLEDGE

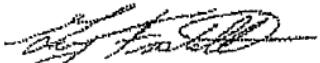
**N O T I C E**  
In a written instrument, any person who knowingly makes a false statement which such person does not believe to be true  
has committed a crime under the laws of the State of New York punishable as a Class A Misdemeanor. (PL 210.45)

Affirmed under penalty of perjury

this 07 <sup>TH</sup> day of OCTOBER, 2024

--OR--

Subscribes and sworn to before me this \_\_\_\_\_ day of  
\_\_\_\_\_, 20 \_\_\_\_\_

  
COMPLAINANT -