

County of Niagara
Town of Wheatfield Court

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DEC 09 2024

People of the State of New York)
)
-vs-)
)
Kevin Riford)

MOTION TO DISMISS THE CHARGE OF
RESISTING ARREST (PENAL LAW 205.30)
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 resisting arrest (205.30) 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, the Defendant was detained by law enforcement officers, specifically Niagara County Sheriff Deputy Ross and Deputy Guy Fratello, at his residence located at 3038 Michael Drive North Tonawanda, NY 14120.
2. The police report states in part “he prevented Deputy Ross and I from detaining him into handcuffs.” This statement indicates that at the time of the alleged resistance, the officers were attempting to detain the Defendant, not arrest him.¹
3. The Defendant was not informed at any time during the incident that he was under arrest. He was told only that he was being detained. The Defendant was not informed of the reasons for his detention, nor was he ever advised that he was under arrest.²
4. The Defendant was placed into handcuffs and taken to jail, but was never informed that he was under arrest, or read his Miranda rights.

II. GROUNDS FOR DISMISSAL

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

1 SEE EXHIBIT A – Niagara County Sheriff Accusation, Facts, and Notice – PL 205.30 (1 page)

2 SEE EXHIBIT B – USB Containing Video Evidence

1. No Lawful Arrest Was Made

Under Penal Law § 205.30, the charge of Resisting Arrest requires the Defendant to have intentionally resisted a lawful arrest. The People must establish that the Defendant was subjected to a lawful arrest at the time of the alleged resistance. As stated in *People v. Hodge*, 64 N.Y.2d 514, 518 (1985), an arrest must be lawful, and any resistance to an unlawful arrest does not give rise to a charge of resisting arrest.

In this case, the police information itself contradicts the charge of Resisting Arrest by stating that the officers were attempting to detain the Defendant, not arrest him (**SEE EXHIBIT A**). Video evidence in Exhibit B supports this claim. Since the Defendant was not under formal arrest at the time he allegedly resisted, the charge cannot be sustained. Detention is not the same as an arrest, and alleged resistance to a mere detention does not constitute Resisting Arrest under New York law. As held in *People v. Mendez*, 92 A.D.3d 857, 858 (2d Dept. 2012), the distinction between detention and arrest is critical in assessing whether the charge of resisting arrest applies.

2. Detention Does Not Equate to Arrest

A detention is a temporary, limited interaction by law enforcement officers, whereas an arrest is a formal act of taking a person into custody with the intent to charge them with a crime. The police information (**SEE EXHIBIT A**) clearly indicates that the officers were attempting to detain the Defendant, not arrest him, when the alleged resistance occurred.

Since detention is not the same as arrest, the Defendant cannot be charged with Resisting Arrest based on an incident that involved mere detention. There was no lawful arrest at the time of the alleged resistance, which renders the charge legally insufficient. This principle was discussed in *People v. Santiago*, 87 N.Y.2d 899, 900 (1995), where the Court held that a defendant cannot be convicted of resisting arrest when there has been no arrest made.

3. Analysis of Specific Alleged Actions

The police information describes the Defendant as having “fought with patrol,” “refused to listen to verbal commands,” “actively resisted,” “laying on ground”, and “refusing to get into

the police car.” These alleged actions do not amount to the criminal offense of Resisting Arrest under New York law, particularly when the Defendant was not under formal arrest at the time of the incident.

Fighting with Patrol: The phrase “fought with patrol” is vague and does not provide sufficient detail regarding the nature of the resistance. *People v. Quarles*, 12 N.Y.3d 321 (2009), emphasized that the prosecution must establish clear and direct evidence of active resistance to a lawful arrest. Without clear evidence of a lawful arrest being made at the time, these actions cannot substantiate a charge of resisting arrest.

Refusal to Listen to Verbal Commands: Allegedly refusing to listen to verbal commands does not equate to Resisting Arrest. *People v. Ramnarine*, 117 A.D.3d 781 (2d Dept. 2014), suggests that passive non-compliance, such as not responding to commands, without accompanying violent or obstructive actions, does not meet the threshold for Resisting Arrest.

Laying on the Ground: Allegations of laying on the ground after being detained is simply passive resistance or non-cooperation, but this does not rise to the level of resistance required by Penal Law § 205.30. Courts have found that simple passive resistance (such as not moving) does not satisfy the requirement of active resistance to a lawful arrest, as seen in *People v. Moore*, 150 A.D.3d 1414 (4th Dept. 2017).

Refusal to Enter the Police Car: Similarly, allegations of refusing to get into a police car does not constitute Resisting Arrest if no arrest has been formally made. As established in *People v. Williams*, 65 N.Y.2d 614 (1985), resistance to a mere detention is insufficient to charge a person with Resisting Arrest.

4. Video Evidence Confirms Detention, Not Arrest

The video evidence (**SEE EXHIBIT B**) clearly shows that the Defendant was only being detained by law enforcement officers at the time of the alleged incident, and not under arrest. The video footage directly supports the Defendant’s version of events and contradicts the police report’s claim of Resisting Arrest. Defendant clearly asks “Am I being arrested?”, to which the Niagara County Sheriff Officer states “you’re being detained.” From the time of Defendant

being placed into handcuffs to the time Defendant was placed inside the police officer's vehicle, Defendant was never told he was under arrest, and was only told he was being detained.³

5. Failure to Inform Defendant of Arrest

Additionally, the Defendant was not informed at the time that he was being arrested. The officers' failure to inform the Defendant of his arrest and the reasons for his arrest further supports the argument that a lawful arrest was never effectuated at the time of the alleged resistance. As established in *People v. Lindsay*, 56 N.Y.2d 36, 39 (1982), a defendant must be informed of the reason for their arrest.

6. Insufficient Legal Basis for Arrest

The People have not shown that there was probable cause for an arrest at the time the Defendant allegedly resisted. Since no lawful arrest occurred, the charge of Resisting Arrest must fail as a matter of law. As clarified in *People v. Bigelow*, 66 N.Y.2d 417 (1985), a seizure without probable cause or reasonable suspicion constitutes an unlawful detention.

6. Ambiguity in Police Actions

The officers' own statements and conduct create ambiguity about whether the interaction constituted a detention or arrest. Such ambiguity undermines the clarity required to sustain the charge (*People v. Peacock*, 68 N.Y.2d 675 (1986)).

7. Defective Charging Instrument

The accusatory instrument lacks factual specificity and fails to allege all elements of Resisting Arrest, so it must be dismissed as legally insufficient (*People v. Alejandro*, 70 N.Y.2d 133 (1987)).

8. Prosecution's Burden of Proof

The prosecution bears the burden of proving beyond a reasonable doubt that a lawful arrest occurred. Given the factual inconsistencies, this burden cannot be met. As stated in *People v. Bailey*, 18 N.Y.3d 269 (2011), the prosecution must establish, beyond a reasonable doubt, that an arrest was made.

³ SEE EXHIBIT B – USB Containing Video Evidence

9. Suppression of Evidence

Any evidence obtained as a result of an unlawful detention or arrest must be excluded under the exclusionary rule (*Mapp v. Ohio*, 367 U.S. 643 (1961)). Since no lawful arrest or detention occurred, any evidence obtained from that interaction must be suppressed.

III. VIOLATION OF CONSTITUTIONAL RIGHTS

Fourth Amendment Violation: The detention and subsequent actions lacked probable cause, constituting an unreasonable seizure under the Fourth Amendment (*Dunaway v. New York*, 442 U.S. 200 (1979)).

Failure to Provide Miranda Warnings: Defendant Pro Se was questioned in custody without being informed of his Miranda rights, any statements made during such questioning must be suppressed (*Miranda v. Arizona*, 384 U.S. 436 (1966)).

IV. REQUEST FOR A HEARING

Defendant respectfully requests that the Court hold a hearing to examine the lawfulness of the detention and the circumstances surrounding the alleged resistance. Specifically, the Defendant requests a hearing to address the following issues:

1. Whether the detention was supported by reasonable suspicion or probable cause.
2. Whether the Defendant was informed of the reasons for his detention.
3. Whether the Defendant's rights under the Fourth and Fifth Amendments were violated during the interaction with law enforcement officers, including the failure to provide Miranda warnings.
4. Whether any statements made by the Defendant during the period of detention were legally obtained.

RELIEF REQUESTED

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

1. Issue an Order dismissing the charge of Resisting Arrest in this matter.
2. Suppress any evidence obtained in violation of the Defendant's constitutional rights.
3. Hold a hearing to examine the lawfulness of the Defendant's detention.
4. Grant such other and further relief as the Court deems just and proper.

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 Resisting Arrest (Penal Law § 205.30) 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:** 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 – Video Evidence:** The attached video (Exhibit B) is a true and accurate representation of the events that occurred on October 7, 2024, and has been trimmed only for the purpose of focusing on the relevant portion of the interaction. The video has not been altered, manipulated, or modified in any way other than necessary trimming to reduce its length.

I affirm that the trimmed version of the video accurately reflects the events, and no content has been added, removed, or changed.

DATED: November 29, 2024

Wheatfield, New York

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Kevin Riford", is written over a horizontal line.

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

(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

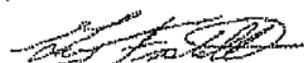
N O T I C E
In a written instrument, any person who knowingly makes a false statement which such person does not believe to be true has committed a crime under the laws of the State of New York punishable as a Class A Misdemeanor. (PL 210.45)

Affirmed under penalty of perjury

this 07 TH day of OCTOBER, 2024

--OR--

Subscribes and sworn to before me this _____ day of
20 _____



COMPLAINANT -