

34 Franklin St.
Lyons, NY 14489
November 19, 2005

Judge Nicholas Forgione
Village Justice
79 William St.
Lyons, NY 14489

Case No: 05070051.01 Ticket: LT866460.0
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Dear Judge Forgione:

Attached you will find a motion in regards to my upcoming trial on Dec 12th 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 \$55,000, 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 dirtball!" In my affidavit I admit to continuing to drive in the past several month on at least 100 different occasions. I hope to make it easy for the DA to add those additional charges and I'll be happy to testify to each occasion at my trial. A long jail sentence might please some.

I have personally struggled with how to handle this. It has been a test of my Faith. A week ago I was almost ready to call Mr. Wunder and accept his plea offer of just 'unlicensed operation'. But I could 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."

I do not feel that I am 'above 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 \$55,000 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:

ADDITIONAL CHARGES – Since I was stopped and issued the ticket on July 12th for driving with a suspended license I have continued to drive in Lyons on numerous occasions and will continue to do so. If these are considered 'crimes' they should be charged and I am happy to take the witness stand to testify regarding my conduct.

DRIVING IS NOT A 'PRIVILEGE' – I have an excellent state driving record with NO tickets in over 10 years. 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 numerous 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 dirtball, 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. 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. 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.

Respectfully yours,

John Murtari
315-430-2702 (cell)

CC: Mr. Richard Wunder, District Attorney, 54 Broad St. Lyons, NY 14489
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

<p>NOTICE OF MOTION Case No: 05070051.01 Ticket: LT866460.0</p>
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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 Nicholas Forgione at the Lyons Village Court, Lyons, New York on Dec. 12th, before this matter comes to trial.

TYPE OF MOTION: Defendant seeks an Order of the Court:

- a) Adding the list of self-reported incidents to the charges presently pending against the Defendant.
- 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.
- d) Dismissing all the pending charges against the Defendant.
- e) Other relief as the Court deems proper.

Dated: November 19, 2005
Respectfully submitted,

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

**STATE OF NEW YORK
LYONS VILLAGE COURT**

People of the State of New York,

vs.

John Murtari, Defendant

Supporting Affidavit

Case No: 05070051.01

Ticket: LT866460.0

JOHN MURTARI, being duly sworn, deposes and states:

1. I am the defendant in this action, and I make this statement in support of my motion dated November 19, 2005.

Additional Violations

2. I acknowledge I have a right to an attorney and a right to not make any statement and any statement I make can be used against me in a Court of Law.
3. I request these incidents be added to the present charge scheduled for trial on December 12th. I will testify with respect to each of these. This is NOT an admission of guilt on my part for any of these incidents.
4. A State Trooper stopped me in the Village of Lyons on July 12th. I was told my license was suspended due to child support and I had no reason to believe that was not correct.
5. Since then I have continued to drive in the Village of Lyons, from my home on Franklin Street, on an almost daily basis up to today.
6. On each of the Sundays since then (18 dates), I've left my home at 9:15 AM to drive to Church in Lyons and then driven back home, at 11 AM. A total of 36 incidents. Up to September 11th I had mother with me in the car.
7. During the interval of September 15 to September 27th (12 dates), I would leave my home in Lyons to drive to the Newark Hospital at 7:45 AM and return at 9:00 AM. I would leave again at 11:45 AM and return at 1 PM. I would leave again at 4:45 PM and return at 6:30 PM. A total of 36 incidents. I was visiting my mother in the hospital during each of these trips.
8. Trips to and from the bank, grocery, hardware, and clothing stores in Lyons and Newark on at least three occasions every week. At least 52 dates, 104

incidents.

9. During this time I was aware of the ability to get a "RESTRICTED LICENSE". A person at DMV told me it could not be used just for shopping, or to go to Church, or to travel with my son during our time together. I chose not to apply for one.

Background of Defendant/Due Process

10. 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.
11. 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.
12. 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.
13. 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.
14. 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. The Defendant rejected job opportunities in the Spring of 1995, to continue this business which has proven

to be an inadequate source of income. 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.”

15. 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.
16. 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 California 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.
17. 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!).
18. 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.
19. 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.

20. 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.
21. The money paid on travel has been well spent. Domenic and I have a very strong relationship. Now he is old enough 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.
22. At the end of August, my mother, Caterina (now 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 the past few months. She is now in the Hospice program, but the nurses say she has made a great recovery from where she was two months ago. My mom is happy; she is 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.
23. My mother and I have lived very frugally and any extra money is spent for Domenic. Right now I am driving an 88 Dodge Caravan with 260,000 miles. I try to take good care of the vehicle – there is certainly no money for a new car. I am now 49 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.
24. 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.
25. 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.
26. 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/>

27. 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

28. 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.

29. 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.

30. 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 California, 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

31. I certainly do not mean to make light of this situation or to be proud of the many potential driving violations I have accumulated.

32. My son is scheduled to come to Lyons on Dec 21st to spend Christmas vacation with his Grandma and me. It may be the last time he sees her alive. I already know that I can't drive with him in the car during the vacation. This will severely limit what we can do together, but it should be a

nice time.

33. I recognize there is a good chance I could be sentenced to jail if found guilty of a crime for all the incidents. I will not voluntarily pay any fine. It would destroy the chance for a Christmas with my son and also put my mother into a nursing home where she might die without me seeing her again.
34. It is not my intention to put either Judge Forgione or Mr. Wunder in a difficult position regarding this matter. I have a great deal of respect for both of them and the gentle manner in which they have handled this. I do expect the matter to be resolved, including all potential violations. I am tired of living under a cloud in my own hometown.
35. I will be sending this entire Motion to contacts in local news organizations. The trial of a big deadbeat might interest many.
36. 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.
37. 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.
38. 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
315-430-2702 (cell)

Sworn to this 19th day
of November 2005

Notary Public

**STATE OF NEW YORK
LYONS VILLAGE COURT**

People of the State of New York,

vs.

John Murtari, Defendant

Affidavit of Service Case No: 05070051.01 Ticket: LT866460.0

JOHN MURTARI, being duly sworn, deposes and states:

1. I am the Defendant in this action.
2. On Nov. 19th, 2005 I served a copy of the attached Motion to Lyons Village Court, date 11/19/2005, upon Mr. Richard Wunder, County Attorney, 54 Broad Street, Lyons, NY 14489 via certified mail from the main post office in Lyons, New York.

John Murtari

Sworn to this 19th day
of November 2005

Notary Public