

**People v Figueroo**

2023 NY Slip Op 33761(U)

September 8, 2023

City Court of Saratoga

Docket Number: Docket No. CR-01110-23

Judge: Constantine F. DeStefano

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STATE OF NEW YORK  
CITY COURT

COUNTY OF SARATOGA  
CITY OF SARATOGA SPRINGS

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THE PEOPLE OF THE STATE OF NEW YORK

-against-

ALEXIS A. FIGUEROO.

Defendant.

DECISION & ORDER  
ON MOTIONS

Docket No.: CR-01110-23

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Omnibus Motions by:  
Alexis A. Figueroo by his attorney, Mark S. Mischeier, Esq.

People's Response by:  
Christopher C. Shambo, Esq., Special Prosecutor

**DeStefano, J.:**

Defendant stands charged under one count of violation of New York Penal Law §190.05 (Obstruction of Governmental Administration) and one count of a violation of New York Penal Law §240.20(4) (Disorderly Conduct). These two counts arise out of alleged actions of the Defendant at a Saratoga Springs City Council meeting on April 4, 2023.

The matter was brought before the Saratoga Spring City Court, where the Defendant was arraigned on the two charges and subsequently pled not guilty to both. The Court set a motion schedule Defense submitted Omnibus Motions on July 10, 2023, by and through attorney Mark S. Mischler, Esq. The People's Response to the motions were submitted to the Court on July 31, 2023.

## FACTS AND ANALYSIS

### A. OBSTRUCTION OF GOVERNMENTAL ADMINISTRATION

Defendant is charged, by Information, with a violation of New York Penal Law (PL) §190.05, namely Obstruction of Governmental Administration in the Second Degree (OGA). A person is guilty of OGA in the Second Degree when he or she "*intentionally obstructs, impairs or perverts the administration of law or other governmental function or prevents or attempts to prevent a public servant from performing and official function, by means of intimidation, physical force or interference, or by means of any independently unlawful act...*" (PL§190.05).

The allegations allege that on April 4, 2023, Defendant "prevented the administration of the Saratoga Spring City Council public comment period of the Saratoga Springs City Council meeting held in the Music Hall of 474 Broadway, Saratoga Springs, by taking the microphone away from Dr. Christian Mathieson while he was speaking." The Information was sworn to by a police officer, based upon information and belief, and a deposition of City Commissioner of Public Safety, James Montagnino as well as a recording of the meeting.

To this date, the only deposition was from the Public Safety Commissioner, but no other City Council members or a statement from Dr. Mathieson.

The Defense argues that the absence of non-hearsay depositions naturally cause the accusatory documents as insufficient under CPL 100.40(c). This is based upon the fact that the affiant officer was not present at the said meeting and his information is based upon viewing a video and the single deposition. The People counter this argument by alleging that the supporting deposition of Commissioner Montagnino fulfils the non-hearsay requirement of the charge and that the prima facie requirement of CPL 100.40(c) is satisfied.

As previously stated, a person is guilty of OGA in the Second Degree when he or she intentionally obstructs a public servant in the performance of an official function. The elements of the crime requires one of the following three methods for this: 1. Intimidation, 2. Physical force or interference, or 3. Any independently unlawful act. (See People v. Case, 42 NY2d at 102).

The Court of Appeals has held that purely verbal interference may not satisfy the physical component under PL §190.05. (See Matter of Davan L., 91 NY2d 88, 91 (1977)). “[M]ere words alone do not constitute ‘physical force or interference’ [and] in order to trigger criminal liability under section 195.05, the interference would have to be, in part at least, physical in nature” (id.). The People cite People v. Romeo, 9 A.D.3d 744 for the premise that interference can consist of inappropriate and disruptive behavior alone at the scene of an official function. The individual discussed in Romeo was the boyfriend of a person undergoing field sobriety tests for a Driving While Intoxicated stop. The individual was not being examined and not being charged, but continued to insert himself into the action.

This case is distinguished by the fact that the Defendant was actually taking part in the function. The City Council invites individuals to speak at their meetings, which is precisely what the Defendant was doing at the time he allegedly committed the crime of OGA in the second degree. Charges were levied against the Defendant because what he said during this time was unacceptable to certain Council members.

The fact that he “took the microphone” away from an individual who was speaking is being held up as the physical force requirement of the statute. There is no description of this “taking” other than vague statements to that effect. There is no corroboration that this action

was done with "force" and was only physical in nature because it required physical movement.

For the present case, the People charged the defendant with Disorderly Conduct. If the defendant was found to be guilty of Disorderly Conduct, it could constitute the independently unlawful act which is a part of the OGA charge. As the defendant was, in fact, charged with Disorderly Conduct, we must discuss that charge.

## B. DISORDERLY CONDUCT

"A person is guilty of Disorderly Conduct, when with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof...without lawful authority, he disturbs any lawful assembly or meeting of persons" (Penal Law §240.20 (4)).

The intent factor here is a problem for the People. Defense states that the People's charge here is devoid of proof of intent to cause public inconvenience, annoyance or alarm. The People counter that Defendant's actions of the evening in question are evidence of such intent. This argument by the People requires this Court to make a bit of a leap. The action evidenced by the Defendant was that of speaking at a public meeting, during the times that the Board invited comments from the public. While it is recognized that an information contain the most precise words or phrases expressing the charge, an accusatory must give the accuse notice sufficient to prepare a defense. (People v. Dumas, 68 NY2d 729, 731 [1986]). The documents here seem to have an issue reaching this standard.

The charging documents allege that Defendant did not allow other persons from speaking at the meeting and caused the meeting to stop. While this may be couched in terms that are attempting to satisfy the elements of the charge, the statement from the primary complainant of

the Board is inconsistent with this. The voluntary statement given by Commissioner Montagnino states that Defendant took the microphone from another speaker and began to shout, yell profanities and other statements, preventing a speaker from addressing the Board and public. His statement then discusses "Later during the course of the same meeting..." This statement in and of itself indicates that the meeting was not stopped and, in fact, continued. It was a subsequent person that the Commissioner alleged prevented the Board from conducting its business. This inconsistency between the statement of the witness and the charging documents gives this Court pause.

Defense raises the argument that in charging Defendant, the Board is denying Defendant's First Amendment rights and that he only engaged in protected speech. The People have relied on People v. Albra, 13 Misc.3d 64 to counter this. Although the Appellate Term in this case, upheld a conviction for Disorderly Conduct, the dissent in this case makes an extremely strong case to say the conviction for that offense should be reversed. While the case is similar to the case at bar, a difference was that the issue raised by the counsel was that the comments from the speaker in this case were simply not part of the agenda. Here, the Board does not allege that Defendant was asked to stop speaking or stay on agenda topics. The perceived problem was that Board members did not agree with Defendant's statements. While the facts are similar, there is a distinction.

#### DECISION

The standard of review includes viewing the facts in the light most favorable to the non-moving party, which in the matter at bar, is the People, this Court must deny the Defendant's

motion to dismiss under the theories of the accusatory instruments being deficient and a violation of the Defendant's First Amendment rights; and

The Court also denies Defendant's motion to dismiss in the furtherance of justice; and

The Court declines to strike the People's Certificate of Compliance and Supplemental Certificate of Compliance; and

The Court directs the People to continue with their obligation to comply with their continuing obligation of disclosure of Brady material; and

The Court grants Defense request, upon consent of the People, to hold *Sandoval/Ventimiglia Molineux* hearing(s) within the required timeframes; and

The Court will allow further motions, or renewal of motions upon a showing, by the defense, of good cause; and

The Court requires the Defense to comply with Discovery demands as per the People's request.

The foregoing constitutes a Decision and Order of this Court.

Signed this 8<sup>th</sup> day of September  
at Saratoga Springs, New York

*Constantine F. DeStefano*  
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Hon. Constantine F. DeStefano  
City Court Judge