

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

vs.

Criminal Action No.
5:07-CR-428 (DEP)
LEAD CASE

JOHN MURTARI,

Defendant.

Criminal Action No.
5:07-CR-406 (DEP)
MEMBER CASE

APPEARANCES:

OF COUNSEL:

FOR THE GOVERNMENT:

HON. GLENN T. SUDDABY
United States Attorney
Northern District of New York
100 S. Clinton Street
P.O. Box 7198
Syracuse, New York 13261-7198

RANSOM P. REYNOLDS, III, ESQ.
Assistant U.S. Attorney

FOR DEFENDANT:

JOHN MURTARI, *Pro Se*

DAVID E. PEEBLES
U. S. MAGISTRATE JUDGE

ORDER

Defendant John Murtari, who is proceeding *pro se* in connection with

this matter, is charged by information in each of these two actions with criminal contempt, in violation of 18 U.S.C. § 401(3). Both of those charges stem from defendant's alleged violation of an order issued by Chief United States Magistrate Judge Gustave J. DiBianco on September 7, 2007, in which, *inter alia*, defendant was prohibited from entering onto the property owned, leased, and used by the United States Government at 100 S. Clinton St., Syracuse, New York without obtaining prior permission.

On September 27, 2007 defendant was ordered released by me on conditions, pending disposition of the two charges in this matter. My intention, in issuing the order authorizing that release and establishing certain conditions in connection with it, was that defendant would be bound by the terms of Judge DiBianco's September 7, 2007 order while these charges remained pending, meaning that he would be prohibited from entering onto the property of the United States Government located at 100 S. Clinton St. absent prior permission, during the pendency of the instant case, regardless of whether Judge DiBianco's order remained in effect or instead expired by its terms.

It has been alleged, and proven to my satisfaction, that on January 15, 2008, the defendant did in fact enter upon the property of the United States

Government, located at 100 S. Clinton St., Syracuse, New York, without obtaining prior permission. That act would have constituted a violation of my pretrial release order, as I intended it. During a proceeding conducted on January 17, 2008 to address that potential violation, however, defendant argued convincingly that my order was ambiguous, and stated that it was his belief that the conditions set forth in Judge DiBianco's September 7, 2007 order, and incorporated by reference into my release order, no longer applied since the criminal procedure in which Judge DiBianco's order was entered was closed on October 22, 2007.

Having reviewed the matter, I agree that there is some inherent ambiguity in my prior release order dated September 27, 2007, establishing the conditions of defendant's release in the case. I also agree with the defendant that the order establishes conditions which are potentially overbroad and unnecessarily impinge upon his ability to engage in peaceful activity in the public plaza adjacent to the James Hanley Federal Building. Accordingly, it is hereby

ORDERED as follows:

- 1) The conditions of my prior order dated September 27, 2007 (Dkt. No. 3), except to the extent otherwise provided herein, shall remain in full

force and effect.

2) It is hereby clarified that during the pendency of these proceedings, in accordance with my release order, defendant is prohibited from entering upon the property of the United States Government located at the James Hanley Federal Building, 100 S. Clinton St., Syracuse, New York absent the granting of prior permission by this court, and subject to the exceptions set forth below.

3) This order does not prohibit the defendant from engaging in marching, picketing, protesting or demonstrating in the outdoor plaza area of the James Hanley Federal Building so long as he complies with any permit requirements made applicable to the general public and receives a permit from the General Services Administration for engaging in that activity.

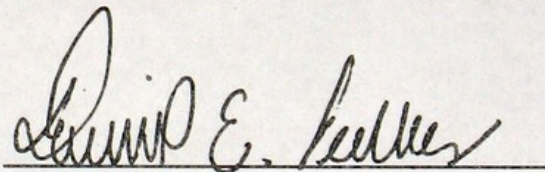
4) Similarly, this order does not prohibit the defendant from engaging in peaceful conduct in the outdoor plaza area of the James Hanley Federal Building provided that he does so alone and not in concert or association with others, does not interfere with any party's access or egress to the premises or otherwise intimidate or annoy others lawfully on the property, does not deface or otherwise destroy government property, and does not engage in any activity which would threaten the safety and welfare

of himself or others.

5) It is hereby clarified that this order constitutes an absolute prohibition against the defendant entering into the James Hanley Federal Building, located at 100 S. Clinton Street, Syracuse, New York, during the pendency of this case except as required to attend court appearances in this and any other action to which he is a party.

6) The defendant is admonished that in the event he violates any portion of this order the court will strongly consider revoking his release status and ordering him held in custody pending resolution of these charges against him.

Dated: January 18, 2008
Syracuse, NY

A handwritten signature in black ink, appearing to read "David E. Peebles", written over a horizontal line.

David E. Peebles
U.S. Magistrate Judge