STATE OF NEW YORK UNIFIED COURT SYSTEM

SUFFOLK COUNTY DISTRICT COURT

400 Carleton Avenue - Central Islip - New York 11722

nycourts.gov/suffolkdistrict

(631) 853-7500

70 pages
$39.00

Copy of all public info -

CERTIFIED TRANSCRIPTS / CERTIFICATES OF DISPOSITION

NAME Anthony Piccirillo DATE OF BIRTH 2/11/1983

STREET 2407 Vista View Dr. CITY Farmingville STATE NY ZIP 11738

PHONE # 631-219-9270 - Keith Davies

LAWS VIOLATED _____ DATE OF VIOLATION _____

DATE OF DISPOSITION _____ DOCKET NUMBER 2011SU040447

(NECESSARY IF A TRAFFIC CASE PRIOR TO JULY 1,1998)

REASON FOR TRANSCRIPT: Copy of all public information -

(e.g. License suspension, employment, any licensing or permits)

****

YOU MUST ATTACH A $5 MONEY ORDER, CERTIFIED CHECK OR ATTORNEY'S CHECK PAYABLE TO "FIRST DISTRICT COURT" FOR EACH DOCKET NUMBER. ALSO INCLUDE A SELF-ADDRESSED STAMPED ENVELOPE.

***MAIL TO SUFFOLK DISTRICT COURT, ATTN: TRAFFIC/CRIMINAL ROOM 220 (TRANSCRIPTS)
400 CARLETON AVENUE, CENTRAL ISLIP NY 11722

TODAY'S DATE: 8-23-19

*** TRANSCRIPT REQUESTS ARE COMPLETED IN THE ORDER IN WHICH THEY ARE RECEIVED.

*** ALL REQUESTED INFORMATION MUST BE FILLED IN, OR YOUR REQUEST WILL BE RETURNED.

*** SHOULD YOU NEED ANY ADDITIONAL INFORMATION, CONTACT CENTRAL RECORDS IN YAPHANK FOR YOUR ARREST RECORD (631) 852-8015.

IF YOU WERE A YOUTHFUL OFFENDER OR YOUR CASE WAS SEALED, ADDITIONAL PROCEDURES MUST BE FOLLOWED :

IF YOU WERE ADJUDICATED AS A YOUTHFUL OFFENDER, PLEASE SIGN FORM #1 BEFORE A NOTARY PUBLIC AND RETURN IT ALONG WITH THE FEE AND A SELF-ADDRESSED STAMPED ENVELOPE.

IF YOUR CASE WAS SEALED PURSUANT TO CPL 160.50 AND YOU WANT THE TRANSCRIPT SENT TO YOU, COMPLETE FORM #2.

IF YOU WANT IT SENT TO SOMEONE ELSE, COMPLETE FORM #3.

IN ANY CASE, THE FORMS MUST BE RETURNED ALONG WITH THE FEE AND A SELF-ADDRESSED STAMPED ENVELOPE.

DC-411 (12/07)

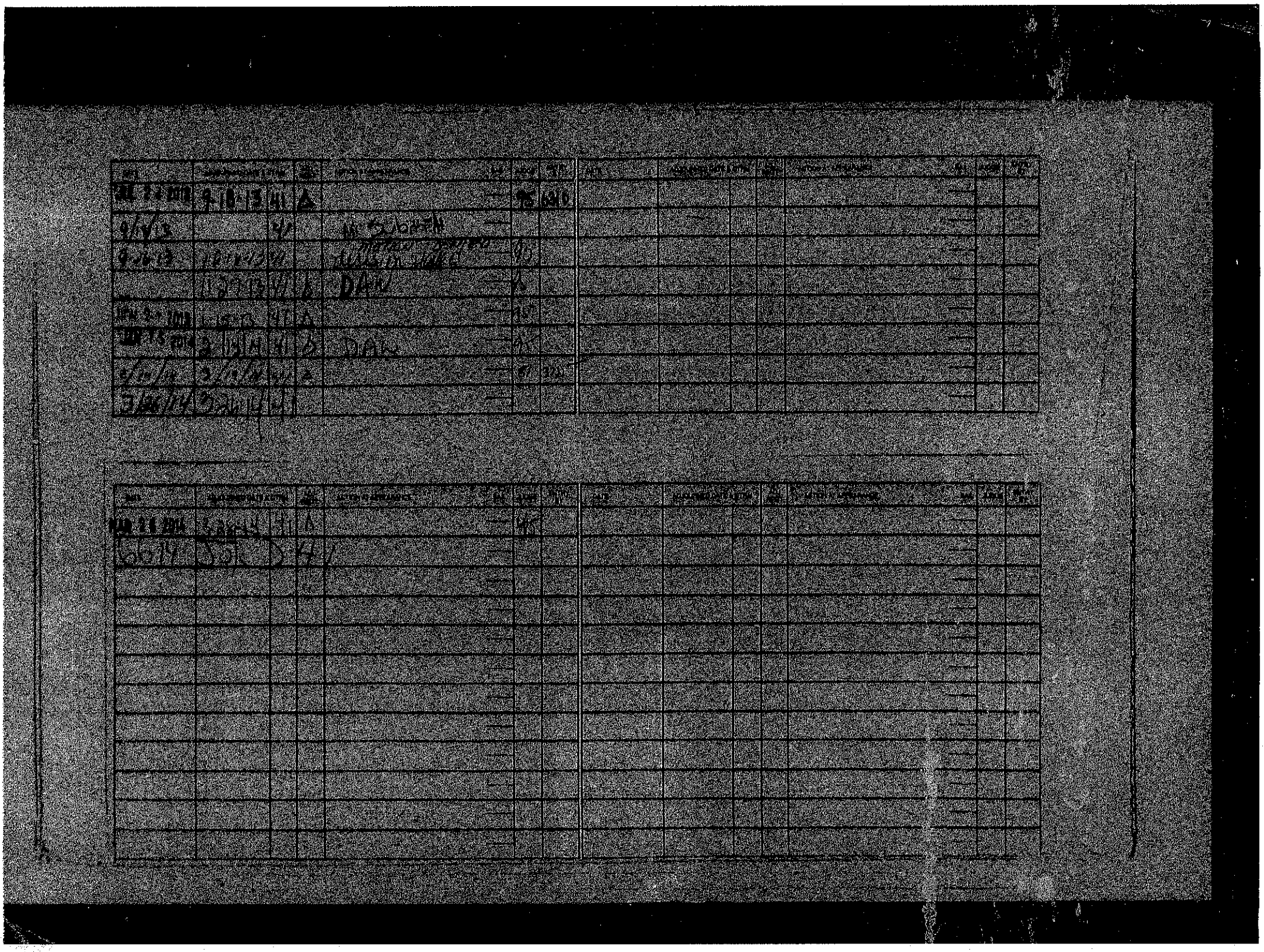
2011SU040447

PICCIRILLO, ANTHONY A

Dob: 02/11/83

MAR 27 2015

| | | |



1ST DISTRICT COURT — NY0510033J — 2011SU 40447 — 10-17-11 D52A

DISTRICT - DOCKET NOS.

MISDEMEANOR INFORMATION

CC NUMBER: 11-045288/SPO

ARREST NUMBER: 029579-11

ARRAIGNMENT TRACT NO.

ARREST DATE & TIME: 08/25/11 01:57

STATE OF NEW YORK } SS
COUNTY OF SUFFOLK }

PIN 569791

The People of the State of New York -vs- PICCIRILLO, ANTHONY A } Defendant

Name (Complainant) PEREGOY, SCOTT E PID 33746 PO 1452

of No. 30 YAPHANK AVE YAPHANK NY 11980 Sqd # 0520/38

Being duly sworn, says that ON OR ABOUT AUGUST 24, 2011, AT APPROXIMATELY 10:55 P.M.

at 16316 SYCAMORE AVENUE, BOHEMIA Town of ISLIP

County of Suffolk, State of New York, the defendant (Name, Address & D.O.B.) PICCIRILLO, ANTHONY A

2407 VISTA VIEW DRIVE, FARMINGVILLE, NY D.O.B. 02/11/1983

committed the offense of PROMOTING GAMBLING 2ND

IN VIOLATION OF PL 225.05 AM2 NYS PENAL LAW

Count # 001

In That A PERSON IS GUILTY OF PROMOTING GAMBLING IN THE SECOND DEGREE WHEN HE KNOWINGLY ADVANCES OR PROFITS FROM UNLAWFUL GAMBLING ACTIVITY.

To Wit: THE DEFENDANT, AT 16316 SYCAMORE AVENUE, BOHEMIA, IN THE TOWN OF ISLIP, SUFFOLK COUNTY, NEW YORK, ON OR ABOUT AUGUST 24, 2011, AT APPROXIMATELY 10:55 P.M., KNOWINGLY ADVANCED OR PROFITED FROM UNLAWFUL GAMBLING ACTIVITY IN THAT, THE DEFENDANT ACTING OTHER THAN A PLAYER NAMELY AN OWNER, MANAGER, EMPLOYEE, EXERCISED CONTROL AND ADVANCED OR PROFITED FROM UNLAWFUL POKER GAMES AT THE ABOVE LOCATION.

( ) This charge is based solely upon complainant's personal knowledge.

(X) This charge is based upon complainant's personal knowledge and on information and belief, the source(s) being EDWARD JACOBS

( ) This charge is based solely upon information and belief, the source(s) being

( ) Warrant Requested ( ) Criminal Summons Requested ( ) Supporting Documents Attached

SWORN TO BEFORE ME August 25 11

Signature of Official Administering Oath

Complainant – P.O. Police Officer, Det., Sgt., Lieut., Capt., Inspector

COURT FOLDER

POLICE DEPARTMENT COUNTY OF SUFFOLK, N.Y.
ACCREDITED LAW ENFORCEMENT AGENCY
STATEMENT FORM
PEDS 11556

C.C. # 11-462008

Date 8/24/11 Time 0115
Page 1 of 1

I, Ed Jones (name) (being duly sworn) deposes and says:

(words "being duly sworn" are to be crossed out if a sworn statement is not being prepared) that I am 47 (age) years old

I was born on 01/12/64 (d.o.b.) I am giving this statement to Officer Murphy (name of officer)

I am giving this statement freely, having received no threats or promises to do so.

Today August 24, 2011 at around 8PM I went to a Poker Hall in Syosset NY in Nassau Co. They call the club the Spot. I love to play poker about 10 hours the games are on Tuesdays & Wednesdays. Tonight I was playing in a $5 no limit Texas Hold'em Poker game. I came in at 8PM & buy in for $300. I don't give cash at first I square up at the end of the night. Mike Sanchez who I have known for about a year had my chips for me. I played about 5 or 6 hands and the only one I remember is the hand cut was about 4 to 5 players and Mike the dealer took it out of the pot. I square up with Anthony who had some shirts with a P on the other nights. I now know his name to be Anthony Piccirillo. The other guy who I square up with is an older guy they call "Fat" Pat would cash me in at the end of the night. I have no idea what his real name is. I now know his name to be Keary Stephen. I have read the above statement that consists of one page and swear it is true.

Daniel Murphy
Notary Public, State of New York
No. 01MU6167859
Qualified in Suffolk County
Commission Expires 06/06/ 2013

False statements made herein are punishable as a class "A" misdemeanor pursuant to Section 210.45 of the Penal Law

Signature of person giving statement

Signature of person giving statement — Date

Witnessing officer

Sworn before me this 24th day of August 2011

Notary Public

POLICE DEPARTMENT, COUNTY OF SUFFOLK, N.Y.
ACCREDITED LAW ENFORCEMENT AGENCY

DESK APPEARANCE TICKET

PDCS - 1980b

WHITE - DEFENDANT PINK - COURT COPY YELLOW - AUDIT COPY

DEFENDANT IS ARRESTED					
VIOLATION NUMBERS	ONE	TWO	THREE	FOUR	FIVE
OFFICER'S NAME	— Self —				

THE PEOPLE OF THE STATE OF NEW YORK VS.
NAME AND ADDRESS Rocco, Anthony A 2407 Victoria Blvd E Bayshore

You are hereby notified to appear in the District Court, Room No. ____ 400 Carleton Ave., Central Islip, N.Y. or the ____ Court, address ____

on the 11 day of October 20 19 at 9 o'clock in the for noon, to answer a criminal charge made against you by J.C.P.D. for violation(s) of

1 Promoting Gambling	$ 50	3	$
2	$	5	$
4	$		

Arresting officer's signature [illegible] Date 6/9/19 Time 2:00 P.M. Badge No. 1572 Tax No. 1550

Should you fail to appear for the violation(s) charged above, in addition to a warrant being issued for your arrest, you may be charged with an additional violation of the Penal Law which if you convicted may subject you to a fine, imprisonment or both. Also, any cash bail posted here under shall be forfeited should you fail to appear at the above time and place.

NOTICE: YOU ARE ADVISED TO CONSULT AN ATTORNEY AS SOON AS POSSIBLE REGARDING THIS MATTER.

ACKNOWLEDGEMENT OF DEFENDANT: I, the undersigned do hereby acknowledge receipt of this desk appearance ticket and do agree to appear as indicated above.

Defendant's signature [illegible] Time 0550 Date 6/25/19

Witness or arresting officer

DISTRICT COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

People of the State of New York
-against-
Anthony Piccirillo
Defendant

NOTICE OF APPEARANCE

Docket Number: USU-4 0447

PLEASE TAKE NOTICE that I, the undersigned, appear herein on behalf of the above named defendant.

Dated: 2/28/12.

Yours, etc.,
J Ingemeo
Signature — Attorney for Defendant
John T. Ingemeo JR, PC.
Print
1041 Old Nichols Rd.
Address
Islip, NY
City
(631) 277-7100
Telephone Number

ATTACH BUSINESS CARD

To: Clerk of the District Court (WHITE TO COURT FILE)
To: District Attorney of Suffolk County (Pink COPY)
cc: Data Entry (YELLOW COPY)

DC 183 Notice of Appearance (3/04)

DISTRICT COURT OF SUFFOLK COUNTY
FIRST DISTRICT CENTRAL ISLIP

PEOPLE OF THE STATE OF NEW YORK
VS
PICCIRILLO,ANTHONY A

2407 VISTA VIEW DR
FARMINGVILLE NY 11738

JUDGMENT ORDER

FINE(S) (CPL420.10
MANDATORY SURCHARGE(S)
CRIME VICTIM ASSISTANCE FEE(S)
CPL 420.35 & 420.40

DOCKET #: 2011SU040447

THE ABOVED NAMED DEFENDANT HAVING BEEN CONVICTED AND SENTENCED BEFORE THIS COURT, AND HAVING BEEN DIRECTED BY THE COURT IN ACCORDANCE WITH CPL 420.10 AND 420.40 TO PAY A

JUDGMENT TOTAL $370

AND IT APPEARING THAT THE ABOVE REMAINS UNPAID, IT IS HEREBY

ORDERED, THAT THE CLERK OF THIS COURT SHALL FILE THIS ORDER WITH THE SUFFOLK COUNTY CLERK, AND IT IS FURTHER

ORDERED, THAT THE SUFFOLK COUNTY CLERK, PURSUANT TO C.P.L. ARTICLE 420, SHALL ENTER THIS ORDER IN THE SAME MANNER AS A JUDGMENT IN A CIVIL ACTION IN ACCORDANCE WITH CPLR 5016(A), AND IMMEDIATELY UPON ENTRY THEREOF THE SUFFOLK COUNTY CLERK SHALL DOCKET THE ENTERED ORDER AS A MONEY JUDGMENT, PURSUANT TO CPLR 5018, AGAINST THE DEFENDANT.

WITH REGARD TO ANY FINE SET FORTH ABOVE, THIS JUDGMENT ORDER IS FILED ON BEHALF OF THE DISTRICT ATTORNEY OF SUFFOLK COUNTY.

DATED:
06/06/2014

RAY,A
JUDGE OF THE DISTRICT COURT

JUDGMENT CREDITOR

CLERK OF THE SUFFOLK COUNTY DISTRICT COURT
CONKLIN COURT COMPLEX
400 CARLETON AVE
CENTRAL ISLIP, NEW YORK 11722

I HEREBY CERTIFY THAT THIS IS A TRUE COPY OF THE RECORD ON FILE IN THIS COURT. I FURTHER AFFIRM, UNDER PENALTIES OF PERJURY, THAT THE ABOVE REFERENCED ADDRESS REPRESENTS THE BEST ASCERTAINABLE ADDRESS AVAILABLE TO THE CLERK OF THIS COURT.

DATED: 06/16/2014

CLERK OF THE COURT

DISTRICT COURT OF SUFFOLK COUNTY
CRIMINAL DEPARTMENT
POST OFFICE BOX 9074
CENTRAL ISLIP, NEW YORK 11722-9074
(631)853-7500

NOTIFICATION OF ADJOURNED DATE

ANTHONY A PICCIRILLO
2407 VISTA VIEW DR
FARMINGVILLE NY 11738

D.O.B.
02/11/83

Motorist Id Number

Docket # **2011SU040447**

Please be advised that the above docketed matter has been adjourned as detailed below:

4/24/2013 In Ceurtroom D41 at 9:30AM

SPECIAL COMMENTS

This matter has been adjourned from the date and part indicated below.
Be sure to notify your attorney (if an attorney has been retained)of the new court date

☑ ATTORNEY OF RECORD HAS BEEN NOTIFIED
JOHN POWERS
1641 DEER PARK AVENUE
DEER PARK NY 11729

ADJOURNED FROM 3/27/13 Date MAY Case Continued

Dated 3/19/2013

Warren S. Clark, Chief Clerk
Suffolk County District Court

BE ADVISED: Only a Judge of the District Court may excuse your appearance on the date indicated above. Your failure to appear may result in a warrant being issued for your arrest.

DC - #5 Order on Motion Docket No. 2011SU040447

DISTRICT COURT OF THE COUNTY OF SUFFOLK, FIRST DISTRICT

Present:
HON. JOHN ANDREW KAT Date September 12, 2013
JUDGE

THE PEOPLE OF THE STATE OF NEW YORK

AGAINST

ANTHONY A. PICCIRILLO,

Defendant.

Upon the following papers numbered 1 to 3 read on this motion for leave to reargue
Notice of Motion/Order to Show Cause and supporting papers 1, 2;
Notice of Cross-Motion and supporting papers ;
Answering Affidavits and supporting papers 3;
Replying Affidavits and supporting papers ;
Filed Papers ; Other ; it is,

ORDERED that this motion by the defendant for an order pursuant to CPLR 2221 granting him leave to reargue his prior motion to dismiss the information charging him with Promoting Gambling in the Second Degree, in violation of Penal Law 225.05, for facial insufficiency is denied. The information states that it is based both on the personal knowledge of the complainant police officer and on the supporting deposition of Edward Jacobs filed with the information. The non-hearsay allegations set forth in the supporting deposition are sufficient to establish that the defendant engaged in conduct constituting the offense charged, as noted in this Court's order dated May 14, 2013. The remainder of the factual allegations contained in the factual part of the information are based on the personal knowledge of the complainant officer, and establish that the defendant was at the specified location at the date and time set forth therein. The information therefore is sufficient on its face, and the motion for leave to reargue is denied accordingly.

The parties are directed to appear on the New Court Date indicated below.

New Court Date: 10/16/13

Dated: 9/25/13

J.D.C.

Decision to be published on line: ___ yes X no

CR - 30 Order on Motion Docket No. 2011SU048447

DISTRICT COURT OF THE COUNTY OF SUFFOLK, FIRST DISTRICT

Present
HON. JOHN ANDREW RAY Date April 24, 2012
JUDGE

THE PEOPLE OF THE STATE OF NEW YORK

AGAINST

ANTHONY A. PICCIRILLO,

Defendant.

Upon the following papers numbered 1 to 4 read on this motion to dismiss
Notice of Motion/Order to Show Cause and supporting papers 1 - 2
Notice of Cross Motion and supporting papers
Answering Affidavits and supporting papers 3
Replying Affidavits and supporting papers
Filed Papers ; Other , it is,

ORDERED that this motion by the defendant for an order dismissing the information charging him with Promoting Gambling in the Second Degree, in violation of Penal Law 225.05, for facial insufficiency is denied. A person promotes gambling by knowingly advancing or profiting from unlawful gambling activity (see, Penal Law 225.05), which is defined by statute as gaining money or property from gambling activity (Penal Law 225.00[5]) or engaging in conduct which materially aids any form of gambling activity, irrespective of whether money or property is received for doing so (Penal Law 225.00[4]), while acting other than as a player (Denning, Practice Commentaries to Penal Law 225.00 [McKinney's Cons. Laws of N.Y., Penal Law 225]). The factual allegations of an information should be given a "fair and not overly restrictive or technical reading" (People v. Casey, 95 N.Y.2d 354, 360 [2000]), and a defendant's knowledge can be inferred based on the surrounding circumstances (see, People v. Walker, 166 A.D.2d 911 [4th Dept. 1990], lv. den. 77 N.Y.2d 845 [1991]; People v. Cadbury Beverages, 81 A.D.2d 918 [4th Dept. 1974]; People v. Taveras, 17 Misc.3d 1139[A] [Crim. Ct., N.Y. Co. 2007]).

The deponent stated in his supporting deposition filed with the information that on August 24, 2011 at 8:50 p.m. he "went to a poker hall on Sycamore Ave in Bohemia. They call the club the Spot. I have been playing here about 10 weeks. Tonight

I was playing a $5, $1 no limit Texas Hold'em poker game. I came tonight and I buy in for $500. I don't give cast at first I square up at the end of the night. I played about 5 or 6 hands and the take, which is the house cut was about $5 to $15 a hand and Mike the dealer takes it out of the pot. I square up with Anthony whose last name starts with a P on the other nights. I now know his name to be Anthony Piccirillo. * The non hearsay factual allegations of the information and supporting deposition are sufficient to establish, if true, every element of the offenses charged and the defendant's commission thereof, and meet the prima facie case requirement for facial sufficiency, which is not as high as the burden of proof beyond a reasonable doubt required at trial. *See, People v. Henderson*, 92 N.Y.2d 677 (1999); *People v. Casey*, *supra*; CPL 100.40(1)(b), (c); CPL 100.15; Penal Law 225.05; Penal Law 225.00(4), (5). The request for dismissal for facial insufficiency is therefore denied.

That branch of the motion requesting dismissal on the ground that the insufficiency of the information prevented the People from being ready for trial within the statutory readiness period is denied as moot.

The parties are directed to appear on the New Court Date indicated below.

New Court Date: 6/12/13

Dated: 5/31/13

J.D.C.

Decision to be published on line ___ yes X no

DISTRICT COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

THE PEOPLE OF THE STATE OF NEW YORK,

Dkt No. 2011SU040447

NOTICE OF MOTION
TO REARGUE

-against-

ANTHONY A. PICCIRILLO, Defendant.

PLEASE TAKE NOTICE, that upon the annexed affirmation of JOHN T. POWERS, JR., 375 Commack Road, Suite 202, Deer Park, New York 11729, the exhibits annexed hereto and the prior proceedings herein, the undersigned will move the District Court of Suffolk County, State of New York, County of Suffolk, Central Islip, New York, on the 4th day of September, 2013, at 9:30 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard, for an Order, granting the following:

I. MOTION TO REARGUE THE COURTS DECISION

And for such other and further relief as this Court may deem just and proper.

Reply Papers: Service of answering papers at least seven (7) days before the argument/decision date of these motions is demanded pursuant to CPLR § 2214.

Dated: Deer Park, New York
July 26, 2013

Yours, etc.,

JOHN T. POWERS, JR. PC

John T. Powers, Jr. Esq
Attorneys for Defendant(s)

375 Commack road, Ste. 202
Deer Park, New York 11729
(631) 242-2020

TO: Hon. Thomas Spota
District Attorney
County of Nassau
400 Carleton Avenue
Central Islip, NY 11722

Clerk of the Court
District Court County of Suffolk
State of New York
400 Carleton Avenue
Central Islip, NY 11722

DISTRICT COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

----------X

THE PEOPLE OF THE STATE OF NEW YORK,

Dkt. No. 2011NA040447

AFFIRMATION IN SUPPORT OF MOTION TO REARGUE

-against-

ANTHONY A. PICCARILLO, **Defendant.**

----------X

I, JOHN T. POWERS, JR., ESQ. an attorney duly admitted to practice law in the State of New York, affirms under penalties of perjury:

1. I am the attorney for Anthony A. Piccarillo. This affirmation is submitted in support of defendant's motion to reargue the decision of the court dated May 14, 2013 and received on the record in court on July 24, 2013, pursuant to CPLR 2221(d) and People v. Widgeon, 303 A.D.2d 330, 757 N.Y.S.2d 267 (1st Dept 2003). Unless otherwise indicated, statements herein are based upon court papers, and papers and information annexed hereto and/or furnished by the prosecution's office, and upon information and belief.

ALLEGATIONS

2. Mr. Piccarillo was arrested on or about August 25, 2011, and charged with violating New York State Penal Law section 225.05, Promoting Gambling in the second Degree.

3. Defendant was arraigned on August 26, 2011, and entered a "Not Guilty" plea.

PROCEDURAL HISTORY

4. Mr. Piccarillo filed a motion to dismiss on September 28, 2012.

LAW

5. A motion to reargue is addressed to the circumstances of the Court and should be granted only if a relevant fact or principle of law has been overlooked or misapplied. People v. Raglin, 175 Misc.2d 1009 (Crim. Ct. Queens Cnty. 1998).

6. A common law inquiry cannot be used to detain an individual for the purpose of investigating a crime. People v. Lee, 96 AD3d 1552 (4th Dept. 2012).

APPLICATION

7. In the instant matter, the Court notes in its' decision that "the factual allegations of an information should be given a fair and not overly restrictive or technical reading and a defendant's knowledge can be inferred based on the surrounding circumstances." The Court relies on People v. Casey, 95 354, 360 (2000), and People v. Walker, 166 A.D.2d 911 (4th Department 1990) as a basis for determining that the statement within the supporting deposition sufficiently articulates the and supports "every element of the offense charged and the defendant's commission thereof, and meets the prima facie case requirement for facial sufficiency." Please see Court decision **Exhibit A**.

8. In support of the above conclusion the Court cites the portion of the supporting deposition that claims, "the deponent went to a poker hall on Sycamore Ave in Boheimia. They call the club the [illegible]. I have been playing here about 10 weeks... Tonight I was playing a $5, $5 no limit Texas Hold'em poker game. I came tonight and I buy in for $500. I don't give cash at first I square up at the end of the night... I played about 5 or 6 hands and the rake, which is the house cut was about $5 to $15 a hand and Mike the dealer takes it out of the pot. *I square up with Anthony whose last name starts with a P on the other nights.* I now know his name to be Anthony Picarillo..." Please see Court decision, emphasis added.

9. The basis of the Court's conclusion that the deponent's deposition establishes every

element and therefore is facially sufficient seems somewhat misguided in that a close reading of the deponent's statement fails to allege any commission of any overt act by the accused on the date and time stated in the deposition, i.e. August 24, 2011 at 8:50 pm. The portion of the statement referring to the accused merely states that "I square up with Anthony whose name starts with a P *on the other nights*."

10. The deposition not only fails to articulate that Mr. Piccarillo acted in any manner to promote gambling on the date and time in question, but also fails to give the accused adequate and sufficient notice to a prepare a defense with adequate detail to prevent the accused from being tried twice for the same offense. People v. Casey, 95 N.Y.2d 354. No "other nights", dates or times are referenced by the deponent.

11. The instant statement only alerts the reader that the deponent has "squared up" with someone he now knows to be Anthony Piccarillo "on the other nights". It is respectfully submitted that the instant statement by the deponent does not give sufficient and adequate details to prepare a defense, nor does the allegation satisfy the necessary elements of promoting gambling.

12. It is respectfully submitted that the instant matter should be dismissed by this Court, especially in light of the failure of the deposition and accusatory instrument to rule out that the accused was a "player" as defined in PL section 225.00(3). The accused's original motion papers addressed this issue as it related to the deponent's allegations. It seems especially relevant in light of the vague nature of the alleged participation of the accused. Please see, Picarrillo Motion Ex B.

CONCLUSION

13. Application is hereby made for the court to grant the accused's application to dismiss the instant matter based on the foregoing reasons.

WHEREFORE, it is respectfully requested that defendant's motion be granted in all respects

and for such other and further relief as the court may deem just and proper.

Dated: Deer Park, New York
July 26, 2013

JOHN T. POWERS, JR., ESQ
Attorney for the Defendant
1641 Deer Park Avenue
Deer Park, New York 11729
(631) 242-2020

TO: Hon. Thomas Spota
Suffolk County District Attorney
400 Carleton Avenue
Central Islip, NY 11722

Clerk of the Court
District Court
County of Suffolk
400 Carleton Avenue
Central Islip, NY 11722

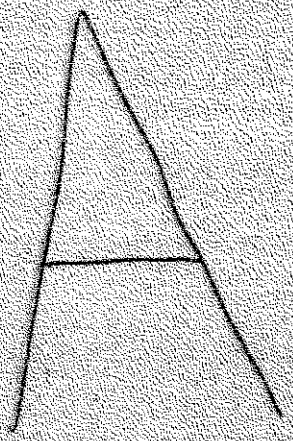


EXHIBIT A

CR - 68 Order on Motion Docket #: 2011CR4247

DISTRICT COURT OF THE COUNTY OF SUFFOLK, FIRST DISTRICT

Present:
HON. JOHN ANDREW RAY
JUDGE

Date April 24, 2012

THE PEOPLE OF THE STATE OF NEW YORK

AGAINST

ANTHONY A. PICCIRILLO,

Defendant.

Upon the following papers numbered 1 to 3 read on this motion to dismiss
Notice of Motion/Order to Show Cause and supporting papers 1, 2;
Notice of Cross-Motion and supporting papers ;
Answering Affidavits and supporting papers 3;
Replying Affidavits and supporting papers ;
Filed Papers ; Other it is,

ORDERED that this motion by the defendant for an order dismissing the information charging him with Promoting Gambling in the Second Degree, in violation of Penal Law 225.05, for facial insufficiency is denied. A person promotes gambling by knowingly advancing or profiting from unlawful gambling activity (see, Penal Law 225.05), which is defined by statute as gaining money or property from gambling activity (Penal Law 225.[5]) or engaging in conduct which materially aids any form of gambling activity, irrespective of whether money or property is received for doing so (Penal Law 225.00[4]), while acting other than as a player. Donnino, Practice Commentaries to Penal Law 225.00 (McKinney's Cons. Laws of N.Y., Penal Law 225). The factual allegations of an information should be given a "fair and not overly restrictive or technical reading" (*People v. Casey*, 95 N.Y.2d 354, 360 [2000]), and a defendant's knowledge can be inferred based on the surrounding circumstances (see, *People v. Walker*, 166 A.D.2d 911 [4th Dept. 1990], *lv. den.* 77 N.Y.2d 945 [1991]; *People v. Cadbury Beverages*, 201 A.D.2d 918 [4th Dept. 1994]; *People v. Taverse*, 17 Misc.3d 1141[A] [Crim. Ct., N.Y. Co. 2007]).

The deponent stated in his supporting deposition filed with the information that on August 24, 2011 at 8:50 p.m. he "went to a poker call on Sycamore Ave in Bohemia. They call the club the Spot. I have been playing here about 10 weeks . . Tonight

I was playing a $5, $5 no limit Texas Hold'em poker game. I came tonight and I buy in for $500. I don't give cash at first. I square up at the end of the night. . . I played about 5 of 6 hands and the rake, which is the house cut was about $5 to $10 a hand and Mike the dealer takes it out of the pot. I square up with Anthony whose last name starts with a P on the other night. I now know his name to be Anthony Piccirillo. . . The non-hearsay factual allegations of the information and supporting deposition are sufficient to establish, if true, every element of the offense charged and the defendant's commission thereof, and meet the prima facie case requirement for facial sufficiency, which is not as high as the burden of proof beyond a reasonable doubt required at trial. *See, People v. Henderson*, 92 N.Y.2d 677 (1999), *People v. Casey*, *supra*; CPL 100.40(1)(b), (c), CPL 100.15, Penal Law 225.05, Penal Law 225.00(2)(4), (6). The request for dismissal for facial insufficiency is therefore denied.

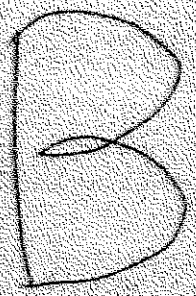
That branch of the motion requesting dismissal on the ground that the insufficiency of the information prevented the People from being ready for trial within the statutory readiness period is denied as moot.

The parties are directed to appear in the New Court Date indicated below.

New Court Date: 6/12/13

Dated: 5/10/13

Decision to be published on line ___ yes 1 no



DISTRICT COURT : COUNTY OF SUFFOLK
STATE OF NEW YORK

---X

THE PEOPLE OF THE STATE OF NEW YORK

NOTICE OF MOTION TO DISMISS

-against-

ANTHONY A. PICCIRILLO, Docket No. [illegible]

Defendant.

---X

PLEASE TAKE NOTICE, that upon the annexed affirmation of **JOHN T. POWERS, JR., ESQ.**, dated September 25, 2012, the undersigned will move this Court on the 30th day of October, 2012, at 9:30 o'clock in the forenoon, or as soon thereafter as counsel may be heard, for an Order allowing the defendant the following relief:

A. Dismissal of the accusatory instrument pursuant to sections 100.15, 100.40, and 30.30 of the New York State Criminal Procedure Law, and for such further relief as this Court may deem just and proper and,

B. For such other and further relief as to this Court may seem just and proper.

PLEASE TAKE FURTHER NOTICE, that the defendant reserves the right to [illegible] any such further motions pursuant to C.P.L. 255.02(2) and (3) as may be necessitated by the receipt of discovery material not yet received and upon information given in the answer to the instant motion.

Dated: Deer Park, New York
September 25, 2012

Yours,
John T. Powers, Jr., Esq.
Attorney for Defendant
1041 Deer Park Ave.
Deer Park, NY 11729
(631) 242-2020

TO: Clerk of the Court

District Court
County of Suffolk
400 Carleton Avenue
Central Islip, NY 11722

Thomas Spota
Suffolk County District Attorney
400 Carleton Avenue
Central Islip, NY 11722

EXHIBIT A

1ST DISTRICT COURT — NY051033J

DISTRICT - DOCKET NOS. 2011SU2 4041

MISDEMEANOR INFORMATION

CC NUMBER	11-045208/SPD
ARREST NUMBER	APPEARANCE TICKET NO.
029979 11	
ARREST DATE & TIME	08/25/11 01:57

STATE OF NEW YORK } SS
COUNTY OF SUFFOLK }

PIN: 599791

The People of the State of New York -vs- PICCIRILLO, ANTHONY A } Defendant

Name (Complainant) PEREGOY, SCOTT E PID 33740 PO 1452

of No. 30 YAPHANK AVE YAPHANK NY 11980 Sqd # 0520-381

Being duly sworn, says that ON OR ABOUT AUGUST 24, 2011, AT APPROXIMATELY 10:55 P.M.

at 16316 SYCAMORE AVENUE, BOHEMIA Town of ISLIP

County of Suffolk, State of New York, the defendant (Name, Address & D.O.B.) PICCIRILLO, ANTHONY A.

2407 VISTA VIEW DRIVE, FARMINGVILLE, NY D.O.B. 02/11/1983

committed the offense of PROMOTING GAMBLING 2ND

IN VIOLATION OF PL 225.05 AM2 NYS PENAL LAW

Count # 001

In That, A PERSON IS GUILTY OF PROMOTING GAMBLING IN THE SECOND DEGREE WHEN HE KNOWINGLY ADVANCES OR PROFITS FROM UNLAWFUL GAMBLING ACTIVITY.

To Wit: THE DEFENDANT, AT 16316 SYCAMORE AVENUE, BOHEMIA, IN THE TOWN OF ISLIP, SUFFOLK COUNTY, NEW YORK, ON OR ABOUT AUGUST 24, 2011, AT APPROXIMATELY 10:55 P.M., KNOWINGLY ADVANCED OR PROFITED FROM UNLAWFUL GAMBLING ACTIVITY IN THAT, THE DEFENDANT ACTING OTHER THAN A PLAYER NAMELY AN OWNER, MANAGER, EMPLOYEE, EXERCISED CONTROL AND ADVANCED OR PROFITED FROM UNLAWFUL POKER GAMES AT THE ABOVE LOCATION.

( ) This charge is based solely upon complainant's personal knowledge.

(X) This charge is based upon complainant's personal knowledge and on information and belief, the source(s) being: EDWARD JACOBS

( ) This charge is based solely upon information and belief, the source(s) being:

( ) Warrant Requested ( ) Criminal Summons Requested ( ) Supporting Documents Attached

SWORN TO BEFORE ME August 25, 20 11

Signature of Official Administering Oath

Complainant - Police Officer Name, Shield, Squad & Command

DEFENDANT

EXHIBIT B

POLICE DEPARTMENT COUNTY OF SUFFOLK, N.Y.
ACCREDITED LAW ENFORCEMENT AGENCY
STATEMENT FORM
PDCS-1163

C.C. # 11-462008

Date 8/24/11 Time 0115

Page 1 of 1

I, Ed Jacobs (being duly sworn) deposes and says

name

(words "being duly sworn" are to be crossed out if a sworn statement is not being prepared) that I am 44 years old (age)

I was born on 01/15/67 d.o.b. I am giving this statement to Officer Murphy (name of officer)

I am giving this statement freely, having received no threats or promises to do so.

Today August 24, 2011 at around 2:30a I went to a Peter Hall in Syosset or in Bohemia. They all the club the Spot. I have been playing here about 10 years. The games are a Saturday night. Tonight I was playing a 5, 5 point Texas Hold'em. Poker game. I came home at 1:30a in Syosset. I don't give cash at first I figure up at the end of the night. Mike Sanders who I have known for about a year had my chips out for me. I played about 5 or 6 hands and the only child in the house sat next to me for a hand and a while the dealer takes it out of the pot. I figure up with Anthony who last name starts with a P or the other night. I now know I've come to be Anthony Piccirillo. The other guy who I figure up with is an older guy then me "Pat" Pat would ask me in at the end of the night. I have no idea what his real name is. I now know his name to be Keany, Stephen. I have read the above statement that consists of one page and swear it is true.

Daniel Murphy
Notary Public, State of New York
No. 01MU6215775
Qualified in Suffolk County
Commission Expires 06/04/2013

False statements made herein are punishable as a class "A" misdemeanor pursuant to Section 210.45 of the Penal Law.

Signature of person giving statement

Signature of person giving statement — Date

Witnessing officer

Sworn before me this 24th day of August 20 11

Notary Public

Docket No. 2011SU040447 Year

DISTRICT COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

THE PEOPLE OF THE STATE OF NEW YORK,

- against -

ANTHONY A. PICCIRILLO,

Defendant.

NOTICE OF MOTION TO REARGUE

JOHN T. POWERS, JR., ESQ.
POWERS LAW, P.C.
Attorneys for Defendant
375 Commack Road
Suite 202
Deer Park, New York 11729
631.667.7100 T.

To:

Clerk of the Court
Suffolk County District Court
400 Carleton Avenue
Central Islip, NY 11722

Hon. Thomas Spota
Suffolk County District Court
400 Carleton Avenue
Central Islip, NY 11722

SUFFOLK COUNTY
DISTRICT ATTORNEY
JUL 26 2013
RECEIVED
CENTRAL ISLIP

Service of a copy of the within is hereby admitted
Dated

Attorney(s) for

Docket No. 2011SU040447 Year

DISTRICT COURT OF THE STATE OF NEW YORK
COUNTY OF SUFFOLK

THE PEOPLE OF THE STATE OF NEW YORK,

- against -

ANTHONY A. PICCIRILLO,

Defendant.

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To:

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Central Islip, NY 11722

Hon. Thomas Spota
Suffolk County District Court
400 Carleton Avenue
Central Islip, NY 11722

SUFFOLK COUNTY
DISTRICT ATTORNEY
JUL 26 2013
RECEIVED
CENTRAL ISLIP

Service of a copy of the within is hereby admitted
Dated

Attorney(s) for:

DISTRICT COURT: COUNTY OF SUFFOLK
FIRST DISTRICT: CENTRAL ISLIP, NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK

AFFIDAVIT OF AFFIRMATION IN OPPOSITION TO DEFENDANT'S MOTION TO REARGUE

-against-

Docket No.: 2011SI040447

ANTHONY A. PICCIRILLO,

DEFENDANT

PHILIP V. APRUZZESE, being duly sworn, deposes and says:

1. I am admitted to practice law in the Courts of this State and am an Assistant District Attorney in and for Suffolk County. I appear of counsel to THOMAS J. SPOTA, District Attorney of Suffolk County, and attorney of record for the People of the State of New York.

2. The statements made in this affirmation are based on information and belief, the source being the files of this Office and the applicable law, and on that basis I believe them to be true.

3. Defendant, by motion dated July 26, 2013, moves this Court for:

(1) Leave to reargue request for dismissal of the accusatory instrument pursuant to New York Criminal Procedure Law, such argument having already been denied by the Honorable John Andrew Kay on May 14, 2013, and

(2) Such other and further relief as this Court may deem just and proper.

DEFENDANT'S MOTION TO REARGUE SHOULD BE DENIED

4. Defendant moves this court for leave to reargue his request for dismissal of the accusatory instrument pursuant to New York Criminal Procedure Law. The People respond as follows:

5. Although motions to reargue are within the Court's discretion, the party seeking reargument must ordinarily demonstrate that the court misapplied the law or overlooked relevant facts. C.P.L.R. §2221, see Foley v. Roche, 68 A.D.2d 558 (1st Dept. 1979); see generally, People v. Bergen Beach Yacht Club, ___ Misc.2d ___ (Crim. Ct. N.Y. Co.), N.Y.L.J. June 6, 1994, p.35 col 2; cf. People v. Robles, 80 N.Y.2d 763 (1993).

6. Furthermore, "A motion to reargue does not afford an unsuccessful party an opportunity to advance arguments different from those proffered in the original application" (citations omitted). People v. Cordes, 270 A.D.2d 430 (2d Dept.), *lv. Denied*, 95 N.Y.2d 851 (2000).

7. It is the People's position that the defendant has failed to show that the court misapplied the law or overlooked any relevant fact in the present matter when defendant prior written argument was denied.

8. It is further the People's position that the defendant has failed to show any change in circumstances that would warrant this Court revisiting this issue.

9. The defendant has also failed to advance any different arguments proffered originally before the Honorable John Andrew Kay when he denied defendant argument on by written decision dated May 14, 2015, establishing the finding the prosecutor's information sufficient to establish a prima facie case of the crime charged, Promoting Gambling in the Second Degree.

10. As the relief the defendant seeks has already been addressed and denied by the Honorable John Andrew Kay, and the defendant has failed to indicate any new or additional arguments not made previously in written motion, it is the People's position that the defendant has failed to show proper grounds to be granted leave to reargue, and the People urge this Court to deny the defendant's motion.

WHEREFORE, it is respectfully requested by the People that the Motion submitted by Defendant be decided in accordance with the People's Affirmation in Opposition.

The People announce their readiness to proceed to trial pursuant to section 30.30 of New York's Criminal Procedure Law.

Respectfully submitted,

PHILIP V. APPREZZESE
Assistant District Attorney

Dated: September 18, 2013
Central Islip, NY

To: John T. Powers, Esq
Powers Law, P.C
Attorney(s) for Defendant
375 Commack Road
Suite 202
Deer Park, New York 11729

cc: Hon. John Andrew Kay
Clerk of the Court – [94]

DISTRICT COURT : COUNTY OF SUFFOLK
STATE OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK

NOTICE OF MOTION TO DISMISS

-against-

ANTHONY A. PICCIRILLO,

Docket No. 2011SU040447

Defendant.

PLEASE TAKE NOTICE, that upon the annexed affirmation of **JOHN T. POWERS, JR., ESQ.**, dated September 25, 2012, the undersigned will move this Court on the 30th day of October, 2012, at 9:30 o'clock in the forenoon, or as soon thereafter as counsel may be heard, for an Order allowing the defendant the following relief:

A. Dismissal of the accusatory instrument pursuant to sections 100.15, 100.40, and 30.30 of the New York State Criminal Procedure Law, and for such further relief as this Court may deem just and proper and,

B. For such other and further relief as to this Court may seem just and proper.

PLEASE TAKE FURTHER NOTICE, that the defendant reserves the right to make any such further motions pursuant to CPL 255.02(2) and (3) as may be necessitated by the receipt of discovery material not yet received and upon information given in the answer to the instant motion.

Dated: Deer Park, New York
September 25, 2012

Yours,
John T. Powers, Jr., Esq.
Attorney for Defendant
1641 Deer Park Ave.
Deer Park, NY 11729
(631) 242-2020

TO: Clerk of the Court

District Court
County of Suffolk
400 Carleton Avenue
Central Islip, NY 11722

Thomas Spota
Suffolk County District Attorney
400 Carleton Avenue
Central Islip, NY 11722

DISTRICT COURT : COUNTY OF SUFFOLK
STATE OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK,

Docket No. 2011SU040447

- against -

ATTORNEY'S AFFIRMATION IN SUPPORT OF AMENDED MOTION TO DISMISS

ANTHONY A. PICCIRILLO, **Defendant.**

I, JOHN T. POWERS, JR., ESQ., an attorney duly admitted to practice law in the State of New York, affirms under penalties of perjury:

I am the attorney for Anthony Piccirillo. This affirmation is submitted in support of defendant's omnibus motion. Unless otherwise indicated, statements herein are based upon court papers, papers and information annexed hereto and/or furnished by the prosecutor's office, and upon information and belief.

Defendant was arrested on or about August 25, 2011 and charged in a misdemeanor complaint (copy annexed as Exhibit A) with Promoting Gambling in the Second Degree, an 'A' misdemeanor, a violation of New York State Penal Law 225.05.

Mr. Piccirillo entered a plea of not guilty to the charges upon arraignment.

A. MOTION FOR DISMISSAL PURSUANT TO CPL SECTION 100.40

It is well founded that an information must contain non-hearsay factual allegations of an evidentiary nature that provide reasonable cause to believe the defendant committed every element of the offense charged. C.P.L. sections 100.15(3), 100.40(1)(a) and (c) People v. Alejandro, 70 N.Y.2d 133, 517 N.Y.S.2d 927, 511 N.E.2d 71 (1987); People v. Henderson, 92 N.Y.2d 677, 685 N.Y.S.2d 409, 708 N.E.2d 165 (1999).

A misdemeanor complaint must be sufficient on its face before it can be converted to an information upon which the People can proceed to trial. CPL 170.65(1); People v. Dumas, 68 N.Y.2d 729, 506 N.Y.S.2d 319, 497 N.E.2d 686 (1986).

The basic function of the misdemeanor complaint is "to permit the court arraignment and temporary control over the defendant's person for a given period solely on the basis of 'reasonable cause', with the expectation that evidence will soon be acquired establishing a legally sufficient case and enabling the misdemeanor complaint to be replaced by or converted to an information. People v. Brightman, 565 N.Y.S.2d 992, 150 Misc.2d 60 (Nass. Co. Dist. Ct. 1991), citing (Bellacosa, Practice Commentary, McKinney's Cons Laws of NY, Book 11A, CPL 170.65, at 110.)

C.P.L. section 70.10(2) provides reasonable cause as, "when evidence or information which appears reliable discloses facts or circumstances which are collectively of such weight or persuasiveness as to convince a person of ordinary intelligence, judgment and experience that it is likely that such offense was committed and that such person committed it.

An information replacing a misdemeanor complaint is "required to exhibit a prima facie case as well as reasonable cause. Id. at 992., citing (Bellacosa, Practice Commentary, McKinney's Cons Laws of NY, Book 11A, CPL 100.40, at 67.).

In People v. Hoffman, 692 N.Y.S.2d 592, 180 Misc.2d 782 (App. Term 2nd Dept.

1999), the Court dismissed the accusatory instrument because "*every element* of the offense charged is not supported by non-hearsay allegations of fact that establish, if true, *every element* of the offense." Id. 593. Emphasis added.

In concluding that the allegations are insufficient to satisfy the statutory requirements of a jurisdictionally sufficient information the Hoffman court cites People v. Alejandro, 70 N.Y.2d 133, 517 N.Y.S.2d 927, 511 N.E.2d 71, and CPL 100.15 and 100.40. The issue before the Alejandro court was whether the defect within the accusatory instrument was jurisdictional. In that case the accusatory instrument lacked an essential element of the crime of resisting arrest, namely whether the arrest was lawful. The conclusion of the court was that an information which fails to contain non-hearsay allegations establishing "if true, every element of the offense charged and the defendant's commission thereof" is fatally defective. Id. 929. The Alejandro accusatory instrument failed to contain non-hearsay substantiation of a lawful arrest.

Section 100.40(1)(c), as it pertains to an information, provides:

> "1. An information or count thereof is sufficient on its face when:
>
> "(c) Non-hearsay allegations of the factual part of the information and/or of any supporting depositions establish, if true, *every element* of the offense charged and the defendant's commission thereof." Emphasis added.

In the instant matter the supporting statement fails to establish *every element* essential to satisfy the statutory requirements. Penal Law section 225.05, Promoting Gambling in the Second Degree reads:

> "A person is guilty of promoting gambling in the second degree when he knowingly advances or profits from unlawful gambling activity."
>
> "Advance gambling activity" is defined as: A person advances gambling activity when, acting as other than a player, he engages in conduct which materially aids any form of gambling activity. Such conduct includes but is not limited to conduct directed toward the creation or establishment of the particular

game, contest, scheme, device or activity involved, toward the acquisition or maintenance of premises, paraphernalia, equipment or apparatus therefor, toward the solicitation or inducement of persons to participate therein, toward the actual conduct of the playing phases thereof, toward the arrangement of any of its financial or recording phases, or toward any other phase of its operation. One advances gambling activity when, having substantial proprietary or other authoritative control over premises being used with his knowledge for purposes of gambling activity, he permits such to occur or continue or makes no effort to prevent its occurrence or continuation." PL 225.00(4)

"Profit from gambling activity is defined as: a person profits from gambling activity when, other than as a player, he accepts or receives money or other property pursuant to an agreement or understanding with any person whereby he participates or is to participate in the proceeds of gambling activity." PL 255.00(5)

a. The criminal information is insufficient because it fails to allege any of the necessary elements to sustain the allegation of Promoting Gambling in the Second Degree.

One of the indispensable elements of the crime of Promoting Gambling in the Second Degree is that the accused must engage in conduct which materially aids any form of gambling activity.

The supporting statement of Edward Jacobs fails to articulate any basis for the conclusion that Mr. Picirillo advanced or aided in gambling activity. As a matter of fact, the statement of Edward Jacobs (attached as exhibit B) in pertinent part states, "I square up with Anthony whose last name starts with a P on the other nights. I now know his name to be Anthony Picirillo." failure to state what, if any, activity P D is doing

The above statement also fails to allege that Anthony Picirillo accepts or receives money or other property pursuant to an agreement or an understanding of any person

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The above statement also fails to allege that Anthony Picirillo accepts or receives

money or other property pursuant to an agreement or an understanding of any person whereby he participates or is to participate in the proceeds of gambling activity. This is a failure of the accusatory instrument to show another indispensible element of the accusation, that of profiting from gambling.

Furthermore, there is nothing in the statement of Edward Jacobs that excluding Mr. Picirillo as a player. A "player" is defined in pertinent part at PL 225.00(3) as a person who engages in any form of gambling solely as a contestant or bettor, without receiving or becoming entitled to receive any profit therefrom other than personal gambling winnings, and without otherwise rendering any material assistance to the establishment, conduct or operation of the particular gambling activity.

Nowhere is it claimed in the supporting statement of Edward Jacobs that Mr. Picirillo is not a mere player, nor are the defendants activities ever defined to include rendering any material assistance to the establishment. The term "square up" (found in the supporting statement) is not defined in the Penal Law and therefore cannot be given any significance in this matter.

Finally, it cannot be assumed by this Court that Mr. Picirillo is an owner, manager, employee, exercised control, knowingly advanced or profited from an unlawful poker game on August 24, 2011 at approximately 10:55 pm based on the statement of Edward Jacobs. The mention of such control or activity in the misdemeanor complaint is not supported by non-hearsay sworn statements in the supporting documentation. Mere allusions to the elements fails to properly articulate actual intent.

In the absence of intent there is no crime. This element of intent, incorporated in the statute, effectively removes the possibility that a defendant could be unaware of his criminal conduct. See People v. Livio, 725 N.Y.S.2d 785 (2000). Furthermore, the element of intent also removes the possibility that criminal liability would be imposed based on the unascertainable sensitivities of the complainant. See People v. Shack, 634 N.Y.S.2d 660

(1995).

Intent is alleged in the accusatory instrument, however, that document is not signed by the complaining witness and is therefore a hearsay statement. Nowhere in the complainant's statement is the element of intent supported by non-hearsay documentation. The accusatory instrument must contain facts of an evidentiary nature not merely conclusory allegations. People v. Dumas, 68 N.Y.2d 729 (1986).

It is respectfully submitted that the statutory requirement of CPL 100.40(1)(c) is not satisfied, in that the complainant fails to allege all the above vital elements.

It is further submitted the failure of the prosecution to file a proper supporting deposition corroborating all the elements in the accusatory instrument within the statutory period mandates dismissal of this case pursuant to section 100.40 of the CPL. People v. Hall, 48 N.Y.2d 927, 425 N.Y.S.2d 56, 401 N.E.2d 179 (1979).

b. *People v. Casey* Analysis with Respect to the Elements

As noted, it is well founded that an information must contain non-hearsay factual allegations that establish a prima facie case. People v. Alejandro, 70 N.Y.2d 133, 517 N.Y.S.2d 927, 511 N.E.2d 71 (1987); People v. Henderson, 92 N.Y.2d 677, 685 N.Y.S.2d 409, 708 N.E.2d 165 (1999).

In the instant matter, a supporting deposition alleging non-hearsay allegations as to every element pertaining to the within charge has never been filed by the prosecution.

The People cannot, even though they may state so during the pendency of a Misdemeanor Complaint, be ready for trial on an insufficient accusatory instrument absent defendant's waiver of his right to be prosecuted by a misdemeanor information. People v.

Weinberg, supra, People v. Cononsenti, 83 Misc 2d 842, 373 N.Y.S.2d 443 (District Court, Suffolk County, J. Newmark, 1975), People v. Hinkson, 184 Misc 2d 496, 706 N.Y.S.2d 546, (Kings Co. Crim. Ct., J. Farber, 2000), People v. John Dooley, NYLJ April 21, 2000 at page 29, col. 4.

The record is void of any waiver of this absolute, substantial right by Mr. Pietrillo.

Pursuant to Criminal Procedure Law Section 30.30(1)(b) the People must be ready for trial within Ninety (90) days of the commencement of the original action.

This original criminal action was commenced on or about August 25, 2011, by the filing of and arraignment of the Misdemeanor Complaint.

The holding in the Court of Appeals decision, People v. Casey, 95 N.Y.2d 354, 717 N.Y.S.2d 88, addressed the "jurisdictional" purposes between the two "prima facie" requirements of CPL 100.40(1)(c). *Id.* at 362.

In Casey the Court revisited its' decision in People v. Alejandro, 70 N.Y.2d 133, 517 N.Y.S.2d 927, 511 N.E.2d 71 (1987), concluding that first, there must be factual allegations establishing every element of the offense and second, those allegations must be non-hearsay. Casey at 362.

The case at bar is similar to that of Alejandro, in that there is a failure to satisfy the first requirement of CPL 100.40(1)(c). There is a total absence of pleading of one of the essential elements of the statute, that of *intent*.

According to analysis used in Casey, this Court need look no further than the failure of the original accusatory instrument to allege the element of intent as grounds to find a non-waivable jurisdictional defect and thus dismiss the charge herein pursuant to CPL 100.40 and 30.30.

In Casey, the absence of an unequivocal non-hearsay allegation issue is raised for the first time on appeal. The Court of Appeals ruled that the defendant by not raising the hearsay objection in a pretrial motion is deemed to have waived his right to have the compliant dismissed. People v. Casey, id at 364.

Contrary to Casey, Mr. Picirillo has raised the issue of insufficiency prior to proceeding to trial on an insufficient accusatory instrument, thus not consenting to any waiver of his right to be prosecuted by a sufficient information.

In distinguishing the present case from that of Casey, it must be noted that the Court of Appeals found that "[h]ad the motion [to dismiss] been made, however, we know from the record of the suppression hearing and trial that the defect was readily curable." Id at 361. The defendant in Casey admitted to certain elements of the crime in statements to law enforcement working the case. Elements that were not admitted to by the defendant were provided by sworn statements from the complainant to law enforcement working the case.

All of the statements in the Casey matter were known to the defendant and gathered before the ninety (90) day CPL 30.30 time had elapsed. Furthermore, all of the statements by the complainant and the defendant fit into hearsay rule exceptions, making them valid non-hearsay statements that could then be admitted at a trial.

In the present matter, the non-hearsay allegations submitted to the Court within the ninety (90) statutory time to are insufficient to convert the complaint to an information.

Without the complainant swearing to the element of *intent* the factual allegations of the accusatory instrument do not give the accused sufficient notice to prepare a defense. Without the essential elements the instrument is not adequately detailed to prevent the defendant from being tried twice for the same offense. People v. Casey, id at 360, citing, People v. Jacoby, 304 N.Y. 33, 38-40, 105 N.E. 613, People v. Knapp, 152 Misc. 368, 370.

Criminal Procedure Law Section 170.35(1)(a) allows that an information "not sufficient on its face pursuant to the requirements of section 100.40 ... may not be dismissed as defective, but must instead be amended, where the defect ... is of a kind that may be cured by amendment and where the people move to so amend." Section 100.40(1)(a) provides that an information "is sufficient on its face when it substantially conforms to the requirements prescribed in section 100.15. Section 100.15(3) states, in pertinent part, "The factual part of such instrument *must* contain a statement of the complainant alleging facts of an evidentiary character supporting or tending to support the charges." Emphasis added.

Herein the accusatory instrument lacks a non-hearsay allegation by the complainant. The prosecution is aware of their obligation under CPL 100.15. The prosecution was also aware of the insufficient supporting deposition by the complainant, yet instead chose to continue to announce their readiness for trial.

Upon information and belief no previous application for the relief sought herein has heretofore been made.

WHEREFORE, for all of the foregoing reasons it is respectfully requested that this motion be granted and for any further relief this court my deem appropriate.

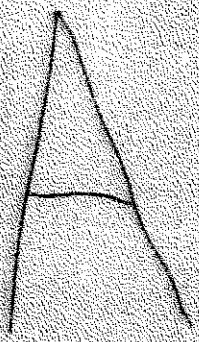
Dated: September 25, 2012
Deer Park, New York



JOHN T. FLYNN, JR.
1041 Deer Park Avenue
Deer Park, New York 11729
(631) 242-2020

TO: Clerk of the Court
District Court
County of Suffolk
400 Carleton Avenue
Central Islip, New York 11722

Thomas Spota
Suffolk County District Attorney
400 Carleton Avenue
Central Islip, New York 11722



1ST DISTRICT COURT
DISTRICT - DOCKET NOS. NY0510331 Suffolk 4047

MISDEMEANOR INFORMATION

	11-6462008/SFD
928678-11	
ARREST DATE & TIME: 06/25/11 01:57	

STATE OF NEW YORK } SS
COUNTY OF SUFFOLK }

PIN 589791

The People of the State of New York vs. PICCIRILLO, ANTHONY A } Defendant

Name (Complainant) PEREGOY, SCOTT E PID 13746 PO/1452

of No. 30 YAPHANK AVE YAPHANK NY 11980 Sqd. # 0520/3B1

Being duly sworn, says that ON OR ABOUT AUGUST 24, 2011, AT APPROXIMATELY 10:55 P.M.

at 16316 SYCAMORE AVENUE, BOHEMIA Town of ISLIP

County of Suffolk, State of New York, the defendant (Name, Address & D.O.B.) PICCIRILLO, ANTHONY A

2407 VISTA VIEW DRIVE FARMINGVILLE, NY D.O.B. 02/11/1983

committed the offense of PROMOTING GAMBLING 2ND

IN VIOLATION OF PL 225.05 AM2 NYS PENAL LAW

Count # 001

In That, A PERSON IS GUILTY OF PROMOTING GAMBLING IN THE SECOND DEGREE WHEN HE KNOWINGLY ADVANCES OR PROFITS FROM UNLAWFUL GAMBLING ACTIVITY.

To Wit, THE DEFENDANT, AT 16316 SYCAMORE AVENUE, BOHEMIA, IN THE TOWN OF ISLIP, SUFFOLK COUNTY, NEW YORK, ON OR ABOUT AUGUST 24, 2011, AT APPROXIMATELY 10:55 P.M., KNOWINGLY ADVANCED OR PROFITED FROM UNLAWFUL GAMBLING ACTIVITY IN THAT, THE DEFENDANT ACTING OTHER THAN A PLAYER NAMELY AN OWNER, MANAGER, EMPLOYEE, EXERCISED CONTROL AND ADVANCED OR PROFITED FROM UNLAWFUL POKER GAMES AT THE ABOVE LOCATION.

( ) This charge is based solely upon complainant's personal knowledge

(X) This charge is based upon complainant's personal knowledge **and** on information and belief, the source(s) being, EDWARD JACOBS

( ) This charge is based solely upon information and belief, the source(s) being

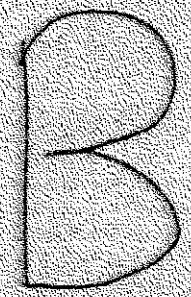
( ) Warrant Requested ( ) Criminal Summons Requested ( ) Supporting Documents Attached

SWORN TO BEFORE ME August 25 20 11

Signature of Officer Administering Oath

Complainant - Police Officer, Name, Shield, Squad & Command

DEFENDANT



POLICE DEPARTMENT COUNTY OF SUFFOLK, N.Y.
ACCREDITED LAW ENFORCEMENT AGENCY
STATEMENT FORM
PDCS-1165f

C.C. # 11-462008

Date 8/24/11 Time 0115

Page 1 of 1

I, Ed Jacks (being duly sworn) deposes and says
name

(words "being duly sworn" are to be crossed out if a sworn statement is not being prepared) that I am 47 (age) years old

I was born on: 01/15/64 (d.o.b.) I am giving this statement to Officer Mundy (name of officer)

I am giving this statement freely, having received no threats or promises to do so.

Today August 24, 2011 at around 8:15pm I went to a Poker Night in Syosset NY in Burrows. They call the club the Spot. I have been playing here about 10 times the games are a few days a week. Tonight I was playing in a no limit Texas Hold'em Poker game. I have started I sat in the game, I don't give cash at first I square up at the end of the night. Chris Mike Sanchez who I have known for about a year had my chips at for me. I played about 5 or 6 hands and the rake around is the house cut was about $5 to $8 a hand and rake the dealer takes it out of the pot. I square up with Anthony whose last name starts with a P on the other night. I now know it's name to be Anthony Piccirillo. The other guy who I square up with is an older guy they all "Fat" but mine asks me is at the end of the night. I have no idea what his real name is. I now know his name to be Keary, Stephen. I have read the above statement consisting of one page and swear it is true.

Signature of person giving statement

Daniel Kemplay
Notary Public, State of New York
No. 01KF6167859
Qualified in Suffolk County
Commission Expires 06/04/20__

False statements made herein are punishable as a class "A" misdemeanor pursuant to Section 210.45 of the Penal Law

Signature of person giving statement — Date

Witnessing officer

Sworn to before me this 24th day of August, 20 11

Notary Public

Rank / Name

Docket No. 2011SU040447 Year

DISTRICT COURT, COUNTY OF SUFFOLK
STATE OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK,

- against -

ANTHONY A. PICCIRILLO,

Defendant.

NOTICE OF MOTION TO DISMISS

JOHN T. POWERS, JR., ESQ.
POWERS LAW, P.C.
Attorneys for Defendant
375 Commack Road
Suite 202
Deer Park, New York 11729
631.667.7100 T.

To:

Service of a copy of the within is hereby admitted.
Dated:

Attorney(s) for:

10:11 AM SEP 28

DISTRICT COURT: COUNTY OF SUFFOLK
FIRST DISTRICT: CENTRAL ISLIP, NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK,

-against-

AFFIRMATION IN OPPOSITION TO DEFENDANT'S MOTION

ANTHONY A. PICCIRILLO,
DEFENDANT.

DOCKET NO.: 2011SU043447

PHILIP V. APRUZZESE, being duly sworn, deposes and says that:

1. I, **PHILIP V. APRUZZESE**, an Assistant District Attorney of Suffolk County, am admitted to practice law in the State of New York. I appear of counsel to **Thomas J. Spota**, District Attorney of Suffolk County and attorney of record for the People of the State of New York, and pursuant to the rules of the Appellate Division, Second Department. Statements made in this affidavit are based on information and belief, the source being the files of this office, and on that basis I believe them to be true.

2. Defendant is charged with:

a. one (1) count of Promoting Gambling in the Second Degree in violation of New York Penal Law (P.L.) § 225.05.

3. Defendant, by motion moves this Court for an Order:

a) dismissing the accusatory instrument as insufficient on its face;
b) any such other and further relief as this Court deems just and proper.

I. THE ACCUSATORY INSTRUMENT IS FACIALLY SUFFICIENT AND DEFENDANT'S MOTION TO DISMISS SHOULD BE DENIED.

4. The People assert that the accusatory instrument is sufficient and should not be dismissed.

5. To constitute a facially sufficient information, the accusatory instrument must contain (1) facts of an evidentiary nature which support or tend to support the crimes charged, C.P.L. § 100.15(3); *People v. Dumas*, 68 N.Y.2d 729, 497 N.E.2d 686, 506 N.Y.S.2d 319 (1986); (2) factual allegations in the information and supporting deposition that provide reasonable cause to believe that the defendant committed the crimes charged, C.P.L. § 100.40(1)(b); and (3) non-hearsay allegation which establish, if true, every element of the crimes charged, C.P.L. § 100.40(1)(c); *People v. Alejandro*, 70 N.Y.2d 133, 511 N.E.2d 71, 517 N.Y.S.2d 927 (1987).

6. "[I]t must be emphasized that the prima facie case requirement is not the same as the burden of proof beyond a reasonable doubt required at trial." *People v. Henderson*, 92 N.Y.3d 677, 680, 685 N.Y.S.2d 409, 708 N.E.2d 165 (1999). Instead, at this stage, the factual allegations contained in the information are deemed true.

7. Moreover, in reviewing an accusatory instrument for facial sufficiency, "so long as the factual allegations of an information give an accused notice sufficient to prepare a defense and are adequately detailed to prevent a defendant from being tried twice for the same offense..." the court should give it "a fair and not overly restrictive or technical reading." *People v. Casey*, 95 N.Y.2d 354, 360, 740 N.E.2d 233, 717 N.Y.S.2d 88 (2000).

8. The accusatory instrument contains (1) facts of an evidentiary nature which support or tend to support the crimes charged, C.P.L. § 100.15(3); *People v. Dumas*, 68 N.Y.2d 729, 497 N.E.2d 686, 506 N.Y.S.2d 319 (1986), (2) factual allegations that provide reasonable cause to believe that the defendant committed the crimes charged, C.P.L. § 100.40(1)(b), and (3) non-hearsay allegation which establish, if true, every element of the crimes charged, C.P.L. § 100.40(1)(c), *People v. Alejandro*, 70 N.Y.2d 133, 511 N.E.2d 71, 517 N.Y.S.2d 927 (1987).

9. The factual allegations of the information "give [the] accused notice sufficient to prepare a defense and are adequately detailed to prevent [the] defendant from being tried twice for the same offense . . ." Cases, 95 N.Y.2d at 360.

10. In this case, it is alleged that the defendant, Anthony Piccirillo, acting other than as a player, namely as an owner, manager, employee, exercised control and advanced or profited from unlawful poker games at 1631-6 Sycamore Avenue, Bohemia, Town of Islip, Suffolk County, New York on or about August 24, 2011, at approximately 10:55 p.m. Specifically, the accusatory instrument is based on the sworn allegations of Officer Scott Peregoy and the sworn statement of Edward Jacobs which states "TODAY AUGUST 24, 2011, AT AROUND 850 PM I WENT TO A POKER HALL ON SYCAMORE AVE IN BOHEMIA. THEY CALL THE CLUB THE SPOT. I HAVE BEEN PLAYING HERE ABOUT 10 WEEKS. THE GAMES ARE A FEW DAYS A WEEK. TONIGHT I WAS PLAYING A $5, $5 NO LIMIT TEXAS HOLD'EM POKER GAME. I CAME TONIGHT AND I BUY IN FOR $500. I DON'T GIVE CASH AT FIRST I SQUARE UP AT THE END OF THE NIGHT. MIKE SANCHEZ WHO I HAVE KNOWN FOR ABOUT A YEAR HAD MY CHIPS OUT FOR ME. I PLAYED ABOUT 5 OR 6 HANDS AND THE RAKE, WHICH IS THE HOUSE CUT WAS ABOUT $5 TO $15 A HAND AND MIKE THE DEALER TAKES IT OUT OF THE POT. I SQUARE UP WITH ANTHONY WHOSE LAST NAME STARTS WITH A P ON THE OTHER NIGHTS. I NOW KNOW HIS NAME TO BE ANTHONY PICCIRILLO. THE OTHER GUY I SQUARE UP WITH IS AN OLDER GUY THEY CALL "FOOT." FOOT WOULD CASH ME IN AT THE END OF THE NIGHT. I HAVE NO IDEA WHAT HIS REAL NAME IS. I NOW KNOW HIS NAME TO BE KEARY, STEPHEN. I HAVE READ THE ABOVE STATEMENT THAT CONSISTS OF ONE PAGE AND SWEAR IT IS TRUE." Mr. Jacobs identifies the defendant, Anthony Piccirillo as the individual whom Mr. Jacobs "squares up with," thus putting the defendant in the role of owner, manager, employee, who exercises control and advanced or profited from the unlawful poker game at the above location.

11. Based on the foregoing, defendant's motion to dismiss should be denied.

12. In the alternative, if the Court does find the accusatory instrument insufficient, the People request time for amendment of the accusatory instrument.

WHEREFORE, it is respectfully requested by the People that the Defendant's Motion be decided in accordance with the People's Affirmation in Opposition.

The People announce their readiness to proceed to trial pursuant to C.P.L. § 30.30.

Respectfully submitted,

PHILIP V. APPRUZZESE
Assistant District Attorney

Dated: March 27, 2013
Central Islip, New York

To: Powers Law, P.C.
Attorneys for Defendant
575 Commack Road, Suite 202
Deer Park, New York 11729

Cc: Hon. John Andrew Kay
Clerk of Court Part D-41

4.25
DH

STATE OF NEW YORK COUNTY OF SUFFOLK
FIRST DISTRICT COURT

----------X

THE PEOPLE OF THE STATE OF NEW YORK,

Plaintiff,

- against -

ANTHOONY PICCIRILLO,

Defendant

----------X

DEMAND FOR DISCOVERY & BILL OF PARTICULARS

Docket No. 20CR-4[illegible]47

SUFFOLK COUNTY DISTRICT COURT
MAR 15 PM 4:54

SIR/MADAM:

PLEASE TAKE NOTICE, that the defendant hereby demands that the Office of the District Attorney of Suffolk County, on behalf of the People of the State of New York, produce the following:

1. Pursuant to C.P.L. §710.30(1), specify in detail particulars of the evidence intended to be offered of statements made by the defendant to a public servant and of Particulars of evidence identifying the defendant as a person who committed the offense(s) charged by a witness(es) who has (have) previously identified the defendant.

2. Pursuant to C.P.L. §240.20, disclose and make available for inspection, photographing, copying, or testing, the following property:

(2) Any written, recorded, or oral statements of the defendant and of a co-defendant to be tried jointly whether made to a public servant engaged in law enforcement activity or to a person then acting under his direction or in cooperation with him;

(b) Any transcript of testimony relating to the criminal action or proceeding pending against the defendant, given by the defendant, or by a co-defendant to be tried jointly, before any [Grand] Jury.

(c) Any written report or document, or portion thereof, concerning a physical or mental examination, or scientific test or experiment, relating to the criminal action or proceeding and made by, or at the request or direction, of a public servant engaged in law enforcement activity.

(d) Any photographs or drawings relating to the criminal action or proceeding made or completed by a public servant engaged in law enforcement activity, including, but not limited to:

1. Crime scene photographs and drawings;
2. Any arrest photo of the defendant;
3. Photographs of any lineup involving the pending case (if applicable);
4. Any photographs exhibited to witnesses, including that of the defendant and all other persons involved in any photo identification proceeding, whether or not an identification was made by the witness (if applicable);
5. Any composition or sketch or drawing attempting to depict a perpetrator of the crime herein (if applicable);
6. Photographs of any witness or alleged victim showing the physical condition of that person;
7. Photographs of any property involved in the pending case, including property alleged to be stolen or property seized from the defendant and/or the co-defendant (if applicable);

(e) Any property obtained from the defendant, or a co-defendant to be tried jointly and any tangible property which will be offered in evidence against the defendant at trial;

(f) Any tapes or other electronic recordings relating to the criminal action or proceeding which was made or completed by a public servant engaged in law enforcement activity. Notice is hereby given that the defense demands the preservation of any tapes reflecting radio calls, 911 calls, squad car conversations or videotapes concerning the actions or condition of the defendant or any law enforcement officer, or any witness.

(g) A copy of all routine police and detective reports, including, but not limited to incident reports, field reports, arrest reports, prisoner activity logs, concerning the instant case, except to the extent that they contain legal opinions or theories which fit within the exclusion for attorney's work product, as defined by C.P.L. §240.10(2);

(h) The name and whereabouts of any persons who witnessed or were accomplices in the alleged criminal activity;

(i) What attempts, in any, were made to contact the defendant's family on the day of this arrest;

(j) The approximate date, time, and place of the offense charged and of the defendant's arrest;

(k) Anything required to be disclosed prior to trial, to the defendant by the prosecution, pursuant to the Constitution of this State or of the United States;

(l) The memo book pages for the date of arrest of the arresting officer, assisting officer(s), and any other law enforcement officer the People intend to call as a witness.

[illegible]
[illegible]
[illegible]
[illegible]

(m) All material, evidence or information, whether or not admissible at trial, known to the prosecution, or which should become known upon a diligent inquiry to those under the prosecution's direction or control, which is in any way favorable to the defendant, whether by detracting from the prosecution's case or the credibility of the prosecution's witnesses, or is supportive of the positions urged by the defendant, including, but not limited to:

1. Any record of previous convictions or any other evidence or information demonstrating participation in dangerous, vicious, immoral, or criminal behavior on the part of any person(s) intended to be called as a witness by the prosecution.

2. Any statements known to be false or erroneous that have been made to a public servant engaged in law enforcement activity, or to a Grand Jury or Court by a person(s) intended to be called as a witness by the prosecution.

3. Any statements, records, or information indicating that any prospective prosecution witness has given contradictory, or deceitful information during the course of the investigation of this case.

4. Any information indicating that any prospective prosecution witnesses have given information which is inconsistent with or materially different than information received from more reliable sources.

(n) Copies of any written correspondence between the prosecution and any Probation Department or Parole Board concerning the cooperation of a prosecution witness in the trial of this action.

(o) The nature of any promise or consideration being given to any witness for the prosecution in exchange for his testimony in this proceeding.

Keith J. Pontillo, III, P.C.
[illegible] Park Avenue
New York, NY 11729
(631) 549-[illegible]

(p) A copy of any arrest warrant issued in connection with this matter.

(q) Copies of any search warrants issued in connection with this matter, as well as any application, supporting affidavits, or return pertaining to same.

PLEASE TAKE FURTHER NOTICE, that at any pre-trial hearing held in a criminal court at which the People call a witness to testify, the defendant requests that the People make available to the defendant to the extent not previously disclosed:

(a) Any written or recorded statement, including any testimony before a Grand Jury, made by such witness which relates to the subject matter of the witness' testimony;

(b) A record of any judgment of conviction of such witness, if the record of conviction is known by the People to exist, and

(c) The existence of any pending criminal action against such witness if the pending criminal action is known by the People to exist.

PLEASE TAKE FURTHER NOTICE, that upon trial and prior to the opening address, the defendant demands that the People shall make available the following:

(a) Any written or recorded statement, including any testimony before a Grand Jury, made by such witness which relates to the subject matter of the witness' testimony;

(b) A record of any judgment of conviction of such witness, if the record of conviction is known by the People to exist, and

[redacted]

(c) The existence of any pending criminal action against such witness if the pending criminal action is known by the People to exist.

REQUEST FOR BILL OF PARTICULARS

PLEASE TAKE FURTHER NOTICE, that the defendant hereby requests that the District Attorney, pursuant to C.P.L. §200.95, serve upon the defendant and file with the Court, a Bill of Particulars specifying:

1. With respect to each and every count of the information(s), state whether the prosecution intends to prove that the defendant acted as a principal, an accomplice or both.

2. If the prosecution intends to prove that the defendant acted as a principal, state:

a) the nature of defendant's conduct encompassed by the offenses charged;

b) if the defendant was aided by another, the manner in which he was aided, the manner in which the other/others was/were actually present, and the identity of the person or persons aiding him.

3. If the prosecution intends to prove that the defendant was "acting with others" and is therefore culpable as an accomplice, describe in detail:

a) that conduct of the defendant which constitutes the basis for his alleged accessorial liability;

b) the conduct of any other persons, jointly or separately charged, which allegedly provides the basis for the instant prosecution;

c) whether any co-defendant was arrested and if so, when.

4. Please state, with respect to AUGUST 25, 2011:

[redacted]

a) the exact location of the alleged criminal conduct;

b) the exact time and date of the alleged criminal conduct;

c) what Defendant was doing immediately prior to the alleged incident;

d) the names, addresses, and birth dates of any witnesses to or informants about the alleged criminal conduct.

5. Please state, with respect to circumstances of arrest:

a) the exact time, date and location within said premises of the arrest;

b) the names, addresses, and birth dates of any witnesses to Defendant's arrest;

c) the circumstances leading up to the arrest;

d) the predicate for the initial seizure of the defendant.

6. Please state the exact time at which any informant provided information leading to the detention of Defendant.

7. Please state the exact date and time of any 911 call and/or police radio broadcast made in relation to the alleged incident(s). Please include the name, address, and birth dates of all parties to such calls or broadcasts.

8. With respect to the charge of PROMOTING GAMBLING, describe in detail:

a) the specific conduct which gave rise to the charge(s);

b) the actions of the defendant at the time of the alleged violation(s);

c) the location of the police officer who viewed the defendant at the time of the alleged violation(s);

d) the location of the defendant at the time of the alleged violation(s);

e) if any drugs and/or drug paraphernalia was found on the defendant's person;

f) if any additional charges were filed simultaneously with this charge, if so, please

ANTHONY PORCELLI, JR., P.C.
1040 Deer Park Avenue
Deer Park, NY 11729
(631) 667-1000

state the docket number, specific charge(s), arresting officer(s), and county where such charge(s) were filed;

(g) specify whether the defendant was "exercising control" over or "profiting from" the alleged gambling activity;

(h) specify the type of gambling activity involved;

(i) if it is said the defendant was "exercising control" over the alleged gambling activities, specify what actions and/or inactions he exhibited to demonstrate such behavior;

(j) if it is said the defendant was "profiting from" the alleged gambling activity, specify how, how much, and when such "profits" were derived and the specific nature of said "profits";

(k) the nature, extent, and exact location of damage, if any.

PLEASE TAKE FURTHER NOTICE, that pursuant to C.P.L. §240.80, compliance with this demand shall be made within fifteen (15) days of service thereof, and any refusal to disclose the demanded material must be made in writing to the defendant and a copy filed with the Court as mandated by C.P.L. §240.35.

DATED: March 13, 2012
Deer Park, New York

Yours, etc.,

JENNIFER S. LIPPMANN, ESQ.
JOHN T. POWERS, JR., P.C.
Attorneys for Defendant
1641 Deer Park Avenue
Deer Park, NY 11729
631.667.7109 T

JOHN T. POWERS, JR., P.C.
1641 Deer Park Avenue
Deer Park, NY 11729
631.667.7109 T

To: THOMAS J SPOTA, ESQ
District Attorney
Suffolk County

CLERK OF THE COURT
First District Court
400 Carlton Ave.
Central Islip, NY 11722

C7

DISTRICT COURT: COUNTY OF SUFFOLK
FIRST DISTRICT: CENTRAL ISLIP, NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK,

-against-

RESPONSE TO DISCOVERY DEMAND AND PEOPLE'S DEMAND FOR RECIPROCAL DISCOVERY

DOCKET #2011SU040447

ANTHONY PICCIRILLO,

DEFENDANT

I, PHILIP V. APRUZZESE, an Assistant District Attorney of Suffolk County admitted to practice law in the State of New York, appear of counsel to **THOMAS J. SPOTA**, District Attorney of Suffolk County and attorney of record for the People of the State of New York, submit the following in response to defendant's Demand for Discovery.

The Defendant is charged with Promoting Gambling in the Second Degree in violation of New York Penal Law § 225.05.

I. DISCOVERY RESPONSE

Enclosed are the following:

- Misdemeanor Information and Attached Statement of Edward Jacobs (2 pages);
- Photographs (63 pages);
- Property Section List Report (2 pages);
- §§ 710.30/250.20 Notice and Demand (1 page); and
- Defendant's NYSIIS (5 pages).

a) The People are not in possession at this time of any written, recorded, or oral statements of the defendant made to a public servant engaged in law enforcement activity or to a

person then acting under his direction or in cooperation with him other than what is enclosed herein.

b) The People are not in possession at this time of any transcript testimony relating to the criminal action or proceeding pending against the defendant, or given by the defendant or by a co-defendant to be tried jointly, before any Grand Jury, other than what has been provided herein.

c) The People are not in possession at this time of any written report or document, or portion thereof, concerning a physical or mental examination, or scientific test or experiment, relating to the criminal action or proceeding which was made by, or at the request or direction of a public servant engaged in law enforcement activity, or which was made by a person whom the prosecutor intends to call as a witness at trial, or which the People intend to introduce at trial.

d) The People are unaware of any photographs or drawing relating to the criminal action or proceeding which was made or completed by a public servant engaged in law enforcement activity, or which was made by a person whom the Prosecutor intends to call as a witness at trial, or which the People intend to introduce at trial, other than what has been included herein.

e) The People are not in possession at this time of any photograph, photocopy or other reproduction, made by or at the direction of a police officer or prosecutor, of any property related to this proceeding, other than what is referenced herein.

f) The People are unaware of the any property taken from the defendant, or co-defendant, other than what has been referenced herein.

g) The People have requested any and all 911 tapes or other electronic recordings which may exist relating to this proceeding and will make them available to the defendant at a mutually convenient time.

h) The People are cognizant of their duties pursuant to the Constitution of this State and the United States.

i) The People are aware of their continuing obligation under *Brady* to give defendant any exculpatory material in their possession. However, the People contend that they do not currently possess any discoverable material other than what has been provided. If and when any such material becomes known to the People, it will be made available to the defendant.

j) For the approximate date, time and place of the offense charged see the Misdemeanor Information.

k) All other requests not specifically addressed herein are denied as improper pursuant to Article 240 of the C.P.L.

II. PEOPLE'S RESPONSE TO DEFENDANT'S BILL OF PARTICULARS

l) Defendant's demand for a Bill of Particulars should be denied by the Court. A Bill of Particulars is "not a discovery device" and is not authorized in any instance other than where an indictment is pending. People v. Davis, 41 N.Y.2d 678, 679 (1997); See CPL § 200.95. The pleading requirements for a misdemeanor information obviate the need for a Bill of Particulars.

m) To be facially sufficient, a misdemeanor information must set forth a *prima facie* case, that is, non-hearsay allegations that establish, if true, every element of the offense charged and the defendant's commission of such offense. See CPL § 100.40. The pleading requirements for an indictment are substantially more liberal than those of a misdemeanor information. An indictment which "state[s] no more than the bare elements of the crimes charged and in effect parrot[s] that statute [is] sufficient." People v. Mackey, 49 N.Y.2d 274, 275 (1980).

n) The function of a Bill of Particulars is to provide sufficient notice of the facts where a "bare bones" indictment is filed by furnishing "items of factual information which are not recited in the indictment." CPL §200.95.

o) The enclosed copy of the misdemeanor information provided in the discovery demand fulfills the requirement of specifying the "defendant's conduct which is the subject of the charges." See People v. Skolnick, 135 Misc.2d 964, 966 (1987); People v. Smith, 103 A.D.2d 859, 860 (3d Dept 1984); CPL § 200.95.

p) Based on the foregoing, the defendant's request for a Bill of Particulars should be denied.

III. PEOPLE'S DEMAND FOR RECIPROCAL DISCOVERY

PLEASE TAKE NOTICE that the People demand the defendant to disclose the following pursuant to C.P.L. section 240.30 (a) any written report or document, or portion thereof, concerning a physical or mental examination or scientific test, experiment, or comparison made by or at the request or direction of the defendant, if the defendant intends to introduce such report or document at trial, or if the defendant has filed a notice of intent to proffer psychiatric evidence and such report or document relates thereto, or if such report or document was made by a person, other than the defendant, whom the defendant intends to call as a witness at trial, and (b) any photograph, drawing, tape or other electronic recording which the defendant intends to introduce at trial.

PLEASE TAKE FURTHER NOTICE, that the People demand that defendant shall make available to the prosecutor any written or reported statement made by a person other than the defendant whom defendant intends to call as a witness at the trial and which relates to the subject matter of the witness's testimony.

The People announce their readiness to proceed to trial pursuant to C.P.L. §30.30.

Dated: May 30, 2012
Central Islip, NY

Respectfully submitted,

PHILIP V. APRUZZESE
Assistant District Attorney

To: Jennifer S. Lippmann, Esq.
John T. Powers, Jr. P.C.
Attorney(s) for Defendant
1641 Deer Park Avenue
Deer Park, New York 11729

CC: Hon. John Andrew Kay
Part D-41

DISTRICT COURT: COUNTY OF SUFFOLK

NOTICE AND DEMAND

DOCKET/COURT NUMBER 2011SU046447

THE PEOPLE OF THE STATE OF NEW YORK

-against-

NOTICE PURSUANT TO C.P.L. 710.30
DEMAND PURSUANT TO C.P.L. 250.20
DEMAND PURSUANT TO C.P.L. 240.30

ANTHONY A. PICCIRILLO

Defendant(s).

SIR/MADAM:

PLEASE TAKE NOTICE that the People intend to offer at a trial of the above entitled action statement(s) by and/or identification(s) of the Defendant contained in or attached to the accusatory instrument, or otherwise specified below. [Time(s) approximate]

[ ] Evidence of oral statement(s) made by the Defendant to a public servant(s), the sum and substance of statement(s) is hereby set forth as follows and/or is contained within the accusatory instrument.

Date _____ Time _____ Place _____

Sum & Substance _____

_____

_____

ANY ADDITIONAL statement(s) made by the Defendant is/are outlined on attached form.

[ ] Evidence of an audio/video recording of the Defendant's statement(s) to public servant(s) prior/subsequent to his arrest made:
Date _____ Time _____ Place _____

[ ] Evidence of written statement(s) made by the Defendant to public servant(s): Date(s) _____ Time(s) _____
Place _____, a copy of said written statement(s) is attached hereto and/or is attached to the accusatory instrument.

[ ]Testimony regarding an observation of the Defendant at the time or place of commission of the offense and/or upon some other occasion relevant to the case, such testimony to be given by a witness who has previously identified the Defendant at an identification procedure. The procedure utilized was/were: ["No. of witnesses" refers to number of witnesses making a positive identification]

[ ] Showup Date _____ Time _____ Place _____ No. of witnesses _____
[ ] Photo I.D. Date _____ Time _____ Place _____ No. of witnesses _____
[ ] Lineup Date _____ Time _____ Place _____ No. of witnesses _____
[ ] Other Date _____ Time _____ Place _____ No. of witnesses _____

PLEASE TAKE FURTHER NOTICE that if the defendant intends to offer for any purpose whatever testimony that he, at the time of the commission of the crime charged, was at some place or places other than the scene of the crime and he intends to call witnesses in support of such defense, he must, within eight (8) days of service of such demand, serve upon the People and file a copy thereof with the Court, a "Notice of Alibi", reciting (a) the place or places where the defendant claims to have been at the time in question, and (b) the names, the residential addresses, the place of employment and the addresses thereof of every such alibi witness upon whom he intends to rely.

PLEASE TAKE FURTHER NOTICE that the People Demand that the defendant furnish to the People all materials/evidence specified at Criminal Procedure Law section 240.30( ) within fifteen (15) days or as soon thereafter as practicable (Criminal Procedure Law Section 240.80(3)).

DATED: Riverhead/Hauppauge/Central Islip, New York

09/06/11

Yours, etc.

THOMAS J. SPOTA
District Attorney