



## Legal Update

### Urine not a noxious or filthy substance for purposes of MGL c 266 §103

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Commonwealth v. Perez Narvaez, (Supreme Judicial Court, November 22, 2022)

#### Relevant facts

At 2:30AM on February 10, 2020, the defendant was arrested by the Massachusetts State Police for operating under the influence of liquor. He was angry and uncooperative with the troopers on scene. After being transported back to the barracks, he became even more belligerent. He was placed in a cell and told he had to cooperate with the booking process before he could be bailed out. The defendant refused to be fingerprinted yelling, "Just take me to the judge, he will dismiss this right away."

Another trooper performed a cell check at 7AM and saw that the defendant had urinated on the floor both inside and outside his cell. Based upon where the toilet was placed in the cell, it was clear that the defendant had purposefully urinated through the cell's bars onto the floor outside of the cell. Urine had seeped between the floor tiles, potentially causing damage to the subfloor. Police hired a company specializing in cleaning hazardous fluids to clean the floor.

The defendant was charged with vandalizing with a noxious or filthy substance in violation of MGL c. 266 §103. The defendant filed a motion to dismiss arguing that the Commonwealth did not establish probable cause for the charge. The only issue on appeal was whether urine meets the statutory definition of "other noxious or filthy substance."

**For specific guidance on the application of these cases or any law, please consult your supervisor or your department's legal advisor or prosecutor.**

## Discussion

MGL c 266 sec 103 states:

“Whoever willfully, intentionally and without right throws into, against or upon a...building...or puts or places therein or thereon oil of vitriol, coal tar or other noxious or filthy substance, with intent unlawfully to injure, deface or defile such...building...or any property therein, shall be punished....”

The term “other noxious or filthy substance” is not defined in the statute. The court found that these words may seem unambiguous on their face, but in reality could have different meanings dependent on the circumstances in which it is used.

To help define the term, the court looked at its significance in history. Section 103 was enacted in 1851 during the temperance movement where there was strong proponents and opponents of a constitutional ban on alcohol. The court pointed to multiple accounts of violence and property damage related to the temperance movement where the “weapon of choice” was reported to be coal tar or oil vitriol.

“In light of this historical context, the Legislature was forced to take a significant measure to combat the antitemperance violence that began to grow in the decades preceding the Civil War, by enacting §103 in 1851.”

The court next applied ejusdem generis (Latin translation: the same kind or class.) This doctrine states that when general words follow more specific words in a statute, the general words are interpreted to embrace only objects that are similar in nature to the specific words.

Section 103 lists two specific items: oil of vitriol and coal tar. After naming these specific items, the statute uses the more general term “other noxious or filthy substance”. Applying ejusdem generis,

“we must construe the term ‘other noxious or filthy substance’ to encompass only those substances substantially similar to the specifically listed items, coal tar and oil of vitriol, both of which were used as items to throw at buildings as part of the antitemperance violence in the decades leading up the Civil War.”

The court found that by specifically naming coal tar and oil of vitriol in the statute, the Legislature necessarily intended to limit the more general phrase “other noxious or filthy substance” to substances that are similar in nature to coal tar and oil of vitriol.

Unlike coal tar and oil of vitriol, urine does not appear on the Massachusetts Oil and Hazardous Material list, nor is it substantially similar in form to either one of the others. For these reasons, urine is not a noxious or filthy substance within the meaning of §103.

The criminal complaint must be dismissed.

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