Fall 2023

The Magistrate

The Courts Closest to the People

In This Issue

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The Magistrate

The Courts Closest to the People

Deuteronomy, Chapter 1

And I charged your Judges at that time, Saying,
Hear the causes between your brethren,
and judge righteously between every man and his brother,
and the stranger that is with him.
Ye shall not respect persons in judgement;
but ye shall hear the small as well as the great;
ye shall not be afraid of the face of man;
for the judgement is God's: and the cause that is too hard for you,
bring it unto me, and I will hear it.

Selected Canons from the Code of Judicial Conduct

Section 100.3 A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently

(A) Judicial Duties in General. The judicial duties of a judge take precedence over all the judge's other activities. The judge's duties include all the duties of the judge's office prescribed by law. In the performance of these duties, the following standards apply.

(B) Adjudicative Responsibilities.
(1) A judge shall be faithful to the law and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor or fear of criticism.

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President's Message

Hon.
Dennis W. Young

As this will be my last message to all of you, I want to thank you for the privilege and honor serving as your President this year. I truly enjoyed visiting the county magistrates associations' meetings. Maybe if our Assembly and Senate members did the same, they would better understand just how important the "Court Closest to the People" are to the communities that they serve. They would then realize how dedicated the judges and the courts clerks are, and the outstanding service they provide day in and day out.

The coming months are extremely important in continuing our fight against the ill-advised "Top 100 Bill" that the New York State Senate so foolishly passed. I wonder how many of them ever set foot in any of our courtrooms; it's probably safe to assume that the sponsor of this bill, Sen. Sean Ryan, has not. Please continue to ask your town and village boards to pass the resolution that we sent out to all of you and send them to your local Assembly and Senate member and the Governor's office too.

Many of you may not have heard that we have also had a great success in putting the brakes on the Orleans County district court proposal. The proponents of district courts were using the extremely biased New York State Bar Association's recent report along with the outdated 2006 *New York Times* articles to support district courts in Orleans county. The Orleans County Legislature recently voted unanimously to rescind their resolution to put this on the ballot in November.

In closing, we must continue our work to protect the "Courts Closest to the People" from all who would like to see us go away. I also hope that many of you will be attending our 113th annual Conference in Syracuse, New York from October 1 through October 4, 2023.

Dennis W Young
President
NYSMA

Pay to Plea? Not a Good Idea

Hon. Gary Graber (*NYSMA Past President, T/Darien, ret.*) brings to our attention that some prosecutors are insisting the only way a defendant can get a negotiated plea in a traffic case is if that defendant agrees to pay the fine immediately at the court appearance where the plea is taken.

This policy runs afoul of advice given to our courts by the Civil Rights Division of the United States Department of Justice in their two "Dear Colleagues" letters.

In their March 14, 2016, letter they remind us that "[c]ourts must not condition access to a judicial hearing on the prepayment of fines or fees."

In their April 20, 2023 letter, they remind us that the 14th Amendment to the United States Constitution prohibits conditioning access to the judicial process on the payment of fees.

Taken together, these two advisory opinions clearly indicated that "pay to plea" should not be happening in our courts.

Bill Introduced to Allow Judges to Carry Sidearms in Court

ALBANY – Assemblyman Joseph M. Giglio and Senator George Borrello have introduced legislation to allow judges and town and village justices to carry guns into court to protect themselves and others.

Under the 2022 Concealed Carry Improvement Act, judges and justices were barred from carrying firearms into court as courts are considered "sensitive locations" where firearms are banned.

Originating in the Assembly, the bill exempting judges from the sensitive locations ban was drafted by Assemblyman Giglio who asked Senator Borrello to carry the legislation in the Senate. The bill (S.7633) would allow judges who have pistol permits to carry a firearm in a "sensitive location" including courts.

"I introduced this bill in the Assembly in response to public requests to give rural judges the ability to protect themselves and those in their courtrooms," Assemblyman Giglio said. "This legislation provides an exemption which allows only those judges and justices with valid New York State pistol permits to carry firearms in courtrooms. Many of these courtrooms are in remote towns with no municipal police forces and with often-lengthy law enforcement response times."

"This commonsense legislation would provide a safer courtroom environment for our rural judges, similar to the protection provided by bailiffs and other law enforcement officers in more populous areas of the state."

The Concealed Carry Improvement Act exempted law enforcement officers and private security guards from its "sensitive location" restrictions. However, no exemption was made for judges and town and village justices.

Senator George Borrello

Assemblyman Joseph M. Giglio

"In many rural communities, there is no court security. There is just a judge and the clerk. This law will enable the presiding judges to defend themselves and others, preventing the potential violent disruption of court proceedings," said Senator Borrello.

Some rural town and village courts do not even have metal detectors.

"The current situation is unsafe," Senator Borrello said.

New York's Concealed Carry Improvement Act was signed into law by Governor Kathy Hochul after the U.S. Supreme Court struck down parts of New York's concealed carry handgun law for violating the Second Amendment. Senator Borrello and Assemblyman Giglio voted against the Concealed Carry Improvement Act as an unconstitutional abridgement of the Second Amendment. The Concealed Carry Improvement Act is being challenged in federal court.

Among the key elements of the Concealed Carry Improvement Act is a ban on carrying a gun in sensitive locations defined under the law including courts, schools, bars, medical facilities, stadiums, government buildings and houses of worship.

From Grievance to Attack: The Modus Operandi of Judicial Attackers, with Tips for Your Protection

BY JOHN F. MUFFLER, MS, CTM, PRINCIPAL OF AEQUITAS GLOBAL SECURITY, LLC, WHO IS A SENIOR ADVISOR FOR GAVIN DE BECKER & ASSOCIATES MOSAIC THREAT ASSESSMENT SYSTEMS. HE IS A FACULTY MEMBER OF THE NATIONAL JUDICIAL COLLEGE AND IS A RETIRED U.S. MARSHAL HE CAN BE REACHED AT JMUFFLER.AEQUITAS@GMAIL.COM.

Be an active participant in your own survival. That is how I begin every safety presentation, whether to judges, hospital staff, or undergraduate students. Being actively engaged means you are not relying on someone else to help you; that you, alone, are aware of your environment, of what "feels off" or "doesn't fit," enabling you to make appropriate life-saving decisions.

To be a good judge, you must hear courteously, answer wisely, consider soberly, and decide impartially.[1] This is embodied in the image of a blindfolded Lady Justice outside courthouses. But to navigate your safety and security, that blindfold must be removed, or you will never see the escalating threat right in front of you or the potential risk around the corner, or react accordingly in developing pre-incident indicators of violence that may befall you.

It is incumbent on you to understand that you must be your own protector. Security, bailiffs, law enforcement, or whomever you rely on for protection are not going home with you, commuting with you, or escorting you to your vehicle (in most cases)—all of which are locations where most judges have been targeted for attack—especially the home, *where all attacks occurred on judges and/or their loved ones cited in this article*.

I will specifically focus on the targeted attacks to the Honorable Judges Esther Salas, Julie Kocurek, and Joan Lefkow.

The Courtroom Outburst

Violence can be divided into two types: impromptu and premeditated. As a judge, you may see reactive or emotional violence in your courtrooms. This is defensive violence and can be driven by a perceived threat like an unexpected decision, feeling their voice was not heard or feeling they were treated unfairly, or emotionally charged victim and offender (to include families) were in proximity in the courtroom, as just a few examples. Some other drivers can include mental instability, anxiety, or drugs and alcohol and should be treated with the utmost dignity and respect by the court.

This type of affective violence is often detectable and, therefore, preventable if one is aware of the behavioral cues. While we have seen judges and staff get hurt in these court fight scenarios, especially when security personnel are disarmed during a melee, it is still a safer environment overall and not a location where a premeditated attack would normally occur. In short, someone lashing out is likely to be stopped by court personnel or security, if not you.

To mitigate an emerging threat in your courtroom, consider the advice of your colleagues from across the country with these 10 tips: use de-escalation techniques, actively listen, let them talk, do not be the cause of someone losing their dignity, take a recess during times of heightened tension, coordinate

[1] David P. Sterva, *Good Judicial Temperament the Hallmark of a Good Judge*, Chi. Daily L. Bull. (Apr. 30, 2015, 12:48 PM), https://www.chicagolawbulletin.com/law-day/2015/david-sterba-forum-ld2015.aspx.

with security, come up with a predetermined benign code word that allows you and your staff to covertly warn of potential trouble, have an escape plan and practice it, separate opposing parties in the gallery and have them leave the courtroom at separate times, and do not ever be afraid to use your duress button.

A Fair Exchange Ain't No Robbery

A Philadelphia La Cosa Nostra witness who I protected during testimony of a high-profile racketeering case once told me, in terms of street law, that "a fair exchange ain't no robbery." In other words, if someone felt they were wronged, whether a real or imagined grievance, they had the right to exact whatever punishment they deemed necessary. This usually meant a physical assault or murder to even the exchange.

In examining the modus operandi of judicial attackers, we see them follow a pathway to violence.[2] These steps include grievance, ideation, research and planning, pre-attack preparation, probing and breaching, and then the attack. This follows a pattern of premeditation, the second type of violence.

Grievance—the first step along the pathway because of your decision. Their grievance is specific to the court case before you. To the judicial pursuer, it does not matter if your decision was legally sound. What matters is they get to decide if they were wronged in some way. Thus begins the "fair exchange."

Ideation—the ruminating and thinking of getting even by someone influenced by your decision. While U.S. Supreme Court Justice Brett Kavanaugh would not have known his potential attacker, the individual who sought to carry out his violent attack did so because of his disagreement with his opinion. That said, it is more likely that you will know your attacker because they were in a case before you.

Research and planning—exploiting personally identifiable information (PII) on the internet as well as looking at your social media accounts for any PII about you, or your family. Kocurek's attacker used her son's Instagram account to track him and knew they would be at a high school football game on a Friday night. He lay in wait outside her home, placed a bag of leaves in the driveway to make the car stop, and shot her four times, point-blank, in front of her family.

Pre-attack preparation—in most incidents, this equated to obtaining a weapon. But some instances included developing an explosive parcel delivered to the home, such as the devices that killed Federal Appeals Judge John Vance and injured his wife; and a week later, unrelated, Maryland Circuit Judge John Cordeman, nearly killing him; or making poisoned chocolates, delivered to U.S. District Court Judge Charles Brieant's home, nearly killing his wife.

Probing and breaching—depending on the pursuer, this can be the first or second overt act in furtherance of their plan. They will probe areas of vulnerability—a soft target like your home, a kid's soccer game, your favorite lunch spot, your assigned parking spot—and breach this location after exploiting social media posts and careful planning. This is so they can understand the playing field and see what, if any, security you may have and if they can approach without notice and escape without capture. Kocurek's, Lefkow's, and Salas's attackers all engaged in physical surveillance on multiple occasions of their target location well before carrying out the attack.

The attack—the final step along the pathway. The attack can be a compressed period of days or weeks or take years to develop. It all depends

Continued on page 6

[2] Frederick S. Calhoun & Steven W. Weston, Threat Assessment and Management Strategies: Identifying the Howlers and Hunters (2009).

Continued from page 5

on the individual and their inhibitors and triggers. Relatively speaking, pathway timeframes for Salas's, Kocurek's, and Lefkow's attackers were compressed. In June 2022, Juneau County, Wisconsin, Circuit Court Judge John Roemer, who retired in 2017, was murdered in his residence by a litigant he had not seen in over 15 years. That is not an uncommon delay for an attack on a judge, from my experience.

Pathways to Safety

The grievance step may be mitigated if you follow your colleagues' advice above. Conversely, it can be the catalyst that propels them.

While some states, as well as the federal government, have passed legislation to protect your PII, most have not. In an interview with Judge Salas for this article, she states:

State judges face all the same threats that federal judges do, and violence against the courts also threatens state court systems. I am very pleased by the example New Jersey has set, and I certainly think other states should consider similar laws. To my knowledge, at the state level, there is no current way to track the number of inappropriate communications received by state judicial officers. Much remains to be done to protect judges at all levels of government. With the passage of the federal legislation, the law now authorizes a state grant program to incentivize states to establish or expand programs to protect and prevent disclosure of judges' PII. We need to make protecting our democracy a priority in this country, and it starts by ensuring that ALL judges are free to do their jobs without fear of reprisal, retribution, or death.[3]

Be mindful, even if your PII is protected, they can still follow you from the courthouse and obtain information for a future attack. They will also scan your loved one's social media posts for information. Opt out and scrub the internet using open-source platforms[4] and stay on it. Data aggregators will constantly update and share your information.

It stands to reason you might recognize your attacker. Seeing, understanding, and acting on baseline changes in your environment are cornerstones to being actively engaged. Report anything suspicious to law enforcement so they can determine intentions of what you feel "doesn't fit." For example, a litigant who is not from your community ends up sitting behind you in your place of worship or a bullet found placed on your front step are just two examples of intimidation I have investigated.

We have heard the campaign "See Something, Say Something," which has worked well in stopping intended violence. However, before seeing it, you may receive an intuitive signal that something is not right, or, as Salas told me, "if you feel something, do something."[5]

Countering an unknown, possible future attack does not have to be daunting. Have open and honest discussions about the risk you face with loved ones and law enforcement and put "what if" plans in place now to protect your home, private information, and places you normally visit.

Because the pursuer will eventually mobilize to action, they will tip their hand projecting intentions. Good awareness, home[6] and vehicle security, protecting PII, and changing your daily routines must all be practiced. Security expert Gavin de Becker, in his book *The Gift of Fear*, states, "In fact, assassination not only can be prevented, it is prevented far more than it succeeds. Though assassins have a few advantages over their victims,

[3] Interview with E. Salas (Mar. 31, 2023).

[4] Michael Bazzell, OSINT Techniques: Resources for Uncovering Online Information, 10th ed. (2023).

[5] Interview with E. Salas (Apr. 3, 2023).

[6] Judge Herbert B. Dixon Jr., *Tech and No-Tech Security Considerations for Judges*, 60 Judges' J., no.3, Summer 2021, at 36.

there are many more factors working against them. Literally, thousands of opportunities exist for them to fail. And only one slender opportunity exists to succeed."[7]

Typologies and Commonalities Across Three Attacks

It is extremely rare that they will advance a threat (a promise) to you about their intentions and then carry it out. They will hunt, not howl,[8] as they do not want to be caught.

Pathway behaviors are but one of the warning behavior typologies[9] and existed in all the cases listed above. While judicial attackers do not check every warning behavior box in each individual attack case, they can present others, individually and/or collectively, such as last resort, fixation, leakage, energy burst, novel aggression, and a directly communicated threat.

I do not know of any judicial pursuer who did not project blame[10] onto a judge for their decision. This, again, speaks to the "fair exchange" mindset and an initial justification for attacking. This mindset is one of four elements that can be evaluated by threat assessors to help predict violence: perceived justification, perceived alternatives, perceived consequences, and perceived ability—or JACA."[11]

Salas's attacker exhibited a pathological fixation, possibly driven by misogynistic beliefs; an energy burst by conducting drive-bys of her home; and novel aggression by committing a murder beforehand[12] to possibly ready himself for his act of vengeance against the judge.

Kocurek's assailant also exhibited a pathological fixation, likely driven by his desire to continue his criminal enterprise, an energy burst by following her while she drove to work, driving by her residence numerous times, jogging through her neighborhood, and even peering into her home window. Leakage[13] and a directly communicated threat (that is then carried out) are rare for a judicial pursuer. It is disturbing to know that her protectors dismissed these two signals, and the elements of JACA, as the attacker's girlfriend warned law enforcement of the death threat one week prior to the assassination attempt.

The murderer of Judge Lefkow's mother and husband left a note for his landlord to take care of his cat and dog because he was not returning, an act of last resort, before embarking on his plan to right his perceived wrong. He, too, became fixated as his medical malpractice case did not achieve the financial outcome he had hoped for.

Continued on page 8

[7] Gavin de Becker, The Gift of Fear: Survival Signals That Can Protect Us from Violence (1997).

[8] Calhoun & Weston, *supra note* 2.

[9] J. Reid Malloy et al., *Warning Behaviors and Their Configurations Across Various Domains of Targeted Violence*, in International Handbook of Threat Assessment 39–40 (J. Reid Malloy & Jens Hoffmann ed. 2014).

[10] *Externalizing Blame Can Have Deadly Consequences*, Dr. George Simon (Aug. 28, 2015), https://www.drgeorgesimon.com/externalizing-blame-can-have-deadly-consequences.

[11] De Becker, *supra note* 7.

[12] Tracy Smith, *Federal Judge Whose Son Was Killed in Ambush: "My Son's Death Cannot Be in Vain*," CBS News (Sept. 11, 2021, 11:03 PM), https://www.cbsnews.com/news/esther-salas-son-murder-roy-den-hollander-48-hours.

[13] "Leakage in the context of threat assessment is the communication to a third party of an intent to do harm." J. Reid Meloy & Mary Ellen O'Toole, *The Concept of Leakage in Threat Assessment*, 29 Behav. Sci. & L. 513 (2011), https://drreidmeloy.com/wp-content/uploads/2015/12/2011_theconceptofleakage.pdf

Continued from page 7

Salas's and Lefkow's attackers committed suicide, more common among active shooters in school and workplace settings, while in pursuit of other judges they were targeting after their initial judicial act, as noted by the hit lists found on their bodies.[14]

Be an Active Participant

It is not wise for you to rely solely on those responsible for your safety at the court. As de Becker states, decrease an attacker's chances by increasing your own. Avoid self-inflicted mistakes like being predictable, advertising on your vehicle that your child is an honor student at the local school, or driving with vanity plates. At speaking engagements, I often hear someone yell out, dismissively, "If they want to get me, they'll get me." This parochial thinking will only guarantee a successful attack.

Challenge your court and legislature about the grant program in the Daniel Anderl Act to close safety and security gaps at the state and local levels. Converse with your protectors on ideas to better protect you, but please speak with your colleagues about their safety plans, in and out of court. I have learned from many of them, and so can you.

Be safe.

[14] Alberto Luperon, *Misogynist Lawyer Who Murdered Federal Judge's Son Had "Manila Folder" on Justice Sotomayor*, Law & Crime (Feb. 19, 2021, 3:50 PM), https://lawandcrime.com/crazy/misogynist-lawyer-who-murdered-federal-judges-son-had-manila-folder-on-justice-sotomayor.

NEW YORK STATE MAGISTRATES ASSOCIATION

The More Things Change, The More They Stay the Same

We are indebted to Hon. Dr. Carrie O'Hare *(T/Stuyvesant)* for sharing this correspondence and resolution from 50 years ago about an earlier attempt to do away with the justice courts . . .and we are still here!

Town of Greenport

COLUMBIA COUNTY, NEW YORK

POST OFFICE ADDRESS: HUDSON, N. Y. 12534

RICHARD GENZMER, TOWN JUSTICE
JOSLEN BLVD.
HUDSON, NEW YORK
TEL. 518-828-6874

April 2, 1973

Dear Judge:

Enclosed please find a copy of a resolution adopted by the Columbia County Magistrates Association at its' last meeting. I have taken the liberty of informing Senator Douglas Hudson and Assemblyman Clarence D. Lane of our action.

At this time, I would suggest you present a similar resolution to your respective Town Boards and urge them to adopt the same and have your Town Clerk notify the above two gentlemen of its' adoption.

Very truly yours
Richard W. Genzmer

Richard W. Genzmer
Vice-President
Col. Co. Magistrates Assoc.

Continued on page 10

Continued from page 9

WHEREAS, it has come to the attention of the Columbia County Magistrates Association that the Temporary Commission regarding the New York State Court System, headed by D. Clinton Dominic, Esq., has made a study, and recomended the reorganization of the Court System of the State of York by eliminating all Village Justice Courts, and in many Counties replacing Town Justice Courts with District Courts, and

WHEREAS, the local Town and Village Courts of this State provide for the Citizenry of the respective Villages and Towns an accessability and availability not otherwise found in any other Court System, and

WHEREAS, it is statistacally proven that the District Court System in the Counties of Suffolk and Nassau are not proving to be the answer in those Counties due to an ever increasing backlog of cases, and

WHEREAS, the Town and Village Court System provides a tax savings to the Citizens of their respective communities, and

WHEREAS, the ELIMINATION OR MODIFICATION of the local Court System can only be regarded as a deprivation of the opportunity of the citizens to enjoy said availability and accessibility of their local Courts at all days and hours thereof, be it therefore

HIGHLY RESOLVED, that this Association is unalterably and unanimously opposed to any provision for restricting the Courts of the State of New York, which would include the elimination or modification of the Town and Village Court System provided by the Constitution of the State of New York, and the Constitution of the United States of America, and be it further

HIGHLY RESOLVED, that copies of this resolution be forwarded to the Legislators representing our communities, and to the members of the Dominic Commission, through their Chairman, D. Clinton Dominic, Esq., to insure that they are fully aware of the position taken by this Association.

STATE OF NEW YORK SS
COUNTY OF COLUMBIA

I, Nancy Testa, Secretary of the Columbia County Magistrates Association, hereby certify that I have compared the foregoing resolution with the original resolution, adopted unanimously by the Association on the 27th day of March 1973, and the same is a true and correct transcript therefrom, and the whole thereof.

Nancy Testa
Sec.

Pres.

Case Law Update

By Hon. Robert Bogle NYSMA Past President, Nassau County Court Judge, Acting Supreme Court Justice, Supervising Judge Nassau County Town and Village Courts. **(Third in a series)**

Good Faith Exception to Exclusionary Rule

In *People v. Pena*, 36 NY3d 978, 139 NYS3d 70 (2020), a police officer stopped the defendant's car because of a non-functioning center brake light. Defendant, who exhibited signs of intoxication, was given - and failed a field sobriety test.

Defendant was arrested and charged with operating a motor vehicle while impaired (Vehicle and Traffic Law § 1192 [1])and two counts of operating a motor vehicle while intoxicated (Vehicle and Traffic Law § 1 192[2],[3]).

Defendant moved to suppress the evidence obtained as a result of the stop, asserting that the officer lacked probable cause to justify the seizure because, the defendant argued, "operat[ing] a vehicle that has a non-illuminated middle brake light" is not a violation of the Vehicle and Traffic Law. At the suppression hearing, relying on the United States Supreme Court's opinion in *Heien v. North Carolina*, 574 U.S. 54, 135 S. Ct. 530,190 L.Ed.2d 475 (2014), the People argued that the officer's belief that the defendant was violating the law was "a reasonable mistake in this situation," rendering the stop permissible under the Fourth Amendment. The judicial hearing officer determined that there was no ambiguity in the Vehicle and Traffic Law, and concluded that it was not "objectively reasonable for the officer in this case to mistakenly believe that a non-functioning middle brake light is a violation of the vehicle and traffic law." The suppression court adopted the judicial hearing officer's finding of fact and legal conclusions in full and granted the defendant's motion, and the Appellate Term affirmed.

The sole issue before the Court of Appeals is whether the officer's belief that the defendant violated the Vehicle and Traffic Law by operating a vehicle with a non-functioning center stop light was objectively reasonable (see *People v. Guthrie*, 25 NY3d 130,136. 8 NYS3d 237, 30 N.E.3d 880 [2015] ["the relevant question before us is... whether (the officer's) belief that a traffic violation had occurred was objectively reasonable"]; see also *Heien*, 574 U.S. At 59,61135, S. Ct. 530) The "ultimate touchstone of the Fourth Amendment is reasonableness" (*Riley v. California*, 573 U.S. 373,381,134 S. Ct. 2473, 189 L.Ed.2d 430 [2014], As the Supreme Court explained in *Helen*, "[t]o be reasonable is not to be perfect, and so the Fourth Amendment allows for some mistakes on the part of government officials, giving them 'fair leeway for enforcing the law in the community's protection'" (574 U.S. at 60^61, 135 S. Ct. 530, quoting *Brinegar v. United States*, 338 U.S. 160,176,69 S. Ct, 1302,93 L.Ed. 1879(1949])- Accordingly, even assuming that a stop is premised upon a mistake of law, the stop may nonetheless be lawful where the officer's purported mistake was objectively reasonable (*id.* At 61,135 S. Ct. 530; *People v. Guthrie*, 25 NY3d 130,136. 8 NYS3d 237, 30 N.E.3d880 [2015]).

The Court of Appeals held that the officer's interpretation of the Vehicle and Traffic Law was objectively reasonable. Vehicle and Traffic Law § 375 (40)(b) mandates that motor vehicles manufactured after a certain date be "equipped with at least two stop lamps, one on each side, each of which shall display a red to amber light visible at least five hundred feet from the rear of the vehicle when the brake of such vehicle is applied."

Vehicle and Traffic Law § 375(19), in turn, prohibits the operation of a motor vehicle on highways or streets if the vehicle "is defectively equipped and lighted." Taken together, these provisions could reasonably be read to require that all lamps and signaling devices be in good working condition, and that all equipment and lighting be non-defective, regardless of whether a vehicle is actually required to be equipped with those lamps, signaling devices, equipment, or lights. Even assuming the officer was, in fact, mistaken on the law, it was nevertheless objectively reasonable to conclude that the defendant's non-functioning center brake light violated the Vehicle and Traffic Law. Because any error of law by the officer was reasonable, there was probable cause justifying the stop. The Court of Appeals reversed the trial court and the Appellate Term accordingly.

Continued on page 12

Continued from page 11

Property Subject to Search and Seizure - Search Warrant

In *People v. Gordon*, 36 NY3d 420, 142 NYS3d 440 (2021), the Court of Appeals held that a search warrant application failed to establish probable cause for police officers to search two vehicles located outside of a surveilled residence and, thus, suppression of physical evidence seized from vehicle was appropriate. The search warrant application and its supporting affidavits sought a warrant to search suspect and "the entire premises" from which he was seen emerging, but contained no mention of the existence of vehicles ultimately searched, much less evidence connecting the vehicles to any criminality. The Court reiterated the long-standing constitutional rule that the permissible scope of a search warrant is carefully limited by the requirement for probable cause and a particular description of the subjects to be searched, U.S, const. Amend. 4; N.Y. Const. Art. 1 § 12; C.P.L. § 690.15(1).

Speedy Trial - General Interpretation

In *People v, Ramlall*. 34 NY3d 1154, 119 NYS 769 (2020), the Court of Appeals affirmed the Appellate Term, noting that the "Defendant argues that the lengthy delay of his prosecution for the traffic infraction of driving while ability impaired (Vehicle and Traffic Law § 1192[1]) violated his constitutional right to a speedy trial (see *People v, Taranovich*, 37 NY2d 442, 373 NYS2d 79, 335 N.Ed,2d 303 [1975]: C.P.L, 30:20), Though a close case, the Court concluded that, after balancing the relevant factors, defendant's claims do not rise to the level of a constitutional violation."

Also, the Court added. "The People's argument that the constitutional right to a speedy trial does not apply to traffic and infractions is unpreserved for our review,"

Conduct of Trial Court

In *People v. Battick*, 35 NY3d 561, 135 NYS3d 34 (2020). the Court of Appeals held that the trial court's measured response to a sworn juror's outburst in open court, when defense counsel's repeated use of a racial slur in an attempt to provoke the state witness caused juror to exclaim that she found the slur extremely offensive, in not conducting a *Buford* inquiry, 514 NYS2d 191, but instead admonishing the juror for her disruptive outburst and instructing the jurors as a group that they should report to the court if they could not remain fair and impartial, was not abuse of discretion. The Court added that there was no indication that juror's ability to maintain her sworn oath to render an impartial verdict was hampered by exposure to any facts outside the four corners of the evidence, and thus no probing *Buford* inquiry was required.

In *People v. J.L.*, 36 NY3d 112, 139 NYS3d 103 (2020), the Court of Appeals ruled that evidence required the trial court to instruct the jury on voluntary possession, in defendant's trial for third-degree criminal possession of a weapon, even though defendant's primary defense was that he lacked constructive possession of a gun found in a bedroom that he rented in someone else's house. The evidence could have supported a finding that the defendant had constructive possession and that the possession of a gun was knowing once he saw a gun while looking for towel in frantic moments after being shot in neck inside the home, but that his possession was not voluntary, given that it lasted for only the brief period between when he ran into the bedroom and saw the gun in the dresser and when he left the bedroom, NY Penal Law § 265.02.

The Court further noted that if, on any reasonable view of the evidence, the fact finder might have decided in defendant's favor had it heard the requested jury instruction, the failure to charge constitutes reversible error. C.P.L. § 300.10 (2).

Jury Conduct

In *People v. Williams*, 36 NY3d 156, 139 NYS3d 594 (2020), the trial court's credibility determinations as to a juror's claim that she had been threatened prior to deliberations found support in the record and thus the Court of Appeals would uphold the denial of a motion to set aside verdict finding defendant guilty of criminal possession of a weapon. The trial court had the opportunity to evaluate the juror's demeanor and credibility, and court thoroughly explained its basis for discrediting the juror's allegations, including location at which threat was purportedly made, nature of threat, manner in which allegations were reported, and the juror's refusal to cooperate with authorities attempting to investigate the alleged threat. C.P.L. § 330.30(2).

The Court of Appeals further noted that trial courts are vested with discretion in deciding motions to set aside verdicts based on improper conduct by or in relation to a juror, and an Appellate Court will uphold a trial court's undisturbed findings of fact if they are supported by evidence in the record. C.P.L. §330.30(2).

Departure from Presumptive Risk Level - SORA

In *People v. Del Rosario*, 36 NY3d 964, 137 NYS3d 288 (2020), the Court of Appeals held that it was not an abuse of discretion for the Appellate Division to sustain the upward departure based on the People's proof that defendant raped the victim in order to take revenge upon someone other than the victim - a risk factor not adequately captured by the Sex Offender Registration Act: Risk Assessment Guidelines and Commentary.

Prosecutor's Failure to Disclose Brady Materials

In *People v. McGhee*, 36 NY3d 1063, 142 NYS3d 863 (2021), the Court of Appeals held that the State's failure to disclose a witness statement at issue in trial for murder and criminal possession of a weapon did not undermine fairness of defendant's trial or impact the jury's verdict. The undisclosed witness's description of the shooter and his flight path did not differ in any material respect from that of the eyewitness who identified defendant in court as the perpetrator. The jury's verdict was supported by considerable other evidence, including testimony of cooperating witness who planned crime with defendant, testimony by the spouse of the cooperating witness confirming defendant's involvement, and testimony of additional witnesses who described perpetrator's clothing and his movement following the shooting.

The Court concluded that the defendant failed to show that prejudice arose as an element of a Brady claim. Also, there was no reasonable possibility that the witness's statement supported an alternative theory of defense, and the defendant failed to demonstrate any likelihood that the statement would have led to additional admissible evidence.

Hon. Robert Bogle

News from the National Judicial College

National Judicial College Offers Free Classes to Local Magistrates Associations

by Hon. Barbara Seelbach (*T/Clinton, NYSMA Director, NJC Ambassador*)

Are you looking for speakers for your next county magistrates association meeting? As the New York State Ambassador for the National Judicial College, I am pleased to announce the successful launch of two inperson classes entitled; "Effectively Handling Commercial Driver's License Holders in New York Courts," developed by Judge Gary Graber, and "Self-Represented Litigants in CDL Cases" developed by Judge Jonah Triebwasser. These classes have already been presented and well received in several jurisdictions and both courses have been approved for CJE credit.

In addition, Judge Graber has developed a wonderful website at https://www.cdlcourtassist.org. He created this website to help judges and related stakeholders recognize the applicable federal regulations in their own state. Judge Graber is more than happy to teach a class on how to use this site to your benefit.

If you are interested in scheduling a presentation for one of your upcoming meetings, please contact me at bseelbach@judges.org or (845)489-4258.

Have a CDL related question?

Free Commercial Drivers License Resource Website

For: Judges, Court Clerks and Stakeholders

www.cdlcourtassist.org

Developed by Hon. Gary A. Graber (ret.)

Leadership Genesee Class of 2005

For more information or training

call: 716-474-2777

Judge and Clerk Training Returns to the Association of Towns.

Core A & B Presentations (via video) will be hosted in NYC by NYSMA at the AOT, February 18 to 21, 2024, at the Marriott Marquis hotel.

For registration information, go to:

https://members.nytowns.org/Towns/Common/2024_Annual_Meeting_and_Training_School_info_Registration.aspx

The Twin Pillars of Depression

By Dan Lukasik, founder lawyerswithdepression.com,
OCA Special Projects Coordinator

"Once you choose hope, anything is possible." – Christopher Reeve

There are two pillars upon which depression rests.

Helplessness

When in the grip of depression, we feel helpless despite our efforts to pull out. The more we struggle, the more exhausted we become. In her book *Eat, Pray, Love*, Elizabeth Gilbert writes, "They flank me – Depression on my left, loneliness on my right. They don't need to show their badges. I know these guys very well . . . then they frisk me. They empty my pockets of any joy I had been carrying there."

Hopelessness

Helplessness often leads to profound hopelessness about the future. In her book *ProzacNation*, Elizabeth Wurtzel writes, "That's the thing about depression: A human being can survive almost anything, as long as she sees the end in sight. But depression is so insidious and compounds daily that it's impossible to ever see the end."

What I have learned over the past twenty years of living with depression is we need to chisel away at these twin pillars. I began to discover helplessness and hopelessness are disempowering: I had no choice but to live my days under this rock of sadness. My healing involved learning that I did have options in how I related to life when depressed, and I found this ability to choose empowering and life-affirming.

How did I leave helplessness and hopelessness behind?

Depression's "Crooked Thinking"

For fifteen years, I had a therapist named Jerry. He was brilliant, with a salty sense of humor and a Bronx accent, who doled out big hugs at the end of each therapy session.

Jerry taught me to recognize the thought patterns of my depression, which he called"crooked thinking." In this process, I developed a sense of detachment from these thoughts. Before meeting Jerry, I used to feel depression was my identity; I could not separate it from my everyday experience of reality and who I was. Jerry once said, "Depression's a terrible liar." How true this is.

Psychologist Hara Estroff Marano writes:
"One of the features of depression is pessimistic thinking. The negative thinking is actually depression speaking. It's what depression sounds like. Depression's affect. Most depressed people are not aware that the despair and hopelessness they feel are flowing from negative thoughts. Thoughts are mistakenly seen as privileged, occupying a rarefied territory, immune to being affected by mood and feelings, and therefore representing some immutable truth."

Continued on page 16

Continued from page 15

Don't Go Down the Rabbit Hole

I also learned depressing thoughts are ruminative, tumbling over and over again in my brain like clothes in a laundromat dryer.

I can now spot these patterns when they strike and see them for what they are: part of the disease of depression. When I notice my thoughts going down the rabbit hole of depression, I detach and let them go. I see them as bubbles that arise and pass away.

I am not my depression. I have more inner strength than depression would have me believe. As Albert Camus once wrote, "In the middle of winter, I at last discovered an invincible summer.

I don't have to let my life be run by helplessness and hopelessness; in this realization, I summon my power to choose how I want to live my life.

• • •

Dan Lukasik has given over 200 presentations throughout the U.S. on the topics of depression, anxiety, and stress. He tells his own powerful story of his struggles with growing up in a traumatic home with an alcoholic father, overcoming obstacles to become a successful lawyer, being diagnosed with major depression at age 40, learning to overcome and manage. One on the most difficult aspects of living with depression was dealing with the stigma surrounding his own mental illness. At first hurt and then angered by such stigma he and others encountered, he launched Lawyerswithdepression.com 15 years ago to educate others about depression, provide resources, and combat the stigma to those who often struggle in a lonely battle against this disease.

Dan's work on mental health has been featured in *The New York Times, The Wall Street Journal, The National Law Journal, The Washington Post*, on *CNN*, and *NPR*, and many other national and international publications. He was recently selected by WebMD for a video on the importance of working with a therapist throughout one's life to manage clinical depression. In addition, Dan was chosen by the Substance Abuse and Mental Health Services Administration ("SAMSA") in Washington, D.C. as their spokesman in a PSA video of someone living successfully with depression. For inquiries, please go to the contact tab at the top of the website homepage.

Answers to Puzzle on Pages 36

Answer:

Executive Director Tanja Sirago
3rd Vice President David Kozyra
2nd Vice President Susan Sullivan Bisceglia
1st Vice President Thomas Sheeran
President Elect Kenneth Ohi Johnson
President Dennis Young

Why did the Judge find the Mona Lisa innocent of all charges?

It was obvious she had been framed!

NYSMA 113th ANNUAL CONFERENCE PROGRAM
CJE & CLE Credits

MONDAY, OCTOBER 2, 2023

7:00 – 9:00AM	**Breakfast** *Persian Terrace, Lobby Level*
8:30AM – 4:30PM	**NYSMA Registration** *Lobby Level*
8:30 – 9:30AM	**General Assembly** *Otisco, Skaneateles, & Cayuga Court, Lobby Level*
9:30 – 9:40AM	**Break**
9:40 – 10:40AM	**How to Effectively Communicate with your Town or Village Board** *Otisco Court, Lobby Level*
9:40 – 10:40AM	**DWI Bench Trial – The Common Law Case (2 Hour)** *Skaneateles & Cayuga Court, Lobby Level* (Hour one of two-hour program, must attend both hours for credit)
9:40 – 10:40AM	**Tech** *Keuka Room, Ground Floor Level*
10:40 – 10:50AM	**Break**
10:50 – 11:50AM	**DWI Bench Trial – The Common Law Case (2 Hour)** *Skaneateles & Cayuga Court, Lobby Level* (Hour two of two-hour program, must attend both hours for credit)
10:50 – 11:50AM	**Misdemeanor Drug Court – Why it is a Good Idea** *Otisco Court, Lobby Level*
10:50 – 11:50AM	**Tech** *Keuka Room, Ground Floor Level*
11:50AM – 12:50PM	**Lunch** *Persian Terrace, Lobby Level*
12:50AM – 1:50PM	**Judicial Wellness** *Otisco Court, Lobby Level*
12:50 – 1:50PM	**Updates & Review of the Bail Reform Act** *Skaneateles Court, Lobby Level*
12:50 – 1:50PM	**Adjudicating Environmental Conservation Law Offenses** *Cayuga Court, Lobby Level*
12:50 – 1:50PM	**Tech** *Keuka Room, Ground Floor Level*

MONDAY, OCTOBER 2, 2023 CONT...

1:50 – 2:00PM	**Break**
2:00 – 3:00PM	**Expect the Unexpected: Advanced Arraignment Issues** *Cayuga Court, Lobby Level*
2:00 – 3:00PM	**Issues with Judicial Ethics Discipline** *Skaneateles Court, Lobby Level* (Hour one of two-hour program, must attend both hours for credit)
2:00 – 3:00PM	**Therapeutic Courts – Veterans Court and Mental Health Court** *Otisco Court, Lobby Level*
2:00 – 3:00PM	**Tech** *Keuka Room, Ground Floor Level*
3:00 – 3:10PM	**Break**
3:10 – 4:10PM	**Pleas and Sentencing** Otisco Court, Lobby Level
3:10 – 4:10PM	**Issues with Judicial Ethics Discipline (Cont.)** *Skaneateles Court, Lobby Level* (Hour two of two-hour program, must attend both hours for credit)
3:10 – 4:10PM	**Opinion Writing** *Cayuga Court, Lobby Level*
3:10 – 4:10PM	**Tech** *Keuka Room, Ground Floor Level*
4:30PM	**Annual Business Meeting** *Otisco, Skaneateles, Cayuga Court, Lobby Level* **(Attendance Required for State Reimbursement)**

BADGE REQUIRED FOR ENTRY

Dinner: Dine Around

TUESDAY, OCTOBER 3, 2023

7:00 – 9:00AM	**Breakfast** *Persian Terrace, Lobby Level*
8:30AM – 4:30PM	**NYSMA Registration** *Lobby Level*
8:30 – 9:30AM	**Navigating Post-Judgment Motion Practice: CPL Article 440 and Writs of Error Coram Nobis** *Otisco Court, Lobby Level*

TUESDAY, OCTOBER 3, 2023 CONT...

8:30 – 9:30AM **Centralized Arraignment Part - Implementation**
Skaneateles Court, Lobby Level

8:30 – 9:30AM **Tech**
Keuka Room, Ground Floor Level

8:30AM – 5:10PM **Continuing Judicial Education** *Canandaigua Room, Ground Floor Level*
JUDGES ONLY

CORE B

8:30 – 9:30AM	Case Law and Legislative Updates 2023 1.0 CLE/CJE
9:40 – 10:40AM	Arraignments – Assignment of Counsel, Use of Technology E-Justice and Criminal Disposition Reporting 1.0 CLE/CJE
10:50 – 11:50AM	Introduction to Evidence 1.0 CLE/CJE
12:50 – 1:50PM	Summary Proceedings- Updates 2023 1.0 CLE/CJE
2:00 – 3:00PM	Property Maintenance Code and Municipal Ordinances 1.0 CLE/CJE
3:10 – 4:10 PM	Ethics II: Attending Events, Accepting Gifts, Favors, or Benefits 1.0 CLE/CJE
4:10 – 5:10PM	Assessment Core B (Open book format)

9:30 – 9:40AM **Break**

9:40 – 10:40AM **Court of Appeals Criminal Procedure Update**
Otisco Court, Lobby Level

9:40 – 10:40AM **Setting Up and Operating Centralized Arraignment Parts: Part 2, Administrative and Legal Operations**
Skaneateles Court, Lobby Level

9:40 – 10:40AM **Tech**
Keuka Room, Ground Floor Level

10:40 – 10:50AM **Break**

10:50 – 11:50AM **Judges Without Court Clerks**
Otisco Court, Lobby Level

10:50 – 11:50AM **Sex Offender Registration Act (SORA)**
Skaneateles Court, Lobby Level

10:50 – 11:50AM **Tech**
Keuka Room, Ground Floor Level

11:50AM – 12:50PM **Lunch**
Persian Terrace, Lobby Level

TUESDAY, OCTOBER 3, 2023 CONT...

12:50 – 1:50PM	**Accusatory Instruments, Facial Sufficiency and Dismissals in the Interest of Justice** *Otisco Court, Lobby Level*
12:50 – 1:50PM	**Emergency Family Court Powers in Justice Court with a Family Court Perspective** *Skaneateles Court, Lobby Level*
12:50 – 1:50PM	**Tech** *Keuka Room, Ground Floor Level*
1:50 – 2:00PM	**Break**
2:00 – 3:00PM	**OJCS Round Table** *Otisco Court, Lobby Level*
2:00 – 3:00PM	**Overview of the Town and Village Jury Process** *Skaneateles Court, Lobby Level*
2:00 – 3:00PM	**Tech** *Keuka Room, Ground Floor Level*
3:00 – 3:10PM	**Break**
3:10 – 4:10PM	**Probation, Interim Probation, Conditional Discharges and ACD Violations** Otisco Court, Lobby Level
3:10 – 4:10PM	**Mock Jury Voir Dire** *Skaneateles Court, Lobby Level*
3:10 – 4:10PM	**Tech** *Keuka Room, Ground Floor Level*
6:15 – 7:15PM	**Gala Reception** *Empire Room, 10th Floor*
7:30PM	**Installation Banquet** *Grand Ballroom, 10th Floor*

Keynote Speaker: Honorable James P. Murphy, Deputy Chief Administrative Judge for Courts Outside NYC

Installation of Officers

NYSMA *Welcomes*

the following new judge to the bench:

Hon. Adam Koblenz

(V/Roslyn Estates)

Welcoming New Judges

Do you know of a judge who is new to the bench? Please send that judge's name and town or village to NYSMA1@gmail.com so that we can welcome that judge in the next issue of The Magistrate.

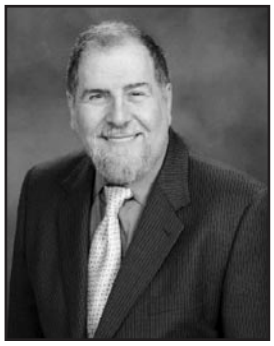
NYSMA *Congratulates*

the following judges on their retirement:

Hon. F. Stephen Bailey

(T/Tully)

NYSMA congratulates the Hon. Stephen F. Bailey, who is retiring from Tully Town Court after serving for 38 years.



Hon. Stanley J. Somer

(V/Asharoken)

NYSMA congratulates the Hon. Stanley J. Somer on his retirement from the bench.

Thank you Judge Bailey and Judge Somer for your service.

Justice Court Support Attorneys Retire

Hon. David Fryer

Hon. David Whelan

Both Daves have always been very helpful to our judges and we will miss their guidance. Best wishes to both for many years of good health and happiness in retirement.

Honoring Retired Judges

Do you know of a judge who is retiring? Please send that judge's name and town or village to NYSMA1@gmail.com so that we can honor that judge in the next issue of The Magistrate.

From the Classroom to the Bench Justice Joseph Suarez '80

"Reprinted with the permission of the author, Jessica Dubuss, Executive Director of Communications at the Elisabeth Haub School of Law at Pace University."

After spending 30 years on the bench, Haub Law alumnus Justice Joseph Suarez has recently retired. Born in Cuba, Justice Suarez attended City College in New York while working as an electrical worker in NYC Transit to help support his family. After a tragedy hit home, he and his fiancée became guardians of three children. "I had a responsibility to my family and at that point, I knew I had to support them," said Suarez. "I decided that obtaining my teaching license would be prudent and I started a career as a science teacher in the South Bronx." During that time, Justice Suarez supplemented his teaching salary as a S.E.C. registered Investment Adviser and Tax preparer and continued his educational studies, ultimately receiving an MBA in finance from Baruch. With a passion for learning and a drive to go further, he ultimately pursued and obtained a MS in Educational Administration and a NYS license as a District Administrator.

"By the time I had started thinking about law school, I had moved my family to Rockland County," Suarez recalled. "I was interested in law, I truly enjoyed being a student, and there was a competitive value of a law degree that was appealing." Ultimately, he was accepted to a number of law schools, but once he heard that Pace was to open a law school in White Plains, the choice was made. "It was the perfect circumstances for me. I would not have to commute far, and I could attend at night."

Once enrolled at what was then known as Pace Law School, Justice Suarez immersed himself in his legal studies. "Immediately I knew I was in the right place. And, fortunately, despite having a young family, I had the unwavering support of my wife, Della, without which none of this would have been possible." During his time at Pace, Justice Suarez recalls the many professors who helped him along the way. "I was most impressed by Professor Jay Carlisle, Professor Bennett Gershman, and the late Ralph Stein. Their passion and skills for imparting knowledge on the particular subject matter was amazing."

After graduating from Pace in 1980, Justice Suarez remained very involved with the School, serving as a member of the alumni association for thirteen years, as president, treasurer, and on various committees of the association. "I developed strong friendships with classmates during my time at Pace. We all fostered a mutual sense of wanting to give back to Pace through our involvement, which included scholarships, outreach to minorities, and more."

Once he was admitted to the bar, Justice Suarez accepted the position of District Director of Management Services in his South Bronx school district. When the position of labor negotiator for Rockland County became available, he applied and became the first Hispanic assistant county attorney in the process. During this time, he also helped found the village of Chestnut Ridge, becoming the village attorney for the first six years of its operation and serving as the first Hispanic village attorney in the county.

With a passion for involvement in community causes, Justice Suarez was deeply involved with the Haverstraw community, helping to form: the Hispanic Coalition of Rockland County, the Alliance of Latino Leaders; and HOGAR (Home),

an organization which focused on establishing first-time home buyers. Ultimately, through HOGAR, Justice Suarez helped close for nearly 200 families, over the years. "Giving back to the Hispanic community has always been a passion and priority of mine."

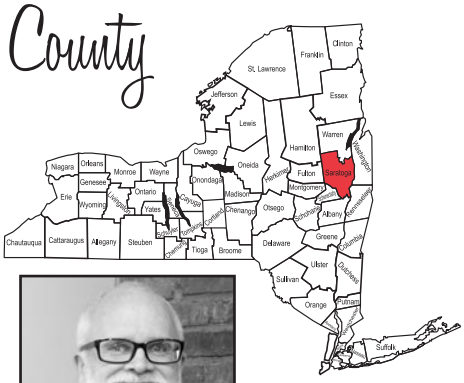
It was in 1992 when the acting village justice of Chestnut Ridge moved away that the mayor asked him to assume the position of acting village justice and he accepted- becoming the first Hispanic judge in the Hudson Valley. For the next nearly five years, Justice Suarez served in that capacity. With a need for a second justice, it was in 1997 that Justice Suarez was elected to fill that role and since then, he has been re-elected continuously. "Being on the bench was not something I foresaw all those years ago when I was pursuing different educational paths and degrees. My career and the path of my career has been circuitous and rewarding. The ability to effect change, and ensure justice is served, has been life changing. It was the honor of my lifetime to have served in that capacity."

Now that he is retired, Justice Suarez looks forward to taking the time to reflect on how he can efficiently effect positive change. "I am excited for the next chapter, connecting with friends, spending time with family, and a Havanese puppy we recently got, who takes up much of our time. I also look forward to continuing my work with the Hudson Valley Hispanic Bar Association."

NYSMA

About My County

Saratoga County



Hon. Robert Rybak (*T/Clifton Park*) shared these photos of two new beautiful murals with *The Magistrate*. "We had Shenendehowa High School students paint two murals in our courtroom to use as background for weddings (as well as to hopefully calm folks down who are in court for less happy moments)," said Judge Rybak. "The feedback we are getting is that the couples love the background as compared to a blank wall. The kids did an excellent job and other courts may want to reach out to their local schools to see if they are interested."

Send your county news and photos to nysma1@gmail.com

Decision & Order

By The Honorable Jonah Triebwasser, *Town of Red Hook*

State of New York: **County of Dutchess**
Town Court: **Town of Red Hook**

RED HOOK ALCHEMY, LLC, Petitioner

-against-

MICHAEL PATIERNO, *et al.*, Respondents.

DECISION AND ORDER

CASE # C-42-17

HON. JONAH TRIEBWASSER, J., Presiding

This matter is again before the Court for a determination as to the amount of an undertaking to be deposited with the Court to support a stay pending appeal of the Court's Order of the eviction of the respondents by its decision of July 7, 2022.

Petitioner is represented by Paul Freeman, Esq., of Freeman Howard, P.C., Hudson, New York. Respondents are represented by Oliver Budde, Esq., Harrison, New York.

Court's Analysis

Section 5519 of the Civil Practice Laws and Rules requires as follows in order for tenants to secure a stay on appeal of this Court's order of eviction:

> Stay of enforcement. (a) Stay without court order. Service upon the adverse party of a notice of appeal or an affidavit of intention to move for permission to appeal stays all proceedings to enforce the judgment or order appealed from pending the appeal or determination on the motion for permission to appeal where:
>
> 6. the appellant or moving party is in possession or control of real property which the judgment or order directs be conveyed or delivered, and *an undertaking in a sum fixed by the court of original instance* is given that the appellant or moving party will not commit or suffer to be committed any waste and that if the judgment or order appealed from, or any part of it, is affirmed, or the appeal is dismissed, *the appellant or moving party shall pay the value of the use and occupancy of such property*, or the part of it as to which the judgment or order is affirmed, from the taking of the appeal until the delivery of possession of the property; if the judgment or order directs the sale of mortgaged property and the payment of any deficiency, the undertaking shall also provide that the appellant or moving party shall pay any such deficiency; *(emphasis added)*

Clearly, this section applies to the instant matter. The questions now become: how much of an undertaking is required and how and when shall it be paid?

The Amount of the Undertaking

As no fair rental value was ever agreed upon by the landlord and tenants in the past, both sides have offered appraisals of what they each consider comparable properties to the rental property in question. Landlord's appraisal was for $5,800.00 per month, based upon what she claimed were comparable properties, all of which were outside of Red Hook, New York, the location of the subject property. Tenants submit what they contend are comparables, averaging $2,729.00 per month. Although tenants' comparables are located in Red Hook, New York, some of them were for properties smaller than the subject property.

Given these two extremes, the Court will be Solomon- like[1] and rule that the fair market rental is the average of the two appraisals, or $4,264.50.

Landlord's counsel contends that the undertaking should include amounts for the roof repair, town, county and school taxes, as well as the cost of insurance. These items are traditionally the landlord's costs of doing business and are covered by the monthly rental. Landlord has cited no authority to support including these items in the undertaking, and the Court declines to do so.

How the Undertaking Is To Be Paid

Landlord contends that the undertaking should be paid, retroactively, from the date of tenants' Notice of Appeal, July 27, 2022, and that it be extended to include the possible time that the Appellate Term will take to decide this appeal (perhaps as much as two years, or more.) Tenants contend that the undertaking should accrue from the date of the lifting of the ERAP[2] stay that tenants acquired, or May 12, 2023. Tenants cite no authority for their contention that the undertaking accrues from the lifting of the ERAP stay. It is axiomatic that the appeal was created by tenants when they filed their Notice of Appeal on July 27, 2022, and this is the appeal for which they seek the stay. Therefore, logic demands that any undertaking relate back to the date of the creation of the appeal on July 27, 2022.

For these reasons, tenants will file an undertaking with the Clerk of this Court in the amount of $51,174.00[3] by 5:00 p.m. on September 1, 2023. Said undertaking shall be by secured bond, bank check, money order or certified check and made payable to "Town of Red Hook Justice Court."

Tenants claim that they are financially unable to pay any substantial retroactive undertaking and ask that the Court require a *de minimis* undertaking. Tenants cite as authority for this proposition the New York Supreme Court case of *Genger v. Genger*, 2016 NY Slip Op 3168(U). This case does not involve a landlord tenant matter, and is not controlling authority on this Court, nor does the decision provide an analysis as to why that court granted relief based upon movant's financial condition. In addition, tenants did not provide this Court with financial records to document their alleged financial distress. Absent that controlling authority and proof, the landlord is entitled to have monies deposited with the Court to assure no further pecuniary loss due to this litigation.

As to the prospective rentals owed from the date of this decision until the Appellate Term addresses the issues on appeal, landlord seeks a lump sum undertaking to cover the expected two year delay in the Appellate Term addressing this matter. Tenants ask for a monthly sum to be deposited with the Court, rather that the much larger speculative amount sought by the landlord.

While the New York State Office of Court Administration has been very generous with the justice courts in supplying computers, software and training, a crystal ball in not in their inventory. The Court has no idea how long it will take for the Appellate Term to fully address this matter. Therefore, in complete fairness to the parties, an undertaking to cover prospective rentals of $4,264.50 per month, beginning with August of 2023, will be deposited with Clerk of this Court by 5:00 p.m. on August 15, 2023, and on the 15th of each month thereafter, until the matter is decided by the Appellate Term. Said monthly undertaking shall be by bank check, money order or certified check and made payable to "Town of Red Hook Justice Court." This monthly payment procedure is not unique and has been used before (see *A.K. Estates, Petitioner, v, 454 Central Corp, LLC, et al.*, 32 Misc.3d 1233(A) (District Court, Nassau County, 2011)).

Tenants' failure to pay the initial undertaking of $51,174.00 by 5:00 p.m. on September 1, 2023, or any monthly undertaking by 5:00 p.m. on August 15, 2023, and on the 15th of each month thereafter will cause the automatic lifting of the stay pending appeal, and the eviction can move forward immediately.

This decision also constitutes the Order of this Court.

SO ORDERED. 

Dated: Red Hook, New York
July 29, 2023

JONAH TRIEBWASSER,
Justice, Town of Red Hook

[1] The Judgement of Solomon is a story from the Hebrew Bible in which Solomon ruled between two women who both claimed to be the mother of a child. Solomon ordered the baby be cut in half, with each woman to receive one half. The first woman accepted the compromise as fair, but the second begged Solomon to give the baby to her rival, preferring the baby to live, even without her. Solomon ordered the baby given to the second woman, as her love was selfless, as opposed to the first woman's selfish disregard for the baby's actual well-being.

[2] New York's Emergency Rental Assistance Program.

[3] The monthly rental of $4,264.50 multiplied by the 12 months that have accrued since the filing of the Notice of Appeal.

Decision & Order

By The Honorable George A. Smith, *Village of Unionville*

State of New York: **County of Orange**
Village Court: **Village of Unionville**

HSM ASSOCIATES, LLC, Petitioner

-against-

SHAMEIK WASHINGTON, Respondent.

DECISION AND ORDER

Case No. 23030004

This proceeding concerns premises denoted as Apartment Number 3, 6 Main Street, Unionville, New York. On January 23, 2023, a Fourteen Day Notice was served by Petitioner upon respondent with regard to claimed unpaid rents as follows:

August 2022	$770.00
September 2022	$1100.00
October 2022	$1100.00
November 2022	$1100.00
December 2022	$1100.00
January 2023	$1100.00

This amount totals $6,270.00

There having been no response to the Fourteen Day Notice, Petitioner then duly brought on a proceeding in this Court by filing a Petition and Notice of Petition dated February 17, 2023, seeking a judgement of eviction, recovery or the premises and a monetary judgement for the amount of outstanding rent.

Subsequent to the service of the Fourteen Day Notice and subsequent to the service and filing of the Notice of Petition and Petition, it appears that the Emergency Rental Assistance Program approved a rental payment on behalf of Respondent as follows:

May 2022	$1100.00
June 2022	$1100.00
July 2022	$1100.00
August 2022	$270.00
September 2022	$500.00
October 2022	$1100.00
November 2022	$1100.00
December 2022	$1100.00

This amount totals $7,3710.00. ERAP's own records make it clear that it only paid for the months listed.

The Petition was made returnable in the Village of Unionville Justice Court on April 6, 2023 at 4 p.m. Respondent was duly served with the Petition and notified of the date. In his own subsequent communication to the Court, Respondent acknowledges being aware of the Court date, but claims to have suffered an injury preventing him from attending. Accordingly, Respondent defaulted on April 6, 2023.

Petitioner requested and, upon default, was awarded, a judgment in the amount of $4400.00. This constituted rent for January, February, March and April of 2023. As per Petitioner, this rent remained unpaid. It is clear from the records of ERAP that they made no payments on Respondent's behalf for the months of January through April of 2023. Rather, the ERAP payments paid for Respondent's back rent from May through December of 2022. A warrant of eviction was also signed on April 6, 2023.

Upon application of Respondent, the Court signed an order to show cause to stay execution of the warrant of eviction and judgment. This order to show cause was signed on May 1, 2023, and came to be heard on June 22, 2023. All parties were heard at

that time. Additionally, a letter brief was submitted on that date by Legal Services of the Hudson Valley on behalf of Respondent. Counsel for Petitioner was afforded the opportunity, if he so desired, to make a written submission, but has chosen not to do so.

This matter in now up for Decision and Order.

First, in order to vacate a default, a moving party must demonstrate a reasonable excuse and a valid defense. Starting with the first prong of the test, the Court is not convinced that Respondent has shown a reasonable excuse. Respondent claims to have been injured on April 6, 2023 and been treated at the Garnet Medical Center in Middletown for an injury to his left index finger. To substantiate this excuse, Respondent attached a one page form, which does not bear any heading or acknowledgment that it was, in fact, by Garnet Health. The entire procedure is described as "stitches." The document is purportedly signed by "Rita Grendsburg." Her title is listed as physician. Interestingly, she does not sign "M.D." after her name, which is common. Leaving aside the fact that the Court is extremely familiar with hospital and clinical discharge summaries and this document is not like the one the Court has ever seen in many, many years of practice. The more troubling fact is that a review of New York State Physicians Profiles, a New York State Department of Health website listing of doctors who practice in the state of New York, does not reveal any Rita Grendsburg listed as a physician licensed in the state of New York. Further, a search of the Garnet Medical website reveals no Dr. Grendsburg affiliated with their practice or medical center. Under the circumstances, the Court cannot help but conclude that the excuse and document used to support the purported excuse are manufactured out of whole cloth. Respondent should consider himself lucky to avoid a contempt finding and the consequences thereof.

Second, the Court is not finding a valid defense. Respondent's counsel contends that under the provisions of RPAPL 749(3) as amended in 2019, the Court must dismiss the petition. The Court does not find this argument in any way convincing. The case of *636 Apartment Associates v. Mayo*, holds that where the full amount of the rent owed is paid prior to the execution of the warrant, the warrant must be vacated. That is not our situation here. The amounts paid by ERAP, pursuant to their own records, cover the months of May through December of 2022. Those monies were paid well in advance of the existence of the judgment, which did not even exist until April 6, 2023. The judgment covered the months of January through April of 2023. The ERAP funds had nothing to do with those months. The Petition also included a request for fair value of use and occupancy from the date of January 23, 2023, until trial. However, we need not concern ourselves with this. "Rent" as defined by RPAPL 702, is the negotiated dollar amount to occupy property pursuant to a rental agreement. Respondent in his own communication to the Court as part of his order to show cause, refers to his willingness to pay "rent" for January of 2023 and further avers that he had paid "my monthly contract rent" for the months of February, March and April of 2023. So, by all definitions, we are dealing with rent. This is particularly the case since, under the changes to the RPAPL 749(3), the issuance of the warrant no longer annuls the tenancy, as it would have prior to 2019. Since the tenancy continues, so does the obligation to pay rent at the contracted rate.

Under the Housing Stability and Tenant Protection Act, if the tenant pays the full amount of the rent due to the landlord at any time before trial, it shall be accepted by the landlord and the payment would render the processing moot. Likewise, even payment at the time of trial would render the case subject to dismissal. However, even with the benefit of the ERAP payment, the months of January through April of 2023 remained allegedly due and owing as of the time of trial, April 6, 2023. Even the Respondent is referring to this as his "monthly contract rent." There is a dispute as to whether or not these amounts

Continued on page 28

Continued from page 27

for February, March and April have been paid. There seems to be an admission by Respondent that the January, 2023 rent, which is part of the petition, is unpaid (since he speaks of his willingness to pay it in his communication in support of his order to show cause). So, there was not a full payment of the rent and RPAPL 749(3) is not applicable. Even if it were, the Court would find that Respondent proceeded in bad faith as set forth in the earlier paragraphs of the decision discussing the defense for the default.

Simply put, the judgment of $4,400.00 issued in April of 2023 was in no way satisfied by the earlier ERAP payment. The ERAP payments do not cover the rent allegedly due for the first four months of 2023.

Since there appears to be a dispute as to whether or not rent was paid for February through April of 2023, and perhaps an issue as to whether or not rent was paid for January of 2023, the Court will schedule a further hearing to be held in this matter on August 3, 2023 at 4:00 pm.m. in the Village Hall of the village of Unionville, 7 Main Street, Unionville, New York 10988 for the purpose of making a determination as to whether rents for January through April of 2023 have been paid or remain outstanding. The parties should be prepared to put on testimony and produce evidence as to this issue. The warrant of eviction is reinstated but stayed to that date and the money judgment remain stayed subject to modification by the Court upon determination of the status of any unpaid rent. However, any alleged unpaid rents from May to date would need to be the subject of a new proceeding.

Dated: Unionville, New York
July 5, 2023

Hon. George A. Smith
Village Justice

Decision & Order

By The Honorable Mack Cook, *Town of Virgil*

State of New York: **County of Cortland**
Town Court: **Town of Virgil**

PEOPLE OF THE STATE OF NEW YORK

vs.

JOHN D. DOE; DOB 00/00/1986 Defendant.

DECISION AND ORDER

Findings of Fact:

The Defendant, John D. Doe, a resident of Pennsylvania was arrested by the Cortland County Sheriff's Department on July 23, 2021 for Menacing in the Second Degree and Criminal Possession of a Weapon in the Fourth Degree, both misdemeanors. The Defendant was subsequently charged in the same incident with Criminal Possession of a Weapon in the 2nd Degree, a Class C felony. It was alleged that on the evening of the date of the arrest, the Defendant was driving northbound on Interstate 81, located in the Town of Virgil, when the Defendant during an incident of road rage, did intentionally and unlawfully point a loaded Tokarev model firearm at the operator of another vehicle. The NYS Fingerprint Response Summary listed no arrests prior to this instance.

Per an agreement the Defendant pled guilty on March 22, 2022 to one count of Criminal Possession of a Weapon in the 4th degree,(PL 265.01) a Class A Misdemeanor in satisfaction of all charges. This Court accepted the plea and scheduled a sentencing date of May 25, 2022 pending receipt of a Pre-sentencing Investigation Report (PSIR).

The PSIR was completed on May 16, 2022. Per the PSIR the Defendant was a "straight A" student in high school and graduated in 2005. After graduation the Defendant enrolled in North Hampton Community College majoring in liberal arts and received an Associate Degree in 2007 whereafter he immediately enlisted in the US military on June 5th, 2007. The Defendant achieved the rank Private First Class and was the recipient of several commendations for meritorious service. The Defendant served one tour in Iraq where he sustained facial injury and nerve damage to his arm and hand. The Defendant was treated for his physical injuries and received mental health counseling at the US Military Hospital in Landstuhl, Germany. The Defendant was medically discharged on May 26, 2009.

Upon discharge the Defendant stated that he had regularly attended "check-ins" for his mental health on a monthly basis from 2009 to 2012. The Defendant conveyed that he has not sought mental health assistance since 2012. At the time of the PSIR the Defendant was receiving medical treatment for a persistent wound on his chin incurred during his tour. The Defendant is classified as disabled and receives VA disability benefits.

After the Defendant's service he enrolled in the University of South Carolina to major in German but attended only one year without completing any academic program. Between 2010 and 2018 the Defendant was employed in a successive variety of seasonal jobs.

The Defendant's PSIR reports that he is a very limited consumer of alcohol and that he denied having used illicit drugs or other illicit substance. However, the Defendant disclosed that he now uses marijuana to assist with sleep issues the Defendant attributes to Post Traumatic Stress Disorder. (PTSD)

Continued on page 30

Continued from page 29

The PSIR recommended a brief period of incarceration, bringing to the Court's attention unique issues with a sentence of probation given the defendant being an out-of-state resident.

This Court took notice of resources available to the public by the US Department of Veterans Affairs, National Center for PSTD at https://www.ptsd.va.gov/ to assist in the recognition of symptoms of PSTD among veterans. The Court has taken note of several disclosures in the PSIR to support a reasonable suspicion that the Defendant's behavior in the instance case may in some degree be attributed to PTSD stemming from his military service. Specifically, the Defendant's lack of academic success in completing a post-service college program in light of his pre-service success in high school and community college; a stellar history of military service followed by a post-service history of an array of seasonal jobs with little proof that any was related to a sustained career path; the receipt of care for mental health issues provided while in the military hospital in Germany; the Defendant's non-history of criminal behavior prior to the instance case; and his admitted use of marijuana to self-treat a sleep disorder he attributes to PTSD.

On June 7, 2022 this Court notified the People and Defense Counsel that although this Court found the Defendant's conduct to be egregious, issues attributed to his military experience might be relevant. This Court expressed concern that due to interstate issues regarding probation the Court was left with no proactive options and thus by default was left with incarceration as the only viable option. This Court also expressed concern that the Defendant was not currently seeking, of his own volition, mental health care and had not done so in the 10 years prior. This Court expressed the opinion that a period of incarceration would not effectively address any PSTD issues or motivate the Defendant to seek assistance upon release.

On June 7, 2022 this Court informed the parties that the Court would favorably view a motion by the Defense for a 60 day postponement in sentencing upon the condition that the Defendant seek the assistance of the VA or other qualified provider, commence all prescribed course(s) of action, and regularly report progress to the Court. On June 21, 2022, the Defense made such motion to which the People did not object.

The Court received notice on October 24, 2022 from the Department of Veterans Affairs Wilkes-Barre Medical Center that the Defendant commenced attending scheduled sessions on August 5, 2022 and attended all seven subsequently scheduled sessions. The notice outlined the parameters of the mental health protocol being followed and reported positive progress.

On October 14, 2022 the Court provided notice to the People and Defense Counsel that it remained the opinion of the Court that the serious nature of Defendant's behavior was of concern but that longer-term societal interests and the Defendant's rehabilitation would be better served in a mental and emotional health environment rather than incarceration. The Court *sua sponte* deferred sentencing till March 23, 2023, again on the condition that the Defendant pursue a course of treatment and the Court be notified of his progress. Neither the People nor the Defense objected.

The Court has received positive reports from the VA facility on December 22, 2022 and February 24, 2023. The February report also included the Defendant's scheduled sessions through May 12, 2023. The Court again notified all parties that it was deferring sentencing until June 27, 2023. Neither the People nor Defense objected.

Conclusions of Law

This case has caused this Court to balance its obligation to impose a sentence that reflects the seriousness of the offense; promote respect for the law; provide just punishment for the offense; adequately deter criminal conduct; protect the public from further crimes by the defendant; and preserve the safety and security of society, with the rehabilitative aim of Penal Law 65.10.

In so doing this Court has reviewed the judicial application of PL 65.10 starting with the Court of Appeals' holding in *People v Letterlough*, 86 N.Y. 2nd 259 (N.Y. 1995}, 631 N.Y.S. 2d 105. 655 N.E.2d 146. In *Letterlough* the Court quoted *Laface and Scott Substantive Criminal Law* Section 1.5 that "the utility of rehabilitation as a vehicle for preventing criminal behavior rests upon the belief that human behavior is the product of antecedent causes, that these causes can be identified, and that on this basis therapeutic measures can be employed to effect changes in the behavior of the person treated". Id.at 33

While the Letterlough case involved alcoholism, the Court of Appeals' decision has been cited and followed in nearly 80 subsequent cases involving the gambit of medical and psychological issues prevalent in modern society. Specifically, in *People v C.D.B.*, 2022 NY Slip Op 22152 Decided on April 5, 2022 Criminal Court of the City Of New York, Kings County Perlmutter, J., the Court addressed PSTD as the contributing factor in the defendant's unlawful behavior. In fashioning a Conditional Discharge that included the Defendant's continuance with mental health treatment during the next year at a level deemed appropriate by his treatment providers, Judge Perimutter opined that courts "are obligated to assist individuals on the path to recovery … and that path is rarely straight or without obstacles".[i] As in the case involving Mr. Doe, Judge Perimutter took note that the Defendant C.D.B. had no prior history of criminal behavior and that C.D.B had voluntary set upon a course of medical treatment.

However, unlike Mr. Doe, Defendant C.B.D "expressed deep remorse for his participation in the offenses, and now, after undergoing treatment, recognizes the connection between his alcoholism and previously untreated trauma …and furthermore continually accepted responsibility for his actions." Of concern to this Court in the instant case is Mr. Doe's statement contained in the Presentencing Report that he "felt the other driver should have been arrested as well for their behavior". (PSIR of 05/16/22 Page 6) In *People v Kerringe*r, 195 AD3d 861, 863 (2d Dept. 2021) the Court held that expressions of remorse and acceptance of responsibility can be mitigating factors in sentencing. It is of significant weight to this Court that Mr. Doe's opinion has changed and he now accepts full responsibility for the incident his actions created.

Order of the Court

Pursuant to Section 65.01 and 95.10 of the NYS Penal Law, this Court places the Defendant, John D. Doe on a conditional discharge for a period of one year starting on June 27, 2023.

The Court imposes the following conditions upon the Defendant.

A. General Conditions
- B. Refrain from frequent unlawful or disreputable places or consorting with disreputable persons;
- C. Work faithfully at a suitable employment of faithfully pursue a course or study or vocational training;
- D. Support his dependents and meet other family responsibilities.

E. Special Conditions
- F. Faithfully and consistently adhere to any and all course(s) of treatment as prescribed by a mental health provider(s);
- G. Provide to Court on a quarterly basis a report from the attending mental health provider of attendance at scheduled sessions;
- H. Refrain from having any firearms readily assessable while operating a motor vehicle within the state of New York;
- I. The Defendant will provide the Cortland County Sheriff's Department and State of New York with a sample of his DNA.

In its discretion, this Court may modify or enlarge any of all of the above conditions

_____

Dated, June 27, 2023
Judge Mack Cook, Town of Virgil NY

Acknowledgment

I have read the above conditions imposed and I thoroughly understand the conditions imposed. I acknowledge that I have received a copy of this order and conditions imposed upon me.
Dated, June 27, 2023

_____

John D. Doe, Defendant

[i] Judge Perimutter's Order of Conditional Discharge did provide for a 15 day incarceration period should the defendant fail to adhere to the terms and conditions of his order.

Decision & Order

By The Honorable Barbara Seelbach, *Town of Clinton*

State of New York: **County of Dutchess**
Town Court: **Town of Clinton**

DANA M. PAGANO, Plaintiff

vs.

CORIE GREICO, Defendant.

DECISION AND ORDER

Docket Number: 2304003

SEELBACH, J.

Dana Pagano ("Claimant") commenced this small claims action to recover damages after she had purchased a boxer puppy with boxer breeder, Corie Greico ("Defendant"). Claimant alleges the Defendant sold her an unhealthy puppy and seeks monetary damages for veterinary care in the amount of $3,000.

The court has considered the testimony of Claimant and Defendant and has also read and considered the following documents in making its determination:[1]

- Companion Pet Hospital of Carmel veterinary records dated August 30, 2022 – April 1, 2023
- Correspondence from Dana M. Pagano to Corie Grieco
- Veterinary records from Hudson Valley Cardiology, LLC dated March 20, 2023
- Veterinary records from Family Veterinary Care of Ossining dated March 20, 2023
- Veterinary Certification Form from Dutchess County Animal Hospital date August 11, 2022
- Information Statement for Purchaser dated August 28, 2022
- Sale of Dogs and Cats Notice
- "Rumors of luv Boxers" Bill of Sale and Guarantee and Disclosure of Animal Pedigree Registration dated August 28, 2022

This matter was scheduled for trial on May 22, 2023. Plaintiff and Defendant appeared and were duly sworn. The parties were advised of their right to appear with counsel and an adjournment of the matter if they wished to secure counsel. Claimant advised that she spoke with an attorney and wished to proceed without counsel. Defendant declined attorney representation.

The facts are largely undisputed. Claimant testified that she purchased a boxer puppy from Defendant on August 28, 2022. Claimant submitted a copy of the bill of sale and guarantee which states, "…I, the seller recommend the buyer to have the puppy examined by a licensed Veterinarian within 5 business days from date Buyer assumes custody of Puppy." In compliance with the terms of the bill of sale and guarantee, on August 30, 2022, Claimant scheduled a preliminary care appointment with Companion Pet Hospital of Carmel. The veterinary records reveal that upon examination, a soft heart murmur was found. No other defects were noted. Claimant testified that the veterinarian stated heart murmurs are somewhat common in puppies. The veterinarian also stated that the murmur could recede with age. In accordance with the contract, Claimant contacted the Defendant and advised her of the diagnosis.

Claimant continued to care for the puppy. She appeared at each regularly scheduled veterinary visit. On December 14, 2022, an examination of the puppy revealed a grade 2/6 heart murmur. The veterinarian advised Claimant to have the murmur re-checked when the puppy reached six months of age. However, prior to reaching that milestone, Claimant sought a second opinion. On March 20, 2023, she took the puppy to Family Veterinary Care of Ossining where

[1] Plaintiff submitted copies of text messages between the parties, which were not considered. In any event, even if considered, the court's determination would be the same.

an examination and echocardiogram confirmed the diagnosis. The echocardiogram report demonstrated a heart murmur and a "congenital lesion with malformation of the pulmonic valve leaflets." The veterinarian's notes further indicate that the condition may be progressive up until the dog reaches the age of maturity, which would be around 2-3 years of age.

Defendant testified that she has been a well-respected boxer breeder for eighteen years. She submitted the contract signed by the parties which indicates that the puppy was in good health. As proof, Defendant submitted a checklist from her veterinary office, Dutchess County Animal Hospital, dated August 11, 2022. The checklist from the Defendant's veterinarian (whose name is illegible) certifies the puppy was in good health. The checklist did not reveal any medical issues. The checklist was not supplemented by an examination report. Defendant also testified that, in accordance with the sale notice, she is entitled to a second opinion in regard to the puppy's diagnosis and treatment. Defendant did not offer any evidence to dispute the medical condition of the puppy or other facts submitted by Claimant.

The proof submitted by the Claimant includes detailed veterinary records demonstrating the presence of a heart murmur in the puppy. Claimant also submitted a second veterinarian's opinion along with an echocardiogram report confirming the diagnosis.

Defendant submitted the Sale of Dogs and Cat Notice as proof of her entitlement to her own veterinary opinion in accordance with General Business Law Article 35-D. Although she was advised of the dog's diagnosis in a timely fashion, the Defendant did not exercise her right to a veterinary examination prior to the commencement of this action.

Under UCC 2-105, a dog falls into the definition of "goods" while a dog breeder falls into the definition of a "merchant" pursuant to UCC 2-104 (1). Thus, the theory of breach of the implied warranty of merchantability is applicable. *See Badillo v Bob's Tropical Pet Ctr., Inc.*, *40 Misc 3d 137[A], 2013 NY Slip Op 51386[U] [App Term, 2d Dept., 2d, 11th & 13th Jud. Dists. 2013]; Rossi v Puppy Boutique* , 20 Misc 3d 132 [A], 2008 NY Slip Op 51449[U] [App Term, 2d Dept., 2d & 11th Jud. Dists. 2008]; *Saxton v Pets Warehouse, 180 Misc 2d 377, 691 N.Y.S. 2d 872 [App Term, 2d Dept. 1999]*.

Both the Claimant and Defendant testified credibly and essentially did not contradict each other. Claimant is clearly a responsible and thoughtful dog owner. By the same token, Defendant is a well-respected and responsible breeder.

The court finds that the evidence presented at trial establishes that the Defendant sold the Claimant a puppy with a congenital condition. Although undetected by the Defendant's veterinarian, the evidence supports that the condition must have been in existence at the time of sale since it was detected a mere two days after the purchase of the puppy. (*See Appell v Rodriguez*, 14 Misc 3d 131[A], 2007 NY Slip Op 50051[U] [App Term, 2nd, 9th and 10th Jud. Dist. 2007]).

Claimant's submissions establish that she incurred $1,023.00 in veterinary expenses relative to the care and treatment of the puppy's congenital defect. Claimant seeks future veterinary expenses. However, any award for future expenses would be speculative. Hence, the court finds that Claimant is entitled to recover damages for certain veterinary expenses incurred under the breach of the implied warranty of merchantability pursuant to UCC 2-314. As such, claimant is entitled to recover damages (*see Budd v Quinlan*, 19 Misc 3d 66, 68, 860 N.Y.S.2d 802 [App Term, 9th & 10th Jud. Dists. 2008]; *see also Sacco v Tate*, 175 Misc 2d 901, 672 N.Y.S. 2d 618 [App Term 2 nd , 9 th and 10 th Jud. Dists.1998]) ; *Lombardo v Empire Puppies*, 50 Misc 3d 143[A], 36 N.Y.S.3d 48, 2016 NY Slip Op 50218[U] [App Term, 2nd, 11th and 13th Jud. Dists. 2016]).

Based on the foregoing, the court finds the Defendant is liable to Claimant and it is hereby ORDERED that damages are awarded to Claimant and against Defendant in the amount of $1,023.00 for veterinary expenses incurred.

This constitutes the Decision and Order of the court.
Dated: June 8, 2023

Barbara Seelbach
Clinton Town Justice

Index NYS Magistrate Magazine Decisions, Orders and Case Law Updates by Hon. Mack Cook (*T/Vigil*)

SUMMER 2023 through Fall 2010

Sp–Spring
Su–Summer
Fa–Fall
Wi–Winter

GENERAL TOPIC	LEGAL ISSUE	EDITION (s)
RESTITUTION		
	• Evidence to Support Order	Sp-13
SEARCH WARRANT		
	• Validity	Su-23
SMALL CLAIMS		
	• Condominium Assessments	Wi-18
	• Parents' Liability for Act of Minor Children	Sp-11
	• Post Judgment Information Subpoena	Su-22
	• Real Estate Sale Disclosure Form	Sp-21
	• Implied and Express Warranties in Online Sales	Sp-23
	• Standing to Bring an Action Where Administrative Remedy Exists	Su-23
	• Treble Damages	Su-22
	• Unpaid Municipal Fees	Wi-17
SUMMARY PROCEEDING		
	• Attorney Fees -Residential Lease	Sp-23
	• ERAP Eligibility	Fa-22
	• ERAP Stay	Fa-22 Sp-23
	• Jurisdiction to Hear a Non-Payment Proceeding where a Holdover Proceeding Exists	Sp-17
	• Non-Payment Eviction	Sp-16
	• Objectionable Tenant	Fa-12
	• Statute of Frauds	Sp-23
	• Stayed Pending Outcome of a Prior Action	Sp-19
	• Strict Compliance with Statutory Requirements	Fa-11
	• Tenancy Defined	Fa-21
	• Tenant of a Life Tenant	Wi-16
	• Termination of lease	Sp-20

GENERAL TOPIC	LEGAL ISSUE	EDITION (s)
TRAFFIC STOP		
	• Probable Cause	
	• Database Information-Sufficiency of	Su-23
	• Expectation of Privacy – License Plates	Wi-22 Wi-17
	• Miranda Warning	Su-22
	• Objective Reasonable Belief	Wi-22, Su-22, Wi-20, Su-19, Fa-18, Sp-18, Fa-16, Sp-15, Su-23
	• Reasonable Suspicion, Case Law Update	Wi-21 Wi-17 Su-23
	• "Similarity Hits"	Su-23
	• Temporary Roadside Detention	Su-22
	• When Exists	Wi-22, Su-22
WILLFUL and PERSISTENCE		
	• Clear and Convincing Evidence	Su-20
	• Requirement to Set Bail	Su-23
	• "Persistent" defined	Su-20 Sp-23
	• "Willful" defined	Su-20 Su-23
VTL		
	• Lane Change	Sp-17
	• Texting	Fa-12

Departed Members

Whereas, again Almighty God has called from our midst a number of treasured associates, and, bowing in humble obedience to his will, we pause to remember the following magistrates who have passed away.

We remember them as fond friends, loyal servants, and staunch exponents of democracy and our judicial system. We enjoyed their friendship and helpful contributions in our work as magistrates, in business, and in social hours.

Their memory is revered and their virtues are recalled.

Now, be it resolved, that a copy of this resolution be included in the minutes and records of this association; that copies be available to survivors; that a copy be spread in the publication of this association; that the sincere sympathy of the officers and members of the New York State Magistrates Association be expressed.

Name	Title & Location	County
Hon. Judith C. Durkin (Ret.)	TJ/Indian Lake	Hamilton County
Hon. Monroe Bishop (Ret.)	TJ/Hinsdale	Cattaraugus County
Hon. Herbert W. Buckley (Act.)	VJ/TJ/ Hancock TJ/Deposit	Delaware County
Hon. Lawrence E. Cabana (Act.)	TJ/Peru	Clinton County
Hon. Sherry L Derouin (Ret.)	TJ/Houndsfield	Jefferson County
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Hon. Fredric Stapleton (Act.)	TJ/Windsor	Broome County

The Jumbled Judge

By The Honorable Kenneth Ohi Johnsen

Solve the anagrams to reveal the letters for the final message

Take the letters that appear in the numbered boxes and unscramble them for the final message.

(answers on page **16**)

WHO ARE THESE NYSMA PEOPLE?

Why did the Judge find the Mona Lisa innocent of all charges?

1 CEXTEVUIE (7) RIRDETOC (21) AJATN (2) ORSIAG (22)

2 3 DR ICVE (19) SDIPREENT (4) VIADD YZRKOA

3 2 DN CVEI (1) TEENPISDR (11) UNSAS (10) LISUVNAL (6 12)

CSGLIBAIE

4 1 ST ECIV DRETSIPNE (17 14) ASHTMO (15 9 23 3) RESENAH

5 EPEDSNIRT (25) CTELE (18) NKEEHTN (13) IOH (5) OENJSHN (20)

6 RDTNSPEEI (24 8) NIDSNE GYNUO

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1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	6	18	19	20	21	22	23	24	25

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Mugs

Additional items such as robes, badges, lanyards and more to be added, so check back often!

NEW YORK STATE MAGISTRATES ASSOCIATION
163 Delaware Avenue, Suite 108
Delmar, New York 12054