

STATE OF NEW YORK
COMMISSION ON JUDICIAL CONDUCT

In the Matter of the Proceeding
Pursuant to Section 44, subdivision 4,
of the Judiciary Law in Relation to

WILLIAM A. CARTER,

a Judge of the County Court,
Albany County.

**AGREED
STATEMENT OF FACTS**

Subject to the approval of the Commission on Judicial Conduct

(“Commission”):

IT IS HEREBY STIPULATED AND AGREED by and between Robert H. Tembeckjian, Administrator and Counsel to the Commission, and Honorable Name of Judge (“Respondent”), who is represented in this proceeding by Stephen F. Downs, Esq., that further proceedings are waived and that the Commission shall make its determination upon the following facts, which shall constitute the entire record in lieu of a hearing.

1. Respondent was admitted to the practice of law in New York in 1992. He has been a Judge of the County Court, Albany County, since January 2017, having previously served as a Judge of the Albany City Court, Albany County, from 2002 to 2016. Respondent’s current term expires on December 31, 2026.

2. Respondent was served with a Formal Written Complaint dated December 17, 2019. He filed a Verified Answer dated January 17, 2020.

As to Charge I

3. In January 2018, (A) Respondent initiated, engaged in and considered an *ex parte* communication with an Albany County Deputy Sheriff concerning a policy and practice of the county jail that pertained to the merits of a motion then pending before him in *People v Richard Quinn*, in which the defendant was charged with murder in the second degree, and (B) Respondent failed to disclose the communication to the defense or prosecution.

Specifications to Charge I

4. The murder trial in *People v Richard Quinn* was scheduled to begin before Respondent on Tuesday, January 16, 2018. On January 10, 2018, the defendant's attorney, Angela Kelley, made a motion *in limine* to preclude certain material from admission into evidence, including certain telephone calls the defendant made from – and that were recorded by – the Albany County Correctional Facility, where he was incarcerated pending trial. A copy of the motion papers is attached as Exhibit A. The defense motion was based on an equal protection argument that the defendant was disadvantaged because of his incarcerated status and could not therefore speak freely with friends or relatives regarding his defense in the way an unincarcerated defendant could. Respondent's concern, however, was whether inmate-defendants were given sufficient notice by the correctional facility that their calls were being monitored, consistent with Court of Appeals precedent.

5. Respondent or his court attorney scheduled oral argument on the motion for the afternoon of Friday, January 12, 2018. A fact-finding hearing was to be held in the

event the motion could not be resolved after oral argument. The prosecution intended to call Lt. Ronald M. Murray as a witness should the matter proceed to a hearing, although Respondent was not informed of this.

6. On January 11, 2018, after reading the defendant's motion papers, Respondent telephoned the Albany County Correctional Facility and spoke with Lt. Murray. No one else was on the telephone call. Respondent told Lt. Murray that he had some questions pertaining to a trial scheduled to start the following Tuesday. Respondent asked Lt. Murray about how the inmate calling system operated, and specifically about how inmates are notified that their phone calls are being monitored. Lt. Murray informed Respondent that the Inmate Rulebook and a pre-recorded message advise inmates that their conversations are recorded prior to each phone call. Lt. Murray then played the pre-recorded message for Respondent.

7. On January 11, 2018, the prosecution filed a response to the defense motion, a copy of which is annexed as Exhibit B.

8. On January 12, 2018, the defense attorney filed a Supplemental Affirmation in support of the motion *in limine*, a copy of which is annexed as Exhibit C.

9. On January 12, 2018, Respondent held oral argument on the defense motion and denied it on the submitted papers when no party requested a hearing. The transcript of the argument is annexed as Exhibit D.

10. Respondent considered the information provided to him by Lt. Murray in deciding the motion.

11. At the defendant's trial, Respondent admitted into evidence certain of the defendant's recorded phone conversations, over the objection of the defense. The jury convicted the defendant of murder in the second degree.

12. On March 8, 2018, Ms. Kelley made a motion pursuant to Criminal Procedure Law §330.30 for an order setting aside the jury verdict, based in part on the argument that the People's receipt and use of the defendant's recorded jail telephone calls as evidence was improper. On March 13, 2018, Respondent denied the motion.

13. On April 9, 2018, Respondent sentenced Mr. Quinn to 25 years to life in prison.

14. Respondent never disclosed his *ex parte* communication with Lt. Murray to the prosecution or defense counsel.

15. By reason of the foregoing, Respondent should be disciplined for cause, pursuant to Article 6, Section 22, subdivision (a), of the Constitution and Section 44, subdivision 1, of the Judiciary Law, in that Respondent failed to uphold the integrity and independence of the judiciary by failing to maintain high standards of conduct so that the integrity and independence of the judiciary would be preserved, in violation of Section 100.1 of the Rules; failed to avoid impropriety and the appearance of impropriety, in that he failed to respect and comply with the law and failed to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary, in violation of Section 100.2(A) of the Rules; and failed to perform the duties of judicial office impartially and diligently, in that he failed to accord to every person who has a legal interest in the proceeding, or that person's lawyer, the right to be heard according to law, and initiated,

permitted and considered an *ex parte* communication concerning a pending proceeding, in violation of Section 100.3(B)(6) of the Rules.

As to Charge II

16. From in or about March 2017 to in or about September 2019, Respondent failed to diligently discharge his administrative responsibilities, in that he failed to report to his administrative judge on his Quarter Annual Reports of Pending Cases, as required, numerous cases that were pending longer than 60 days without decision.

Specifications to Charge II

17. Section 4.1(a) of the Rules of the Chief Judge requires that, in such form or times as required by the Chief Administrative Judge, a judge must report on matters pending undecided before him or her for 60 days after final submission. Such forms are required to be filed quarter annually.

18. Respondent delegated the preparation and filing of his quarterly reports of undecided cases to his secretary and failed to review the reports prior to his secretary's submission of the reports.

19. From April 21, 2017, to September 10, 2019, Respondent failed to report on his quarterly reports that for each period, he had several cases pending decision longer than 60 days. Instead, each such report erroneously stated that Respondent had "no civil or criminal motions, proceedings, actions or matters of any kind pending undecided for more than 60 days after final submission."

20. On September 10, 2019, Respondent amended his reports as a result of the Commission's inquiry. Copies of his amended reports are annexed as Exhibit E.

21. By reason of the foregoing, Respondent should be disciplined for cause, pursuant to Article 6, Section 22, subdivision (a), of the Constitution and Section 44, subdivision 1, of the Judiciary Law, in that Respondent failed to uphold the integrity and independence of the judiciary by failing to maintain high standards of conduct so that the integrity and independence of the judiciary would be preserved, in violation of Section 100.1 of the Rules; failed to avoid impropriety and the appearance of impropriety, in that he failed to respect and comply with the law and failed to act in a manner that promotes public confidence in the integrity and impartiality of the judiciary, in violation of Section 100.2(A) of the Rules; and failed to perform the duties of judicial office impartially and diligently, in that he failed to diligently discharge his administrative responsibilities and maintain professional competence in judicial administration, in violation of Section 100.3(C)(1) of the Rules, and failed to require staff subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge, in violation of Section 100.3(C)(2) of the Rules.

Additional Factors

22. Respondent has been cooperative and contrite with the Commission throughout this inquiry.

Regarding the Ex Parte Phone Call to the Jail

23. As to his *ex parte* telephone conversation with Lt. Murray regarding the correctional facility's practices as to inmate telephone calls, Respondent avers that he called the correctional facility in preparation for the oral argument, to get a description of the procedures routinely used at the correctional facility as to inmate phone calls, and not

as to defendant Quinn in particular. He and Lt. Murray did not discuss the defendant or his case. Respondent avers that at the time of his conversation, he did not consider it to be an improper *ex parte* contact, but after reading the complaint he recognized that he was wrong. Respondent further avers that while he considered the information provided to him by Lt. Murray when rendering his decision on the motion, it confirmed the same information provided to him by the prosecution and the defense attorney, both of whom had spoken to Lt. Murray before the oral argument on the motion and appeared to agree with Lt. Murray's description of the procedures at the Albany County Correctional Facility for handling inmate phone calls.

Regarding the Inaccurate Reports

24. As to his failure to file accurate reports of pending cases, Respondent had a total of 16 cases with undecided motions or appeals that should have been reported. Of the 16, four were inherited from a prior judge and were already pending when Respondent began his term in County Court. The remaining 12 originated with Respondent. None of the delays in rendering decision were excessive. All of the matters Respondent initially failed to report were post-conviction motions or appeals, which his secretary and law clerk mistakenly believed were not reportable.

Regarding the Appropriate Sanction

25. The Administrator notes that, under the circumstances, if the failure to report 16 pending matters were the only charge against Respondent, he would have recommended a confidential caution as the disposition.

26. The Administrator notes that he regards the *ex parte* communication and the failure to report it as publicly disciplinable, and that he would have recommended a public Admonition but for Respondent’s disciplinary history. The Administrator notes that, had this matter proceeded to a hearing before a Referee, and then argument before the Commission, he would have cited Respondent’s prior disciplinary history pursuant to Commission Policy 3.8¹ – a public Censure and two private cautions – in arguing for public Censure here.

27. The Administrator notes that the Court of Appeals has held (A) that prior cautions may be considered in determining sanction in subsequent Commission proceedings, *Matter of Cerbone*, 2 NY3d 479 (2004), and (B) that a prior censure is “noteworthy regardless of whether it was related to the instant misconduct.” *Matter of Doyle*, 23 NY3d, 656, 662 (2014).

28. Respondent’s disciplinary history is as follows.

- A. Respondent was privately cautioned by the Commission in 2004 for failing to disqualify himself in arraignments of unrepresented defendants, notwithstanding that the complaining witness and alleged victim was his co-judge.
- B. Respondent was privately cautioned again in 2012 for appearing as a guest of honor at a fundraising event for a civic organization.
- C. Respondent was publicly censured by the Commission in 2006 for, *inter alia*, coming off the bench and physically confronting a defendant appearing in his courtroom.

¹ Available at <http://cjc.ny.gov/Legal.Authorities/NYSCJC.PolicyManual.Dec2017.pdf>.

IT IS FURTHER STIPULATED AND AGREED that Respondent withdraws from his Answer any denials or defenses inconsistent with this Agreed Statement of Facts.

IT IS FURTHER STIPULATED AND AGREED that the parties to this Agreed Statement of Facts respectfully recommend to the Commission that the appropriate sanction is public Censure based upon the judicial misconduct set forth above.

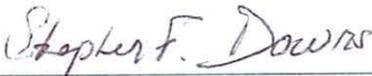
IT IS FURTHER STIPULATED AND AGREED that if the Commission accepts this Agreed Statement of Facts, the parties waive oral argument and waive further submissions to the Commission as to the issues of misconduct and sanction, and that the Commission shall thereupon impose a public Censure without further submission of the parties, based solely upon this Agreed Statement. If the Commission rejects this Agreed Statement of Facts, the matter shall proceed to a hearing and the statements made herein shall not be used by the Commission, the Respondent or the Administrator and Counsel to the Commission.

Dated: 3/2/2020



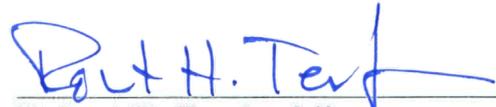
Honorable William A. Carter
Respondent

Dated: 3/2/20



Stephen F. Downs, Esq.
Attorney for Respondent

Dated: March 2, 2020



Robert H. Tembeckjian

Administrator & Counsel to the Commission
(Cathleen S. Cenci, Of Counsel)

EXHIBIT A

STATE OF NEW YORK
COUNTY COURT

COUNTY OF ALBANY

THE PEOPLE OF THE STATE OF NEW YORK,

-against-

**NOTICE OF MOTION IN
LIMINE**

Indictment No.:4-8376
Hon. William A. Carter

RICHARD QUINN,

Defendant.

SIRS:

PLEASE TAKE NOTICE, that upon the annexed Affirmation of Angela Kelley, Esq., Assistant Public Defender of the County of Albany and attorney for the defendant herein and any attached exhibits, a motion will be made at a Special Term to be held January 12, 2018 at 9:00 AM, or as soon thereafter as counsel may be heard for an Order granting the following relief:

1. An Order precluding the People from introducing any of defendant's phone calls from the jail on the grounds that the People's access to and use of same is in violation of the defendant's New York State and Federal Constitutional rights.
2. Granting such other and further relief as this Court seems just and proper.

DATED: January 10, 2018
Albany, New York

Yours, etc,

STEPHEN W. HERRICK
ALBANY COUNTY PUBLIC DEFENDER
ANGELA KELLEY, ESQ., of Counsel
60 South Pearl Street
Albany, New York 12207
Telephone: [REDACTED] 7150

TO: HON. P. DAVID SOARES
ALBANY COUNTY DISTRICT ATTORNEY

Eric Galarneau, Esq.
Albany County Courthouse
Albany, New York 12207
Telephone: [REDACTED] 5460

STATE OF NEW YORK
COUNTY COURT

COUNTY OF ALBANY

THE PEOPLE OF THE STATE OF NEW YORK,

-against-

**AFFIRMATION IN
SUPPORT OF
MOTION IN LIMINE**

Indictment No.:4-8376
Hon. William A. Carter

RICHARD QUINN,
Defendant.

STATE OF NEW YORK)
) ss.
COUNTY OF ALBANY)

Angela Kelley, Esq., under penalties of perjury states as follows:

1. I am an attorney duly admitted to practice law in the Courts of the State of New York and am an Assistant Public Defender for the Albany County Public Defender’s Office which has been assigned to represent Defendant in the above-captioned proceeding. As such, I am fully familiar with the facts and circumstances surrounding this application.

2. The Defendant herein stands charged with one count of Murder in the Second Degree, a class A-I felony, in violation of section 125.25(1) of the Penal Law of the State of New York.

3. The instant Affirmation is made in support of the within Notice of Motion in Limine and is based partially upon information and belief, the source of my information and grounds for my belief as to all of the matters set forth herein upon information and belief are the papers and documents involved in this case, including the Indictment and all sworn depositions and witness statements, my personal conversations with the Prosecutor, my personal conversations with Defendant, and the information which has been obtained from my own personal investigation

into the facts and circumstances involved herein, together with the investigation into the facts and circumstances conducted by my office.

**THE PEOPLE SHOULD BE PRECLUDED FROM USING DEFENDANT'S JAIL
PHONE CALLS AT TRIAL ON THE GROUNDS THAT SUCH USE VIOLATES THE
DEFENDANT'S STATE AND FEDERAL CONSTITUTIONAL RIGHTS**

4. Section one of the Fourteenth Amendment to the United States Constitution provides that “[n]o State shall make or enforce any law which shall deny to any person within its jurisdiction the equal protection of the laws.” The equal protection clause protects against “intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents.” Village of Willowbrook, et al. v. Grace Olech, 528 U.S. 562, 564 (2000).

5. Article 1, section 11 of the New York State Constitution provides New York citizens with an equivalent constitutional safeguard. Hernandez v. Robles, 7 N.Y.3d 338, 362, (2006).

6. Claimed violations of equal protection are evaluated under either a “strict scrutiny” or “rational basis” analysis. Where governmental action disadvantages a suspect class or *burdens a fundamental right*, the conduct must be strictly scrutinized and will be upheld only if the government can establish a compelling justification for the action. See, Regents of the Univer. of Cal. v. Bakke, 438 U.S. 265, 299–300 (1978); San Antonio Ind. Sch. Dist. v. Rodriguez, 411 U.S. 1, 16–17, (1973).

7. Where a suspect class or a fundamental right is not implicated, the action need only be rationally related to a legitimate governmental purpose. See, Massachusetts Bd. of Retirement v. Murgia, 427 U.S. 307, 312 (1976).

8. The constitutional guarantee to due process of law provides criminal defendants with “the fundamental right to a fair trial.” People v. Henriquez, 3 N.Y.3d 210, 214 (2004); Strickland v. Washington, 466 U.S. 668, 684 (1984). The right to a fair trial is a fundamental right. See, Id.; People v. Crimmins, 36 N.Y.2d 230, 237 (1975). The defendant’s right to a fair trial will be significantly impacted due to the prosecution’s unfettered access to his communications to

family and friends while being detained as a pre-trial suspect in this case. Therefore, the conduct of the government must be strictly scrutinized and will be upheld only if the government can establish a compelling justification for the action. See, Regents of the Univer. of Cal. v. Bakke, 438 U.S. 265, 299–300 (1978); San Antonio Ind. Sch. Dist. v. Rodriguez, 411 U.S. 1, 16–17, (1973).

9. The current arrangement between the Albany County Jail and the District Attorney's office wherein the District Attorney's office has direct and unregulated access to all of an inmate's non-privileged telephone communications undermines the constitutional rights of defendants who are financially unable to make bail. See, People v. Johnson, 27 N.Y.3d 199, 208 (2016)(Pigott, J. concurring). The District Attorney's office's unfettered access to these calls can "skew[] the fairness of the entire system," thereby depriving a defendant of his constitutional right to due process of law and a fair trial. See, Id. at 211.

10. Although the jail has a legitimate interest in maintaining the safety and security of its facility, "[t]he [jail's] purpose in recording and monitoring these conversations is limited to ensuring the safety and security of its facilities, not harvesting evidence for the prosecution." Johnson, 27 N.Y.3d at 209 (Pigott, J. concurring).

11. Often, the People justify this practice on the basis of consent because the inmate is warned that the call may be recorded and monitored and thus has no expectation of privacy. However, there is "a major distinction between prison authorities having access to prisoners' phone calls for purposes of prison security and discipline, and the prosecutors of that pretrial prisoner having the same access for purposes of gaining advance knowledge of the pretrial prisoner's trial strategy and potential witnesses." Johnson, 27 N.Y.3d at 209 (Pigott, J. concurring), quoting United States v. Mitani, 2009 WL 3081727, *4 (E.D.Pa. 2009).

12. The defendant contends in this case that given the lack of any alternatives for communication given his financial inability to post bail, he has not consented to the prosecution's use of his communications. Importantly, the notification on the jail calls states only that the call is "subject to monitoring and recording." It says nothing with respect to "any statements can be used against you in a court of law," or "calls are subject to review and use by

the District Attorney's Office." Inmates cannot be deemed to have consented to the District Attorney's review and use of these calls when they have not been told that is what they are consenting to.

13. "Pretrial detainees like defendant are presumed innocent until proved guilty. Because they have not yet been convicted of a crime, the State's only legitimate purpose for detaining them is to assure their presence at trial, and their liberty may not be restrained more than necessary to accomplish that result." Johnson, 27 N.Y.3d at 209 (Pigott, J. concurring). The prosecution's unlimited access to their conversations with friends and family places a significant further restraint on defendants that is not in any way related to assuring their presence at trial.

14. Generally, the only difference between a detained pretrial suspect and a pretrial suspect at liberty is that one can afford to post bail, and one cannot. See generally, Id. Thus, the government has free and unfettered access to a pretrial suspect's communications based solely on his lack of economic resources, whereas a wealthy pre-trial suspect has no fear of such governmental intrusion in the absence of a warrant issued upon probable cause. See generally, CPL §700.15. The result is an arbitrary discrimination against indigent pretrial suspects, which violates the equal protection clause of the New York State and Federal Constitutions.

15. A detained suspect is already at a disadvantage in that he is not in a position to take the same steps and make the same preparations, such as gathering evidence or contacting witnesses, that a suspect at liberty is capable of undertaking. See, Id. at 210. To then further disadvantage that detained suspect by subjecting any and all telephone calls to family or potential witnesses to review of the prosecutor is fundamentally unfair. See, Id. To subject only indigent people to this further disadvantage is violative of his right to due process and his right to equal protection under the law.

16. The solution of telling every detained inmate to essentially refrain from talking to anyone other than an attorney about anything related to the case unless the inmate wants the prosecutor to know about it is not a viable option that would enable a defendant adequately to prepare a defense without knowledge of the prosecutors. Id. at 211; Mitan, 2009 WL 3081727, *3.

17. In the present case, the Albany County District Attorney's office had complete and unfettered access to the defendant's jail calls. Through these phone calls, the District Attorney's Office is privy to a plethora of information they would not have had access to but for the defendant's financial inability to post bail.

18. Moreover, to the extent the People garnered information relating to trial strategy or defense witnesses, a violation of defendant's Sixth Amendment right to counsel is implicated. See, Johnson, 27 N.Y.3d 199, Footnote 1; People's Molineux Proffer dated November 9, 2017 at

19. Although the New York State Court of Appeals in *People v. Johnson* denied Appellant's motion for a new trial, it is essential to note that when it did so, the majority stated "we are constrained by the law applicable to the arguments, *as narrowed by defendant*, to conclude that on the record before us defendant is not entitled to a new trial." Johnson, 27 N.Y.3d at 203 (emphasis added). The arguments raised by Appellant in that case were that the disclosure of the recordings violated the Department of Corrections Operations Order and that disclosure to the prosecutor undermined defendant's Sixth Amendment right to counsel. Id. at 204.

20. In its decision, the Court of Appeals in *Johnson* noted it was constrained to rule upon the two narrow issues raised, which did not expressly include an equal protection argument. Id. at 202. Crucially, the Court of Appeals concluded its majority opinion by stating, "[o]ur resolution of the narrowly drawn issues presented on this appeal should not be interpreted as this Court's approval of these practices." Id. at 208.

21. The concurring opinion then went on, in detail, to denigrate the practice and expound on the many inequities inherent in allowing the prosecution unfettered access to communications of "defendants who are financially unable to make bail", going so far as to lament, "[s]omething needs to change." Id. at 209.

22. Upon information and belief, the District Attorney's access to the defendant's jail phone calls in the present case is exactly what the concurring justice denigrates for the entirety of his two page opinion. See, Id.

23. Even more troubling in the present case, however, is that unlike the prosecution in

Johnson, the District Attorney's office here did not seek a subpoena for the recordings and the recordings were not reviewed *in camera* by the trial court prior to their disclosure to the People, as was the case in *Johnson*. See, *Id.* at 211. Here, rather, the District Attorney's office merely requested each and every recording from the defendant's pin number and received them directly from the jail. Thus, the District Attorney's office's "unfettered access" in the present case was even more unfettered than the access that was lambasted by the concurring justice in *Johnson*.

24. Furthermore, the majority opinion's need to clarify that their decision "should not be interpreted as this Court's approval of these practices" is a clear indication that the majority would likewise decline to approve the full and complete access without subpoena or *in camera* review that exists in this case. See, *Id.* at 208. In the words of Justice Pigott, "something needs to change." *Id.* at 209.

25. There is clearly an arbitrary disparity in allowing prosecutors unfettered access to the telephone calls of detained pre-trial suspects who cannot afford bail, while denying prosecutors any access at all to the telephone calls of pre-trial suspects at liberty absent a warrant. See generally, Village of Willowbrook, et al. v. Grace Olech, 528 U.S. 562, 564 (2000).

26. There is no compelling factor to justify this practice. Regents of the Univer. of Cal. v. Bakke, 438 U.S. 265, 299–300 (1978); San Antonio Ind. Sch. Dist. v. Rodriguez, 411 U.S. 1, 16–17, (1973).

27. Although the defendant contends the standard of review is strict scrutiny, even under a rational basis review, the practice of allowing unfettered access to detained suspect's phone calls does not withstand scrutiny. There is no rational basis to conclude that the legitimate purpose of the Sheriff in maintaining the safety and security of the facility is in any way furthered by allowing unfettered access to the recorded calls to the prosecution. See, Johnson, 27 N.Y.3d at 209.

28. Often, the District Attorney's office does not obtain the calls until the eve of trial. Clearly, their concern has nothing to do with the safety and security of the facility in reviewing calls that were placed months previously. Moreover, the role of the District Attorney's office by

its very existence has nothing to do with maintaining security at the jail. It exists to prosecute cases, not maintain jail security. Clearly, the sole and obvious purpose of the prosecutors in obtaining these recordings is to comb them for evidence. See, Id.

29. The legitimate government purpose of maintaining the security of the jail facility is in no way furthered or related to the prosecution's access to the recordings. There is no rational relationship between this disparity of treatment between those who can afford bail and those who cannot and the legitimate government purpose of maintaining the security of a jail. See, Id.

30. Moreover, the District Attorney's office has absolutely nothing to do with the fulfillment of the jail's legitimate purpose of maintaining security. Thus, their access to the calls serves no legitimate government purpose at all.

31. As such, the practice does not withstand a rational basis analysis and certainly fails under the higher "strict scrutiny" analysis implicated by the fundamental right to a fair trial at issue here.

32. Thus, even if the court were to determine a fundamental right is not at issue, a violation of the equal protection clause still lies.

33. The prosecution's use of defendant's jail phone calls in this case would be in violation of his fundamental right to a fair trial under the due process clause of the New York State and Federal Constitutions, his right to counsel under the New York State and Federal Constitutions, and his right to equal protection under the law under the New York State and Federal Constitutions. As such, this court should grant defendant's motion to preclude the People from offering any of defendant's jail phone calls at trial.

WHEREFORE, your deponent respectfully requests that an Order be granted directing the relief specified herein, together with such other and further relief as the Court deems necessary and appropriate.

AFFIRMED, this 10th day of January 2018 at Albany, New York.

A handwritten signature in black ink, appearing to read 'Angela Kelley', written over a horizontal line.

Angela Kelley, Esq.

**STATE OF NEW YORK
COUNTY COURT**

COUNTY OF ALBANY

**THE PEOPLE OF THE STATE OF NEW YORK,
-against-**

Indictment No.: 4-8376

**RESPONSE TO MOTION
IN LIMINE REGARDING
CALLS FROM THE
ALBANY COUNTY
CORRECTIONAL
FACILITY**

RICHARD QUINN,

Defendant.

ERIC M. GALARNEAU, a duly licensed and practicing attorney of the State of New York, affirms as follows under penalty of perjury:

1. That I am an Assistant District Attorney of Albany County, New York, and that in such capacity, am fully familiar with the facts and circumstances of this action.
2. That I submit this Affirmation in Opposition to the Notice of Motion (Second Amendment) and Affidavit(s) of Angela Kelley, Esq. on behalf of the defendant.
3. That this Affirmation is made upon information and belief, the source of my information and the basis for my belief are an examination of the files maintained by the District Attorney's Office.

STATEMENT OF FACTS

4. The defendant is accused on one count of Murder in the Second Degree, a Class A-I felony, in violation of section 125.25(1) of the Penal Law.
5. The defendant is currently housed in Albany County Correctional Facility on the Murder charges. He was also being held on a post conviction violation of probation.
6. At the jail facility, all phone calls are monitored.

7. I have spoken to Marcus Decker, a Sergeant with the Albany County Sheriff's Office, who is familiar with the practices of the Correctional Facility. Sergeant Decker advised me that warnings are conspicuously posted in the phone area that inmates' calls are subject to monitoring and recording. They are also included in the handbook provided to inmates upon reception into the facility. The facility also has a procedure whereby attorneys can register their name and/or numbers with the facility or the provider --Global Tel Link (GTL)-- so as to block their calls from being recorded or monitored. No other portion of the facility is subject to audio monitoring.

8. When an inmate lifts the handset, a pre-recorded message advises the inmate and the that his phone calls may be recorded.

9. Despite these clear warnings, the defendant in this case made admissions reflecting evidence of his guilt. During the call, he even acknowledges that he does not want to speak about the case on the phone, thereby indicating his knowledge that the call is being monitored and recorded.

10. These statements were made voluntarily, and the defendant does not allege that they were provoked, coerced, or otherwise induced by the People or any jail authorities.

11. It is those voluntary, un-coerced, and duly warned statements that the defendant now challenges in his motion in limine.

LAW

12. The defendant seeks to limit proof as to the calls made from the Albany County Correctional Facility. However, his motion is not a motion to preclude; it is a motion to suppress due a constitutional violation.

13. At the outset, the People note that the defendant's motion is untimely. The motion was made more than 45 days after arraignment. It also violates the "single motion" requirement of CPL §255.20(2).

14. Procedural grounds aside, it also lacks merit. Jail calls clearly are admissible. The Court of Appeals has squarely held that calls made by a defendant from jail to third parties and thus recorded by prison official are admissible, so long as a proper foundation is laid (*People v Vining*, 28 NY3d 686, 688 [2017]). The fact "that the call was recorded while defendant was incarcerated does not change [that] analysis" (*Id.*).

15. Both the First and Second Departments have recently considered question and have universally held that jail calls are admissible evidence, and have rejected challenges to admissibility based on a number of constitutional salvos (*see People v Diaz*, 149 AD3d 974, 976 [2d Dept 2017]; *People v Negrin*, 140 AD3d 1192, 1193 [2d Dept 2016], *lv denied*, 28 NY3d 972; *People v Roberts*, 139 AD3d 985, 986 [2d Dept 2016], *lv denied*, 28 NY3d 936; *People v Cruz*, 154 AD3d 429, 429 [1st Dept 2017]; *People v Cisse*, 149 AD3d 435, 436 [1st Dept 2017], *lv granted* 29 NY3d 1124).

16. The defendant's motion acknowledges that calls are receivable in this state. *People v. Johnson*, 27 NY3d 199 [2016]. In fact, a similar argument was rejected in October, 2017 in the case of *The People of the State of New York against Waverly Pleasant* (Albany County Supreme Court, Breslin, J.). (See also *People v. Cisse*, AD3d 435 [first Dep't 2

17. Against the clear weight of authority, the defendant points to a one-judge concurring opinion in *People v Johnson* (*see People v Johnson*, 27 NY3d 199, 208 [2016] [Pigott, J, concurring]). Judge Pigott's concurrence is not the law. He wrote only for

himself, and failed to command even one other vote on the Court of Appeals. Judge Pigott has since retired and no longer sits on the Court.

18. The defendant attempts to convert a one-judge concurrence into precedent by quoting the majority decision's statement that it's "resolution of the narrowly drawn issues presented on this appeal should not be interpreted as this Court's approval of these practices" (*Johnson*, 27 NY3d at 208).

19. But this anodyne statement does not change the status of Judge Pigott's concurrence. The fact that the Court of Appeals did not consider an issue not before it is hardly surprising. Its decision cannot be read as an endorsement, but it cannot be read as a condemnation, either.

Defendant's Consent was Adequate

20. Central to the analysis of whether a defendant's jail calls may be introduced is the issue of consent. Courts have typically ruled that a defendant's consent to the use of the jail calls can be inferred because of his knowledge that his calls are monitored and recorded and his decision to speak anyway (*see, e.g., United States v Workman*, 80 F3d 688, 693 [2d Cir 1996]; *United States v Amen*, 831 F2d 373, 378 [2d Cir 1987]; *People v Diaz*, 149 AD3d 974, 975 [2d Dept 2017]; *People v Jackson*, 125 AD3d 1002, 1003 [2d Dept 2015]; *People v Koonce*, 111 AD3d 1277, 1279 [4th Dept 2013]).

21. The defendant argues, in essence, that he consented to monitoring and recording of his phone conversations but not to sharing them with the District Attorney's office (Defendant's Motion in Limine at ¶ 12). This argument lacks merit. The defendant was repeatedly warned that his conversations were being recorded and he

nevertheless chose to discuss his case. The defendant was also surely aware that he was located in a jail, surrounded by law enforcement officers.

22. Moreover, the third parties with whom he discussed the case could just as easily have shared his “private” conversations with the authorities. For example, if the defendant had shared admissions regarding the case with another inmate, there would be no issue if the other inmate came forward and turned over the information to jail officials (*Cf. People v Cardona*, 41 NY2d 333, 335 [1977]). The government here was merely a “passive” recipient of information that the defendant knew he was giving and that he knew would be monitored by law enforcement (*Id.*).

23. The monitoring and recording of the defendant’s conversations were hardly a secret, by which the government lulled the defendant into a false sense of security. Instead, given the notices that inmates read on the wall and hear as they make their phone calls and read in their handbooks, it is clear that far from taking surreptitious action to elicit incriminating statements, the jail facility actually took overt steps to *deter* the inmates from discussing their cases.

24. *Diaz* is instructive here. In *Diaz*, the Second Department rejected the defendant’s efforts to preclude the use of his jail calls. Significantly, the Court specifically noted the conspicuous disclosure of notices about the recording and monitoring of inmates’ phone calls, including postings near the phones, throughout the facility, in the inmate’s handbooks, and in the calls themselves. As noted above, Sergeant Decker advised me that the same procedures are followed at the Albany County Correctional Facility. In addition, procedures are in place to prevent the monitoring and recording of calls between inmates and their attorneys. Finally, as in *Diaz*, it is clear

from the calls that are the subject of this motion that the defendant is hesitant about speaking about the crime, thereby indicating that he was aware that his calls were being monitored.

25. Although the *Diaz* court recognized that the primary purpose of the recordings was to provide for jail security, it held that “the notifications... did not limit the scope of the defendant’s consent to the monitoring and recording of his telephone calls solely for security purposes” (*Id.*). Accordingly, that defendant’s consent operated as consent for handing over the recordings to the district attorney (*Id.*).

26. These factual circumstances are directly on point for the circumstances at issue here. As a result, this Court is bound by the First Department’s decision on this issue (*D’Alessandro v Carro*, 123 AD3d 1 [1st Dept 2014], *citing Mountain View Coach Lines v Storms*, 102 AD2d 663, 664 [2d Dept 1984] [“...where the issue has not been addressed within the Department, Supreme Court is bound by the doctrine of stare decisis to apply precedent established in another Department, either until a contrary rule is established by the Appellate Division in its own Department or by the Court of Appeals”]; *Oswald v Oswald*, 107 A.D.3d 45, 47 [2013]; *see also People v Turner*, 5 NY3d 476, 481-482 [2005]).

There is No Equal Protection Clause Issue

Tiered Scrutiny

27. The defendant next contends that the Equal Protection Clause of the Federal and State Constitutions requires that these jail calls not be admitted. He is incorrect.

28. The Equal Protection Clause of the Fourteenth Amendment requires that “no State shall ‘deny to any person within its jurisdiction the equal protection of the laws,’ which is essentially a direction that all persons similarly situated should be treated alike” (*City of Cleburne v Cleburne Living Center*, 473 US 432, 439 [1985] [*citing Plyler v Doe*, 457 US 202, 216 (1982)]).

29. Of course, in the process of governing, distinctions must routinely be made between people and classes of people. Most of these distinctions raise no constitutional questions. As the defendant himself points out, the need to distinguish between legitimate and non-legitimate classifications have given rise to differing standards of scrutiny by courts, based on the type of classification involved (Defendant’s Motion in Limine at ¶ 6).

30. Generally speaking, distinctions between members of a “suspect class” and others are subject to strict scrutiny—a high standard—while distinction made between classes of individuals who are not members of a suspect class are reviewed only for a rational basis. Distinctions in the law that do not employ suspect classifications or burden a fundamental right are subject only to rational basis review (*Hodel v Indiana*, 452 US 314, 331 [1981]; *see also Rodriguez*, 411 US at 17; *People v Knox*, 12 NY3d 60, 67 [2009], cert denied 558 US 1011).

The Defendant is Not a Member of a Suspect Class

31. Certain classifications have been deemed so irrelevant to any legitimate government end that distinctions based upon them warrant heightened review (*City of Cleburne v Cleburne Living Center, Inc.*, 473 US 432, 440 [1985]). These “suspect classifications” have been held to include race, national origin, and alienage (*San Antonio*

Indep. Sch. Dist. v Rodriguez, 411 U.S. 1, 61 [1973] [Stewart, J, concurring]).

32. In determining whether a particular group is a suspect class for the purpose of equal protection analysis, courts look to certain “traditional indicia” (*Id.* at 28). A suspect class: possesses an immutable characteristic—the result of an “accident of birth” (*Frontiero v Richardson*, 411 U.S. 677, 686 [1973]); is saddled with a history of purposeful discrimination in this country (*Lyng v Castillo*, 477 US 635, 638 [1986]); and is in a position of political powerlessness (*Rodriguez*, 411 US at 36).

33. Such groups are said to constitute “discrete and insular minorities” (*United States v Carolene Products*, 304 US 144, 152 n4 [1938]). Under these criteria, it is clear that the defendant—as an inmate—is not a member of a suspect class.

34. The defendant complains of a distinction between those who are subject to pre-trial detention and those who are not (Defendant’s Motion in Limine at ¶ 6). Specifically, according to the defendant, “[g]enerally, the only difference between a detained pretrial suspect and a pretrial suspect at liberty is that one can afford to post bail, and one cannot” (Defendant’s Motion in Limine at ¶ 6). Of course, the group defendant is part of (pretrial detainees) do not possess an immutable trait that is the result of an accident of birth. The other group that the defendant might be part of (the economically disadvantaged) also do not possess the immutable characteristic that is the hallmark of a suspect classification.

35. Nor is the defendant part of a broader suspect class. Felons are not members of a suspect class (*Parker v Lyons*, 757 F3d 701 [7th Cir 2014]; *Virgin Islands v Hodge*, 359 F3d 312, 326 [3d Cir 2004]; *Zipkin v Heckler*, 790 F2d 16, 18 [2d Cir 1986]). Neither are prisoners (*Lee v Governor of State of New York*, 87 F3d 55, 60 [2d Cir 1996])

[“[P]risoners either in the aggregate or specified by offense are not a suspect class....”]; *Hampton v Hobbs*, 106 F3d 1281, 1286 [6th Cir 1997]). Nor, for that matter, are sex offenders, a group that is subject to many distinctions that other classes of prisoners are not (*United States v Juvenile Male*, 670 F3d 999, 1009 [9th Cir 2012], *cert denied* 133 SCt 234 [2012]; *Roe v Marcotte*, 193 F3d 72, 82 [2d Cir 1999]; *Artway v Attorney Gen.*, 81 F3d 1235, 1267 [3d Cir 1996]). And, perhaps most relevant to the defendant’s analysis, neither are the poor (*Harris v McRae*, 448 US 297, 323 [1980] [“this Court has held repeatedly that poverty, standing alone is not a suspect classification”]; *Barron v Ellis Hosp.*, 235 AD2d 189, 190 [3d Dept 1997]).

36. For all those reasons, defendant is not a member of a suspect class, and the government action at issue is subject only to rational basis review (*Hodel v Indiana*, 452 US 314, 331 [1981]; *see also Rodriguez*, 411 US at 17).

Strict Scrutiny Does not Apply to the “Fundamental Right” being Burdened here.

37. The defendant also claims that because the challenged government action here “burdens” a fundamental right, that strict scrutiny should apply (Defendant’s Motion in Limine at ¶¶ 6-7). The defendant’s papers seem to conflate equal protection analysis with fundamental rights analysis (apparently because they both utilize tiered scrutiny), but it is important to keep the analysis separate.

38. The first step in the fundamental rights analysis is a “careful description” of the asserted right (*see Reno v Flores*, 507 US 292, 301-302 [1993]). The defendant’s description of the fundamental right at issue here is not so precise. Instead, the best the defendant can do is refer this Court to the “fundamental right to a fair trial (Defendant’s Motion in Limine at ¶ 7). This is not, of course, one right so much as a whole

constellation of rights—the right to an impartial arbiter, the right to due process, the right to effective assistance of counsel, and so on, etc. Nor can the the defendant contend that that his right to counsel is violated. That was settled in *People v Johnson* (27 NY3d 199, 206 [2016]); *People v Negrin*, 140 AD3d 1192, 1193 [2d Dept 2016], *lv denied*, 28 NY3d 972; *Diaz*, 149 AD3d at 975). (Although, perhaps this really *is* the defendant’s claim [Defendant’s Motion in Limine at ¶ 18])

39. Instead, the right the defendant appears to assert is the right to talk to friends and family about his case with impunity (Defendant’s Motion in Limine at ¶ 7). The defendant repeatedly complains that the right to prepare a defense is burdened because he cannot speak to anyone but his attorney about his case (Defendant’s Motion in Limine at ¶¶ 15-18).

40. But that is not a fundamental right at all. No defendant has a fundamental right to make admissions about their case and not have it used against them. Moreover, defendants who are not subject to pretrial detention are subject to this same constraint. Where the government is a mere ‘passive recipient’ of information that a defendant has foolishly chosen to share, that information can be introduced at trial (*see Cardona*, 41 NY2d at 335). Pretrial detainees are treated no differently. In addition, the People note that the Sixth Amendment right to counsel is vitiated by the presence of a third party (“The attorney-client privilege must be narrowly construed and generally does not extend to communications between a client and his or her counsel which are made in the known presence of a third party” (*Doe v Poe*, 244 AD2d 450, 451 [2d Dept 1997])). And to the extent that the defendant disclosed the subject of any conversation with his attorney,

“voluntarily disclosed what would have been privileged communications... waived any attorney-client privilege” (*People v Cruz*, 154 AD3d at 430).

41. In light of the above, the defendant’s claim that, in essence, the right to counsel is eroded by his inability to confide details of his crimes to third parties is without merit. Any defendant, at liberty or not, takes a risk when he does not “refrain from talking to anyone other than his attorney about anything related to his case” (Defendant’s Motion in Limine at ¶ 16). In short, there is no fundamental right at issue here.

There is a Rational Basis for the Government Conduct

42. Distinctions in the law that do not employ suspect classifications or burden a fundamental right are subject only to rational basis review (*Hodel*, 452 US at 331; *see also Rodriguez*, 411 US at 17; *People v Knox*, 12 NY3d 60, 67 [2009], *cert denied* 558 US 1011 [2009]). Under that test, government actions are presumed to be constitutional (*Maresca v Cuomo*, 64 NY2d 242, 250 [1984]). Indeed, rational basis review merely requires a court to ask whether the means chosen by the government are “rationally related” to some “legitimate” governmental purpose (*People v Walker*, 81 NY2d 661, 668 [1993]). That standard is particularly deferential, in recognition of the fact that it is not the place of the judiciary to “substitute its policy judgment” for that of responsible governmental officials (*Hodel*, 452 US at 331; *New Orleans v Dukes*, 427 US 297, 303 [1976]; *Jarrett v Westchester County Dept. of Health*, 166 Misc 2d 777, 779 [Sup Ct 1995] [“[T]he proper administration of jails is best left to those whose duty it is to run our correction facilities. This Court may not substitute its judgment for the judgment of the corrections officials”]).

43. The Court of Appeals has called rational basis review “a paradigm of judicial restraint” (*Affronti v Crosson*, 95 NY2d 713, 719 [2001]). In determining whether the chosen means are rational related to the ends, there need not be a perfect fit between the means and ends (*See Mass. Bd. of Ret. v Murgia*, 427 US 307, 314 [1976]; *Schanzenbach v Town of Opal*, 706 F3d 1269, 1276 [10th Cir 2013] [“[T]here need not be a perfect fit between purpose and achievement for a law to pass constitutional muster.”]). The government may even resort to broad generalizations in their actions (*Heller v Doe by Doe*, 509 US 312, 321 [1993]).

44. Moreover, the state need not even assert what its ends are; the court may hypothesize legitimate purposes in order to uphold the statute (*Maresca*, 64 NY2d at 250-51). So long as “any conceivable state of facts will support the classification,” a law will stand, since the legislature is presumed to know all facts that would support constitutionality (*Id.*; *Walker*, 81 NY2d 661, 668; *FCC v Beach Communications, Inc.*, 508 US 307, 313 [1993]).

45. Under such a deferential standard, the governmental action here clearly passes Constitutional muster. This Court need not speculate too broadly to conceive of the various health and safety challenges that a jail official faces.

46. Courts have recognized that these ends are “legitimate” (*see Campbell v McGruder*, 580 F.2d 521, 529 [DC Cir. 1978]) and jail official have “broad latitude to adopt rules that protect the safety of inmates and corrections personnel and prevent escape or unlawful entry” (*United States v Cohen*, 796 F2d 20, 22 [2d Cir 1986]). Monitoring of jail calls defendant is justifiable for those health and safety reasons; otherwise, jailed persons could arrange for contraband to enter the jail, could

communicate with ongoing criminal enterprises on the outside, or could arrange for witness intimidation, among other possibilities that come to mind.

47. These concerns justify recording and monitoring, at least to the extent that it does not implicate privileged communications (*see Johnson*, 27 NY3d at 203).

48. Simply as a result of the nature of a jail, a prisoner forfeits his rights to freedom of movement, marital intimacy, and many other rights (*Doe v Coughlin*, 71 NY2d 48, 56 [1987]). This is as true for pre-trial detainees as it is for convicted detainees, or else a jail will not be able to function (*Cohen*, 796 F2d 20, 22 [2d Cir 1986]).

49. Once phone call recordings are made, for whatever reason, there is no reason that they cannot and should not be made available to law enforcement, like almost every other governmental record.

50. The defendant makes much of how the calls are transmitted from the jail to the District Attorney's office, but surely this cannot have a constitutional dimension. If the calls are properly recorded and properly obtainable by the People, then whatever mechanism is chosen for convenience and dispatch passes rational basis review as well. 017]. As such, he tries a different tact, arguing that the monitoring and recording of the calls violates his right to equal protection under the law. Notably, he cites no case to support his position. In fact, *Diaz* holds expressly to the contrary. *People v. Diaz*, 149 AD3d 974 [2nd Dep't 2017].

WHEREFORE, the People respectfully requests that the prayed for relief be, in all respects, denied.

DATED: January 11, 2018

RESPECTFULLY SUBMITTED,

P. DAVID SOARES
District Attorney

By: 

Eric M. Galarneau
Of Counsel

STATE OF NEW YORK
COUNTY COURT

COUNTY OF ALBANY

THE PEOPLE OF THE STATE OF NEW YORK,

-against-

**SUPPLEMENTAL
AFFIRMATION IN
SUPPORT OF
MOTION IN LIMINE**

Indictment No.:4-8376
Hon. William A. Carter

RICHARD QUINN,

Defendant.

STATE OF NEW YORK)
) ss.
COUNTY OF ALBANY)

Angela Kelley, Esq., under penalties of perjury states as follows:

1. I am an attorney duly admitted to practice law in the Courts of the State of New York and am an Assistant Public Defender for the Albany County Public Defender's Office which has been assigned to represent Defendant in the above-captioned proceeding. As such, I am fully familiar with the facts and circumstances surrounding this application.

2. The Defendant herein stands charged with one count of Murder in the Second Degree, a class A-I felony, in violation of section 125.25(1) of the Penal Law of the State of New York.

3. The instant Affirmation is made in support of the Defendant's Motion in Limine seeking to preclude the District Attorney's Office from using Defendant's jail calls at trial and is based partially upon information and belief, the source of my information and grounds for my belief as to all of the matters set forth herein upon information and belief are review of the case file, investigations conducted by my office and personal conversations with Sergeant Marcus Decker,

Captain Ronald Murray and conversations with a former Albany County Prosecutor as well as my experience speaking with members of the Albany County District Attorney's Office on the matter of jail phone calls on past cases.

4. Upon information and belief, there is no written policy or directive regarding the dissemination of inmate phone calls from the Albany County Jail to the District Attorney's Office. Based upon telephone conversations with Sergeant Decker and Captain Murray on today's date, no such written policy exists.

5. Moreover, according to both Sergeant Decker and Captain Murray, the process by which inmate calls are turned over to the District Attorney's Office is that an ADA handling a case will e-mail, call or otherwise communicate their request to either Captain Murray or Sergeant Decker. Sergeant Decker will then fulfill the request by obtaining the calls and providing them to the District Attorney's Office.

6. This method was confirmed by a former ADA who had personally obtained jail phone calls in this manner, without requesting a subpoena and without any additional regulations or procedures beyond simply asking the jail to provide them.

7. According to Sergeant Decker, the manner in which the calls are provided to the District Attorney's Office is either via email, on a disc, or in some cases, as a direct transfer through a shared network directly to the ADA's computer.

8. According to Sergeant Decker, some of the ADAs have a file on a network that is directly accessible to Sergeant Decker. He will then access the ADA's file and transfer the files of inmate calls from the Albany County Jail directly to the ADA's folder.

9. In the present case, Sergeant Decker indicated ADA Galarneau requested the defendant's jail calls and he provided them to ADA Galarneau via a direct transfer as described above.

10. As the Court is aware, no *in camera* review was sought by the People and, upon information and belief, no subpoena was issued to request the calls.

11. Based on the foregoing, the District Attorney's Office clearly has "unfettered access" to any inmate's jail calls to the extent that the sheriff's department can directly link with the District Attorney's network and simply deposit each and every call of any inmate directly onto the District Attorney's computer.

WHEREFORE, your deponent respectfully requests that an Order be granted directing the relief specified herein, together with such other and further relief as the Court deems necessary and appropriate.

AFFIRMED, this 12th day of January 2018 at Albany, New York.



Angela Kelley, Esq.

STATE OF NEW YORK

ALBANY COUNTY COURT

THE PEOPLE OF THE STATE OF NEW YORK

-against-

RICHARD QUINN,

Defendant.

O R A L A R G U M E N T

B E F O R E:

HON. WILLIAM A. CARTER
County Court Judge

A P P E A R A N C E S:

P. DAVID SOARES

Albany County District Attorney
For the People

BY: ERIC GALARNEAU,

SHADI MASRI,

Assistant District Attorneys

STEPHEN W. HERRICK

Albany County Public Defender
For the Defendant

BY: ANGELA KELLEY,

DONALD PARTYKA,

Assistant Public Defenders

ALSO PRESENT:

THE DEFENDANT

D A T E:

January 12, 2018

1 P R O C E E D I N G S:

2 THE COURT: This is the matter of the People
3 against Richard Quinn. Mr. Quinn appears today
4 with Ms. Kelley and Mr. Partyka. The People are
5 represented by Mr. Galarneau and Mr. Masri.

6 Let the record reflect that the Court is in
7 receipt of two motions in limine from Mr. Quinn:
8 One with regard to the introduction of the knife
9 that was recovered from his person at trial; and
10 the other with regard to precluding the People
11 from introducing any of his phone calls made from
12 the Albany County Correctional Facility. There
13 was a supplemental affirmation submitted with
14 regard to that motion, and the Court did review
15 that, as well as the People's responses to both of
16 the motions.

17 So, Ms. Kelley, did you wish to be heard
18 outside of your papers?

19 MS. KELLEY: Your Honor, if I could just
20 respond briefly to a couple of points raised by
21 the People in their responding papers.

22 THE COURT: With regard to which issue?

23 MS. KELLEY: First, with respect to the
24 motion on the knife. The People are asserting on
25 the first page basically that the witnesses'

1 observations are supported by the autopsy on the
2 death certificate, which establishes conclusively
3 that the victim was stabbed. Although certainly
4 that can be a conclusion drawn from the autopsy
5 and from the witness reports, the question is
6 really whether the stabbing occurred with this
7 particular knife. I don't think there is any
8 indication that the witnesses describe anything
9 even close to resembling the knife that was
10 recovered from Mr. Quinn. And I think that's
11 really what this boils down to, is whether the
12 instrument used is the instrument found on the
13 defendant.

14 And I think a lot of the cases cited by the
15 People are dealing with cases where essentially
16 the gun, in a lot of these cases, that was found
17 on the defendant, that was allowed in evidence,
18 that the gun was found on him to establish that he
19 had used that gun in a crime, but I believe there
20 was more connecting that particular weapon to the
21 crime, whereas here there is no connection between
22 the knife that was found on Mr. Quinn and the
23 stabbing. There is no forensics on the knife. It
24 doesn't fit the description. There is no
25 indication what type of knife was used from the

1 autopsy or the medical examiner report.

2 So there is nothing that links this
3 particular knife to the crime.

4 THE COURT: But you would agree that the
5 witnesses did describe a knife.

6 MS. KELLEY: I would agree that some of the
7 witnesses did describe seeing a knife. I believe
8 one described a knife, that she saw the glare of
9 the light gleaming off the blade, which I would
10 also submit goes against admitting this particular
11 knife since the blade of this knife is black. It
12 doesn't necessarily reflect in the light the way
13 that a silver blade would.

14 So I would argue that the knife that's
15 described by the witnesses is not even consistent
16 with the knife that was recovered from Mr. Quinn.

17 THE COURT: The knife with the black blade
18 is made out of metal?

19 MS. KELLEY: I believe so, yes.

20 THE COURT: And it has an edge?

21 MS. KELLEY: Yes.

22 THE COURT: And the edge is not black?

23 MS. KELLEY: I believe that it is, Your
24 Honor. From what I can tell from the photographs
25 that I have, the entire knife is black.

1 THE COURT: If the knife has been sharpened,
2 it's not completely black.

3 MS. KELLEY: Well, I mean, I think if the --
4 if the sharp edge alone is what's metal, I think
5 that's questionable as to whether that's what the
6 witness is describing.

7 THE COURT: Question of fact.

8 MS. KELLEY: Sure. I mean, I would agree
9 that there is a question of fact here, but I would
10 argue that what they're describing is not
11 consistent with the knife that was found on Mr.
12 Quinn.

13 THE COURT: All right. I would agree with
14 you that the People's cases are not on point. The
15 facts are very different from this case.

16 But, Mr. Galarneau, do you wish to be heard?

17 MR. GALARNEAU: Your Honor, I would add
18 that I did speak to a Mr. Jewett this afternoon,
19 this morning. First time I spoke to him. We had
20 previously had an agreement for him to testify.
21 He had violated his probation. This Court
22 sentenced him to State Prison. I have extended
23 him an understanding that should he testify
24 truthfully in this matter, I would write a letter
25 to the Parole Board on his behalf and see what can

1 be done about transferring him closer to home and
2 seeing what can be done in terms of cutting
3 through the bureaucratic red tape of getting him
4 into a Work Release Program once he's completed
5 it. We also bought him lunch, for what it's
6 worth.

7 In any event, Mr. Jewett described an
8 admission made by Mr. Quinn where Mr. Quinn, in
9 describing the stabbing, is reaching towards his
10 chest down and out. And I would note for the
11 record that this is a knife that's worn around a
12 chain around the neck, which would further
13 buttress the People's position that this is the
14 murder weapon.

15 THE COURT: Anything else?

16 MR. GALARNEAU: No, Your Honor.

17 THE COURT: With regard to your motion, Ms.
18 Kelley, for the knife -- and we'll address the
19 phone calls afterwards -- a weapon having no
20 probative value or serving no legitimate purpose
21 may not be admitted because it is unduly
22 prejudicial and inflammatory. *People v. Martin*, 8
23 AD3d 883. *People v Bass*, 277 AD2d 488.

24 Thus, there must be a sufficient connection
25 between the weapon sought to be introduced into

1 evidence, here the knife, the defendant, and the
2 murder. *People v. Mirenda*, 23 NY2d 439.

3 Apparently there is no direct evidence
4 connecting the knife found around the defendant's
5 neck in the murder. However, as on all issues
6 which stand or fall on circumstantial evidence, a
7 choice between competing inferences as a choice
8 between competing facts is available to the trier
9 of facts, so long as the one arrived at is found
10 beyond a reasonable doubt. *People v. Castillo*, 47
11 NY2d 270.

12 A test for admissibility of this type of
13 object is an evaluation of how close is the
14 connection between the object and the defendant.
15 If it is not so tenuous as to be improbable, it is
16 admissible as is any other evidence which is
17 relevant to an issue in the prosecution. Again,
18 citing *The People v. Mirenda*.

19 Here, the People have multiple witnesses who
20 observed the victim being stabbed by the defendant
21 and a witness who observed the knife at issue
22 during the attack. In addition, the People claim
23 to have medical records establishing that the
24 victim was stabbed. It is for the jury to weigh
25 competing theories and proof and to ultimately

1 determine, after considering all of the evidence
2 presented, whether the knife found around the
3 defendant's neck the day after the murder was, in
4 fact, the knife used in the commission of the
5 offense. See *People v. Pena*, 50 NY2d 400.

6 Accordingly, the defendant's motion seeking
7 preclusion of the knife located around the
8 defendant's neck is denied.

9 Do you wish to be heard with regard to your
10 other motion in limine with regard to the phone
11 calls?

12 MS. KELLEY: Yes, Your Honor. In reference
13 to some of the arguments made by the People in
14 opposition to my motion, I would just note that as
15 far as I can tell, there have been no cases so far
16 that deal with this specific issue that I'm
17 raising in terms of the equal protection argument.

18 THE COURT: Not yet.

19 MS. KELLEY: Right. And I think that that's
20 obviously one of the issues with the precedent in
21 finding cases on point. But I would note that the
22 decision that was issued by Judge Breslin that the
23 People referenced --

24 THE COURT: Has no precedential value.

25 MS. KELLEY: Yes, Your Honor. And I believe

1 that the arguments were different there as well.

2 I would also argue that the *People v Diaz*
3 that the People rely on, again, does not deal with
4 the specific arguments that I'm raising in my
5 motion with respect to the equal protection issue.
6 So I would argue that the holdings in that case,
7 to the extent the People are asking them to be
8 binding upon this Court, are not to the extent --
9 that they are not the same arguments that I'm here
10 raising.

11 Other than that, I believe I would rest on
12 my papers. I did -- I would also note, too, that
13 the People are discussing on Page 4 that the
14 consent was adequate. The *Johnson* case that I
15 cited mostly -- and I will acknowledge mostly was
16 a concurrent opinion in this decision. That case
17 did not pass on consent and rather determined that
18 the consent issue was not preserved. So that case
19 does not have precedential value for that
20 particular issue one way or the other.

21 And I think that the dicta that is contained
22 in the majority opinion of that case certainly
23 leaves open the possibility that the Court of
24 Appeals does believe that there is a legal basis
25 to limit or prevent the practice that is ongoing

1 with unlimited access to these jail phone calls.

2 So based on all of that, everything in my
3 papers, I would argue that the People have not
4 really cited anything that contradicts or refutes
5 my position and that the People should be
6 precluded from using the jail calls at trial.

7 THE COURT: Mr. Galarneau?

8 MR. GALARNEAU: Your Honor, the People would
9 submit that *The People v. Diaz* is on point here.
10 Even though Ms. Kelley may be raising an issue not
11 addressed by that Court, it's still on point. The
12 defendant is not a member of a suspect class.
13 This -- a fundamental right is not being burdened.
14 I mean, to the extent it is, the Court of Appeals
15 already addressed the fundamental right to counsel
16 in the *Johnson* decision.

17 I think there being, you know -- I would
18 submit this Court is bound by *People v. Diaz*.
19 There is consent to the recordings when the
20 individual answers, picks up the phone. It's in
21 the Prisoner's Handbook, as articulated in my
22 affidavit. It's -- there is postings placed by
23 the phones. The defendant in one of his phone
24 calls, I submit to the Court, clearly indicates
25 that he doesn't want to talk about anything over

1 the phone reflecting his awareness of the fact
2 that the calls are being recorded and monitored.

3 For those reasons, I respectfully -- and for
4 that matter, you know, it may affect his ability
5 to make phone calls, but he's still at liberty --
6 he can talk to people about the case if he wants
7 to. Lawyers' conversations are not recorded with
8 their clients.

9 For all of these reasons, I respectfully
10 submit that the defendant's motion in limine
11 should be denied.

12 MS. KELLEY: Judge, if I could, just
13 briefly. And although I acknowledge that
14 obviously my phone calls, to my knowledge, have
15 not been recorded between myself and Mr. Quinn,
16 but I think there is more to it than that. People
17 who are incarcerated before trial are not able to
18 talk to even their family members really about
19 their cases, because anything they say can be
20 interpreted and used against them, even if it's
21 not intended to be any sort of admission or
22 anything incriminating. For them to be told they
23 can't discuss anything whatsoever about their case
24 with friends and family significantly limits their
25 ability to defend themselves, make informed

1 decisions for themselves and their life about what
2 they're going to do with their case, how they're
3 going to proceed, because the District Attorney's
4 Office is listening in.

5 I think that just because the phone call
6 directly to the attorney is not recorded, it still
7 affects his right to counsel in that it limits how
8 he can approach his entire case. And I think
9 importantly it affects his right to a fair trial
10 for the same reasons. So just because the direct
11 phone call to the attorney is not what's being
12 recorded, it still significantly infringes on
13 his -- on his rights.

14 And I think also that the Court of Appeals
15 in *Johnson* is talking about the fact that the
16 purpose of these -- the jail phone call recording
17 is for security and things of that nature. There
18 is no legitimate reason why that function needs to
19 include just providing them at will to the
20 District Attorney's Office.

21 THE COURT: I don't disagree with you.

22 MS. KELLEY: Well, I mean, Judge, it would
23 be my position that the security of the jail is
24 the function of the jail. The District Attorney's
25 Office does not have anything to do with keeping

1 the jail safe and secure.

2 THE COURT: I understand that.

3 MS. KELLEY: So it's my position that there
4 is no reason why, if the phone calls are recorded
5 for that purpose, why they then are just --
6 unlimited access is granted to the District
7 Attorney's Office to --

8 THE COURT: Unfettered access, I believe, is
9 the term the Court used. I'm not disagreeing with
10 you, but that's really not for today, Ms. Kelley.

11 So your motion to preclude the admission of
12 the recorded inmate telephone calls from this
13 trial based on a violation of due process is
14 denied. Your motion papers fail to set forth an
15 adequate factual basis to support the relief
16 requested.

17 However, denial of your motion does not
18 alter the People's obligation to set forth an
19 adequate foundation for the admission of such
20 recorded telephone calls at this trial. Such
21 foundation will necessarily include how, in the
22 absence of a judicial subpoena, the People came
23 into possession of such recordings.

24 As instructed by the Court of Appeals, the
25 inherent prejudice in the prosecutor's use of

1 inmate recordings emphasizes the necessity of the
2 trial judge's gate-keeper role in ensuring
3 compliance with constitutional mandates and the
4 usual rules of evidence in a criminal procedure,
5 and that is from *Johnson*. So like any other
6 evidence, the trial judge must weigh the probative
7 value of the recordings against the potential for
8 prejudice to the defendant.

9 Additionally, to the extent that the People
10 have applied through the District Attorney's
11 unfettered access to and use of recorded inmate
12 telephone calls in a criminal trial is settled
13 law. It is noted that the Court of Appeals has
14 granted leave in *People v. -- I'm not sure how to*
15 *pronounce it -- C-I-S-S-E, Cisse, 149 AD3d 435,*
16 *which is a case that was relied on the People, by*
17 *the People, in their motion papers and will soon*
18 *be addressing the issue of whether defendant's*
19 *telephone calls from prison were admitted into*
20 *evidence in violation of federal and/or state*
21 *wiretapping statutes, right to counsel, and due*
22 *process protections.*

23 So I don't disagree with you, Ms. Kelley,
24 but as far as this trial is concerned, your motion
25 is denied. We'll have to see what the Court of

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

Appeals does.

MS. KELLEY: Thank you.

THE COURT: So just keep in mind what I told you guys at the bench, and I'll try to let you know as soon as I know.

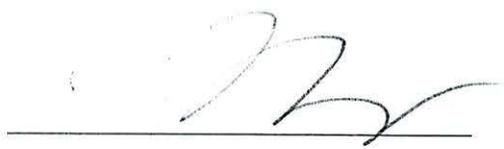
MR. GALARNEAU: Thank you.

(Proceedings concluded, this date.)

* * *

C E R T I F I C A T I O N

I, JACQUELYN BURKE GECEWICZ, a Senior Court Reporter, Unified Court System, Third Judicial District, State of New York, do hereby CERTIFY that the foregoing is a true and accurate stenographic transcript of the proceedings, to the best of my ability, held in the above-entitled matter, before the HON. WILLIAM A. CARTER.



JACQUELYN BURKE GECEWICZ



Amended
REPORT OF UNDECIDED MATTERS
PURSUANT TO SECTION 4.1 OF THE RULES OF THE CHIEF JUDGE

Date: 09 / 10 / 2019

To: Hon. Thomas A. Breslin

From: Hon. William A. Carter

Reporting Period: January-March April-June July-September October-December 2017

As of the 4th Quarter 2018, residential and commercial foreclosure proceedings must be reported. Tax certiorari proceedings continue to be exempt.

To the best of my knowledge (Check all that apply):

- A. No civil or criminal motions, proceedings, actions or matters of any kind pending undecided for more than 60 days after final submission.
- B. No motions for or related to interim maintenance, child support, or summary landlord/tenant proceedings pending undecided for more than 30 days after final submission.
- C. The following pending matters are undecided more than 60 days after final submission.
Total Number: 4
- D. The following pending interim maintenance or child support matters or summary landlord/tenant proceedings are undecided more than 30 days after final submission.
Total Number:

1. Name of Case: People v M [redacted] S [redacted]

2. Case #/ Motion Sequence #: [redacted] 3. Date of Final Submission: 01 / 09 / 2017

4. Nature of Matter Pending: motion to vacation conviction for criminal possession of a weapon in the 2nd degree *Dec. issued 4/17/17*

TRO is currently in place

5. Type of Motion/Proceeding:

- Motion for summary judgment/Motion to dismiss
- Motion for preliminary injunction
- Article 78 proceeding
- Other special proceeding
- Motion in a matrimonial proceeding
- Other motion/proceeding (Please describe):
- Motion in a real property proceeding
- Summary proceeding (landlord/tenant)
- Suppression motion
- Motion to vacate conviction
- Foreclosure

6. Reasons Decision Remains Undecided:

- Complexity of matter
- Excessive volume
- Other (Please describe):
- Pending in Law Dep't
- Leave/absence from bench

1. Name of Case: People v K [redacted] M [redacted]
2. Case #/ Motion Sequence #: [redacted] 3. Date of Final Submission: 1 2 / 1 3 / 2 0 1 6
4. Nature of Matter Pending: motion to vacate sentence of consecutive terms of imprisonment *Dec. issued 4/24/17*

TRO is currently in place

5. **Type of Motion/Proceeding:**

- | | |
|--|---|
| <input type="checkbox"/> Motion for summary judgment/Motion to dismiss | <input type="checkbox"/> Motion in a real property proceeding |
| <input type="checkbox"/> Motion for preliminary injunction | <input type="checkbox"/> Summary proceeding (landlord/tenant) |
| <input type="checkbox"/> Article 78 proceeding | <input type="checkbox"/> Suppression motion |
| <input type="checkbox"/> Other special proceeding | <input type="checkbox"/> Motion to vacate conviction |
| <input type="checkbox"/> Motion in a matrimonial proceeding | <input type="checkbox"/> Foreclosure |
| <input checked="" type="checkbox"/> Other motion/proceeding (Please describe):
440.20 motion to vacate sentence | |

6. **Reasons Decision Remains Undecided:**

- | | |
|--|---|
| <input type="checkbox"/> Complexity of matter | <input type="checkbox"/> Pending in Law Dep't |
| <input checked="" type="checkbox"/> Excessive volume | <input type="checkbox"/> Leave/absence from bench |
| <input type="checkbox"/> Other (Please describe): | |

1. Name of Case: People v R [redacted] P [redacted]
2. Case #/ Motion Sequence #: [redacted] 3. Date of Final Submission: 1 2 / 0 5 / 2 0 1 6
4. Nature of Matter Pending: motion to vacate sentence of consecutive terms of imprisonment *Dec. issued 4/24/17*

TRO is currently in place

5. **Type of Motion/Proceeding:**

- | | |
|---|---|
| <input type="checkbox"/> Motion for summary judgment/Motion to dismiss | <input type="checkbox"/> Motion in a real property proceeding |
| <input type="checkbox"/> Motion for preliminary injunction | <input type="checkbox"/> Summary proceeding (landlord/tenant) |
| <input type="checkbox"/> Article 78 proceeding | <input type="checkbox"/> Suppression motion |
| <input type="checkbox"/> Other special proceeding | <input type="checkbox"/> Motion to vacate conviction |
| <input type="checkbox"/> Motion in a matrimonial proceeding | <input type="checkbox"/> Foreclosure |
| <input checked="" type="checkbox"/> Other motion/proceeding (Please describe):
44.20 motion to vacate sentence | |

6. **Reasons Decision Remains Undecided:**

- | | |
|--|---|
| <input type="checkbox"/> Complexity of matter | <input type="checkbox"/> Pending in Law Dep't |
| <input checked="" type="checkbox"/> Excessive volume | <input type="checkbox"/> Leave/absence from bench |
| <input type="checkbox"/> Other (Please describe): | |

1. Name of Case: People v R [REDACTED] G [REDACTED]
2. Case #/ Motion Sequence #: [REDACTED] 3. Date of Final Submission: 1 2 / 2 3 / 2 0 1 6
4. Nature of Matter Pending: motion to vacate sentence as illegal *Dec. issued 4/24/17*

TRO is currently in place

5. **Type of Motion/Proceeding:**

- | | |
|--|---|
| <input type="checkbox"/> Motion for summary judgment/Motion to dismiss | <input type="checkbox"/> Motion in a real property proceeding |
| <input type="checkbox"/> Motion for preliminary injunction | <input type="checkbox"/> Summary proceeding (landlord/tenant) |
| <input type="checkbox"/> Article 78 proceeding | <input type="checkbox"/> Suppression motion |
| <input type="checkbox"/> Other special proceeding | <input type="checkbox"/> Motion to vacate conviction |
| <input type="checkbox"/> Motion in a matrimonial proceeding | <input type="checkbox"/> Foreclosure |
| <input checked="" type="checkbox"/> Other motion/proceeding (Please describe):
440.20 motion to vacate sentence | |

6. **Reasons Decision Remains Undecided:**

- | | |
|--|---|
| <input type="checkbox"/> Complexity of matter | <input type="checkbox"/> Pending in Law Dep't |
| <input checked="" type="checkbox"/> Excessive volume | <input type="checkbox"/> Leave/absence from bench |
| <input type="checkbox"/> Other (Please describe): | |

1. Name of Case: _____
2. Case #/ Motion Sequence #: _____ 3. Date of Final Submission: ____ / ____ / ____
4. Nature of Matter Pending: motion to vacate sentence of consecutive terms of imprisonment

TRO is currently in place

5. **Type of Motion/Proceeding:**

- | | |
|--|---|
| <input type="checkbox"/> Motion for summary judgment/Motion to dismiss | <input type="checkbox"/> Motion in a real property proceeding |
| <input type="checkbox"/> Motion for preliminary injunction | <input type="checkbox"/> Summary proceeding (landlord/tenant) |
| <input type="checkbox"/> Article 78 proceeding | <input type="checkbox"/> Suppression motion |
| <input type="checkbox"/> Other special proceeding | <input type="checkbox"/> Motion to vacate conviction |
| <input type="checkbox"/> Motion in a matrimonial proceeding | <input type="checkbox"/> Foreclosure |
| <input type="checkbox"/> Other motion/proceeding (Please describe): | |

6. **Reasons Decision Remains Undecided:**

- | | |
|---|---|
| <input type="checkbox"/> Complexity of matter | <input type="checkbox"/> Pending in Law Dep't |
| <input type="checkbox"/> Excessive volume | <input type="checkbox"/> Leave/absence from bench |
| <input type="checkbox"/> Other (Please describe): | |



Amended

REPORT OF UNDECIDED MATTERS PURSUANT TO SECTION 4.1 OF THE RULES OF THE CHIEF JUDGE

Date: 09 / 10 / 2019

To: Hon. Thomas A. Breslin

From: Hon. William A. Carter

Reporting Period: January–March April–June July–September October–December *2017*

As of the 4th Quarter 2018, residential and commercial foreclosure proceedings must be reported. Tax certiorari proceedings continue to be exempt.

To the best of my knowledge (Check all that apply):

- A. No civil or criminal motions, proceedings, actions or matters of any kind pending undecided for more than 60 days after final submission.
- B. No motions for or related to interim maintenance, child support, or summary landlord/tenant proceedings pending undecided for more than 30 days after final submission.
- C. The following pending matters are undecided more than 60 days after final submission.
Total Number: 2
- D. The following pending interim maintenance or child support matters or summary landlord/tenant proceedings are undecided more than 30 days after final submission.
Total Number:

- 1. Name of Case: People v. [REDACTED]
- 2. Case #/ Motion Sequence #: [REDACTED]
- 3. Date of Final Submission: 02 / 28 / 2017
- 4. Nature of Matter Pending: defendant appeals conviction from Cohoes City Court
Dec. issued 8/8/17

TRO is currently in place

5. Type of Motion/Proceeding:

- | | |
|--|---|
| <input type="checkbox"/> Motion for summary judgment/Motion to dismiss | <input type="checkbox"/> Motion in a real property proceeding |
| <input type="checkbox"/> Motion for preliminary injunction | <input type="checkbox"/> Summary proceeding (landlord/tenant) |
| <input type="checkbox"/> Article 78 proceeding | <input type="checkbox"/> Suppression motion |
| <input type="checkbox"/> Other special proceeding | <input type="checkbox"/> Motion to vacate conviction |
| <input type="checkbox"/> Motion in a matrimonial proceeding | <input type="checkbox"/> Foreclosure |
| <input checked="" type="checkbox"/> Other motion/proceeding (Please describe):
pro se criminal appeal | |

6. Reasons Decision Remains Undecided:

- | | |
|--|---|
| <input type="checkbox"/> Complexity of matter | <input type="checkbox"/> Pending in Law Dep't |
| <input checked="" type="checkbox"/> Excessive volume | <input type="checkbox"/> Leave/absence from bench |
| <input type="checkbox"/> Other (Please describe): | |

1. Name of Case: SEFCU v Notaro
2. Case #/ Motion Sequence #: CA 208-17 3. Date of Final Submission: 0 4 / 1 0 / 2 0 1 7

4. Nature of Matter Pending:
appeal of denial of motion to vacate default judgment from Albany City Court

Dec. issued 8/18/17

TRO is currently in place

5. **Type of Motion/Proceeding:**

- | | |
|--|---|
| <input type="checkbox"/> Motion for summary judgment/Motion to dismiss | <input type="checkbox"/> Motion in a real property proceeding |
| <input type="checkbox"/> Motion for preliminary injunction | <input type="checkbox"/> Summary proceeding (landlord/tenant) |
| <input type="checkbox"/> Article 78 proceeding | <input type="checkbox"/> Suppression motion |
| <input type="checkbox"/> Other special proceeding | <input type="checkbox"/> Motion to vacate conviction |
| <input type="checkbox"/> Motion in a matrimonial proceeding | <input type="checkbox"/> Foreclosure |
| <input checked="" type="checkbox"/> Other motion/proceeding (Please describe):
civil appeal | |

6. **Reasons Decision Remains Undecided:**

- | | |
|--|---|
| <input type="checkbox"/> Complexity of matter | <input type="checkbox"/> Pending in Law Dep't |
| <input checked="" type="checkbox"/> Excessive volume | <input type="checkbox"/> Leave/absence from bench |
| <input type="checkbox"/> Other (Please describe): | |

1. Name of Case: _____
2. Case #/ Motion Sequence #: _____ 3. Date of Final Submission: ____ / ____ / ____

4. Nature of Matter Pending:

TRO is currently in place

5. **Type of Motion/Proceeding:**

- | | |
|--|---|
| <input type="checkbox"/> Motion for summary judgment/Motion to dismiss | <input type="checkbox"/> Motion in a real property proceeding |
| <input type="checkbox"/> Motion for preliminary injunction | <input type="checkbox"/> Summary proceeding (landlord/tenant) |
| <input type="checkbox"/> Article 78 proceeding | <input type="checkbox"/> Suppression motion |
| <input type="checkbox"/> Other special proceeding | <input type="checkbox"/> Motion to vacate conviction |
| <input type="checkbox"/> Motion in a matrimonial proceeding | <input type="checkbox"/> Foreclosure |
| <input type="checkbox"/> Other motion/proceeding (Please describe): | |

6. **Reasons Decision Remains Undecided:**

- | | |
|---|---|
| <input type="checkbox"/> Complexity of matter | <input type="checkbox"/> Pending in Law Dep't |
| <input type="checkbox"/> Excessive volume | <input type="checkbox"/> Leave/absence from bench |
| <input type="checkbox"/> Other (Please describe): | |



Amended

REPORT OF UNDECIDED MATTERS PURSUANT TO SECTION 4.1 OF THE RULES OF THE CHIEF JUDGE

Date: 0 9 / 1 0 / 2 0 1 9

To: Hon. Thomas A. Breslin

From: Hon. William A. Carter

Reporting Period: January–March April–June July–September October–December *2017*

As of the 4th Quarter 2018, residential and commercial foreclosure proceedings must be reported. Tax certiorari proceedings continue to be exempt.

To the best of my knowledge (Check all that apply):

- A. No civil or criminal motions, proceedings, actions or matters of any kind pending undecided for more than 60 days after final submission.
- B. No motions for or related to interim maintenance, child support, or summary landlord/tenant proceedings pending undecided for more than 30 days after final submission.
- C. The following pending matters are undecided more than 60 days after final submission.
Total Number: 1
- D. The following pending interim maintenance or child support matters or summary landlord/tenant proceedings are undecided more than 30 days after final submission.
Total Number:

- 1. Name of Case: People v. [REDACTED] R. [REDACTED]
- 2. Case #/ Motion Sequence #: [REDACTED] 3. Date of Final Submission: 0 6 / 1 6 / 2 0 1 7
- 4. Nature of Matter Pending: Appeal from a conviction of attempted aggravated harassment in the 2nd degree *Dec. issued 1/25/18*

TRO is currently in place

5. Type of Motion/Proceeding:

- | | |
|--|---|
| <input type="checkbox"/> Motion for summary judgment/Motion to dismiss
<input type="checkbox"/> Motion for preliminary injunction
<input type="checkbox"/> Article 78 proceeding
<input type="checkbox"/> Other special proceeding
<input type="checkbox"/> Motion in a matrimonial proceeding
<input checked="" type="checkbox"/> Other motion/proceeding (Please describe): | <input type="checkbox"/> Motion in a real property proceeding
<input type="checkbox"/> Summary proceeding (landlord/tenant)
<input type="checkbox"/> Suppression motion
<input type="checkbox"/> Motion to vacate conviction
<input type="checkbox"/> Foreclosure |
|--|---|

criminal appeal

6. Reasons Decision Remains Undecided:

- | | |
|--|--|
| <input type="checkbox"/> Complexity of matter
<input checked="" type="checkbox"/> Excessive volume
<input type="checkbox"/> Other (Please describe): | <input type="checkbox"/> Pending in Law Dep't
<input type="checkbox"/> Leave/absence from bench |
|--|--|



Amended

REPORT OF UNDECIDED MATTERS PURSUANT TO SECTION 4.1 OF THE RULES OF THE CHIEF JUDGE

Date: 09 / 10 / 2019

To: Hon. Thomas A. Breslin

From: Hon. William A. Carter

Reporting Period: January–March April–June July–September October–December *2017*

As of the 4th Quarter 2018, residential and commercial foreclosure proceedings must be reported. Tax certiorari proceedings continue to be exempt.

To the best of my knowledge (Check all that apply):

- A. No civil or criminal motions, proceedings, actions or matters of any kind pending undecided for more than 60 days after final submission.
- B. No motions for or related to interim maintenance, child support, or summary landlord/tenant proceedings pending undecided for more than 30 days after final submission.
- C. The following pending matters are undecided more than 60 days after final submission.
Total Number: 2
- D. The following pending interim maintenance or child support matters or summary landlord/tenant proceedings are undecided more than 30 days after final submission.
Total Number:

1. Name of Case: People v J [REDACTED] R [REDACTED]
 2. Case #/ Motion Sequence #: [REDACTED] 3. Date of Final Submission: 06 / 16 / 2017

4. Nature of Matter Pending:
 Appeal from a conviction of attempted aggravated harassment in the 2nd degree *Dec. issued 1/25/18*

TRO is currently in place

5. Type of Motion/Proceeding:

- | | |
|---|---|
| <input type="checkbox"/> Motion for summary judgment/Motion to dismiss | <input type="checkbox"/> Motion in a real property proceeding |
| <input type="checkbox"/> Motion for preliminary injunction | <input type="checkbox"/> Summary proceeding (landlord/tenant) |
| <input type="checkbox"/> Article 78 proceeding | <input type="checkbox"/> Suppression motion |
| <input type="checkbox"/> Other special proceeding | <input type="checkbox"/> Motion to vacate conviction |
| <input type="checkbox"/> Motion in a matrimonial proceeding | <input type="checkbox"/> Foreclosure |
| <input checked="" type="checkbox"/> Other motion/proceeding (Please describe):
criminal appeal | |

6. Reasons Decision Remains Undecided:

- | | |
|--|---|
| <input type="checkbox"/> Complexity of matter | <input type="checkbox"/> Pending in Law Dep't |
| <input checked="" type="checkbox"/> Excessive volume | <input type="checkbox"/> Leave/absence from bench |
| <input type="checkbox"/> Other (Please describe): | |

1. Name of Case: People v. [REDACTED]
2. Case #/ Motion Sequence #: [REDACTED] 3. Date of Final Submission: 1 0 / 1 0 / 2 0 1 7
4. Nature of Matter Pending: motion to vacate VOP conviction *Dec. issued 3/16/18*

TRO is currently in place

5. **Type of Motion/Proceeding:**

- | | |
|--|---|
| <input type="checkbox"/> Motion for summary judgment/Motion to dismiss | <input type="checkbox"/> Motion in a real property proceeding |
| <input type="checkbox"/> Motion for preliminary injunction | <input type="checkbox"/> Summary proceeding (landlord/tenant) |
| <input type="checkbox"/> Article 78 proceeding | <input type="checkbox"/> Suppression motion |
| <input type="checkbox"/> Other special proceeding | <input checked="" type="checkbox"/> Motion to vacate conviction |
| <input type="checkbox"/> Motion in a matrimonial proceeding | <input type="checkbox"/> Foreclosure |
| <input type="checkbox"/> Other motion/proceeding (Please describe): | |

6. **Reasons Decision Remains Undecided:**

- | | |
|--|---|
| <input type="checkbox"/> Complexity of matter | <input type="checkbox"/> Pending in Law Dep't |
| <input checked="" type="checkbox"/> Excessive volume | <input type="checkbox"/> Leave/absence from bench |
| <input type="checkbox"/> Other (Please describe): | |

1. Name of Case: _____
2. Case #/ Motion Sequence #: _____ 3. Date of Final Submission: ____ / ____ / ____
4. Nature of Matter Pending: _____

TRO is currently in place

5. **Type of Motion/Proceeding:**

- | | |
|--|---|
| <input type="checkbox"/> Motion for summary judgment/Motion to dismiss | <input type="checkbox"/> Motion in a real property proceeding |
| <input type="checkbox"/> Motion for preliminary injunction | <input type="checkbox"/> Summary proceeding (landlord/tenant) |
| <input type="checkbox"/> Article 78 proceeding | <input type="checkbox"/> Suppression motion |
| <input type="checkbox"/> Other special proceeding | <input type="checkbox"/> Motion to vacate conviction |
| <input type="checkbox"/> Motion in a matrimonial proceeding | <input type="checkbox"/> Foreclosure |
| <input type="checkbox"/> Other motion/proceeding (Please describe): | |

6. **Reasons Decision Remains Undecided:**

- | | |
|---|---|
| <input type="checkbox"/> Complexity of matter | <input type="checkbox"/> Pending in Law Dep't |
| <input type="checkbox"/> Excessive volume | <input type="checkbox"/> Leave/absence from bench |
| <input type="checkbox"/> Other (Please describe): | |



REPORT OF UNDECIDED MATTERS PURSUANT TO SECTION 4.1 OF THE RULES OF THE CHIEF JUDGE

Date: 09 / 10 / 2019

To: Hon. Thomas A. Breslin

From: Hon. William A. Carter

Reporting Period: January–March April–June July–September October–December

2018

As of the 4th Quarter 2018, residential and commercial foreclosure proceedings must be reported. Tax certiorari proceedings continue to be exempt.

To the best of my knowledge (Check all that apply):

- A. No civil or criminal motions, proceedings, actions or matters of any kind pending undecided for more than 60 days after final submission.
- B. No motions for or related to interim maintenance, child support, or summary landlord/tenant proceedings pending undecided for more than 30 days after final submission.
- C. The following pending matters are undecided more than 60 days after final submission.
Total Number: 1
- D. The following pending interim maintenance or child support matters or summary landlord/tenant proceedings are undecided more than 30 days after final submission.
Total Number:

1. Name of Case: People v [REDACTED] S. [REDACTED]

2. Case #/ Motion Sequence #: [REDACTED] 3. Date of Final Submission: 01 / 10 / 2018

4. Nature of Matter Pending: *Dec. issued 8/3/18*
 motion to vacate conviction for criminal possession of a weapon in the 2nd degree, criminal possession of a weapon in the 3rd degree & criminal sale of a firearm in the 3rd degree

TRO is currently in place

5. **Type of Motion/Proceeding:**

- | | |
|--|---|
| <input type="checkbox"/> Motion for summary judgment/Motion to dismiss | <input type="checkbox"/> Motion in a real property proceeding |
| <input type="checkbox"/> Motion for preliminary injunction | <input type="checkbox"/> Summary proceeding (landlord/tenant) |
| <input type="checkbox"/> Article 78 proceeding | <input type="checkbox"/> Suppression motion |
| <input type="checkbox"/> Other special proceeding | <input checked="" type="checkbox"/> Motion to vacate conviction |
| <input type="checkbox"/> Motion in a matrimonial proceeding | <input type="checkbox"/> Foreclosure |
| <input type="checkbox"/> Other motion/proceeding (Please describe): | |

6. **Reasons Decision Remains Undecided:**

- | | |
|--|---|
| <input type="checkbox"/> Complexity of matter | <input type="checkbox"/> Pending in Law Dep't |
| <input checked="" type="checkbox"/> Excessive volume | <input type="checkbox"/> Leave/absence from bench |
| <input type="checkbox"/> Other (Please describe): | |



Amended

REPORT OF UNDECIDED MATTERS PURSUANT TO SECTION 4.1 OF THE RULES OF THE CHIEF JUDGE

Date: 09 / 10 / 2019

To: Hon. Thomas A. Breslin

From: Hon. William A. Carter

Reporting Period: January–March April–June July–September October–December

2018

As of the 4th Quarter 2018, residential and commercial foreclosure proceedings must be reported. Tax certiorari proceedings continue to be exempt.

To the best of my knowledge (Check all that apply):

- A. No civil or criminal motions, proceedings, actions or matters of any kind pending undecided for more than 60 days after final submission.
- B. No motions for or related to interim maintenance, child support, or summary landlord/tenant proceedings pending undecided for more than 30 days after final submission.
- C. The following pending matters are undecided more than 60 days after final submission.
Total Number: 2
- D. The following pending interim maintenance or child support matters or summary landlord/tenant proceedings are undecided more than 30 days after final submission.
Total Number:

1. Name of Case: People v J. [REDACTED] S. [REDACTED]

2. Case #/ Motion Sequence #: [REDACTED] 3. Date of Final Submission: 01 / 10 / 2018

4. Nature of Matter Pending: *Dec. issued 8/3/18*
motion to vacate conviction for criminal possession of a weapon in the 2nd degree, criminal possession of a weapon in the 3rd degree & criminal sale of a firearm in the 3rd degree

TRO is currently in place

5. Type of Motion/Proceeding:

- | | |
|--|---|
| <input type="checkbox"/> Motion for summary judgment/Motion to dismiss | <input type="checkbox"/> Motion in a real property proceeding |
| <input type="checkbox"/> Motion for preliminary injunction | <input type="checkbox"/> Summary proceeding (landlord/tenant) |
| <input type="checkbox"/> Article 78 proceeding | <input type="checkbox"/> Suppression motion |
| <input type="checkbox"/> Other special proceeding | <input checked="" type="checkbox"/> Motion to vacate conviction |
| <input type="checkbox"/> Motion in a matrimonial proceeding | <input type="checkbox"/> Foreclosure |
| <input type="checkbox"/> Other motion/proceeding (Please describe): | |

6. Reasons Decision Remains Undecided:

- | | |
|--|---|
| <input type="checkbox"/> Complexity of matter | <input type="checkbox"/> Pending in Law Dep't |
| <input checked="" type="checkbox"/> Excessive volume | <input type="checkbox"/> Leave/absence from bench |
| <input type="checkbox"/> Other (Please describe): | |

1. Name of Case: People v. [REDACTED] S [REDACTED]
2. Case #/ Motion Sequence #: [REDACTED] 3. Date of Final Submission: 0 4 / 2 3 / 2 0 1 8
4. Nature of Matter Pending: Dec. issued 8/6/18
motion to vacate conviction for criminal possession of a weapon in the 2nd degree, criminal possession of a weapon in the 3rd degree & criminal sale of a firearm in the 3rd degree

TRO is currently in place

5. **Type of Motion/Proceeding:**

- | | |
|--|---|
| <input type="checkbox"/> Motion for summary judgment/Motion to dismiss | <input type="checkbox"/> Motion in a real property proceeding |
| <input type="checkbox"/> Motion for preliminary injunction | <input type="checkbox"/> Summary proceeding (landlord/tenant) |
| <input type="checkbox"/> Article 78 proceeding | <input type="checkbox"/> Suppression motion |
| <input type="checkbox"/> Other special proceeding | <input checked="" type="checkbox"/> Motion to vacate conviction |
| <input type="checkbox"/> Motion in a matrimonial proceeding | <input type="checkbox"/> Foreclosure |
| <input type="checkbox"/> Other motion/proceeding (Please describe): | |

6. **Reasons Decision Remains Undecided:**

- | | |
|--|---|
| <input type="checkbox"/> Complexity of matter | <input type="checkbox"/> Pending in Law Dep't |
| <input checked="" type="checkbox"/> Excessive volume | <input type="checkbox"/> Leave/absence from bench |
| <input type="checkbox"/> Other (Please describe): | |

1. Name of Case: _____
2. Case #/ Motion Sequence #: _____ 3. Date of Final Submission: ____ / ____ / ____
4. Nature of Matter Pending: _____

TRO is currently in place

5. **Type of Motion/Proceeding:**

- | | |
|--|---|
| <input type="checkbox"/> Motion for summary judgment/Motion to dismiss | <input type="checkbox"/> Motion in a real property proceeding |
| <input type="checkbox"/> Motion for preliminary injunction | <input type="checkbox"/> Summary proceeding (landlord/tenant) |
| <input type="checkbox"/> Article 78 proceeding | <input type="checkbox"/> Suppression motion |
| <input type="checkbox"/> Other special proceeding | <input type="checkbox"/> Motion to vacate conviction |
| <input type="checkbox"/> Motion in a matrimonial proceeding | <input type="checkbox"/> Foreclosure |
| <input type="checkbox"/> Other motion/proceeding (Please describe): | |

6. **Reasons Decision Remains Undecided:**

- | | |
|---|---|
| <input type="checkbox"/> Complexity of matter | <input type="checkbox"/> Pending in Law Dep't |
| <input type="checkbox"/> Excessive volume | <input type="checkbox"/> Leave/absence from bench |
| <input type="checkbox"/> Other (Please describe): | |



Amended

REPORT OF UNDECIDED MATTERS PURSUANT TO SECTION 4.1 OF THE RULES OF THE CHIEF JUDGE

Date: 09 / 10 / 2019

To: Hon. Thomas A. Breslin

From: Hon. William A. Carter

Reporting Period: January–March April–June July–September October–December

2018

As of the 4th Quarter 2018, residential and commercial foreclosure proceedings must be reported. Tax certiorari proceedings continue to be exempt.

To the best of my knowledge (Check all that apply):

- A. No civil or criminal motions, proceedings, actions or matters of any kind pending undecided for more than 60 days after final submission.
- B. No motions for or related to interim maintenance, child support, or summary landlord/tenant proceedings pending undecided for more than 30 days after final submission.
- C. The following pending matters are undecided more than 60 days after final submission.
Total Number: 2
- D. The following pending interim maintenance or child support matters or summary landlord/tenant proceedings are undecided more than 30 days after final submission.
Total Number:

1. Name of Case: People v M [REDACTED] D [REDACTED]

2. Case #/ Motion Sequence #: [REDACTED] 3. Date of Final Submission: 07 / 27 / 2018

4. Nature of Matter Pending:

Dec. issued 10/11/18

People Appeal from a decision of Guilderland Town Court dismissal of charges against the defendant

TRO is currently in place

5. Type of Motion/Proceeding:

- Motion for summary judgment/Motion to dismiss
- Motion for preliminary injunction
- Article 78 proceeding
- Other special proceeding
- Motion in a matrimonial proceeding
- Other motion/proceeding (Please describe):
criminal appeal
- Motion in a real property proceeding
- Summary proceeding (landlord/tenant)
- Suppression motion
- Motion to vacate conviction
- Foreclosure

6. Reasons Decision Remains Undecided:

- Complexity of matter
- Excessive volume
- Other (Please describe):
- Pending in Law Dep't
- Leave/absence from bench

1. Name of Case: Five Corners v Valentino
2. Case #/ Motion Sequence #: CA 437-18 3. Date of Final Submission: 0 7 / 2 5 / 2 0 1 8
4. Nature of Matter Pending: landlord/tenant *Dec. issued 4/23/19*

TRO is currently in place

5. **Type of Motion/Proceeding:**

- | | |
|---|---|
| <input type="checkbox"/> Motion for summary judgment/Motion to dismiss | <input type="checkbox"/> Motion in a real property proceeding |
| <input type="checkbox"/> Motion for preliminary injunction | <input type="checkbox"/> Summary proceeding (landlord/tenant) |
| <input type="checkbox"/> Article 78 proceeding | <input type="checkbox"/> Suppression motion |
| <input type="checkbox"/> Other special proceeding | <input type="checkbox"/> Motion to vacate conviction |
| <input type="checkbox"/> Motion in a matrimonial proceeding | <input type="checkbox"/> Foreclosure |
| <input checked="" type="checkbox"/> Other motion/proceeding (Please describe):
motion to dismiss appeal as abandoned | |

6. **Reasons Decision Remains Undecided:**

- | | |
|--|---|
| <input type="checkbox"/> Complexity of matter | <input type="checkbox"/> Pending in Law Dep't |
| <input checked="" type="checkbox"/> Excessive volume | <input type="checkbox"/> Leave/absence from bench |
| <input type="checkbox"/> Other (Please describe): | |

1. Name of Case: _____
2. Case #/ Motion Sequence #: _____ 3. Date of Final Submission: ____ / ____ / ____
4. Nature of Matter Pending: _____

TRO is currently in place

5. **Type of Motion/Proceeding:**

- | | |
|--|---|
| <input type="checkbox"/> Motion for summary judgment/Motion to dismiss | <input type="checkbox"/> Motion in a real property proceeding |
| <input type="checkbox"/> Motion for preliminary injunction | <input type="checkbox"/> Summary proceeding (landlord/tenant) |
| <input type="checkbox"/> Article 78 proceeding | <input type="checkbox"/> Suppression motion |
| <input type="checkbox"/> Other special proceeding | <input type="checkbox"/> Motion to vacate conviction |
| <input type="checkbox"/> Motion in a matrimonial proceeding | <input type="checkbox"/> Foreclosure |
| <input type="checkbox"/> Other motion/proceeding (Please describe): | |

6. **Reasons Decision Remains Undecided:**

- | | |
|---|---|
| <input type="checkbox"/> Complexity of matter | <input type="checkbox"/> Pending in Law Dep't |
| <input type="checkbox"/> Excessive volume | <input type="checkbox"/> Leave/absence from bench |
| <input type="checkbox"/> Other (Please describe): | |



Amended

REPORT OF UNDECIDED MATTERS PURSUANT TO SECTION 4.1 OF THE RULES OF THE CHIEF JUDGE

Date: 09 / 10 / 2019

To: Hon. Thomas A. Breslin

From: Hon. William A. Carter

Reporting Period: January–March April–June July–September October–December *2018*

As of the 4th Quarter 2018, residential and commercial foreclosure proceedings must be reported. Tax certiorari proceedings continue to be exempt.

To the best of my knowledge (Check all that apply):

- A. No civil or criminal motions, proceedings, actions or matters of any kind pending undecided for more than 60 days after final submission.
- B. No motions for or related to interim maintenance, child support, or summary landlord/tenant proceedings pending undecided for more than 30 days after final submission.
- C. The following pending matters are undecided more than 60 days after final submission.
Total Number: 1
- D. The following pending interim maintenance or child support matters or summary landlord/tenant proceedings are undecided more than 30 days after final submission.
Total Number:

1. Name of Case: Five Corners v Valentino

2. Case #/ Motion Sequence #: CA 437-18 3. Date of Final Submission: 07 / 25 / 2018

4. Nature of Matter Pending: landlord/tenant *Dec. issued 4/23/19*

TRO is currently in place

5. Type of Motion/Proceeding:

- | | |
|--|---|
| <input type="checkbox"/> Motion for summary judgment/Motion to dismiss
<input type="checkbox"/> Motion for preliminary injunction
<input type="checkbox"/> Article 78 proceeding
<input type="checkbox"/> Other special proceeding
<input type="checkbox"/> Motion in a matrimonial proceeding
<input checked="" type="checkbox"/> Other motion/proceeding (Please describe):
<u>motion to dismiss appeal as abandoned</u> | <input type="checkbox"/> Motion in a real property proceeding
<input type="checkbox"/> Summary proceeding (landlord/tenant)
<input type="checkbox"/> Suppression motion
<input type="checkbox"/> Motion to vacate conviction
<input type="checkbox"/> Foreclosure |
|--|---|

6. Reasons Decision Remains Undecided:

- | | |
|--|--|
| <input type="checkbox"/> Complexity of matter
<input checked="" type="checkbox"/> Excessive volume
<input type="checkbox"/> Other (Please describe):
<div style="border: 1px solid black; height: 30px; width: 100%; margin-top: 5px;"></div> | <input type="checkbox"/> Pending in Law Dep't
<input type="checkbox"/> Leave/absence from bench |
|--|--|



Amended

REPORT OF UNDECIDED MATTERS PURSUANT TO SECTION 4.1 OF THE RULES OF THE CHIEF JUDGE

Date: 09 / 10 / 2019

To: Hon. Thomas A. Breslin

From: Hon. William A. Carter

Reporting Period: January–March April–June July–September October–December

2019

As of the 4th Quarter 2018, residential and commercial foreclosure proceedings must be reported. Tax certiorari proceedings continue to be exempt.

To the best of my knowledge (Check all that apply):

- A. No civil or criminal motions, proceedings, actions or matters of any kind pending undecided for more than 60 days after final submission.
- B. No motions for or related to interim maintenance, child support, or summary landlord/tenant proceedings pending undecided for more than 30 days after final submission.
- C. The following pending matters are undecided more than 60 days after final submission.
Total Number: 3
- D. The following pending interim maintenance or child support matters or summary landlord/tenant proceedings are undecided more than 30 days after final submission.
Total Number:

1. Name of Case: Kowalski v Village of Voorheesville

2. Case #/ Motion Sequence #: CA 961-17

3. Date of Final Submission: 10 / 11 / 2018

4. Nature of Matter Pending:
appeal of dismissal of small claims judgment

Dec. issued 4/8/19

TRO is currently in place

5. **Type of Motion/Proceeding:**

- | | |
|--|---|
| <input type="checkbox"/> Motion for summary judgment/Motion to dismiss | <input type="checkbox"/> Motion in a real property proceeding |
| <input type="checkbox"/> Motion for preliminary injunction | <input type="checkbox"/> Summary proceeding (landlord/tenant) |
| <input type="checkbox"/> Article 78 proceeding | <input type="checkbox"/> Suppression motion |
| <input type="checkbox"/> Other special proceeding | <input type="checkbox"/> Motion to vacate conviction |
| <input type="checkbox"/> Motion in a matrimonial proceeding | <input type="checkbox"/> Foreclosure |
| <input checked="" type="checkbox"/> Other motion/proceeding (Please describe): | |

civil appeal

6. **Reasons Decision Remains Undecided:**

- | | |
|--|---|
| <input type="checkbox"/> Complexity of matter | <input type="checkbox"/> Pending in Law Dep't |
| <input checked="" type="checkbox"/> Excessive volume | <input type="checkbox"/> Leave/absence from bench |
| <input type="checkbox"/> Other (Please describe): | |

1. Name of Case: People v K [redacted] F [redacted]
2. Case #/ Motion Sequence #: DA 891-15 3. Date of Final Submission: 0 1 / 0 4 / 2 0 1 9
4. Nature of Matter Pending: *Dec. issued 4/26/19*
motion to dismiss conviction for rape in the second degree

TRO is currently in place

5. Type of Motion/Proceeding:

- | | |
|--|---|
| <input type="checkbox"/> Motion for summary judgment/Motion to dismiss | <input type="checkbox"/> Motion in a real property proceeding |
| <input type="checkbox"/> Motion for preliminary injunction | <input type="checkbox"/> Summary proceeding (landlord/tenant) |
| <input type="checkbox"/> Article 78 proceeding | <input type="checkbox"/> Suppression motion |
| <input type="checkbox"/> Other special proceeding | <input checked="" type="checkbox"/> Motion to vacate conviction |
| <input type="checkbox"/> Motion in a matrimonial proceeding | <input type="checkbox"/> Foreclosure |
| <input type="checkbox"/> Other motion/proceeding (Please describe): | |

6. Reasons Decision Remains Undecided:

- | | |
|--|---|
| <input type="checkbox"/> Complexity of matter | <input type="checkbox"/> Pending in Law Dep't |
| <input checked="" type="checkbox"/> Excessive volume | <input type="checkbox"/> Leave/absence from bench |
| <input type="checkbox"/> Other (Please describe): | |

1. Name of Case: Five Corners v Valentino
2. Case #/ Motion Sequence #: CA 437-18 3. Date of Final Submission: 0 7 / 2 5 / 2 0 1 8
4. Nature of Matter Pending: *Dec. issued 4/23/19*
landlord/tenant

TRO is currently in place

5. Type of Motion/Proceeding:

- | | |
|--|---|
| <input type="checkbox"/> Motion for summary judgment/Motion to dismiss | <input type="checkbox"/> Motion in a real property proceeding |
| <input type="checkbox"/> Motion for preliminary injunction | <input type="checkbox"/> Summary proceeding (landlord/tenant) |
| <input type="checkbox"/> Article 78 proceeding | <input type="checkbox"/> Suppression motion |
| <input type="checkbox"/> Other special proceeding | <input type="checkbox"/> Motion to vacate conviction |
| <input type="checkbox"/> Motion in a matrimonial proceeding | <input type="checkbox"/> Foreclosure |
| <input checked="" type="checkbox"/> Other motion/proceeding (Please describe): | |

motion to dismiss appeal as abandoned

6. Reasons Decision Remains Undecided:

- | | |
|---|---|
| <input type="checkbox"/> Complexity of matter | <input type="checkbox"/> Pending in Law Dep't |
| <input type="checkbox"/> Excessive volume | <input type="checkbox"/> Leave/absence from bench |
| <input type="checkbox"/> Other (Please describe): | |



Amended

REPORT OF UNDECIDED MATTERS PURSUANT TO SECTION 4.1 OF THE RULES OF THE CHIEF JUDGE

Date: 09 / 10 / 2019

To: Hon. Thomas A. Breslin

From: Hon. William A. Carter

Reporting Period: January–March April–June July–September October–December

2019

As of the 4th Quarter 2018, residential and commercial foreclosure proceedings must be reported. Tax certiorari proceedings continue to be exempt.

To the best of my knowledge (Check all that apply):

- A. No civil or criminal motions, proceedings, actions or matters of any kind pending undecided for more than 60 days after final submission.
- B. No motions for or related to interim maintenance, child support, or summary landlord/tenant proceedings pending undecided for more than 30 days after final submission.
- C. The following pending matters are undecided more than 60 days after final submission.
Total Number: 2
- D. The following pending interim maintenance or child support matters or summary landlord/tenant proceedings are undecided more than 30 days after final submission.
Total Number:

- 1. Name of Case: People v J. M. [REDACTED]
- 2. Case #/ Motion Sequence #: [REDACTED]
- 3. Date of Final Submission: 04 / 12 / 2019
Dec. issued 8/8/19
- 4. Nature of Matter Pending:
People appeal order of Guilderland Town Court dismissing two driving while intoxicated charges

TRO is currently in place

5. Type of Motion/Proceeding:

- | | |
|--|---|
| <input type="checkbox"/> Motion for summary judgment/Motion to dismiss | <input type="checkbox"/> Motion in a real property proceeding |
| <input type="checkbox"/> Motion for preliminary injunction | <input type="checkbox"/> Summary proceeding (landlord/tenant) |
| <input type="checkbox"/> Article 78 proceeding | <input type="checkbox"/> Suppression motion |
| <input type="checkbox"/> Other special proceeding | <input type="checkbox"/> Motion to vacate conviction |
| <input type="checkbox"/> Motion in a matrimonial proceeding | <input type="checkbox"/> Foreclosure |
| <input checked="" type="checkbox"/> Other motion/proceeding (Please describe):
<u>motion to dismiss appeal as abandoned</u> | |

6. Reasons Decision Remains Undecided:

- | | |
|--|---|
| <input type="checkbox"/> Complexity of matter | <input type="checkbox"/> Pending in Law Dep't |
| <input checked="" type="checkbox"/> Excessive volume | <input type="checkbox"/> Leave/absence from bench |
| <input type="checkbox"/> Other (Please describe): | |

1. Name of Case: People v Z [REDACTED] V [REDACTED]
2. Case #/ Motion Sequence #: [REDACTED] 3. Date of Final Submission: 0 4 / 2 3 / 2 0 1 9
4. Nature of Matter Pending: Dec. issued 8/20/19
Appeal from Colonie Town Court conviction for common law driving while intoxicated

TRO is currently in place

5. **Type of Motion/Proceeding:**

- | | |
|---|---|
| <input type="checkbox"/> Motion for summary judgment/Motion to dismiss | <input type="checkbox"/> Motion in a real property proceeding |
| <input type="checkbox"/> Motion for preliminary injunction | <input type="checkbox"/> Summary proceeding (landlord/tenant) |
| <input type="checkbox"/> Article 78 proceeding | <input type="checkbox"/> Suppression motion |
| <input type="checkbox"/> Other special proceeding | <input type="checkbox"/> Motion to vacate conviction |
| <input type="checkbox"/> Motion in a matrimonial proceeding | <input type="checkbox"/> Foreclosure |
| <input checked="" type="checkbox"/> Other motion/proceeding (Please describe):
criminal appeal | |

6. **Reasons Decision Remains Undecided:**

- | | |
|--|---|
| <input type="checkbox"/> Complexity of matter | <input type="checkbox"/> Pending in Law Dep't |
| <input checked="" type="checkbox"/> Excessive volume | <input type="checkbox"/> Leave/absence from bench |
| <input type="checkbox"/> Other (Please describe): | |

1. Name of Case: _____
2. Case #/ Motion Sequence #: _____ 3. Date of Final Submission: ____ / ____ / ____
4. Nature of Matter Pending:

TRO is currently in place

5. **Type of Motion/Proceeding:**

- | | |
|--|---|
| <input type="checkbox"/> Motion for summary judgment/Motion to dismiss | <input type="checkbox"/> Motion in a real property proceeding |
| <input type="checkbox"/> Motion for preliminary injunction | <input type="checkbox"/> Summary proceeding (landlord/tenant) |
| <input type="checkbox"/> Article 78 proceeding | <input type="checkbox"/> Suppression motion |
| <input type="checkbox"/> Other special proceeding | <input type="checkbox"/> Motion to vacate conviction |
| <input type="checkbox"/> Motion in a matrimonial proceeding | <input type="checkbox"/> Foreclosure |
| <input type="checkbox"/> Other motion/proceeding (Please describe): | |

6. **Reasons Decision Remains Undecided:**

- | | |
|---|---|
| <input type="checkbox"/> Complexity of matter | <input type="checkbox"/> Pending in Law Dep't |
| <input type="checkbox"/> Excessive volume | <input type="checkbox"/> Leave/absence from bench |
| <input type="checkbox"/> Other (Please describe): | |