

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

NAITA A. SEMAJ,

a Justice of the Supreme Court,
12th Judicial District, Bronx County.

**NOTICE OF FORMAL
WRITTEN COMPLAINT**

NOTICE is hereby given to Respondent, Naita A. Semaj, a Justice of the Supreme Court, 12th Judicial District, Bronx County, pursuant to Section 44, subdivision 4, of the Judiciary Law, that the State Commission on Judicial Conduct has determined that cause exists to serve upon Respondent the annexed Formal Written Complaint; and that, in accordance with said statute, Respondent is requested within twenty (20) days of the service of the annexed Formal Written Complaint upon her to serve the Commission at its New York office, 61 Broadway, Suite 1200, New York, New York 10006, with her verified Answer to the specific paragraphs of the Complaint.

Dated: January 21, 2025
Albany, New York

ROBERT H. TEMBECKJIAN
Administrator and Counsel
State Commission on Judicial Conduct
61 Broadway, Suite 1200
New York, New York 10006
(646) 386-4800

To: Hon. Naita A. Semaj



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

**FORMAL
WRITTEN COMPLAINT**

NAITA A. SEMAJ,

a Justice of the Supreme Court,
12th Judicial District, Bronx County.

1. Article VI, Section 22, of the Constitution of the State of New York establishes a Commission on Judicial Conduct (“Commission”), and Section 44, subdivision 4, of the Judiciary Law empowers the Commission to direct that a Formal Written Complaint be drawn and served upon a judge.
2. The Commission has directed that a Formal Written Complaint be drawn and served upon Naita A. Semaj (“Respondent”), a Justice of the Supreme Court, 12th Judicial District, Bronx County.
3. The factual allegations set forth in Charge I state acts of judicial misconduct by Respondent in violation of the Rules of the Chief Administrator of the Courts Governing Judicial Conduct (“Rules”).
4. Respondent was admitted to the practice of law in New York in 2006. She has been a Justice of the Supreme Court, 12th Judicial District, Bronx County, since January 1, 2022, having previously served as a Judge of the New York City

Civil Court, Bronx County, from January 1, 2019, to December 31, 2021.

Respondent's term expires on December 31, 2035.

CHARGE I

5. On numerous occasions from on or about March 23, 2022, through on or about April 3, 2023, while presiding over various matters, Respondent was and/or appeared to be impatient, undignified, discourteous and otherwise disrespectful toward and biased against assistant district attorneys (ADAs), in that she (A) spoke to prosecutors in an impatient and discourteous manner, (B) advocated for the defense, (C) failed to afford prosecutors the opportunity to be heard, (D) mischaracterized and assailed certain policies of the Bronx District Attorney's Office (DA's Office), (E) unjustifiably ejected ADAs from her courtroom on at least three occasions, and (F) otherwise acted inappropriately, including but not limited to making inappropriate comments about the physical appearance of an ADA who was pregnant, and removing her face mask in contravention of court system policy at the time and yelling at two ADAs to the point that spittle visibly emanated from her mouth.

Specifications to Charge I

People v S [REDACTED] S [REDACTED]

6. On or about April 1, 2022, Respondent presided over a calendar appearance in a criminal matter, *People v S [REDACTED] S [REDACTED]*, which was scheduled

for possible disposition on consent. The transcript of the appearance is appended as Exhibit 1. The defendant was charged *inter alia* with two counts of Attempted Murder in the Second Degree, Assault and Reckless Endangerment, and related weapons charges, for allegedly chasing and shooting at two individuals after they accosted him inside a store, wounding and hospitalizing at least one of them. He faced a maximum sentence of 25 years in prison if sentenced as an adult, but a significantly shorter period of incarceration if adjudicated as a youthful offender.¹

7. Walter Fields represented the defendant. ADA Joshua Couce and his Deputy Bureau Chief, ADA Ilya Kharkover, appeared on behalf of the People. The People were recommending a sentence of seven years imprisonment on a plea to the top count in full satisfaction of the charges. ADA Kharkover was present because Respondent had requested the attendance of a supervisor to justify the prosecution's sentencing recommendation.

8. At the beginning of the proceeding, Respondent asked the ADAs to "help" her "understand" the sentence they were recommending. ADA Kharkover stated that the case was "very strong" and explained that it involved the attempted murder of an individual who was running away from the defendant at the time of the shooting. Exhibit 1, 2:18-2:24.

¹ The defendant was eligible for youthful offender status because he was 17 years old at the time of the crime, though he was 18 years old at the time of this appearance.

9. In response, Respondent referred to a video of the events preceding the incident and described it as showing two people who “come into the store as Mr. S [REDACTED]’s in the store . . . with their hands in their pocket, clearly, as if they have something,” “immediately approach Mr. S [REDACTED]; take whatever is in their pocket out” and one of them “starts looking like he’s trying to stab Mr. S [REDACTED] in the side.” Exhibit 1, 2:25-3:10.

10. Respondent continued to ask ADA Kharkover, “help me understand,” sarcastically remarked, “So you’re so concerned about violence,” and asked if ADA Kharkover had seen “that part in the video” where two people “came into the store with weapons” and “[a]ttempted to immediately start stabbing Mr. S [REDACTED].” Exhibit 1, 3:11-3:19.

11. ADA Kharkover replied that the defendant chased and shot at the two individuals after they no longer posed a threat to him, stating, “Yes, Judge, but what about when they flee and he shoots after them; is anybody stabbing him then?” Exhibit 1, 3:20-3:22.

12. Respondent then remarked, “Are you serious right now?” Exhibit 1, 3:23.

13. When ADA Kharkover tried to clarify his point, Respondent cut him off, stating “Why is it okay that somebody gets to walk into a store, corner somebody and try to stab them? Because, basically, the message your office

sends, every single day, is that it's okay to do whatever you want to do as long as you don't have a gun." Exhibit 1, 3:20-4:5.

14. ADA Kharkover attempted to respond, but Respondent cut him off again and stated, "Don't come in here and ask me is that okay? None of it's okay," and "None of it's okay. But I'm the one who realizes that; you don't." Exhibit 1, 4:6-4:11.

15. Respondent again questioned the recommendation of the DA's Office, remarked that "everything started with the two individuals who, clearly, came into the store looking for a problem" and then said, "They found it. Did they not?" Exhibit 1, 4:13-4:19. Respondent also asked ADA Kharkover, "Did you guys pursue those two individuals?" Exhibit 1, 4:22-23.

16. ADA Kharkover responded he was "trying to find out the answer" and reminded Respondent that he was not the ADA assigned to this case, to which Respondent replied, "Well, you should know the answer" and incorrectly asserted that because ADA Kharkover had "something to do" with the offer, he should have "ma[d]e it [his] business to have all the information." Respondent added, "So don't sit here and tell me 'I'm trying to find out.' This is not the point in the game where you investigate and figure it all out; you should know that on the front end." Exhibit 1, 4:21-5-23.

17. ADA Kharkover attempted to explain that he did not have all of the information Respondent requested because he had been pulled from a meeting when Respondent summoned him to court, at which point Respondent immediately called the case without giving ADA Kharkover an opportunity to confer with ADA Couce. Respondent sarcastically said, “I wouldn’t let you speak to him outside? Oh, I’m so sorry . . . I’m so sorry . . . So I’m going to need you to help me understand, without having to inquire, because, again, you should already have the information.” Exhibit 1, 6:2-6:24.

18. ADA Kharkover then said the defendant had no legal right to shoot at the two individuals, even if they were the initial aggressors, because once they fled they no longer posed a threat to him, to which Respondent replied: “So help me understand what gave them the right to try to stab him? Because, clearly, your office is basically saying that’s cool; no worries there; that’s, totally, fine; they didn’t have a gun.” Exhibit 1, 7:7-7:23.

19. Respondent accused the DA’s office of drafting the felony complaint “with every intent of making it look as if” the defendant was “the only person who was doing something wrong . . . when that is, absolutely, not the case.” Exhibit 1, 8:5-19.

20. In response, ADA Kharkover noted that the grand jury was shown the video evidence. Exhibit 1, 8:20-23.

21. Respondent continued to question the DA's recommendation of "seven years jail," for a defendant who "chas[ed] down the person who, quite frankly, tried to kill him." Exhibit 1, 11:24-12:3.

22. ADA Kharkover then asked whether the defendant would be interested in a plea agreement with a reduction of the proposed prison sentence to five years:

ADA KHARKOVER: If he just displayed the firearm, I, totally, agree with Your Honor, this would be a different offer. But, for what it's worth, is the defendant interested in five years?

DEFENSE COUNSEL: Was that addressed to me?

RESPONDENT: You're not going to answer that. What you are going to do is step out of my courtroom.

ADA KHARKOVER: Absolutely.

RESPONDENT: Have a great day. Thank you. Because you are clearly, clearly a waste of everything.

ADA KHARKOVER: Clearly.

RESPONDENT: That makes no sense.

ADA KHARKOVER: Clearly.

RESPONDENT: And do not return.

ADA KHARKOVER: Clearly. Clearly.

Exhibit 1, 12:7-13:1.

23. ADA Kharkover then exited the courtroom, and Respondent stated:

Well, at best, the position of their office is disingenuous and completely inappropriate. To step foot in here and pretend that there's been a full consideration of the facts and circumstances and at the end of it that's how you got to seven years jail is nonsense. It is complete nonsense. I am disgusted. That is, absolutely insane. His attitude -- he need not ever step foot in this part again. Ever step foot in this part again. As a matter of fact, I'm going to ask you to ask the chief to come speak to me about him because that's not how this works. This is not a back-and-forth discussion. We're not talking on the block. He didn't even know if it was a bodega or a phone store. He doesn't have facts straight. No.

Exhibit 1, 13:2-13:16.

24. After ADA Kharkover's departure, Respondent continued to criticize the DA's Office by addressing ADA Couce, who remained:

This whole position that your office is taking that you want to grandstand: Lock them all up. Anybody that has a gun, lock them all up. The problem is everybody else who's doing all these other horrible things; who's randomly attacking people in the street; just because they don't have a gun you're, basically, giving all those people a free pass and that sends a horrible message. And if you don't realize that you need to really think about why you're here and why you're even bothering to show up at work because it shouldn't be just about putting people who have a gun in jail because the two guys who walked into this phone store were going in there to hurt him (indicating). You cannot tell me they were going in there to do anything besides trying to kill him (indicating). But no one gives a damn about that. And when I say no one I mean the People; your office; or the NYPD because no one cares. Instead, you filed these complaints where it just looks as if he's literally, standing around causing a problem and pulling out a gun.

Exhibit 1, 14:3-14:22.

25. Respondent then accused the DA's Office of acting in "100 percent bad faith," both in drafting the criminal complaint and recommending seven years in prison, and she criticized the DA's Office's for giving a "free pass" to the person whom the defendant shot. Respondent characterized the actions of the DA's Office as "complete nonsense." Exhibit 1, 14:23-15:9

26. When ADA Couce pointed out that the victim was hospitalized for his injuries and could be charged with, at most, a Class B Misdemeanor for attempted assault, Respondent said, "But it's still a crime. . . . Somebody has very clearly committed an unprovoked, violent, crime, on camera, and, seemingly, the only reason why there's no criminal case against them and why nobody cares about where they were is because they didn't use a gun while doing it. As somebody who lives in the Bronx, that is, absolutely, disgusting and disturbing because the message is so I can walk outside and somebody could beat me down but, you know, if they don't have a gun nobody might even care to arrest them. That is a problem. That is a problem." Exhibit 1, 15:14-16:25.

27. Respondent accused the Bronx DA's Office of "turn[ing] a blind eye to other crime" (Exhibit 1, 17:3), of having the "audacity to come in here with a straight face and then try to talk to me like I'm an idiot and I don't get it. On what planet?" (Exhibit 1, 20:10-20:13), and of "choos[ing] to see things through a

certain lens and once you've decided who the bad guy is then that's the lens you stick with." Exhibit 1, 20:20-21:2.

28. At the conclusion of the appearance, Respondent stated that she was "not inclined to continue to have [the case] hang over [the defendant's] head" and that she would be inclined to adjourn the case for three or six months if she "thought that there was any possibility that [the Bronx DA's] office would wake up and realize the nonsense that is coming from that side of the courtroom but since that is, absolutely, not going to happen, no." Exhibit 1, 23:7-23:13.

Respondent added the following before adjourning the case:

Your office has made it clear what their position is. Your office has made it, abundantly, clear to me and, probably, everybody else in the Bronx, do whatever you want to do just don't have a gun in your hand. Beat people to a pulp in the street; stab them in a store; go for it; as long as you don't have a gun in your hand we're not worried about it. That's the message that your office is sending. Just so you're, absolutely, clear, that is the message your office is sending and I'm not going to be complicit in the nonsense, at all.

Exhibit 1, 24:3-24:12.

29. At various points throughout the proceeding, Respondent stood up at the bench, removed her mask, and pointed and yelled at ADAs Couce and Kharkover, to the point that spittle visibly emanated from her mouth.²

² On the date of this appearance, face masks were mandated within UCS facilities due to the COVID-19 pandemic.

30. On or about April 4, 2022, Respondent presided over another calendar appearance in *People v S* [REDACTED]. ADA Jaclyn Wood appeared on behalf of the People, and Mr. Fields appeared on behalf of the defendant.

31. At an off-record bench conference, ADA Wood attempted to reiterate the People's sentencing recommendation, as well as to explain why the DA's Office believed that the defense of justification was not applicable to the case.

32. After ADA Wood informed Respondent that the Counsel to the Investigations Division, ADA Mary Jo Blanchard, would appear in court, Respondent replied, "I always thought those people were a little weird."

33. The *S* [REDACTED] case was then called on the record and adjourned to April 5, 2022.

34. On or about April 5, 2022, Respondent presided over another calendar appearance in *People v S* [REDACTED]. The transcript of the appearance is appended as Exhibit 2.³ ADA Blanchard appeared on behalf of the People, and Mr. Fields appeared for the defendant.

35. The case was conferenced off the record, and ADA Blanchard informed Respondent that the DA's Office would be requiring *S* [REDACTED] to plead to the entire indictment, in response to what it perceived to be an inadequate offer

³ The transcript misspells the prosecutor's last name, which is Blanchard.

from the court. Respondent – speaking to ADA Blanchard in a loud, condescending, and chastising manner – accused her in sum and substance of “not caring about defendants,” and the DA’s Office of engaging in a “pissing contest.” Respondent said she would adjourn the case to give the People time to “get off their high horse.”

36. Following the conference, the case was called on the record. Respondent stated to ADA Blanchard, “So the reason why you’re asking him to plead to the entire indictment is because you can, essentially?” ADA Blanchard replied, “We do not agree with the disposition being offered by the Court.”

Exhibit 2, 3:4-8.

People v K [REDACTED] C [REDACTED]

37. On or about October 14, 2022, Respondent presided over a calendar appearance in a criminal matter, *People v K [REDACTED] C [REDACTED]*. The transcript of the appearance is appended as Exhibit 3. The People were represented by ADA Ashley Clement, who was covering the cases in Respondent’s calendar part for the DA’s office that day. The defendant was represented by Monica Dula.

38. Respondent announced that the case was on for decision, that she was granting defendant’s motion to dismiss the indictment, and that the DA’s Office had 45 days to re-present the matter to a grand jury. Exhibit 3, 2:13-2:19.

39. ADA Clement asked whether an electronic copy of the decision would be sent to ADA Joseph Gattuso, the ADA assigned to the case. When Respondent replied that the decision “is right there on the table,” ADA Clement again asked if a copy would be sent to ADA Gattuso. Respondent answered, “I am not his secretary. The case is on right now for decision. The decision is right there.”

Exhibit 3, 3:9-15.

40. During the colloquy that ensued, Respondent raised her voice and yelled at ADA Clement, as follows:

ADA CLEMENT: I understand that. I am asking –

RESPONDENT: If you understand it, why are you asking me questions that don’t make sense? Help me understand this. Why would I be sending e-mail copies of decisions to the ADA. Do I work for your office?

ADA CLEMENT: Because some judges do.

RESPONDENT: I don’t. You have it right there.

ADA CLEMENT: Okay. That’s it.

RESPONDENT: I’m sorry. What did you say?

ADA CLEMENT: I am just saying that some Judges send the decision to the ADA.

RESPONDENT: I do not. I do not.

ADA CLEMENT: I am just asking a question.

RESPONDENT: I do not. Anymore questions?

ADA CLEMENT: Okay. That's it.

RESPONDENT: Actually, you could step out. You could step out.

ADA Clement: Okay. Who else is going to cover the part then?

RESPONDENT: Call a supervisor.

ADA CLEMENT: Okay. That's fine.

[Whereupon, ADA Clement exited the courtroom]

RESPONDENT: We are not doing this today.

Exhibit 3, 3:10-4:17.

41. ADA Clement called her Bureau Chief, ADA Susanna Imbo, who met her outside Respondent's courtroom to discuss what had happened. On determining that Ms. Clement had done nothing to justify being ejected from the courtroom, ADA Imbo entered the courtroom with ADA Clement.

42. Respondent immediately pointed at ADA Clement and yelled, "You're not allowed to be in here!"

43. ADA Imbo asked that everything be put on the record moving forward, which appeared to anger Respondent, who yelled at Ms. Imbo and said, in substance, "Who are you?" and "This is my courtroom!" Respondent then ejected Ms. Imbo from her courtroom as well.

44. On, about or after October 17, 2022, in words or substance, Respondent told ADA Jessica Lupo, an executive staff member at the DA's

Office, that she would allow ADA Clement back in her courtroom only if she apologized for “unintentionally disrespecting” Respondent. Although ADA Clement did not believe that an apology was warranted, she nevertheless apologized to Respondent, who replied in sum and substance, “When a judge yells at you, you just sit there and take it,” She added, “Because of your apology, I’m no longer going to think that Ashley Clement is the devil.”

People v Tyresse Minter

45. On or about April 3, 2023, Respondent presided over the arraignment in *People v Tyresse Minter*, in which the defendant was charged with killing his teenage stepson. The transcript of the appearance is appended as Exhibit 4.

46. The People were represented by ADA Christopher Conway. The defendant was represented by Archana Prakash.

47. Because law enforcement authorities had brought the defendant in through the courtroom’s public entrance rather than from the non-public back cell area, and he was seated in the spectator section, ADA Conway planned to arrange for the defendant and the victim’s family to remain separated. To that end, he remained in touch with a supervisor who would be escorting the victim’s mother into the courtroom.

48. Respondent called the case before either ADA Conway or the victim's mother had arrived. Respondent then sent a court officer to find Conway and convey to him that Respondent had ordered him to the courtroom.

49. When ADA Conway entered the courtroom, Respondent pointed and yelled at him. When he told Respondent the victim's mother was "in the building, walking down the hallway," Respondent replied, "What does that have to do with what we're doing here?" ADA Conway attempted to explain that it would be his preference to wait for the victim's mother arrive because it was a homicide case.

Respondent answered:

Oh, your preference? Oh, my -- you know what? My bad. I completely forgot that your preference actually matters. Are you serious right now? I understand that you have a preference to have the family members sitting in the courtroom, and that's wonderful. So maybe you should ask her to get here sooner. I don't know, but it's 2:30 in the afternoon. Everybody else is here. I am here. And for you to say that the only reason you're not ready right now is that the mother of the victim has not gotten here yet? If you think for a second I'm going to stop what I'm doing, second call this case for the mother to get here -- are you serious?⁴

Exhibit 4, 2:14-4:5.

⁴ The victim's mother had actually been in the courthouse for several hours.

People v Maurice Baptise

50. On or about October 13, 2022, Respondent presided over a calendar appearance in a criminal matter, *People v Maurice Baptise*. The transcript of the appearance is appended as Exhibit 5.

51. The People were represented by ADA Vittoria Fiorenza, who was covering the cases in Respondent's calendar part for the DA's office that day. Mr. Baptise was represented by Olivia Scheck.⁵

52. When the case was called and the defendant failed to appear, Ms. Scheck said she had been informed that he had "previously been in a motorcycle accident" and was unable to make it to court because he "thought that he was going to be able to get a ride today, but the ride fell through." Ms. Scheck also said the defendant had sent her "some photographic evidence that supports his knee injury" and asked for an adjournment. Exhibit 5, 2:11-2:23.

53. Consistent with Criminal Procedure Law § 530.60(1), ADA Fiorenza informed Respondent that the ADA assigned to the case was requesting a bench warrant since the defendant had now failed to appear for a third time, and the DA's Office had not been provided with medical documentation to corroborate the explanations for his absence. Exhibit 5, 2:25-3:9. Respondent replied:

You seriously believe that it's appropriate to ask for a warrant when an attorney has stood up in court and represented that not

⁵ Ms. Scheck's surname was erroneously transcribed as "O'Scheck".

only has she spoken with her client, but her client was in an accident and her client is unable to get here without a ride? You really do believe, as an attorney, that's an appropriate basis upon which to ask for a warrant?

Exhibit 5, 3:10-3:16.

54. ADA Fiorenza stated that she believed Respondent, at the very least, should set a short adjournment date for either the defendant to appear or for defense counsel to provide some medical documentation. Exhibit 5, 3:17-2:20.

55. Respondent stated that there was no point in setting a short adjournment because "in a week we are probably going to hear the same thing" and sarcastically urged ADA Fiorenza to make records that are "consistent with facts and reality." Respondent added, "Like you are asking for a warrant -- warrants are not so cops can go drag somebody in because you want them here faster. Warrants are because somebody chose to simply not come to court. Nothing in that record indicates that he chose to simply not come to court." Exhibit 5, 3:21-4:7.

56. ADA Fiorenza reiterated that the reason she was requesting either a short adjournment or medical documentation providing some assurance of the defendant's whereabouts was due to his chronic history of failing to appear. The following colloquy ensued:

RESPONDENT: [Ms. Sheck] is an officer of the court. She herself has documentation of it. There is no planet upon which she is obligated to share

with you her client's medical records of any sort because you want it so you could feel comfortable. That is not the planet upon which we live. We are not doing that. She is an officer of the court who has made certain representations, period.

ADA FIORENZA: Understood, Judge. I have made my record.

RESPONDENT: You have made your record, and it's one that you really should have really kept to yourself because it makes to [*sic*] sense, no sense, whatsoever.

Exhibit 5, 4:12-4:23.

57. Although not captured in the minutes, ADA Fiorenza heard Respondent say that she should have kept the record "to your damn self."

People v S█-P█ H█ and M█ M█

58. On or about October 13, 2022, Respondent presided over a calendar appearance in a criminal matter, *People v S█-P█ H█ and M█ M█*. The transcript of the appearance is appended as Exhibit 6. ADA Vittoria Fiorenza appeared for the People, and the defendants were represented by Robert Gross and Spiro Ferris. (The ADA assigned to the case, Samantha Miller, had just returned to the office from leave to deal with a family emergency.)

59. The defendants were charged with possessing a firearm when the police stopped a motor vehicle in which they were occupants.⁶ While defendants H■■ and M■■ were being charged in Supreme Court, there was a third occupant who, as a juvenile, was being prosecuted in Family Court for possession of the same firearm. The attorneys for H■■ and M■■ argued that the case against their clients should be dismissed because they believed that the third individual had taken responsibility for and pleaded guilty to possessing the firearm. Exhibit 6, 3:8-4:2.

60. At the time, ADA Miller had not been able to obtain Family Court records to confirm that the juvenile had been sentenced in his case, which the People believed was prerequisite to dismissing the charges against H■■ and M■■.

61. Respondent said at the appearance that the charges should be dismissed because the case only involved “one gun,” and the separately-charged juvenile had already taken responsibility for possessing it. Respondent also voiced her displeasure that the DA’s Office was not prepared to dismiss that day and had not yet confirmed that the juvenile had been sentenced, stating, “We have had this conversation on at least two appearances, likely three appearances.”

⁶ Under New York Law, more than one person may jointly possess a weapon (Penal Law § 265.15(3)), and multiple defendants may be prosecuted for possessing the same firearm.

Exhibit 6, 4:9-4:13. The case was second-called after the lunch break for ADA Miller to appear.

62. At the second call, Respondent yelled at and berated ADA Miller for emailing her at 2:02 PM that afternoon with a request that Respondent sign off on the “so ordered” subpoena she needed to access records from Family Court.

Exhibit 6, 8:2-8:8.

63. ADA Miller informed Respondent that the separately-charged juvenile had been sentenced one week prior, while she was out on leave, and that the DA’s Office would not be able to dismiss the case against defendants H ■ and M ■ unless and until they had proof of the disposition in Family Court. Exhibit 6, 8:13-8:16. The following colloquy ensued:

RESPONDENT: Let’s be clear. It is not that you can’t. It’s that your office chooses not to. There is nothing in the law preventing that. It’s one gun, one gun, three people. One person has already plead guilty, right? Right?

ADA MILLER: Yes, Your Honor, and--

RESPONDENT: We are not going to talk at the same time. We are not doing that. We are absolutely not doing that today. One person already pled guilty to the one gun. You know that. You have that. And either way, even if he was sentenced in (*sic*) last week, we are still here today. And the thing you did today after the first call is the thing you should have done last week, right?

ADA MILLER: Your Honor, I was out last week for a family emergency.

RESPONDENT: Oh, my goodness. So everything must stop. Do you realize that there are implications to having cases open? You do realize that, right?

ADA MILLER: Yes, Your Honor, I do realize that. But, I can't do things that I am not present in New York for. I was out of state for a family emergency, and I am dealing with a family emergency, so I am not going to--

RESPONDENT: Are you a solo practitioner?

ADA MILLER: No. I work for the District Attorney's Office.

Exhibit 6, 8:17-9:17.

64. Despite the fact that the juvenile had been sentenced only one week earlier while ADA Miller was out of the office dealing with a family emergency, Respondent described the actions of the DA's Office as "disingenuous and ridiculous" (Exhibit 6, 10:9-10:10), accused the prosecution of "dragg[ing] their feet" and "not [doing] the bare minimum" (Exhibit 6, 11:11-11:17), and stated that "the lack of any desire to get this done is mind blowing to me." Exhibit 6, 11:24-11:25.

65. In response to statements from Respondent and defense counsel that the case should be dismissed, ADA Miller again asserted that she was not in possession of any minutes or proof that would conclusively establish that the separately-charged juvenile had taken responsibility for possessing the firearm.

Exhibit 6, 13:12-13:17. The colloquy continued, during which Respondent again spoke to ADA Miller in a sarcastic and condescending manner:

RESPONDENT: You can order minutes. I can get -- when I need minutes, I get them. When defense counsel needs minute (*sic*), he gets them. What is stopping you from getting minutes? Help me understand? Please walk me through the life that you live. What is so difficult about getting minutes. It (*sic*) been two months.

ADA MILLER: It hasn't been two months.

RESPONDENT: What efforts did anyone from your office take to get minutes?

ADA MILLER: I don't have any record as to that, so I don't know.

RESPONDENT: What efforts did your office make at all to confirm anything with respect to the codefendant? Because it was your office's record and representation that somebody took a plea, and that they were going to dismiss once he was sentenced. That came from your office. So--

MR. FERRIS: I think maybe the hang-up, Judge, is, from the People's perspective -- not that I am advocating for them, but I think they wanted -- they knew, they were aware that that person made an admission in Family Court, but they wanted to wait until that individual was sentenced.

Exhibit 6, 14:17-15:13.

66. The case was thereafter called a third time for ADA Miller's supervisor, ADA Michelle Villaverde, to appear. While ADA Miller called ADA

Villaverde from the courtroom and asked her to come down, Respondent was screaming.

67. When ADA Villaverde arrived, ADA Miller was crying outside the courtroom.

68. After speaking with ADA Miller, ADA Villaverde entered the courtroom and explained to Respondent, off the record, that ADA Miller had just returned to the office after dealing with a family emergency. Respondent stated, in sum and substance, “I don’t care what her issues are.”

69. Respondent eventually signed the “so-ordered” subpoena and stated, “And I am putting it on for dismissal. At this point, it seems very clear that the intention is that once the defendant is sentenced, these cases are being dismissed.” The case was then adjourned. Exhibit 6, 16:7-16:15.

People v J ■ L ■

70. On or about March 23, 2022, Respondent presided over a criminal matter via Microsoft Teams in *People v J ■ L ■*, which was on the calendar for a possible disposition. The People were represented by ADA Jillian Castrellon. The defendant was represented by Nancy Ginsburg. The transcript of the appearance is appended as Exhibit 7.

71. The defendant, a 16-year-old, was charged with assault, criminal possession of a weapon and other related charges for shooting his ex-girlfriend in the face, which blinded her in one eye.

72. ADA Castrellon stated that, following a conference with her supervisors, she was recommending three and a half years in prison, based on the seriousness of the case as well as the existence of a prior history of domestic violence between the victim and defendant, which involved the defendant hitting and throwing the victim down a flight of stairs. Exhibit 7, 3:16-3:20, 5:4-5:13.

73. Defense counsel requested that the defendant be adjudicated a Youthful Offender and sentenced to probation (Exhibit 7), 3:7-3:9, pointing out that he had voluntarily completed two programs on his own. Exhibit 7, 6:18-6:19.

74. Respondent took issue with ADA Castrellon's recommendation of a prison sentence and asked why she had not requested that the defendant participate in a program:

I'm just, always, um, just -- I guess I am a little confused, when there is someone who is alleged to have done something . . . they are out . . . engaging in services, they are not getting rearrested, um, no one's coming in here asking for anything to change because of any issue or concern, and then the People's position is jail -- several years jail.

Exhibit 7, 7:3-7:10.

75. Respondent again asked ADA Castrellon to state the basis for her prison recommendation and asked if the DA's Office "take[s] into consideration

that it is the Youth Part, or is that just not a part of [*sic*] analysis?” ADA Castellon stated that this was a factor the DA’s Office took into consideration. Exhibit 7, 9:3-9:7.

76. When ADA Castellon opposed giving the defendant youthful offender treatment given the facts of the case, Respondent asked: “what do you have to support that position as an attorney? You have a complainant who has at least at one point said she did shoot herself.” Exhibit 7, 9:17-9:24.⁷

77. ADA Castellon responded that she did not believe the shooting was accidental based on conversations she had with the victim, which she could not “ignore” despite the fact that the victim was uncooperative. She reiterated that the victim had lost vision in one eye and had survived “by an act of God.” Exhibit 7, 9:25-10:13. The following ensued:

RESPONDENT:	But that’s why it -- I am also a little confused -- it’s so serious, it’s so bad, there is a history of domestic violence, according to the People, but yet he is literally not asked to do anything by the People. The People’s position is he’s arrested, he’s charged, he comes to court, and at the end the [<i>sic</i>] everything what he does is services on his own, then jail because it is so terrible. If what he did was so bad -- if the People truly believe there is a history of domestic violence, please tell me, help me [<i>sic</i>] why the People’s position is also to not ask him to do anything. Tell me how to understand that.
-------------	---

⁷ Notwithstanding a prior statement by the victim that she had shot herself, at this point the defendant had been indicted by a grand jury for the shooting.

ADA CASTRELLON: Judge, I am not a DV Assistant. It was not coming in as DV.

RESPONDENT: The representation you have made, based upon the representations you have made, you have the case for several months now. So, whether you are a DV Assistant or not, if you are going to come into this court and talk about there is a history of domestic violence, you are going to have to explain to me why there's that history and the People don't do anything to address it.

ADA CASTRELLON: Judge, I am happy to look into a program that would be available for him to complete with respect to --

RESPONDENT: A year later, after he's done a program on his own? Do you hear yourself?

ADA CASTRELLON: Well, Judge --

RESPONDENT: And let's also be clear. You're not a DV Assistant. Let's also be abundantly clear, DV is not for people that fight frequently, DV is about control, it is not just about people that are fighting each other. So let's be very careful with the language we use, especially when there's been nothing on the People's side that has been done to address the issues. Nothing. Nothing at all. So, to -- on one hand to do nothing to address the issues, then to come in to court and say because it was so bad, it was so horrible, he needs to be in jail for 3 years. I would love for your office to recognize how disconnected and ridiculous that is. It's one thing if you were standing here saying there's a history of domestic violence and we ask for a program. He's been -- or something -- but instead it's acknowledging he's complied with every program he did on his own. There's been

no new incidents. But then you're just throwing all over the record there is a history of domestic violence. Then when I asked you anything about the specific domestic violence, well, I am not a DV assistant. You can't have it every which way. Pick a position and stick with it. And everything you say in this courtroom should be based upon good faith. You can't just say there is a history of domestic violence because they fought...it would really make more sense to me if you could at least put on the record one thing that was done to address that issue.

Exhibit 7, 10:14-12:22.

78. ADA Castrellon answered Respondent's insinuation that she had acted in bad faith by stating that she had interviewed the victim in her office and had viewed photographs that corroborated the prior instances of abuse.

Respondent replied by again asking why the defendant was not being "asked to do anything to address that?" Exhibit 7, 13:1-13:14.

79. Respondent went on to state, "I don't understand this whole -- defendant's out -- doing what they are supposed to be doing -- still very much a child -- and the only answer the People ever have is several years jail." Exhibit 7, 14:8-14:12.

80. Respondent said she was going to adjourn the case for "whoever you conferenced [the case] with" to "log on and maybe help me understand, because I don't," and opined, "I can't say with any certainty that he intentionally shot her in

the face because, (a), I wasn't there, and (b), the complainant, at least at one point said she did it to herself." Exhibit 7, 14:13-15:4.

81. Respondent added, "I'm going to do a short date for whoever made the final determination that 3 years jail for this child is, um, is the only appropriate outcome they can think of, they need to appear and explain to me why." Exhibit 7, 15:10-15:13.

People v J [REDACTED] J [REDACTED] and People v W [REDACTED] A [REDACTED]

82. On or about November 7, 2022, Respondent presided over a calendar appearance in a criminal matter, *People v J [REDACTED] J [REDACTED]*. The People were represented by ADA Katerina Kurteva, who was covering the cases in Respondent's calendar part for the DA's office that day. Ms. Kurteva was six months pregnant. The defendant was represented by Mirela Kucevic.

83. At a bench conference off the record, Respondent said to ADA Kurteva, in words or substance, "Um, are you bloated or what?" When ADA Kurteva responded that she was not, Respondent replied in substance, "Oh, so it's the other thing?" Respondent then remarked, in words or substance, how little ADA Kurteva's body was, and how people like her make pregnancy "look easy."

84. Later that day, Respondent presided over a calendar appearance in another criminal matter, *People v W [REDACTED] A [REDACTED]*. The People were represented by ADA Kurteva and the defendant was represented by Michael Nedick.

85. At an off-record bench conference, Respondent urged ADA Kurteva to take a particular action on the case. When ADA Kurteva informed Respondent that the ADA assigned to the case had specifically instructed her not to take the action Respondent wanted, Respondent again urged her to do so and remarked, in words or substance, “if you get in trouble, just rub your belly and if you have any male supervisors, they’ll get so uncomfortable that they won’t ask you any questions.”

Other Matters

86. During the Spring or Summer of 2022, Respondent asked ADA Levi Stoep why his office “hires white ADAs.”

87. In or about April or May 2022, Administrative Judge Alvin Yearwood counseled Respondent that her conduct “might look as if you’re advocating,” and instructed her to “take it easy” on the ADAs who appear before her.

88. By reason of the foregoing, Respondent should be disciplined for cause, pursuant to Article VI, 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 she 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 she failed to be faithful to the law and maintain professional competence in it, in violation of Section 100.3(B)(1) of the Rules, failed to be patient, dignified and courteous to lawyers with whom she deals in an official capacity, in violation of Section 100.3(B)(3) of the Rules, failed to perform her judicial duties without bias or prejudice against or in favor of any person, in violation of Section 100.3(B)(4) of the Rules, and failed to accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law, in violation of Section 100.3(B)(6) of the Rules.

WHEREFORE, by reason of the foregoing, the Commission should take whatever further action it deems appropriate in accordance with its powers under the Constitution and the Judiciary Law of the State of New York.

Dated: January 21, 2025
Albany, New York



ROBERT H. TEMBECKJIAN
Administrator and Counsel
State Commission on Judicial Conduct
61 Broadway, Suite 1200
New York, New York 10006
(646) 386-4800

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

VERIFICATION

NAITA A. SEMAJ,

a Justice of the Supreme Court,
12th Judicial District, Bronx County.

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

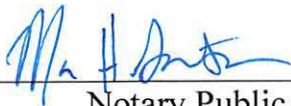
ROBERT H. TEMBECKJIAN, being duly sworn, deposes and says:

1. I am the Administrator of the State Commission on Judicial Conduct.
2. I have read the foregoing Formal Written Complaint and, upon
information and belief, all matters stated therein are true.
3. The basis for said information and belief is the files and records of
the State Commission on Judicial Conduct.



Robert H. Tembeckjian

Sworn to before me this
21st day of January 2025



Notary Public

Marisa Harrison Santos
Notary Public, State of New York
No. 01SA0003835
Qualified in Albany County
Commission Expires March 27, 2025

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: CRIMINAL TERM: PART FYP 32

-----x

PEOPLE OF THE STATE OF NEW YORK,

INDICTMENT NO.
70435/21

- against -

S [REDACTED] S [REDACTED],

Defendant.

-----x

265 East 161st Street
Bronx, New York 10451
April 1, 2022

B E F O R E:

HONORABLE NAITA A. SEMAJ,

Justice of the Supreme Court

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

DARCEL D. CLARK, ESQ.
DISTRICT ATTORNEY, BRONX COUNTY
BY: JOSHUA COUCE & ILYA KHARKOVER, ESQS.
Assistant District Attorney

YOUTH DEFENSE CENTER
Attorney for the Defendant
BY: WALTER FIELDS, ESQ.

Shavonn Eason
Senior Court Reporter

PROCEEDINGS

1 THE CLERK: Come to order. Part FYP 32 is back
2 in session. The Honorable Naita Semaj presiding.

3 We are appearing in person.

4 This is Number 9 on the FYP 32 calendar,
5 Indictment 70435/21, S [REDACTED] S [REDACTED].

6 Appearances, please.

7 MR. FIELDS: Walter Fields, F-I-E-L-D-S,
8 appearing for S [REDACTED] S [REDACTED], for the Youth Defense Center.

9 Good afternoon.

10 MR. COUCE: And Josh Couce, C-O-U-C-E, for the
11 People, Your Honor.

12 Ilya Kharkover for the Honorable Darcel Clark.
13 First name is spelled, I-L-Y-A; last name is
14 K-H-A-R-K-O-V-E-R.

15 Good afternoon, Your Honor.

16 Good afternoon, everybody.

17 THE COURT: Good afternoon. You can have a seat.
18 So it's my understanding the People's offer in
19 this case is seven years jail.

20 MR. KHARKOVER: That's right, Your Honor.

21 THE COURT: Help me understand how you got there.

22 MR. KHARKOVER: This is attempted murder. It's a
23 very strong case. He shot at somebody more than one time
24 as they're fleeing. It's an appropriate offer, Your Honor.

25 THE COURT: Have you seen the video?

PROCEEDINGS

1 MR. KHARKOVER: Yes.

2 THE COURT: Okay. So in the video you don't see
3 the two people come into the store as Mr. S [REDACTED]'s in the
4 store; they come into the store with their hands in their
5 pocket, clearly, as if they have something. They
6 immediately approach Mr. S [REDACTED]; take whatever is in
7 their pocket out. One of them, they bigger dude, has
8 something that's, at least, 7 inches long. The other guy
9 has something, immediately, starts looking like he's trying
10 to stab Mr. S [REDACTED] in the side.

11 Help me understand how the only attempted murder
12 you see is the one Mr. S [REDACTED] -- excuse me. Help me
13 understand. So you're so concerned about violence? What
14 happened with those two because they, clearly, came into
15 the store with weapons --

16 MR. KHARKOVER: Okay.

17 THE COURT: -- with weapons. Attempted to
18 immediately start stabbing Mr. S [REDACTED].

19 Did you see that part in the video?

20 MR. KHARKOVER: Yes, Judge, but what about when
21 they flee and he shoots after them; is anybody stabbing him
22 then?

23 THE COURT: Are you serious right now?

24 MR. KHARKOVER: No, I mean, why is it okay that
25 he fires after --

PROCEEDINGS

1 THE COURT: Why is it okay that somebody gets to
2 walk into a store, corner somebody and try do stab them?
3 Because, basically, the message your office sends, every
4 single day, is that it's okay to do whatever you want to do
5 as long as you don't have a gun.

6 MR. KHARKOVER: Your Honor --

7 THE COURT: Don't come in here and ask me is that
8 okay? None of it's okay.

9 MR. KHARKOVER: Okay.

10 THE COURT: None of it's okay. But I'm the one
11 who realizes that; you don't.

12 MR. KHARKOVER: I agree.

13 THE COURT: Seven years jail?

14 MR. KHARKOVER: Correct. Your Honor --

15 THE COURT: If there was a gun. The first --
16 everything started with the two individuals who, clearly,
17 came into the store looking for a problem --

18 MR. KHARKOVER: Is it --

19 THE COURT: They found it. Did they not?

20 MR. KHARKOVER: Is it over once they leave?

21 THE COURT: Did you pursue it? Did you pursue
22 those people? There's video. Did you guys pursue those
23 two individuals?

24 (At this time, there is a pause in the
25 proceedings.)

PROCEEDINGS

1 THE COURT: Did you pursue those two individuals?

2 MR. KHARKOVER: I'm trying to find out the answer
3 to Your Honor's question.

4 THE COURT: Well, you should know the answer.

5 MR. KHARKOVER: It's not my case, Your Honor.

6 THE COURT: Prior to determining -- but you have
7 something to do with the offer and prior to determining --

8 MR. KHARKOVER: Actually, I didn't.

9 THE COURT: You're going to stop talking when I
10 start talking.

11 MR. KHARKOVER: Yeah, okay.

12 THE COURT: Prior to determining something's an
13 appropriate offer you should make it your business to have
14 all the information.

15 MR. KHARKOVER: Your Honor --

16 THE COURT: Prior to me saying anything I make it
17 my business to read everything the People have presented;
18 to see the videos; before I say anything.

19 MR. KHARKOVER: Your Honor --

20 THE COURT: So don't sit here and tell me "I'm
21 trying to find out." This is not the point in the game
22 where you investigate and figure it all out; you should
23 know that on the front end --

24 MR. KHARKOVER: Your Honor --

25 THE COURT: You've had more time than I've had to

PROCEEDINGS

1 figure out what --

2 MR. KHARKOVER: That's not accurate at all. You
3 summoned me; I ran right over me here --

4 THE COURT: You didn't run anywhere. You didn't
5 run anywhere --

6 MR. KHARKOVER: You wouldn't let me -- I was in
7 the middle of a division meeting --

8 THE COURT: I wouldn't let you speak to him
9 outside? Oh, I'm so sorry.

10 MR. KHARKOVER: No. You wouldn't.

11 THE COURT: I'm sorry.

12 MR. KHARKOVER: And you called the case
13 immediately upon me arriving here.

14 THE COURT: I'm so sorry. Because the reality is
15 you were asked to appear because there was already,
16 already, a discussion about possible disposition and based
17 on the discussion your office decided that seven years jail
18 is appropriate, which means there should be nothing for you
19 to figure out and discuss because you already should have
20 all the information prior to deciding that this young
21 person should sit in jail for seven years based on what I
22 just saw on video. So I'm going to need you to help me
23 understand, without having to inquire, because, again, you
24 should already have the information.

25 MR. KHARKOVER: Your Honor, this isn't the only

PROCEEDINGS

1 case in our bureau. I spoke to the chief before coming
2 over here. I wanted an opportunity to speak to Mr. Couce
3 outside the courtroom. I wasn't given that opportunity.
4 I'm looking at the plea board which was just sent to me in
5 a text message. I'm trying to have an opportunity to
6 review it.

7 Your Honor, all I can say is I don't think that
8 once the conduct that Your Honor is characterizing as the
9 initial aggressor -- and I agree with you; let's assume
10 that they are the initial aggressor -- once that's over and
11 they're leaving the bodega what's --

12 THE COURT: First, it's not a bodega, it's a
13 phone store.

14 MR. KHARKOVER: I'm sorry?

15 THE COURT: It's not a bodega, it's a phone
16 store.

17 MR. KHARKOVER: Okay. Once they're leaving this
18 store what gives this defendant the right to then fire at
19 them once the aggression is over, at that point?

20 THE COURT: So help me understand what gave them
21 the right to try to stab him? Because, clearly, your
22 office is, basically, saying that's cool; no worries there;
23 that's, totally, fine; they didn't have a gun. But it's
24 clear they walked in there and within seconds of getting
25 into the store they start stabbing at him.

PROCEEDINGS

1 MR. KHARKOVER: My understanding is that the
2 defendant's not interested in a jail offer, at all. I
3 think, originally, the offer was five and five.

4 THE COURT: That's not the answer to my question.

5 You're focusing on what he did. I'm trying to
6 understand how it's okay that they walk into a store --
7 because they're not pursuing something and they're not even
8 factoring that in -- and even the way the felony complaint
9 was drafted. The felony complaint was drafted-- if
10 somebody was just reading this and didn't have the video it
11 reads as if Mr. S [REDACTED] decided to get into a fight with
12 these people and randomly during the fight he decides I'm
13 going to shoot you.

14 That is not what happened. And your office knew
15 that's not what happened at the time you drafted this. So
16 this was drafted with every intent of making it look as if
17 the only person who was doing something wrong was this
18 individual (indicating) when that is, absolutely, not the
19 case and you knew that from the front end.

20 MR. KHARKOVER: Your Honor, the video was played
21 in the grand jury. There's no question that the grand jury
22 is aware of the full content of -- and a justification
23 charge was given to the grand jury, as well.

24 THE COURT: What does that have to do with your
25 office's offer?

PROCEEDINGS

1 MR. COUCE: Your Honor, if you look at the video
2 you would see the one individual who's shot doesn't produce
3 anything from his pocket and the second individual, who
4 produces something from his pocket, Mr. S [REDACTED] wouldn't
5 have been able to see, by the way that his head was turned,
6 as that object was behind him. He would have had no
7 opportunity to be able to see that object.

8 THE COURT: I'm sorry, are you putting on the
9 record that Mr. S [REDACTED], there's no way he knew somebody
10 was trying to stab him so him shooting at that person -- is
11 that what you're trying to say; that he didn't know that
12 somebody was trying to stab him?

13 One guy comes in on this side of him
14 (indicating), on the left side of him; the other one comes
15 in on the right side of him. They both take their hands
16 out of their pocket. The smaller one who comes on the
17 right side of him immediately goes to his side and is going
18 like this (indicating). So whether he stabbed him or not
19 he's, clearly, trying to.

20 The other one takes something out of his pocket
21 that is, at least, at least, 7 inches long. You can see it
22 the moment he takes it out. They both come into -- are you
23 -- are you kidding me right now?

24 MR. COUCE: Your Honor, that's what happened, at
25 that point, but then, as you can see in the video from

PROCEEDINGS

1 behind the register, the two individuals then flee the
2 location. Mr. S [REDACTED] raises --

3 THE COURT: They only flee because they see the
4 gun. It's not as if they stopped -- you know what, you
5 know what, I'm sorry, my bad, didn't mean to do that, I'm
6 going to leave now and he's, like, wait a minute, I'm going
7 to shoot. No. This is all very, very, quick. They flee
8 because he manages to free himself from the one who's
9 trying to hold onto him and stab him while the other one is
10 coming at him. He releases himself and he's able to get
11 the gun out. That's when they run. They don't attempt to
12 leave at all. They don't stop touching him. They don't
13 turn around. Nothing. Until he takes out the gun.

14 MR. KHARKOVER: Your Honor, are you saying that
15 displaying that firearm was sufficient in getting them to
16 run away? Because I agree with Your Honor that that was
17 sufficient in --

18 THE COURT: No. No, no, no. I'm saying it
19 appears to me the only reason they stopped their attack is
20 because he took out that gun.

21 MR. KHARKOVER: I agree with Your Honor. So then
22 firing the round is an act of vengeance so, now, it's after
23 the fact --

24 THE COURT: Not when it all --

25 MR. KHARKOVER: He's now safe.

PROCEEDINGS

1 THE COURT: -- not when it all happens in a
2 matter of seconds. Are you kidding me?

3 MR. KHARKOVER: I disagree with Your Honor.

4 THE COURT: This wasn't as if he took out the gun
5 and then, la, la, la, la, la, let me see what's going on,
6 oh, wait, they're still here, let me get them. That's not
7 what happened. This is a short video. It all happens very
8 fast. It all happens extremely fast.

9 MR. COUCE: Your Honor, there's also additional
10 video --

11 THE COURT: I'm sorry?

12 MR. COUCE: There's also additional video showing
13 Mr. S [REDACTED] chasing after the individual outside the
14 store.

15 THE COURT: Which means absolutely nothing to me
16 because you have not provided that. So, there's that. I
17 was only provided with video from inside the store. And
18 the fact that he's chasing down the person -- because one
19 of them cross the street -- he went to the left and chased
20 down the one who went to the left because one of them
21 crossed the street and went straight ahead.

22 MR. COUCE: Yes.

23 THE COURT: He chased down the person who goes to
24 the left. The fact that he's chasing down the person who,
25 quite frankly, tried to kill him, is not, necessarily, mind

PROCEEDINGS

1 blowing and strange. The people, they, clearly, came into
2 the store to attack him (indicating). How do we go from
3 that to seven years jail? That is what I need to
4 understand. You can't keep just telling me, well, he had a
5 gun. Well, the people who came in the store, very
6 obviously, and, very clearly, had weapons. Very clearly.

7 MR. KHARKOVER: If he just displayed the firearm,
8 I, totally, agree with Your Honor, this would be a
9 different offer.

10 But, for what it's worth, is the defendant
11 interested in five years?

12 MR. FIELDS: Was that addressed to me?

13 THE COURT: You're not going to answer that.

14 What you are going to do is step out of my
15 courtroom.

16 MR. KHARKOVER: Absolutely.

17 THE COURT: Have a great day. Thank you.

18 Because you are, clearly, clearly, a waste of
19 everything.

20 MR. KHARKOVER: Clearly.

21 THE COURT: That makes no sense.

22 MR. KHARKOVER: Clearly.

23 THE COURT: And do not return.

24 MR. KHARKOVER: Clearly. Clearly.

25 (At this time, ADA Kharkover exits the

PROCEEDINGS

1 courtroom.)

2 THE COURT: Well, at best, the position of their
3 office is disingenuous and completely inappropriate. To
4 step foot in here and pretend that there's been a full
5 consideration of the facts and circumstances and at the end
6 of it that's how you got to seven years jail is nonsense.
7 It is complete nonsense. I am disgusted. That is,
8 absolutely, insane.

9 His attitude -- he need not ever step foot in
10 this part again. Ever step foot in this part again. As a
11 matter of fact, I'm going to ask you to ask the chief to
12 come speak to me about him because that's not how this
13 works. This is not a back-and-forth discussion. We're not
14 talking on the block. He didn't even know if it was a
15 bodega or a phone store. He doesn't have facts straight.
16 No.

17 But the reality is if you're going to make an
18 offer it should be based on all of the facts; all of the
19 circumstances. It really should. It should not be based
20 on just a snapshot of a moment in time. Context matters.
21 Context 100 percent matters.

22 Seven years jail based on what I saw in this
23 video? I am not excusing the fact that he had a gun.
24 There is nothing in the firing of the gun that seems as if
25 it's anything besides panic. I don't even see how you

PROCEEDINGS

1 gather intent to do anything besides stop the attack. Stop
2 the attack. I don't see how you even get there.

3 This whole position that your office is taking
4 that you want to grandstand: Lock them all up. Anybody
5 that has a gun, lock them all up. The problem is everybody
6 else who's doing all these other horrible things; who's
7 randomly attacking people in the street; just because they
8 don't have a gun you're, basically, giving all those people
9 a free pass and that sends a horrible message. And if you
10 don't realize that you need to really think about why
11 you're here and why you're even bothering to show up at
12 work because it shouldn't be just about putting people who
13 have a gun in jail because the two guys who walked into
14 this phone store were going in there to hurt him
15 (indicating). You cannot tell me they were going in there
16 to do anything besides trying to kill him (indicating).
17 But no one gives a damn about that.

18 And when I say no one I mean the People; your
19 office; or the NYPD because no one cares. Instead, you
20 filed these complaints where it just looks as if he's,
21 literally, standing around causing a problem and pulling
22 out a gun.

23 There should be a good faith basis for every
24 single thing an attorney steps into a courtroom and says on
25 the record. Every single thing. It should never be: My

PROCEEDINGS

1 supervisor told me to or, well, this is what they said.
2 There should be a good faith basis. Because regardless as
3 whether you started as an ADA yesterday, last week or last
4 month, you're a lawyer. You're a lawyer. And lawyers
5 should never walk into a courtroom and make an argument
6 that's not based on good faith.

7 Seven years jail is 100 percent bad faith. This
8 complaint, the way it's drafted, is 100 percent bad faith.
9 It's complete nonsense.

10 And then for him to turn around and: Is he
11 interested in five years jail? How dare he?

12 Anything anybody wants to put on the record?

13 Nothing? Okay.

14 And how do you know that somebody was, actually,
15 shot?

16 MR. COUCE: Because the victim went to the
17 hospital. We have medical records; we have video
18 surveillance. We have the medical records. We have --

19 THE COURT: So since you had the video
20 surveillance what is the reason why that person wasn't
21 arrested? They went into a store; immediately started
22 attacking somebody with a weapon. What is the reason why
23 that person was, essentially, given a free pass? Help me
24 understand that.

25 MR. COUCE: I can't control what the New York

PROCEEDINGS

1 City Police Department does and whether or not they decide
2 to arrest someone or not. I'm not going to put myself at
3 risk and tell the New York City Police Department to arrest
4 someone; that is their prerogative to do. We know who the
5 individual is and, with that, the facts are before the
6 police department and it's before them to make a decision
7 on whether or not they want to charge anyone or not.

8 But based upon looking at that I believe the only
9 thing you would be able to charge that individual with; the
10 individual who was shot and who we know of; is an attempted
11 assault, which is a B misdemeanor.

12 THE COURT: But it's still a crime.

13 MR. COUCE: And it's a New York City --

14 THE COURT: But it's still a crime. And this is
15 not the first time that this happened in this part.
16 Somebody has very clearly committed an unprovoked, violent,
17 crime, on camera, and, seemingly, the only reason why
18 there's no criminal case against them and why nobody cares
19 about where they were is because they didn't use a gun
20 while doing it. As somebody who lives in the Bronx, that
21 is, absolutely, disgusting and disturbing because the
22 message is so I can walk outside and somebody could beat me
23 down but, you know, if they don't have a gun nobody might
24 even care to arrest them. That is a problem. That is a
25 problem.

PROCEEDINGS

1 So it's great that y'all want to send a message
2 that you're getting guns off the street but there's still
3 other crime. And to just turn a blind eye to other crime;
4 I can't even begin to wrap my brain around it.

5 MR. COUCE: Your Honor, I've spoken with the
6 detective in trying to identify the other individual who
7 came into the store and they weren't able to. They were
8 able to identify the other person who was shot. But,
9 again, the only thing that I, personally, think that you
10 could be able to make out against that individual is a B
11 misdemeanor. I can't control the New York City Police
12 Department.

13 THE COURT: I'm not concerned with the type of
14 charge; I'm concerned with the fact that you have three
15 people on camera committing crimes and only one is in a
16 courtroom for it.

17 MR. COUCE: Your Honor, again --

18 THE COURT: That's my problem. Especially since
19 the one who's in the courtroom for it is not the one who
20 instigated it; is not the one who pursued the problem; is
21 not the one who came with someone else for backup. It's
22 the person who was in the store just waiting for help and
23 people come in and attack them and in defending themselves
24 end up here and ends up seven years jail.

25 It boggles my mind that y'all really believe that

PROCEEDINGS

1 that somehow makes sense. It's amazing to me that y'all
2 really believe that makes sense.

3 MR. FIELDS: I just want to be clear, Your Honor,
4 Mr. S [REDACTED] is not 19; he's 18 years old. At the time of
5 the event he was 17 years old. The last time we were here
6 I was told that the handling ADA had watched the video. I
7 have watched it and I know the Court has to move on to
8 other things; I just want to make it clear what was in the
9 video.

10 Mr. S [REDACTED]'s in a phone store with his back
11 turned toward the door. The door opens. Two individuals
12 walk through the door. At some point, Mr. S [REDACTED] is
13 alerted that they're behind him. He turns around. The two
14 individuals have their hands in their pockets. One reaches
15 for something. Mr. S [REDACTED] backs up into a corner then it
16 looks like a blade is being produced by one of the
17 gentlemen and the other gentlemen takes out a long object
18 of, at least, nine -- it looks like eight or nine inches.
19 They're making a stabbing motion towards Mr. S [REDACTED]'s
20 stomach area, and coincidentally, he has marks on his
21 stomach area in the same area that he was being stabbed in.

22 The complaint that I read and the resuscitation
23 of the handling D.A. I don't think belies what happened on
24 that day. And I, definitely, as I've said before, I don't
25 think that this is the kind of a case where a prolonged

PROCEEDINGS

1 period of prison time for a young man that was 17 years old
2 is called for.

3 He is building his life. We were talking
4 outside. He does have a very involved mother. I think
5 this is the kind of young man that things happened in the
6 heat of the moment, so to speak. And I think this video is
7 very short. From start to finish, this is not a long
8 video. This is not a long incident.

9 THE COURT: But that's part of what disturbs me
10 so much is that Mr. S [REDACTED]'s actions were, very
11 obviously, in the heat of the moment. The response to
12 panic, fight or flight, it was very much that. The actions
13 of the people who came into the store; it was very planned.
14 It was very intentional. It was very thoughtful. They
15 came into the store together and immediately separated so
16 that one was on each side of Mr. S [REDACTED]. They came in
17 for the purposes of attacking Mr. S [REDACTED]. Mr. S [REDACTED],
18 whatever he did, was 100 percent, based on the video,
19 100 percent in response to panic and trying to save self.
20 100 percent. There's no part of that -- this whole, well,
21 he didn't have to chase them -- the video is a short. It's
22 57 seconds. He's running out after them and there's no
23 indication, you know, that he sat inside and was, like,
24 this isn't safe; well they're gone, now, I'm good, I should
25 stay right here.

PROCEEDINGS

1 Have you ever panicked in your life? That's not
2 what happens. There's nothing about it that would give me
3 the impression that Mr. S [REDACTED] was thinking thoughtfully
4 about what he was doing or what he was going to do.
5 Everything in that video reeks of Mr. S [REDACTED] trying to
6 save himself and trying to stop anything else from
7 happening. The same cannot be said for those two other
8 people would went in the store. The same cannot be said of
9 them at all.

10 And with all of that in mind, the facts of seven
11 years jail is what y'all have the audacity to come in here
12 with a straight face and then try to talk to me like I'm an
13 idiot and I don't get it. On what planet?

14 MR. COUCE: Your Honor, there's also additional
15 video surveillance.

16 THE COURT: Which you need not tell me about
17 because you have not provided it me.

18 MR. COUCE: But, Your Honor, that's part of this
19 case.

20 THE COURT: First off, let's be, absolutely,
21 clear. The fact that you tell me a video shows X or Y
22 means nothing to me because it's already -- obviously,
23 because the way the felony complaint is drafted. And it's
24 already -- obviously, the way you described the video that
25 we've all saw; that you, your office, chooses to see things

PROCEEDINGS

1 through a certain lens and once you've decided who the bad
2 guy is then that's the lens you stick with. Because I've
3 watched the same videos that you've watched and, clearly,
4 walked away with different impressions. So you telling me
5 what a video shows means nothing to me. Either you provide
6 the video and I get to determine for myself what the video
7 shows or we're not talking about it.

8 MR. COUCE: I can provide the video, Your Honor,
9 if you'd like to see it.

10 THE COURT: And if it's a video of him running
11 down the street after the person who just tried to stab him
12 multiple times --

13 MR. COUCE: There's video before this incident
14 that shows Mr. S [REDACTED] looking over his shoulder multiple
15 times outside of the store as if someone was about to come
16 in. And before this you can see in these videos, you can
17 see as soon as these individuals are in his sight he's
18 already reaching for the firearm in his waistband.

19 THE COURT: I'm sorry. Again, just so we're
20 clear, he is looking towards the door of the store, yes,
21 looking nervous. Looking nervous as if something might be
22 happening. As they come towards the door; as they open the
23 door, the dude, the bigger guy, immediately has his hands
24 in his pocket like he's holding something. The fact that
25 Mr. S [REDACTED] responded to that by putting his hand in his

PROCEEDINGS

1 pocket; what's the take away supposed to be? Because
2 everything about the way they entered the store was they
3 were about to do something. So... what?

4 MR. COUCE: Your Honor, I can only speak to the
5 facts and our interpretation of them and this is an issue
6 of fact that we can put before a jury. It was put before a
7 grand jury; the grand jury was read the justification
8 instruction. They observed the video, firsthand, and they
9 felt, based upon that, there was reasonable cause to
10 believe that Mr. S [REDACTED] had committed Attempted Murder in
11 the Second Degree and Criminal Use of a Firearm in the
12 First Degree.

13 THE COURT: But you know what was not put in
14 front of a grand jury and you know what was not ever
15 drafted and you know what will never, ever, be before a
16 jury? Is anything that those individuals did to him
17 (indicating). Why? Because everybody decided that's fine.
18 Got it. Okay.

19 Short date for possible disposition?

20 MR. FIELDS: Short date for possible disposition.

21 THE COURT: Does he work or is he in school?

22 MR. FIELDS: We'll take a short date any time the
23 Court has.

24 THE COURT: You know what, Monday.

25 MR. FIELDS: Monday is fine.

PROCEEDINGS

1 MR. COUCE: Your Honor, I'm out all of next week.
2 I can have someone cover it, if you would like.

3 THE COURT: Okay.

4 MR. COUCE: I'd prefer to be here, though. If we
5 can put it over for the next week, I'm in Monday, Tuesday,
6 Wednesday of the following week.

7 THE COURT: No, because I'm not inclined to
8 continue to have this hang over his head; I'm not inclined
9 to do this. Because I would go out for three months; six
10 months; if I thought there was any possibility that your
11 office would wake up and realize the nonsense that is
12 coming from that side of the courtroom but since that is,
13 absolutely, not going to happen, no. Monday.

14 MR. COUCE: Your Honor, I would be willing to
15 take this to the Deputy Division Chief and Division Chief
16 to re-conference it with them if that's what Your Honor's
17 asking me to do?

18 THE COURT: I'm not asking you to do anything
19 because, as far as I'm concerned, the representative of the
20 higher ups was already in here and everything about his
21 attitude; everything about his demeanor; everything about
22 it reeked of they didn't care and he wasn't moving from the
23 seven years. And for him to end it with: Would he be
24 willing to take five years? What are we doing? What are
25 we doing? It's a waste of everyone's time. There's no

PROCEEDINGS

1 reason to drag something on when we know the ending is
2 going to be same.

3 Your office has made it clear what their position
4 is. Your office has made it, abundantly, clear to me and,
5 probably, everybody else in the Bronx, do whatever you want
6 to do just don't have a gun in your hand. Beat people to a
7 pulp in the street; stab them in a store; go for it; as
8 long as you don't have a gun in your hand we're not worried
9 about it. That's the message that your office is sending.
10 Just so you're, absolutely, clear, that is the message your
11 office is sending and I'm not going to be complicit in the
12 nonsense, at all.

13 12 o'clock Monday, in person, possible
14 disposition.


15 Have a good night.

16 MR. FIELDS: Thank you, Your Honor.

17 MR. COUCE: Thank you, Your Honor.

18 * * * * *

19 Certified to be a true and accurate record of the
20 above proceedings.

21 
22 _____
23 Shavonn Eason
24 Senior Court Reporter
25

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: CRIMINAL TERM: PART FYP 32

-----x

PEOPLE OF THE STATE OF NEW YORK,

INDICTMENT NO.
70435/21

- against -

S [REDACTED] S [REDACTED],

Defendant.

-----x

265 E 161 Street
Bronx, New York 10451
April 5, 2022

B E F O R E:

HONORABLE NAITA A. SEMAJ,

Justice of the Supreme Court

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

DARCEL D. CLARK, ESQ.
DISTRICT ATTORNEY, BRONX COUNTY
BY: MARY JO BELANCHARD, ESQ.
Assistant District Attorney

YOUTH DEFENSE CENTER
187 E. 163rd Street
Bronx, New York 10451
BY: WALTER FIELDS, ESQ.

Shavonn Eason
Senior Court Reporter

PROCEEDINGS

1 THE COURT: Good afternoon. Come to order. Part
2 FYP 32 is back in session. The Honorable Naita Semaj
3 presiding.

4 This is Number 16 on the FYP 32 calendar,
5 Indictment 70435/21, S [REDACTED] S [REDACTED].

6 Appearances please.

7 MR. FIELDS: Walter Fields, F-I-E-L-D-S,
8 appearing for S [REDACTED] S [REDACTED] for the Youth Defense Center.

9 Good afternoon, Your Honor.

10 MS. BELANCHARD: Mary Jo Belanchard,
11 B-E-L-A-N-C-H-A-R-D for the Office of the District
12 Attorney.

13 Good afternoon.

14 THE COURT: Good afternoon.

15 So this was on for possible disposition and,
16 People, is it correct that your office is requiring that
17 Mr. S [REDACTED] plead to the entire indictment?

18 MS. BELANCHARD: That is correct, Your Honor.

19 THE COURT: Okay. And is there a particular
20 reason why that's being requested on this case?

21 MS. BELANCHARD: Your Honor, the People oppose
22 the offer that the Court is looking to extend to the
23 defendant.

24 Under the CPL, the People have to consent to any
25 disposition that's less than the entirety of the

PROCEEDINGS

1 indictment. We are not consenting to this disposition,
2 therefore, we are requiring a plea to the entire
3 indictment.

4 THE COURT: Okay. So the reason why you're
5 asking him to plead to the entire indictment is because you
6 can, essentially?

7 MS. BELANCHARD: We do not agree with the
8 disposition being offered by the Court.

9 THE COURT: All right.

10 So while I understand that your client is still
11 interested in the offer and willing to plead to the entire
12 indictment that's not what was previously discussed and I
13 do want to make sure that he is making an informed decision
14 and that he has time to really think about what he's doing
15 so we're going to put this over for May 12 at 10:00 a.m.
16 for possible disposition.

17 MR. FIELDS: Does the Court have 12 o'clock?

18 THE COURT: That's fine. Can you do 11:30?

19 MR. FIELDS: I could do 11:30.

20 THE COURT: All right, 11:30 on May 12.

21 Thank you.

22 * * * * *

23 Certified to be a true and accurate record of the
24 above proceedings.

25 Shavonn Eason

Shavonn Eason
Senior Court Reporter

1 SUPREME COURT OF THE STATE OF NEW YORK

2 BRONX COUNTY : CRIMINAL TERM :PART-77

3 -----X

4 THE PEOPLE OF THE STATE OF NEW YORK,

5 -against:

6 K [REDACTED] C [REDACTED],

7 Defendant(s:)

8 -----X

October 14, 2022

9
10 Bronx Supreme Court
11 265 East 161st Street,
Bronx, New York, 10451

12 B E F O R E:

13 THE HONORABLE NAITA SEMAJ,
14 JUSTICE

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

16 DARCEL D. CLARK,
17 District Attorney, Bronx County
BY: ASHLEY CLEMENT, ESQ.,
Assistant District Attorney

18 LEGAL AID SOCIETY:
19 BY: MONICA DULA, ESQ.
20 Attorney for the Defendant

21
22
23 LORNA BECKFORD,
24 Senior Court Reporter
25

1 COURT CLERK: Calling numbers 7, 8 and 9 on the
2 calendar, K█████ C█████, indictment number 72878 of '22.
3 Let the record reflect the defendant is present.
4 Appearances, please.

5 MS. DULA: Monica Dula for the Office of Twyla
6 Carter. Good morning, everyone.

7 MS. CLEMENT: Good morning. ADA Clement for the
8 People.

9 Can I just have one moment, Your Honor, please?
10 (Pause in the proceedings).

11 THE COURT: Are you ready?

12 MS. CLEMENT: Yes.

13 THE COURT: This matter is on for decision. Have
14 you received a copy of the decision?

15 MS. DULA: Yes. Thank you.

16 THE COURT: So the defendant's motion to dismiss
17 is granted. The People have 45 days to re-present. So we
18 are going to come back on November 30th to see if it's
19 actually re-presented.

20 Is that a good date?

21 MS. DULA: Yes.

22 THE COURT: How is 10:00 o'clock?

23 MS. DULA: That's fine.

24 MS. CLEMENT: What type of motion was that?

25 THE COURT: It was an Omnibus.

1 MS. DULA: Didn't I file a Bruen on this case
2 too? I think I did. I don't know if they responded.

3 THE COURT: The indictment is dismissed.

4 MS. DULA: Okay. That's fine.

5 THE COURT: November 30th at 10:00 o'clock.

6 MS. CLEMENT: I am sorry. What is it being put
7 on for?

8 THE COURT: To see if you all re-present.

9 MS. CLEMENT: Was a decision sent to ADA Gattuso?

10 THE COURT: The decision is right there on the
11 table.

12 MS. CLEMENT: I know. Was an electronic copy
13 sent to ADA Gattuso?

14 THE COURT: I am not his secretary. The case is
15 on right now for decision. The decision is right there.

16 MS. CLEMENT: I understand. Is a copy going to
17 be sent to ADA Gattuso?

18 THE COURT: You can send it to the ADA. What is
19 happening right now?

20 MS. CLEMENT: I understand that. I am asking--

21 THE COURT: If you understand it, why are you
22 asking me questions that don't make any sense? Help me
23 understand this. Why would I be sending e-mail copies of
24 decisions to the ADA. Do I work for your office?

25 MS. CLEMENT: Because some Judges do.

1 THE COURT: I don't. You have it right there.

2 MS. CLEMENT: Okay. That's it.

3 THE COURT: I'm sorry. What did you say?

4 MS. CLEMENT: I am just saying that some Judges
5 send the decision to the ADA.

6 THE COURT: I do not. I do not.

7 MS. CLEMENT: I am just asking a question.

8 THE COURT: I do not. Anymore questions?

9 MS. CLEMENT: Okay. That's it.

10 THE COURT: Actually, you could step out. You
11 could step out.

12 MS. CLEMENT: Okay. Who else is going to cover
13 the part then?

14 THE COURT: Call a supervisor.

15 MS. CLEMENT: Okay. That's fine.

16 (Whereupon, the ADA exited the courtroom.)

17 THE COURT: We are not doing this today.

18 * * * *

19

20 THIS IS CERTIFIED to be a true and accurate transcript of my
21 stenographic minutes.

22 *Lorna Beckford*
23 -----

24 LORNA BECKFORD, RPR

25 Official Court Reporter

EXHIBIT 4

1 SUPREME COURT OF THE STATE OF NEW YORK
2 COUNTY OF BRONX: CRIMINAL TERM: PART SCA
3 -----X
4 THE PEOPLE OF THE STATE OF NEW YORK,
5 - against - Arraignment
6 Indictment
7 Nos: 71281/23
8 TYRESSE MINTER,
9 Defendant
10 -----X
11 265 East 161st Street
12 Bronx, New York
13 April 5, 2023
14
15 B E F O R E:
16
17 HON. NAITA SEMAJ,
18 BRONX COUNTY SUPREME COURT JUSTICE
19
20 A P P E A R A N C E S:
21
22 FOR The PEOPLE OF THE STATE OF NEW YORK:
23 BRONX COUNTY DISTRICT ATTORNEY'S OFFICE
24 DARCEL CLARK, BRONX DISTRICT ATTORNEY
25 BY: CHRISTOPHER CONWAY, ESQ

FOR THE DEFENDANT
THE BRONX DEFENDERS
BY: ARCHANA PRAKASH, ESQ.
ALEX MIRAM, ESQ.

ALSO PRESENT:
Justin Simmons,
Fortune Society Supervised Release Program

BARBARA A. HIGHTOWER, RPR
SENIOR COURT REPORTER

1 THE CLERK: An add-on to the
2 calendar, Indictment No. 71281 of 2023,
3 Tyresse Minter. This is a return on an
4 Arrest Warrant, and also on for
5 Arraignment.

6 MS. PRAKASH: On behalf of
7 Mr. Minter, Bronx Defenders by Archana
8 Prakash, A-R-C-H-A-N-A P-R-A-K-A-S-H,
9 and I am joined by co-counsel.

10 MR. MIRAM: Also for Mr. Minter, the
11 Bronx Defenders, by Alex Miram.

12 MR. MOHTA: Kyrus Mohta, from the
13 Office of the District Attorney.

14 Your Honor, I don't have this case
15 in front of me yet, and I just need to
16 pull it up.

17 THE COURT: Do you know who he is
18 assigned --

19 MS PRAKASH: He is out in the
20 hallway.

21 (Whereupon, Mr. Conway enters the
22 courtroom).

23 THE COURT: Step up and put your
24 appearance on the record promptly. It is
25 an actual courtroom. What is happening?

1 What do you mean you're not ready?

2 MR. CONWAY: Judge, the mother of the
3 victim is in the building, walking down
4 the hallway.

5 THE COURT: What does that have to
6 do with what we're doing here? I
7 understand that you might want her to be
8 sitting here in the courtroom, but what
9 does that have to do with the actual task
10 at hand?

11 MR. CONWAY: Judge, our preference
12 would be to wait, because this is a
13 homicide case --

14 THE COURT: Oh, your preference?
15 Oh, my -- you know what? My bad. I
16 completely forgot that your preference
17 actually matters. Are you serious right
18 now? I understand you have a preference
19 to have the family members sitting in the
20 courtroom, and that's wonderful. So
21 maybe you should ask her to get here
22 sooner. I don't know, but it's 2:30 in
23 the afternoon. Everybody else is here.
24 I am here. And for you to say that the
25 only reason you're not ready right now is

1 that the mother of the victim has not
2 gotten here yet? If you think for a
3 second I'm going to stop what I'm doing,
4 second call this case for the mother to
5 get here -- are you serious?

6 Are we ready to proceed?

7 MR. CONWAY: Yes, Judge.

8 THE COURT: Thank you.

9 MR. CONWAY: Christopher Conway, from
10 the Office of Darcel Clark.

11 THE CLERK: Arrest warrant vacated?

12 THE COURT: Yes. The arrest warrant
13 is vacated. I need to see a copy of the
14 indictment.

15 THE CLERK: Tyresse Minter, the
16 District Attorney of Bronx County has
17 filed an Indictment where you are charged
18 with the crime of manslaughter in the
19 second degree, and another related crime.

20 How do you plead? Guilty or not
21 guilty?

22 THE DEFENDANT: Not guilty.

23 THE COURT: Notices?

24 MR. CONWAY: Yes, Judge. The People,
25 in their VDF, served Statement Notice,

1 under CPL 70.10 1(a). We also served
2 Alibi Notice under 250.20.

3 The People have an application as to
4 bail, Judge.

5 THE COURT: Go ahead.

6 MR. CONWAY: Judge, the People are
7 requesting the defendant be remanded.

8 The Grand Jury has indicted the
9 defendant on charges of manslaughter in
10 the second degree, and criminally
11 negligent homicide, both bail eligible
12 offenses under CPL 510.10 4(a) and 4(j),
13 as to felony offense which cause death to
14 another person.

15 As defendant is a mandatory
16 persistent violent felony offender, who
17 was released on parole just one month
18 before this homicide, the crime is also
19 bail eligible under CPL 510.10 4(r), as
20 it is a felony committed while the
21 defendant is serving a term of
22 post-released supervision.

23 The defendant is charged with
24 placing his fifteen year old stepson in a
25 full body restraint, and extended a hold

1 which caused this child's death.

2 Under CPL 510.10 1(b), the Court
3 must take into account the weight of the
4 evidence against this defendant. The
5 evidence here is strong.

6 This defendant admitted, in a
7 Miranda interview, the evening of his
8 stepson's death, that he wrapped his arms
9 around the stepson's chest and rib-cage,
10 forcing the head downward, while wrapping
11 his legs around the stepson's mid-section
12 and held him there.

13 (Court Reporter clarification).

14 MR. CONWAY: Around the stepson's
15 chest and rib-cage, forcing the head and
16 neck downward, while wrapping his legs
17 around the stepson's mid-section and held
18 him there.

19 The Medical Examiner, who performed
20 the autopsy, found injuries consistent
21 with this narrative, including full death
22 hemorrhaging around his neck and
23 underarms, contusions to the head and
24 scratches to the throat.

25 It is the opinion of the Medical

1 Examiner that this defendant would have
2 had to maintain this hold for several
3 minutes, until the stepson lost
4 consciousness and died.

5 This defendant also made several
6 statements to civilians, Fire Department,
7 and NYPD personnel, which, in part,
8 stated that he placed the stepson in a
9 restraint for approximately ten minutes.
10 This defendant only called 911 after the
11 stepson's mother implored him to do so
12 over the phone. And he did not call 911
13 to report the victim's death until
14 approximately twenty minutes after the
15 restraint.

16 Also under CPL 510.31(a), the Court
17 must take into account the defendant's
18 activities and history. This defendant
19 stands before the Court, a mandatory
20 persistent violent felony offender, who
21 is currently on parole, who has been
22 convicted of two violent felonies since
23 2011, resulting in prison time.

24 This defendant is currently on
25 parole after having pled guilty in 2019

1 to Assault in the Second Degree, a
2 D-violent felony, under Cycle 4 of his
3 Wrap Sheet.

4 The underlying facts of that case is
5 that this defendant pistol whipped a
6 victim and shot him three times in the
7 back with a firearm, and the victim ran
8 away.

9 He was sentenced to five years
10 incarceration, and it just over a month
11 into his five year, post-released
12 supervision term when he committed this
13 instant crime.

14 This defendant pled guilty as well
15 to attempted robbery in the second
16 degree, and other D-violent felony in
17 2011, and was sentenced to a two
18 and-a-half year prison term, with three
19 years post-release supervision.

20 He had two parole violations while
21 serving post-release supervision. And
22 the underlying facts of that case
23 included a robbery which involved
24 grabbing a grabbing a victim around her
25 throat and squeezing, while the

1 co-defendant removed property.

2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED].

8 The defendant also has a warrant
 9 history. And as I mentioned, the parole
 10 revocation history.

11 This defendant stands before the
 12 Court as a persistent violent felony
 13 offender, a multiple parole violator, who
 14 is currently on parole for a violent
 15 felony, now indicted for a felony offense
 16 just a month after his release from
 17 prison, for the killing of a fifteen year
 18 old child.

19 Due to the seriousness of these
 20 charges, and the strength of the People's
 21 case, as well as this defendant's
 22 history, the People are requesting remand
 23 as the least restrictive means to assure
 24 his appearance and return to court.

25 THE COURT: Okay. Counsel.

1 MS. PRAKASH: Judge, I think that the
2 first thing I'd say, and I really am a
3 little shocked that this isn't already
4 before you, is that Mr. Minter turned
5 himself in today. I think when we're
6 talking about the least restrictive
7 means, in terms of ensuring somebody's
8 return to court, the fact that the
9 detectives contacted me, because they
10 knew I represented Mr. Minter. I called
11 him on Monday, told him we would be doing
12 this today; he came into my office
13 yesterday, we explained what was going to
14 happen, and he showed up early day for
15 his surrender, is a real sign that --

16 THE COURT: Is that true?

17 MR. CONWAY: It is, Judge.

18 MS. PRAKASH: Is probably -- I think
19 the first thing that should be before
20 you, in terms of whether or not he is
21 going to return to court, and what -- how
22 he is feeling about what happened.

23 You will see, Judge, that this
24 incident occurred on January 27th.
25 Mr. Minter did call the police on that

1 day. He is now been charged with a
2 reckless act --

3 THE COURT: Hold on a second.

4 Can you come up for a second?

5 Your client looks like he was trying
6 to possibly pass out.

7 (Whereupon, the defendant is given a
8 chair).

9 MS. PRAKASH: I think he's trying to
10 breathe deeply. He's okay.

11 THE COURT: Go ahead.

12 MS. PRAKASH: In terms of this
13 incident: This happened on the 23rd.
14 Mr. Minter did call 911. He stayed on
15 the scene. He then gave multiple
16 statements as to what happened. He
17 didn't flee. He was at the hospital. He
18 was taken to the precinct; he gave
19 statements there.

20 He is also, after that, obviously
21 was released from the precinct, and then
22 there was a Family Court petition filed.

23 He has been in Family Court for the
24 two adjournments -- for the two court
25 appearances they have. He is represented

1 by my office in Family Court.

2 The next date in Family Court was
3 April 27th.

4 While I understand that this may
5 have nothing to do with this case, in
6 Family Court he was told to go to
7 parenting classes and anger management.
8 He has enrolled and completed, I think it
9 is 7 out of 10 of the parenting classes.
10 I'm just handing that up. And the reason
11 I'm doing so is because I do think it
12 shows, not only that he's taking this
13 seriously, that he understands what his
14 obligations are, but that this is not a
15 case where bail is necessary in order to
16 ensure his return to court.

17 I will also say, Judge, that --

18 THE COURT: So is there a pending
19 neglect or abuse case in Family Court or
20 what?

21 MS. PRAKASH: There is a
22 pending case in Family Court. My
23 understanding that it is a --
24 Judge, I don't want to speak
25 incorrectly. As I said, my office

1 represent him. I do believe it is
2 a neglect case. And as I said,
3 that case is back on on the 27th
4 of April for a settlement
5 conference.

6 He's been fully compliant in Family
7 Court with the programming there, with
8 ACS there, and obviously he's turned
9 himself in on this case as soon as he was
10 contacted to do so.

11 We all understand, including
12 Mr. Minter, what a horrible tragedy this
13 is. Nobody is saying otherwise. He is
14 indicted on nonviolent offenses. I think
15 that he does have a defense to this case.
16 He's not going anywhere. I understand
17 he's on parole. I understand that he has
18 two prior convictions that are violent.
19 I will say that the first one is from
20 when -- the first one -- excuse me. [REDACTED]

21 [REDACTED]
22 [REDACTED]. The second one was
23 when he was twenty-three.

24 I will also say that since this case
25 has been going on, he has been reporting

1 to parole. They're fully aware of the
2 circumstances. He called them yesterday
3 and told them he would turn himself in
4 today.

5 So, I really don't know what else he
6 could possibly show in terms -- excuse
7 me, what he could possibly do in terms of
8 showing that he's not a flight risk.
9 Having said that, I do understand that
10 these charges are serious and that a
11 child was killed. However, I will just
12 reiterate that he is charged right now
13 with a reckless offense, and a negligent
14 offense, which, again, that serious, I'm
15 not saying it's not, but no one is saying
16 he intentionally did anything to --
17 excuse me. He intentionally, or he
18 wanted this as a result of his actions.

19 This isn't a case that I think will
20 be litigated in a short period of time.
21 My understanding is that the autopsy took
22 a while to complete. I believe, and
23 although I have not seen it, that there
24 were probably forensic specialists that
25 were involved -- involved in coming up

1 with those autopsy findings. We'll
2 certainly will be reviewing them. But
3 the only question right now is is Mr.
4 Minter coming back to court.

5 And I would say, even with his
6 record, everything that he has done since
7 this case started in January, has shown
8 he is absolutely coming back to court.

9 I am going to ask that you release
10 him on his own recognisance. He has been
11 interviewed by Supervised Release. They
12 are here -- if that is an option that you
13 want to consider?

14 THE COURT: And with respect to
15 the -- a bail amount, is there an amount
16 that the family can afford?

17 MS. PRAKASH: Judge, I spoke to his
18 mother yesterday, who also came into the
19 office and is here in the audience today.
20 I think that she would -- you know, she
21 is supporting herself, as Mr. Minter is
22 living with her. I think that the most
23 amount of money that she could probably
24 come up with is about a thousand to
25 \$1500.

1 So, if you are inclined to set bail,
2 I'm asking you to consider setting bail
3 in the amount of \$10,000, with ten
4 percent partial secured or --

5 THE COURT: Who is here from
6 Supervised Release?

7 MR. SIMMONS: Good afternoon, your
8 Honor.

9 Justin Simmons, from the Fortune
10 Society Supervised Release Program.

11 THE COURT: Did you assess him?

12 MR. SIMMONS: I did and I would
13 recommend a Tier 2 Level 5.

14 THE COURT: And what is that
15 involve?

16 MR. SIMMONS: Weekly check-ins. The
17 highest tier and highest level.

18 THE COURT: And you said weekly
19 check-ins and what?

20 MR. SIMMONS: Weekly check-ins, and
21 it would be the highest tier and highest
22 level that we offer. It would be the
23 highest amount of supervision. In
24 addition to which his mother did mention
25 that she did want him to participate in

1 some therapy sessions which we will
2 recommend weekly, group, and
3 individually.

4 THE COURT: Okay. Is there anything
5 else anyone wants to add?

6 MS. PRAKASH: No. Thank you, your
7 Honor.

8 MR. CONWAY: No, Judge.

9 THE COURT: And this happened on
10 January -- This is alleged to have
11 happened on January 23rd. He's been here
12 since then? In the Bronx?

13 MS. PRAKASH: Oh, yeah, yeah. He's
14 been in the Bronx, he's been in Family
15 Court, and has been reporting to parole,
16 and he's been in my office multiple
17 times. Living with his mother.

18 THE COURT: So, I read the
19 statements that were provided, the
20 statement that he gave, I guess at the
21 time of his arrest. I have also reviewed
22 his wrap sheet. He does have two
23 failures to appear, I guess from Cycle 2
24 and Cycle 1. That was 2011.

25 MS. PRAKASH: I think the Failure to

1 Appear, Judge, is from 2011. The parole
2 issue is from 2015. And you will see
3 that when that parole issue happened, he
4 was taken to the Williard Program.

5 THE COURT: What is that?

6 MS. PRAKASH: Williard is drug
7 treatment, upstate.

8 And so I will just submit, and I'm
9 sorry I neglected to say this earlier.

10 [REDACTED]

11 [REDACTED]. The 2015 parole
12 revocation, when he was sentenced to
13 Williard, I think indicates that there
14 was a drug issue at that time.

15 He was then released and completed
16 his last year of parole on that case.

17 MR. SIMMONS: And I also would state:
18 I would recommend a Tier 1 Level 3, but
19 given the charge, I have to mandate Tier
20 2 Level 5.

21 THE COURT: All right. You can have
22 a seat.

23 MR. SIMMONS: Thank you.

24 (Whereupon, Mr. Simmons sits in
25 audience).

1 THE COURT: Given the record made
2 today, there is really nothing before the
3 Court that can lead me to conclude that
4 he is a flight risk, and that he would
5 not return.

6 He was aware -- specifically, if not
7 anything else. He was aware that he was
8 coming here today, to turn himself in,
9 regarding Indictment, what he is charged
10 with manslaughter in the second degree,
11 including negligent homicide.

12 And not only did he come, but he
13 waited for the case to be called. And
14 this is also -- this is something that
15 happened back in January, and it's now
16 April 5th, and he -- I have no indication
17 that there is any issues with parole. I
18 have no indication that he is failing to
19 do anything that he's been asked to do
20 since then. Moreover, giving his
21 statement, I believe he greatly benefits
22 from some sort of programming.

23 The way this incident was
24 characterized on the record, or the way
25 his statement was characterized on the

1 record, is not necessarily how I read
2 it -- or how I interpret it. It is a
3 very full and complete statement. It is a
4 statement where he acknowledges things
5 that he did. It's a statement where he
6 seemingly -- while it doesn't appear that
7 he called the police right away, based
8 upon the statement, it appears that he
9 did not call the police right away
10 because he thought he could wake him up,
11 and he called, I believe, the mother of
12 the child. And when the police were
13 called, he was still there. And he was --
14 Was he in the ambulance or just before?

15 MS. PRAKASH: I'm not sure if he was
16 in the ambulance when they were taken to
17 the hospital, but he was there and then
18 taken to the precinct. You will see that
19 the statements are from that same day,
20 and then later on that night -- or excuse
21 me, after midnight, so the next morning,
22 when he was at the precinct, and then
23 released from there.

24 MR. CONWAY: He was not in the
25 ambulance, Judge.

1 THE COURT: Okay.

2 MR. CONWAY: And Judge, along these
3 lines, if I may?

4 THE COURT: Okay.

5 MR. CONWAY: I would point out that
6 part of the defense that this defendant
7 proffers in his Miranda statement is this
8 idea that the victim had a knife.
9 However, in the hours leading up to this,
10 including his first statements to 911,
11 the statements to EMT's, to FDNY
12 lieutenant, the social workers and
13 doctors at the hospital, there is no
14 mention whatsoever of this knife. This
15 knife seems to come several hours later,
16 almost as an afterthought, thrown in to
17 bolster that defense.

18 So while there is this statement in
19 the Miranda interview, which takes place
20 about six to seven hours after the death
21 of a child, People do not credit that as
22 an accurate source of what happened.

23 THE COURT: I will say, that in
24 reading the entire statement, the part
25 about the child having the knife was --

1 didn't carry that much weight for me. At
2 all. It was the indication that there
3 were possibly a lot of issues in the
4 household. I don't necessarily -- I'm
5 not gonna make this about the victim at
6 all. We're focusing on this defendant.
7 I really have -- I recognize that these
8 are very serious charges. I recognize
9 that a child was dead, and regardless of
10 how that comes to be, it's a horrible
11 thing. But in setting bail or remanding
12 someone, there has to be considerations
13 regarding that individual person, and
14 their specific facts and circumstances,
15 and whether or not they're going to
16 return to court.

17 And with respect to this particular
18 defendant, in this particular set of
19 circumstances, especially where he's
20 here, voluntarily, to face these charges,
21 I do believe that Supervised Release is
22 appropriate. And they assessed him. If
23 they didn't believe he was appropriate,
24 they would not have made the
25 recommendation.

1 So, it's going to be release to
2 supervised release. He just have to go
3 there. If he can -- do you want to come
4 back up? I'm sorry.

5 THE COURT: When does he have to
6 report?

7 MR. SIMMONS: If he is being released
8 from the courtroom we can do it right
9 now.

10 THE COURT: Okay.

11 All right. So Mr. Minter.

12 THE DEFENDANT: Yes, ma'am?

13 THE COURT: You're being released.
14 You have to report to supervised release,
15 and you have to comply with every single
16 thing they ask you to do. It is clear to
17 me that you need assistance. You also --
18 it is absolutely necessary that you check
19 in with them whatever you are suppose to,
20 and you are in court on all of your
21 scheduled court dates. Okay.

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: Do you want a motion
24 schedule?

25 MS. PRAKASH: Yes. Please.

1 THE COURT: Defense motions by April
2 26th.

3 MS. PRAKASH: Judge, can I ask, in
4 this case, for a little bit more time?

5 THE COURT: Have you received any
6 Discovery yet?

7 MS. PRAKASH: No.

8 THE COURT: Do you want to come up
9 for a second.

10 MS. PRAKASH: Sure.

11 (Whereupon, bench discussion).

12 THE COURT: All right. So, defense
13 counsel, you're requesting the full 45
14 days to file your motion?

15 MS. PRAKASH: Yes, please.

16 THE COURT: May 15th.

17 MS. PRAKASH: That's great.

18 THE COURT: And the People Response,
19 June 5th.

20 MR. CONWAY: Yes.

21 THE COURT: And then you're back --
22 you're in Part 77 for Decision on June
23 20th.

24 MS. PRAKASH: I think that's fine,
25 Judge. Give me one second.

1 SUPREME COURT OF THE STATE OF NEW YORK

2 BRONX COUNTY : CRIMINAL TERM :PART-77

3 -----X

4 THE PEOPLE OF THE STATE OF NEW YORK,

5 -against:

6 MAURICE BAPTISE,

7 Defendant(s:)

8 -----X

October 13, 2022

9

10 Bronx Supreme Court
265 East 161st Street,
Bronx, New York, 10451

11

B E F O R E:

12

THE HONORABLE NAITA A. SEMAJ,
JUSTICE

13

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

15

DARCEL D. CLARK,
District Attorney, Bronx County
BY: VITTORIA FIORENZA, ESQ.,
Assistant District Attorneys

16

17

18

BRONX DEFENDERS:
BY: OLIVIA O'SCHECK, ESQ.,
Attorney for the Defendant

19

20

21

22

LORNA BECKFORD,
Senior Court Reporter

23

24

25

1 COURT CLERK: Calling number 32 on the calendar,
2 indictment number 01074-2021. Let the record reflect the
3 defendant is not present. Appearances, please.

4 MS. O'SCHECK: On behalf of Mr. Baptise, Olivia
5 O'Scheck for the Bronx Defenders.

6 Good afternoon.

7 MS. FIORENZA: Good afternoon.

8 Vittoria Fiorenza for the Office of the District
9 Attorney standing on behalf of the Assigned ADA Christina
10 Borges.

11 THE COURT: We conferenced this off the record.
12 Defense counsel, you indicated that you have spoken to your
13 client. He was in some sort of accident recently?

14 MS. O'SCHECK: Yes, Judge.

15 THE COURT: Do you want to make a record?

16 MS. O'SCHECK: Yes. He had previously been in a
17 motorcycle accident. That's why he has not been able to
18 make it to court. He thought that he was going to be able
19 to get a ride today, but the ride fell through, he informs
20 me. He actually sent me some photographic evidence that
21 supports his knee injury, for what it's worth. But, we
22 would be asking for an adjournment for him to be able to
23 come to court and resolve the case.

24 THE COURT: Alright. How is --

25 MS. FIORENZA: Judge, may I just briefly put on

1 the record, I believe this is now the third date the
2 defendant has not appeared. On the last two court dates, I
3 believe counsel said that she had made contact with her
4 client. BCS has indicated that there was supposed to be
5 some additional sessions of programing that the defendant
6 had yet to complete as of September 16. The assigned has a
7 note for us to ask for a warrant today. Given the fact
8 that we have no medical documentation of the defendant's
9 whereabouts, I would request a warrant.

10 THE COURT: You seriously believe that it's
11 appropriate to ask for a warrant when an attorney has stood
12 up in court and represented that not only has she spoken
13 with her client, but her client was in an accident and her
14 client is unable to get here without a ride? You really do
15 believe, as an attorney, that's an appropriate basis upon
16 which to ask for a warrant?

17 MS. FIORENZA: Judge, I believe, at the very
18 least, we should get a shorter adjournment for either the
19 defendant to appear or defense counsel to provide some
20 medical documentation.

21 THE COURT: If somebody is not physically capable
22 of getting here today because he just had his knee drained,
23 which is something defense counsel said on the record, -- I
24 don't believe she said on the record about his knee being
25 drained -- what is the point coming back in a week, because

1 in a week we are probably going to hear the same thing.

2 Make records that are consistent with facts and
3 reality. Like you are asking for a warrant -- warrants
4 are not so cops can go drag somebody in because you want
5 them here faster. Warrants are because somebody chose to
6 simply not come to court. Nothing in that record indicates
7 that he chose to simply not come to court.

8 MS. FIORENZA: Judge, I am asking for a short
9 adjournment for information or medical documentation
10 providing some assurance of where he is. That's it, just
11 considering his history of court appearance.

12 THE COURT: She is an officer of the court. She
13 herself has documentation of it. There is no planet upon
14 which she is obligated to share with you her client's
15 medical records of any sort because you want it so you
16 could feel comfortable. That is not the planet upon which
17 we live. We are not doing that. She is an officer of the
18 court who has made certain representations, period.

19 MS. FIORENZA: Understood, Judge. I have made my
20 record.

21 THE COURT: You have made your record, and it's
22 one that you really should have really kept to yourself
23 because it makes to sense, no sense, whatsoever.

24 MS. FIORENZA: Judge, again, I have not received
25 the documents that she is referring to. I don't believe

1 that the Court has reviewed those documents.

2 THE COURT: I don't need to review because she is
3 actually an attorney. And the same way you all come to
4 court and want everybody to believe every word that comes
5 out of your mouth, I am inclined to believe that she
6 actually did speak to her client. I am inclined to believe
7 that the picture she has on her phone that shows knee
8 injury is a picture of his knee. I am inclined to believe
9 that because as an officer of the court she has an
10 obligation, just like you, to make sure that everything she
11 is saying on this record is accurate.

12 Is everything you stated today accurate?

13 MS. O'SCHECK: Yes. I am happy to show--

14 THE COURT: I am not interested in seeing a
15 picture of somebody's busted up knee. I am not interested
16 in it at all. If the assigned thinks they will feel better
17 because they see a picture of his busted up knee, you could
18 share it with the assigned. I am not getting involved in
19 that. That is absolutely ridiculous.

20 I am not issuing a warrant. And I am going out
21 further because it sounds as if -- especially if your knee
22 has just been drained, it makes it very difficult and
23 painful to walk around. Hence why, I am sure, he was
24 attempting to get a ride for today.

25 November 15th, 10:00 o'clock. Let him know this

1 is a firm date and time. So if he can't get a ride, he is
2 going to have to figure out some way to make sure he is
3 here November 15th at 10:00 a.m.

4 MS. O'SCHECK: I will pass on the message.

5

6 * * * *

7

8 THIS IS CERTIFIED to be a true and accurate transcript of my
9 stenographic minutes.

10

11

12

13 *Lorna Beckford*

14 -----

15 LORNA BECKFORD, RPR

16 Official Court Reporter

17

18

19

20

21

22

23

24

25

1 SUPREME COURT OF THE STATE OF NEW YORK

2 BRONX COUNTY : CRIMINAL TERM :PART-77

3 -----X

4 THE PEOPLE OF THE STATE OF NEW YORK,

5 -against:

6 S█-P█ H█,
7 M█ M█,

8 Defendant(s:)

9 -----X

October 13, 2022

10 Bronx Supreme Court
11 265 East 161st Street,
Bronx, New York, 10451

12 B E F O R E:

13 THE HONORABLE NAITA A. SEMAJ,
14 JUSTICE

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

16 DARCEL D. CLARK,
District Attorney, Bronx County
17 BY: VITTORIA FIORENZA, ESQ.
SAMANTHA MILLER, ESQ.,
18 MICHELLE VILLAVARDE, ESQ.
Assistant District Attorney

19 18B PANEL:
Assigned Counsel
20 BY: ROBERT GROSS, ESQ.,
Attorney for Defendant H█

21 SPIRO FERRIS, ESQ.
22 Attorney for Defendant M█

23
24 LORNA BECKFORD,
25 Senior Court Reporter

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

COURT CLERK: Calling number 30 on the calendar, S█-P█ H█, indictment number 71309 of '22. Let the record reflect the defendant is present. Appearances, please.

MR. GROSS: Good afternoon, Your Honor.
Robert Gross, 1695 Lexington Avenue, on behalf my client, S█-P█ H█. It's a codefendant case, Your Honor.

THE COURT: The parties can step up for M█ as well.

COURT CLERK: Number 30 on the calendar, M█. Same indictment number. Let the record reflect the defendant is not present.

Appearances, please.

MR. FERRIS: Spiro Ferris, 200 East 62nd Street New York, New York, for Mr. M█.

Judge, if I may. As you can clearly, see my client is not before the Court. I did speak with him earlier this morning, and he was in Yonkers en route to court. So from that point on, Judge, I have not heard from him. That was approximately 11:00 a.m. in this morning.

THE COURT: I have that they were both excused today.

MR. FERRIS: I know it's on for decision with

1 respect to whether or not--

2 THE COURT: It's on for disposition, and the
3 disposition, as I understood it, was going to be a
4 dismissal.

5 MR. GROSS: Your Honor, can I make a brief
6 record?

7 THE COURT: Yes.

8 MR. GROSS: Your Honor, this case has been before
9 Your Honor for a very long time. This is a three-defendant
10 case. There are two defendants before Your Honor. There
11 is another defendant that was ultimately -- they had a case
12 in Family Court because on his age, and he took a plea and
13 was convicted, I believe, on this case, and there was an
14 allocution. There was video where, basically, it shows
15 that that particular defendant -- I believe his name is
16 ██████████, by the way, in Family Court. And there
17 was a video that shows him taking and switching jackets,
18 and it's on video, and that was made known to the People.
19 I think there have been two or three prosecutors, all of
20 them each time we come to court saying that we are
21 adjourning for dismissal.

22 This case is really not just an injustice for the
23 attorneys, the judicial economy, but my client has a job
24 that he is missing, and I know he is supposed to be excused
25 today. But, this has been going for approximately eight or

1 nine months, and someone else already took the weight and
2 took the gun. I just don't understand why we are here.

3 THE COURT: People.

4 MS. FIORENZA: Judge, unfortunately, this case has
5 recently been reassigned again to ADA Samantha Miller. The
6 note that from her is that she is asking the Court for a
7 brief adjournment so that she can confirm sentencing on the
8 codefendant in Family Court.

9 THE COURT: We have had this conversation on at
10 least two appearances, likely three appearances. So why
11 hasn't she confirmed that before now? And even if he
12 hasn't been sentenced, if there is a plea where he -- it's
13 one gun, right?

14 MS. FIORENZA: I believe so.

15 THE COURT: If there is a plea where he is taking
16 responsibility for the gun, what else is there to do?

17 MS. FIORENZA: Judge, actually, the assigned is
18 calling right now. If I could answer.

19 THE COURT: You can answer or she can come down.

20 MR. FERRIS: Judge, I would note that, as Your
21 Honor indicated, this is probably the third time we have
22 the same status, which is an adjournment for dismissal
23 purposes on the next adjourned date. So I think this is at
24 least the third time that myself and co-counsel have been
25 here.

1 MR. GROSS: Family Court is next door. This
2 isn't like it's out of state. 30.30 is also an issue in
3 this case, Your Honor. What's the harm in dismissing this
4 case?

5 MR. FERRIS: Judge, I would ask the Court to
6 consider a dismissal sua sponte in furtherance of justice.

7 THE COURT: Is she coming down or is she
8 dismissing it?

9 MS. FIORENZA: Judge, the assigned, like I said,
10 was recently just assigned this case. The prior ADA did
11 not leave her the contact information for the Family Court
12 attorney.

13 THE COURT: It's across the street. The level of
14 laziness is mind blowing. I understand you are the ADA in
15 the part today. This has been on multiple times, and I
16 have heard the same thing at least three times.

17 MS. FIORENZA: I understand. If the Court would
18 indulge us one more time for a brief adjournment.

19 THE COURT: Yes. I will give you until 2:15
20 today. We are not doing this. Either the assigned can
21 come or a supervisor can come because, at this point, you
22 are just taking your sweet time, and it's really just
23 offensive, especially since on every single date the record
24 has been made there is going to be a dismissal with respect
25 to these two people. So 2:15, and a supervisor can come or

1 she can come and explain why this is still not going on,
2 and why nobody can walk across the street or -- as a matter
3 of fact, not even across the street, up the stairs
4 depending on what building they are in, and get the
5 information.

6 with respect to Mr. H■■■■, Supervised Release
7 indicated he did 6 1/2 months of compliance, and they are
8 requesting I grant completion and set ROR. I am granting
9 that.

10 MR. GROSS: Your Honor, may my appearance be
11 excused? Mr. Ferris has graciously said that he will stand
12 up for me at 2:15.

13 THE COURT: That's fine.

14 MR. GROSS: And would my client's appearance be
15 waived, Your Honor?

16 THE COURT: That's fine.

17 MR. FERRIS: Judge, I have Mr. M■■■■ on the phone.

18 THE COURT: Mr. M■■■■ is on supervised release.
19 They are asking for no change of status, but I am not
20 addressing that now because the case is second-called for
21 what should be, by all account, even the People's account,
22 a dismissal at 2:15.

23 Mr. Gross, your client is excused and you are
24 excused.

25 * * * *

1 COURT CLERK: Second call on indictment number
2 71309 of '22, S■■-P■■■ H■■■ and M■■■■ M■■■.

3 MR. FERRIS: Good afternoon.

4 Spiro Ferris, 200 East 62nd Street, New York, New
5 York, appearing for Mr. M■■■. Judge, I am also standing in
6 for co-counsel.

7 THE COURT: During the first call counsel for
8 Mr. H■■■ was here, and he did request to be excused because
9 he couldn't be here in the afternoon. He also requested
10 that his client be excused for the second call, and he is
11 excused. Your client was here, and he was also excused.
12 People?

13 MS. MILLER: Samantha Miller for the People.
14 I am the recently assigned.

15 I spoke with the ADA in the part on the first
16 call. I did reach out to Family Court, as Your Honor
17 requested the People to do.

18 THE COURT: I didn't request that you reach out
19 to Family Court. I requested that you come back, either
20 you or a supervisor come back with a dismissal because this
21 has been on for possible disposition August 18th. It was
22 adjourned to August 29th for possible disposition. August
23 29th it was adjourned for today for possible disposition.
24 And we are in the same -- literally, it's like Ground Hog
25 Day. We are having the same conversation which we had back

1 in August today.

2 Quite frankly, you sent an email to me at 2:02
3 this afternoon, and your email reads: This case is on the
4 calendar today, and it was requested that I go to Family
5 Court to request information regarding the current status
6 of former co-defendant case, which was removed to Family.
7 I spoke to Deputy Borough Chief Matthew Conaghan, and I was
8 informed that I need a so-ordered subpoena for the
9 information regarding any Family Court proceeding in that
10 matter. Please see the attached order, bla, bla, bla.

11 Any and everything that happened today could have
12 been and should have happened since August.

13 MS. MILLER: So, Your Honor, the sentencing was
14 on last week in Family Court. We can't dismiss a
15 codefendant matter without a disposition in the Family
16 Court.

17 THE COURT: Let's be clear. It is not that you
18 can't. It's that your office chooses not to. There is
19 nothing in the law preventing that. It's one gun, one gun,
20 three people. One person has already pled guilty, right?
21 Right?

22 MS. MILLER: Yes, Your Honor, and--

23 THE COURT: We are not going to talk at the same
24 time. We are not doing that. We are absolutely not doing
25 that today.

1 One person already pled guilty to the one gun.
2 You know that. You have that. And either way, even if he
3 was sentenced in last week, we are still here today. And
4 the thing you did today after the first call is the thing
5 you should have done last week, right?

6 MS. MILLER: Your Honor, I was out last week for
7 a family emergency.

8 THE COURT: Oh, my goodness. So everything must
9 stop. Do you realize that there are implications to having
10 cases open? You do realize that, right?

11 MS. MILLER: Yes, Your Honor, I do realize that.
12 But, I can't do things that I am not present in New York
13 for. I was out of state for a family emergency, and I am
14 dealing with a family emergency, so I am not going to--

15 THE COURT: Are you a sole practitioner?

16 MS. MILLER: No. I work for the District
17 Attorney's Office.

18 THE COURT: Exactly. And your office has been
19 aware of this for months now. That is the point. It is
20 not necessarily about you. It is about the fact that your
21 office has been aware of it. While you are standing here
22 right now, and while she is in here right now, I was here
23 on the last date in August. He was here on the last date
24 in August. His client was here on the last date in August.
25 And we had a whole entire discussion on and off the record

1 about what needed to happen, and that's why this date was
 2 picked. This date was specifically picked because it was
 3 after the sentencing. And you said -- whoever was here on
 4 that date said they would have the information, they would
 5 make sure they would get it for defense counsel and be here
 6 so we could move forward today. That is the representation
 7 that was made in August, and we are literally here in the
 8 middle of October and it's just, oh, I will give you a
 9 subpoena and try to get the information. Do you realize
 10 how disingenuous and ridiculous that is?

11 MS. MILLER: Your Honor, that was not the
 12 information that was provided to me.

13 THE COURT: That's not my problem. That's
 14 something you need to address with the people in your
 15 office. I know what happened in here. I don't know what
 16 was relayed to you. I know what happened in court in
 17 August, and I know why it was put on today. It's
 18 incredibly annoying to me that I adjourn cases for dates
 19 that everyone agrees upon so that we could do a particular
 20 thing, and then we are here to do that particular thing and
 21 nothing gets done. And the position from that side of the
 22 room is simply, oh, we need more time. Except you had two
 23 months. You had two months. We would not have come back
 24 here today if there was some confusion about whether or not
 25 it could get done today. But, that is why we are back

1 today. And if the issue is whatever was written on the
2 status sheet and relayed to you, that is something that you
3 have an obligation to address with the people in your
4 office. But, it's not my problem. It shouldn't be his
5 problem or his client's problem. Right now they are going
6 to have to walk out this building with the case still open,
7 knowing someone already took the gun. It's one gun. It's
8 one gun.

9 The position from the People since August has
10 been it's going to be dismissed as to H [REDACTED] and M [REDACTED]. That
11 has been the position. And knowing that that's the
12 position, the fact that it's not getting done strictly
13 because this side of room, the People, have dragged their
14 feet and not done the bare minimum, because the bare
15 minimum is literally what you did between the first and
16 second call which was make a phone call and prepare a
17 subpoena, which could have been done. Not for nothing,
18 it's a Bronx case, isn't it? It's Bronx Family Court?

19 MS. MILLER: Yes, Your Honor.

20 THE COURT: 900 Sheridan Avenue, right there. If
21 anybody from your office even cared, they could have been
22 there for the sentencing. They could have been there and
23 witness it themselves, so there wouldn't even be a need for
24 any subpoena. It could have been done, but the lack of any
25 desire to get this done is mind blowing to me.

1 Do you have anything to say?

2 MR. FERRIS: Well, I had made this application
3 earlier before the second call which is -- I think given
4 the circumstances here, my application would be for the
5 Court to consider sua sponte to dismiss this case in
6 furtherance of justice.

7 THE COURT: People.

8 MS. MILLER: Your Honor, we would be requesting
9 that that motion be made in writing. Additionally, I
10 provided Your Honor with a subpoena in order to get the
11 information that my office requires in order to provide
12 Your Honor with a DOR, which we need time in order to do.

13 THE COURT: A DOR is not required by law. A DOR
14 is something your office like to have. You could reach out
15 to your supervisor or chief and give me a reason why this
16 case should not be dismissed today, because it's been the
17 People's representation that these cases are being
18 dismissed. It's been the People's representation. It's
19 been the People's representation they -- I deferred to the
20 People, and you said it has to be after sentencing. I
21 deferred to the People, it's now after sentencing and,
22 alas, we are here with nothing, nothing. And the only
23 reason why I am even getting this so-ordered subpoena, the
24 only reason any phone call was made today is literally
25 because of the second call, not even because of the first

1 call. The first call, it was simply a status sheet saying
2 I need more time.

3 MR. FERRIS: Judge, if I may. I am somewhat
4 perplexed by the notion, as Your Honor said several times,
5 there is one gun, three people. We know that one of those
6 people has made an admission as to that firearm being
7 theirs. So, what more is there to do here? What are the
8 people seeking to do here as it relates to somebody
9 responding to Family Court making an admission to that
10 firearm being his? I mean, that's pretty irretrievable, if
11 you ask me, Your Honor.

12 MS. MILLER: Your Honor, I have no notes as to
13 any -- the only thing that's mentioned in my file -- I
14 don't have any minutes from Family Court. It appears that
15 he took responsibility for the gun from a note. That's all
16 I have. I don't have any minutes. I don't have any
17 disposition.

18 THE COURT: I am sorry. If you wanted more than
19 a note and wanted minutes for the disposition, there were
20 things you could have done to get that. You are aware of
21 that, right?

22 MS. MILLER: Yes, Your Honor.

23 THE COURT: So why -- you are complaining about
24 things you don't have, but you didn't try to get them.

25 MS. MILLER: I am well aware of -- I can try. I

1 am well aware of that. Where we are at right now with this
2 case being reassigned, I don't have them. So I am not
3 dismissing the case. I did speak with my supervisor. She
4 is on her way down. I spoke with her before lunch. She
5 knows what's going on in this case.

6 THE COURT: Does she, though? Because you didn't
7 know what's going until I told you. According to you, you
8 didn't have anything in your notes. So I am not sure how
9 she could know what's going on.

10 MS. MILLER: She has the same notes that I have.

11 THE COURT: Exactly. So she knows nothing
12 because that's pretty much the record you made; I didn't
13 know any of this. I just got the case. I am reassigned.
14 There is nothing in the notes.

15 MS. MILLER: I am saying that the minutes weren't
16 provided. The assistant district attorney--

17 THE COURT: You can order minutes. I can get --
18 when I need minutes, I get them. When defense counsel
19 needs minute, he gets them. What is stopping you from
20 getting minutes? Help me understand? Please walk me
21 through the life that you live? What is so difficult about
22 you getting minutes? It been two months.

23 MS. MILLER: It hasn't been two months.

24 THE COURT: What efforts did anyone from your
25 office take to get minutes?

1 MS. MILLER: I don't have any record as to that,
2 so I don't know.

3 THE COURT: What efforts did your office make at
4 all to confirm anything with respect to the codefendant?
5 Because it was your office's record and representation that
6 somebody took a plea, and that they were going to dismiss
7 once he was sentenced. That came from your office. So--

8 MR. FERRIS: I think maybe the hang-up, Judge,
9 is, from the People's perspective -- not that I am
10 advocating for them, but I think they wanted -- they knew,
11 they were aware that that person made an admission in
12 Family Court, but they wanted to wait until when that
13 individual was sentenced.

14 THE COURT: I understand that, which is why we
15 came back today. Exactly. It is after sentencing. And
16 what efforts did the People make to confirm that he was
17 sentenced or that anything happened at the sentence that
18 shouldn't have happened? None, zero efforts, zero efforts,
19 zero.

20 So we are all just patiently awaiting the arrival
21 of the supervisor. The court will literally continue to
22 grind to a halt until the People appear and do something or
23 say something. We will all wait. Third call.

24 * * * *

25 THE COURT: Back on the record.

1 MS. VILLAVERDE: Michelle villaverde for the
2 People, V-I-L-L-A-V-E-R-D-E, on behalf of the assigned
3 assistant, Samantha Miller.

4 THE COURT: So you have a hard copy of the
5 subpoena?

6 MS. VILLAVERDE: I do, Judge.

7 THE COURT: We conferenced this at length off the
8 record, and based on ADA villaverde's representations, I am
9 going to sign the subpoena, and I am going to put this over
10 to October 21st. That's next Friday. And I am putting it
11 on for dismissal. At this point, it seems very clear that
12 the intention is that once the defendant is sentenced,
13 these cases are being dismissed. So we are back here 10:00
14 a.m. on October 21st. Your client can be excused on that
15 date. And I have signed the subpoena.

16 Anything else?

17 MS. VILLAVERDE: That's it. Thank you, Judge.
18 Have a good afternoon, everyone.

19 * * * *

20 THIS IS CERTIFIED to be a true and accurate transcript of my
21 stenographic minutes.

22 *Lorna Beckford*
23 -----

24 LORNA BECKFORD, RPR
25 Official Court Reporter

In The Matter Of:

People v.

J [REDACTED] L [REDACTED] Indictment 70344/2021

March 23, 2022

Peter Kent

1 SUPREME COURT OF THE STATE OF NEW YORK
2 BRONX COUNTY : CRIMINAL TERM : PART FYP-32

3 -----X
4 PEOPLE OF THE STATE OF NEW YORK

5 -against-

6 J [REDACTED] L [REDACTED]

Indictment No.
70344/2021

7 Defendant

8 -----X
9 Bronx Hall of Justice
10 265 East 161st Street
11 Bronx, New York 10451
12 (Via TEAMS)

13 Date: March 23, 2022

14 B E F O R E:

15 HON. NAITA A. SEMAJ-WILLIAMS,
16 Supreme Court Justice

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

18 DARCEL CLARK, ESQ.
19 District Attorney, Bronx County
20 198 East 161st Street
21 Bronx, New York 10451
22 BY: JILLIAN CASTRELLON, ESQ.,
23 Assistant District Attorney

24 THE LEGAL AID SOCIETY
25 Attorneys for the Defendant
26 260 East 161st Street
27 Bronx, New York 10451
28 BY: NANCY GINSBURG, ESQ.

29 Also present: Carlos Collazo, Court Interpreter
30 Douglas Knepper, LAS Caseworker

31 Peter M. Kent
32 Senior Court Reporter

1 THE CLERK: We are appearing via TEAMS. Do all
2 parties agree?

3 MS. GINSBURG: Yes.

4 MS. CASTRELLON: Yes.

5 (Brief pause.)

6 THE COURT: I see your client is on. Does he need
7 the Interpreter, or --

8 MS. GINSBURG: That's his mother.

9 THE COURT: Is his mother here, because his camera
10 is not on?

11 Can you turn on your camera, Mr. L [REDACTED]?

12 THE CLERK: Do you want me to repeat anything?
13 He's frozen now.

14 (Brief pause.)

15 THE CLERK: This is Number 2 on the FYP-32
16 Calendar, under Indictment 70344/2021, in the matter of the
17 People of the State of New York against J [REDACTED] L [REDACTED].

18 State your appearances, please.

19 MS. GINSBURG: The Legal Aid Society, by Nancy
20 Ginsburg, G-i-n-s-b-u-r-g, appearing for Deborah Rush,
21 R-u-s-h.

22 Good morning.

23 MS. CASTRELLON: Jillian Castrellon, on behalf of
24 the Office of the District Attorney. My last name is
25 spelled, C-a-s-t-r-e-l-l-o-n.

1 THE COURT: We can proceed because your client
2 speaks and understands English, correct?

3 MS. GINSBURG: Correct.

4 THE COURT: I this on for possible disposition.
5 Is there a disposition?

6 MR. KNEPPER: I can translate for the mother.

7 MS. GINSBURG: The People are recommending
8 three-and-a-half years. And we would like "Y-O" and
9 probation.

10 So, we don't have a disposition.

11 The Court can grant "Y-O" and probation, but we
12 haven't had that discussion yet.

13 This is his only offense. The case is almost a
14 year old and he's had no further contact. He's going to
15 school and working.

16 MS. CASTRELLON: And, Judge, I will say that this
17 recommendation has been made after consideration of
18 counsel's PPI and in conjunction with conversations that I
19 have had with ADA Gottlieb and other executives in the
20 office.

21 THE COURT: So, there is a separately -- I can't
22 find the Indictment -- but I am looking at the felony
23 complaint, and there were two people in a room and someone
24 was shot in the -- I guess -- in the face?

25 MS. CASTRELLON: Yes.

1 The defendant's ex-girlfriend was shot in the face
2 by the defendant.

3 THE COURT: Well, she's -- at one point she says
4 she shot herself. And then he says that he shot her.

5 MS. CASTRELLON: Correct.

6 The charges against her were dismissed. The
7 People were unable to speak with her at the time of the
8 incident. The officers were unable to speak to her as she
9 went to the hospital afterwards, and based on the
10 defendant's NYPD video statement, which, both his parents
11 were present for, those cases -- those charges were
12 dismissed against [REDACTED].

13 MS. GINSBURG: It appears that it was an
14 accidental discharge.

15 THE COURT: What is the People's position?

16 (Brief pause.)

17 THE COURT: Your mic is off.

18 MS. CASTRELLON: Judge, I do not believe that it
19 was accidental, but I do not currently have a cooperative
20 complainant. So, he has been charged with the reckless
21 assault at this time, um, as well as the criminal possession
22 of a weapon, and the other underlying charges.

23 She has never cooperated with the DA's Office.
24 She has not testified in the Grand Jury. I have spoken to
25 her. I have met with her. But the contact has been far and

1 few between.

2 THE COURT: Well, what is the People's position as
3 to what happened?

4 MS. CASTRELLON: Judge, my position is that there
5 was a -- there's been a history of domestic violence between
6 these two individuals, um, that --

7 THE COURT: What do you mean by a "history of
8 domestic violence"?

9 MS. CASTRELLON: That he has hit her, punched her,
10 thrown her down a flight of stairs previously before this
11 incident. That there was a breakup preceding this incident.
12 And that the gun was loaded in front of her at the time of
13 the incident and the trigger was pulled.

14 THE COURT: Where is that information from if you
15 never had a cooperative complainant?

16 MS. CASTRELLON: So, I have spoken with her, but
17 she is not willing to -- she has not been willing to come
18 back into my office.

19 THE COURT: Have the People requested or required
20 anything of the defendant since his arrest?

21 MS. CASTRELLON: I'm sorry, Judge?

22 THE COURT: Have the People requested or required
23 anything of the defendant since his arrest?

24 MS. CASTRELLON: In terms of?

25 THE COURT: If the People's position is that there

1 is a history of domestic violence, I would think that the
2 People would have at least asked or expected him to engage
3 in some services related to that.

4 Has that in fact --

5 MS. CASTRELLON: No.

6 That information was only made aware to me when I
7 became involved with the case, which was just a few months
8 ago. Um, I know that the defendant had voluntarily done the
9 Esperanza Program after his initial arraignment. That was
10 not something that was required by the People. There was no
11 programming required by the People.

12 THE COURT: So --

13 MS. GINSBURG: Judge, just so the Court is aware,
14 he completed both Esperanza and Exalt.

15 THE COURT: Not because the People asked him to,
16 but just on his own?

17 MS. GINSBURG: Correct.

18 We connected him and he completed them and fully
19 participated.

20 THE COURT: He is out on bail?

21 MS. GINSBURG: Yes.

22 THE COURT: How long has he been out?

23 MS. CASTRELLON: I believe actually he is on
24 supervised release.

25 THE COURT: Okay. I don't have anything.

1 MS. CASTRELLON: I don't have either because I am
2 running back and forth between court parts, but --

3 THE COURT: I'm just, always, um, just -- I guess
4 I am a little confused, when there is someone who is alleged
5 to have done something, a case is filed against him, the
6 case is in court, they are out, they are engaging in
7 services, they are not getting rearrested, um, no one's
8 coming in here asking for anything to change because of any
9 issue or concern, and then the People's position is jail --
10 several years jail.

11 MS. CASTRELLON: Yes.

12 The facts of the case -- and you know, like I
13 said, based upon the facts of the case and like I said I
14 have conferenced this and that's the People's recommendation
15 at this time.

16 MS. GINSBURG: Your Honor, there is just one more
17 issue.

18 Um, BCS has been providing supervision, and they
19 are actually asking, given the length of time they have been
20 supervising J■■■■, and that supervision be terminated.

21 THE COURT: Is there an update or is there
22 something that was sent to the Court, because I don't -- is
23 there an update?

24 MS. GINSBURG: Um --

25 MS. CASTRELLON: Judge, I also received it.

1 THE INTERPRETER: Your Honor, do you need the
2 Interpreter?

3 Do you need the Interpreter?

4 THE COURT: Mr. Knepper, what do you -- regarding
5 the Interpreter, do we want the Interpreter or can you just
6 speak to the mother after?

7 MR. KNEPPER: I will speak to her after, it's
8 fine.

9 THE COURT: Okay.

10 Thank you, Interpreter.

11 THE INTERPRETER: Thank you.

12 Can you hear me just to prove that it's fixed for
13 the next case?

14 THE COURT: I can hear you.

15 THE INTERPRETER: Thank you.

16 THE COURT: Have a good day.

17 THE INTERPRETER: Likewise.

18 (Brief pause.)

19 THE COURT: I just got an e-mail from Mr. Knepper.
20 All right.

21 So -- just so I am clear, what is the basis for
22 the 3 years jail?

23 MS. CASTRELLON: Judge, based upon the facts of
24 the case, you know, the conversations that I had with the
25 complainant, and this case has been conferenced with the

1 executives in consideration with the PPI, and this is the
2 recommendation.

3 THE COURT: Does your office take into
4 consideration that it is the Youth Part, or is that just not
5 a part of analysis?

6 MS. CASTRELLON: Yes, Judge. No, Judge, that was
7 taken into consideration as well.

8 THE COURT: How old is he?

9 MS. GINSBURG: Seventeen.

10 He was -- the case is a year old, so he was
11 sixteen when the case came in.

12 THE COURT: And the People's position also is that
13 no "Y-O"?

14 MS. CASTRELLON: Correct.

15 THE COURT: And why -- because of the facts of the
16 case and --

17 MS. CASTRELLON: Yes, Judge. This is a sixteen
18 year old boy who is walking around with a loaded firearm and
19 shoots someone in the face.

20 And, I mean, our position is that it's, it's
21 really not accidental, and, you know --

22 THE COURT: But what do you have to support that
23 position as an attorney? You have a complainant who has at
24 least at one point said she did shoot herself.

25 MS. CASTRELLON: Correct. But Judge, I had

1 further conversations with her, whether or not she is
2 willing to continue to come in, that's not happened, but I
3 can't ignore the conversations that I have had with her and
4 the fact that this goes from an accident to an intentional
5 being shot in the face.

6 She's lost vision to her left eye. She can't see.
7 She's got constant tinnitus in her ear.

8 You know, it's by an act of God that she didn't
9 die. So, it is a very serious set of injures, a very
10 serious set of circumstances. Whether or not he was joking
11 around when this happened, he shot, he fired, he pulled the
12 trigger of a gun on a person's head.

13 It's not a simple mistake --

14 THE COURT: But that's why it -- I am also a
15 little confused -- it's so serious, it's so bad, there is a
16 history of domestic violence, according to the People, but
17 yet he is literally not asked to do anything by the People.

18 The People's position is he's arrested, he's
19 charged, he comes to court, and at the end the everything
20 what he does is services on his own, then jail because it is
21 so terrible.

22 If what he did was so bad -- if the People truly
23 believe there is a history of domestic violence, please tell
24 me, help me why the People's position is also to not ask him
25 to do anything. Tell me how to understand that.

1 MS. CASTRELLON: Judge, I am not a DV Assistant.
2 It was not coming in as DV.

3 THE COURT: The representation you have made,
4 based upon the representations you have made, you have the
5 case for several months now. So, whether you are a DV
6 Assistant or not, if you are going to come into this court
7 and talk about there is a history of domestic violence, you
8 are going to have to explain to me why there's that history
9 and the People don't do anything to address it.

10 Tell me. Help me understand.

11 MS. CASTRELLON: Judge, I am happy to look into a
12 program that would be available for him to complete with
13 respect to --

14 THE COURT: A year later, after he's done a
15 program on his own?

16 Do you hear yourself?

17 MS. CASTRELLON: Well, Judge --

18 THE COURT: And let's also be clear. You're not a
19 DV Assistant. Let's also be abundantly clear, DV is not for
20 people that fight frequently, DV is about control, it is not
21 just about people that are fighting each other.

22 So, let's be very careful with the language we
23 use, especially when there's been nothing on the People's
24 side that has been done to address the issues. Nothing.
25 Nothing at all.

1 So, to -- on one hand to do nothing to address the
2 issues, then to come in to court and say because it was so
3 bad, it was so horrible he needs to be in jail for 3 years.

4 I would love for your office to recognize how
5 disconnected that is and how ridiculous that is.

6 It's one thing if you were standing here saying
7 there's a history of domestic violence and we ask for a
8 program. He didn't comply with the program. He's been --
9 or something -- but instead it's acknowledging he's complied
10 with every program he did on his own. There's been no new
11 incidents. But then you're just throwing all over the
12 record there is a history of domestic violence. Then when I
13 asked you anything about the specific domestic violence,
14 well, I am not a DV Assistant. You can't have it every
15 which way. Pick a position and stick with it. And
16 everything you say in this courtroom should be based upon
17 good faith. You can't just say there is a history of
18 domestic violence because they fought. It's not one in the
19 same. It's really not. And if you're going to say there is
20 a history of domestic violence, it would really make more
21 sense to me if you could at least put on the record one
22 thing that was done to address that issue.

23 Just because there is a history of domestic
24 violence -- I would think it would be more appropriate for a
25 DV Assistant to be here.

1 MS. CASTRELLON: And Judge, I don't disagree. The
2 history of domestic violence issues that came to me were not
3 readily available at the beginning of the case when the case
4 was first indicted with the original assistant, because
5 there was no contact with the complaining witness.

6 I had made contact with the complainant, and had
7 her in my office. I have seen photographs that she alleges
8 were, were of prior incidents of abuse. Um, and that is my
9 basis of knowledge. It is my good faith basis of knowledge.

10 I have not said anything on record that I am
11 speculating --

12 THE COURT: No. If you have that, if you have
13 that information and have you that belief, why was he not
14 asked to do anything to address that? Why is it that
15 anything he has done has been on his own or through the
16 defense counsel? Why is that the case? And this is not the
17 only case where this has happened, why is it the case on
18 this one?

19 MS. CASTRELLON: So, Judge, at the time that, um,
20 that information became aware to me, Mr. L [REDACTED] had already
21 finished completing the Esperanza Program. There was no
22 interim probation or anything set in place. At the time we
23 were recommending jail time. So, there wasn't, in my
24 position, there wasn't programming that the People would
25 consider as part of a plea at this point, after, like I

1 said, after it had been conferenced by my chief and the
2 supervisor above my chief.

3 THE COURT: When was the last time it was
4 conferenced?

5 MS. CASTRELLON: Um, I believe it was conferenced
6 sometime in February, Judge.

7 THE COURT: Okay.

8 So, whoever it was conferenced with -- because I
9 really don't understand the People's position -- I don't
10 understand this whole -- defendant's out -- doing what they
11 are supposed to be doing -- still very much a child -- and
12 the only answer the People ever have is several years jail.

13 So, whoever you conferenced it with, I am going to
14 adjourn it for a short date, that person can log on and
15 maybe help me understand, because I don't. I don't
16 understand it at all.

17 This is his -- for the -- everything related to
18 the history is from -- is strictly from the complainant.
19 There is no -- are there any police reports? Are there any
20 arrests? Is there anything else?

21 MS. CASTRELLON: Not to my knowledge, Judge, no.

22 THE COURT: Okay.

23 So, whoever it was conferenced with, whoever made
24 the final determination that in this particular case where,
25 yes, it was a very serious injury to the complainant, I

1 can't even say that, um, I have no indication -- I can't say
2 with any certainty that he intentionally shot her in the
3 face because, (a), I wasn't there, and (b), the complainant,
4 at least at one point said she did it to herself.

5 So, yes she may have told you that it was
6 intentional, and all we have is that, that statement, but --

7 MS. CASTRELLON: Understood.

8 THE COURT: I'm sorry?

9 MS. CASTRELLON: No. Understood, Judge.

10 THE COURT: So, I am going to do a short date for
11 whoever made the final determination that 3 years jail for
12 this child is, um, is the only appropriate outcome they can
13 think of, they need to appear and explain to me why.

14 So, um -- is he in school?

15 MS. GINSBURG: Yes.

16 THE COURT: Does he go in person?

17 MS. GINSBURG: Yes, he is.

18 MR. KNEPPER: Yes, he's in Port Jervis High
19 School. In the town where they reside.

20 MS. GINSBURG: He moved out of the city.

21 THE COURT: Okay.

22 So, what time is school --

23 THE DEFENDANT: Well --

24 THE COURT: -- like regular, like 8:00 to 3:00 or
25 something?

1 What time is school?

2 MR. KNEPPER: J[REDACTED]?

3 THE DEFENDANT: 7:26.

4 THE COURT: 7:00 to 6:00?

5 THE DEFENDANT: 7:26, Miss.

6 THE COURT: 7:26 in the morning? Until when?

7 THE DEFENDANT: Until, until 2:12.

8 THE COURT: 2:12?

9 THE DEFENDANT: Yes.

10 THE COURT: Very specific times. Okay.

11 So, can we do -- hold on one second.

12 (Brief pause.)

13 THE COURT: Can we do 4:00 o'clock on April 7th?

14 MS. GINSBURG: Yes.

15 THE COURT: Ms. Castrellon?

16 MS. CASTRELLON: (Muted.)

17 THE COURT: You're muted and your camera is off.

18 MS. CASTRELLON: Yes. Sorry, Judge, I am looking
19 at my calendar.

20 That works for me. And I will, obviously, get
21 involved with my supervisors so -- to let them know. I
22 don't know what their schedule is.

23 THE COURT: No, no, it doesn't matter what their
24 schedule is, whoever made the final determination, they are
25 being directed to appear here.

1 MS. CASTRELLON: No, I know.

2 THE COURT: No, no, no, I absolutely know, I know
3 you don't know what their schedule is, whoever made the
4 final determination is being directed to appear here at 4:00
5 p.m. on April 7th virtual to explain their position.

6 MS. CASTRELLON: Okay.

7 THE COURT: Okay?

8 MS. CASTRELLON: Yes, Judge.

9 THE COURT: All right.

10 So, I will see you all -- is there anything else
11 we need to address today?

12 MS. CASTRELLON: There's -- from -- yes -- to
13 terminate BCS supervision.

14 THE COURT: Oh.

15 Do the People have a position on that?

16 MS. CASTRELLON: Um, I would just ask that you
17 maintain the BCS supervision. I think it's just a phone
18 call and check in. It doesn't require him to come to court.

19 THE COURT: Okay, so, why does your office believe
20 that we should maintain that?

21 MS. CASTRELLON: Well, Judge, we had asked for
22 bail originally on this case when the defendant was
23 originally arraigned just to maintain some contact with the
24 court between court dates.

25 He doesn't live in the Bronx any more. This case

1 has not been called in person for -- I guess, ever, um,
2 since arraignment. So, we just ask that he have contact
3 with the court between the court dates.

4 THE COURT: He's been in compliance for
5 nine-and-a-half months. I mean, he is a Tier 1? You can't
6 go any lower. He is -- um, they are asking to be
7 released -- he's been participating for nine-and-a-half
8 months, there's been no -- Ms. Ginsburg, is it your position
9 that there's been no issues reported, no concerns raised in
10 that nine-and-a-half months?

11 MS. GINSBURG: No. None.

12 THE COURT: I mean -- and it's not -- this
13 supervision doesn't necessarily -- this Court doesn't get
14 anything until the court date anyway. So there is -- and he
15 is, he is in -- you're in contact with him, right,
16 Mr. Knepper and Ms. Ginsburg?

17 MS. GINSBURG: Yes.

18 THE COURT: I mean, while the People's position is
19 that they requested bail so there needs to be something. I
20 mean, they may have requested bail when he was arraigned,
21 but he's been out, he's been compliant, he's done everything
22 he's supposed to do. He hasn't been rearrested. There have
23 not been any issues raised.

24 I am going to terminate the supervision. There is
25 no -- we don't -- if at this point it really is just a phone

1 call, and just a, you know, you go on-line and you check in,
2 I personally don't even think that's real supervision. So,
3 let that be free for somebody else.

4 Um, Mr. Knepper and Ms. Ginsburg, if you lose
5 contact with your client, definitely let the Court know and
6 we can advance the case. And if it is a matter of this case
7 just not being on in court and you want to have more contact
8 with the defendant, this case could easily be in-person, but
9 I don't see anywhere where anybody has asked that it be
10 in-person.

11 So -- um --

12 MS. GINSBURG: Your Honor, just so the Court is
13 clear, the People required a DNA swab in February. J [REDACTED] and
14 his mother appeared for that on time. They were compliant
15 with that.

16 So, there is no reason to believe that he would
17 not show up if this was an in-person, I don't believe that
18 right now there is any reason for it to be in-person
19 particularly --

20 THE COURT: No, I am not putting it on in person.
21 I mean there's been no request thus far that it be in
22 person.

23 There's been no indication that he is not suppose
24 to be doing what he is supposed to do. It is -- so, April
25 7th at 4:00 o'clock and that will be virtual for the People

1 to help me understand their position.

2 Is there anything else?

3 MS. CASTRELLON: Judge, just with respect to the
4 swab. We haven't received the results back yet. OCME has
5 been quite backlogged.

6 THE COURT: Okay.

7 MS. CASTRELLON: I will follow up with that if
8 there is an update and I will also ask the Court to extend
9 the order of protection that's been in place. I am not sure
10 if it was extended for a long period of time on the last
11 date.

12 THE COURT: That's extended.

13 And just try to have an update on the swab when
14 you come back.

15 MS. CASTRELLON: Yes, I will do my best to get an
16 update and let the Court know and --

17 THE COURT: All right. Thank you.

18 Anything else?

19 MS. CASTRELLON: Nothing from the People.

20 THE COURT: All right.

21 MS. GINSBURG: Thank you.

22 THE COURT: All right, have a good day.

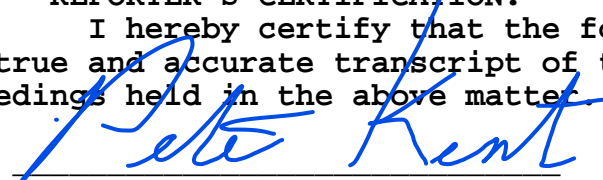
23 MS. CASTRELLON: You too.

24 MS. GINSBURG: Thank you.

25 OOO

REPORTER'S CERTIFICATION:

I hereby certify that the foregoing
is a true and accurate transcript of the
proceedings held in the above matter.


Peter Kent
Senior Court Reporter