



James Culbertson, County Clerk
 Livingston County Government Center
 6 Court Street, Room 201
 Geneseo, New York 14454
 (585) 243-7010 ~ Fax (585) 243-7928

Livingston County Clerk Recording Page

Received From:
 GENESEE VALLEY LEGAL AID INC

Return To:

Document Type: CRIMINAL - MISC

Document Desc: SUPPLEMENTAL NOTICE OF MOTION TO SET ASIDE THE VERDICT / NOTICE OF MOTION & DEFENSE ATTORNEYS AFFIRMATION IN SUPPORT OF MOTION

Plaintiff

Defendant
KREBBEKS MARK J AKA KREBBEKS MARK AKA

Recorded Information:
Index #: 2014-00057

State of New York
 County of Livingston

Recorded on the 18th date of November, 2014
 at 09:07:45 AM.

Livingston County Clerk

This sheet constitutes the Clerk's endorsement required by section 319 of the Real Property Law of the State of New York

STATE OF NEW YORK
SUPREME COURT

COUNTY OF LIVINGSTON

THE PEOPLE OF THE STATE OF NEW YORK,

-vs-

SUPPLEMENTAL NOTICE OF
MOTION TO SET ASIDE THE
VERDICT

Indictment No.: 2014-066


Mark Krebbeks,

Defendant.

PLEASE TAKE NOTICE that upon the annexed affirmation of Jeannie D. Michalski, Esq., attorney for the Defendant, the undersigned will move this Court, at a criminal term thereof, before the Hon. Robert B. Wiggins, New York State Supreme Court Justice, located at Court Street, Geneseo, County of Livingston, on the 18th day of November, 2014 at 9:00 a.m., or as soon thereafter as counsel may be heard for the following relief:

- A Pursuant to C.P.L. Section 330.30(1), setting aside the verdict, due to the defendant's inability to knowingly and voluntarily waive his right to a trial by jury;
- B. An Order permitting renewal of all motions;
- C. An Order granting other and further relief as the Court deems just and appropriate.

DATED: Avon, New York
November 17, 2014



Jeannie D. Michalski, Esq.
Genesee Valley Legal Aid, Inc.
6 Court Street, Room B-11
Geneseo, New York 14454
Telephone: (585) 991-5091

To: Gregory McCaffrey, Esq.
Livingston County District Attorney

STATE OF NEW YORK
SUPREME COURT

COUNTY OF LIVINGSTON

THE PEOPLE OF THE STATE OF NEW YORK.

-vs-

NOTICE OF MOTION AND
DEFENSE ATTORNEY'S
AFFIRMATION IN SUPPORT OF
MOTION

Indictment No.: 2014-066

MARK KREBBEKS,

Defendant.


STATE OF NEW YORK)
COUNTY OF LIVINGSTON) SS:
TOWN OF AVON)

I, JEANNIE D. MICHALSKI, an attorney duly admitted to practice law in the State of New York, affirms under penalty of perjury pursuant to CPLR 2106 that:

1. I am the attorney for the Defendant herein and I am fully familiar with the facts and circumstances in this case.
2. I make this affirmation in support of the relief requested in the annexed Notice of Motion and for any other and further relief as this Court deems just and appropriate.
3. This Defendant was arraigned on Indictment No. 2014-066 charging the Defendant with Falsifying Business Records in the 1st Degree, False Written Statement, and Falsely Reporting an Incident. A jury trial commenced on or about September 19, 2014 wherein the Defendant was found guilty on all three counts.
4. Defendant maintains he was medicated and therefore was unable to understand the meaning of the waiver of a jury trial. Due to the number of medications he was taking and the side effects, he his waiver was not freely and voluntarily given.
 - a. A waiver of jury trial must be knowing and voluntary. *See People v. Satcher*, 144 A.D. 2d 992; *See also, People v. Jones* 178 A.D. 2d 244.
5. In this case, due to the medications Mr. Krebbeks was taking, the side effects were such that he could not knowingly and voluntarily waive his right to a trial by jury. Therefore, we respectfully request that the Court take into account this supplemental motion and set aside the verdict.

WHEREFORE, I respectfully request that this Court grant the relief requested herein and such other and further relief as may deem just and proper.

DATED: June 12, 2009
Rochester, New York

A handwritten signature in black ink, appearing to read 'Jeannie D. Michalski', written over a horizontal line.

Jeannie D. Michalski, Esq.
Genesee Valley Legal Aid, Inc.
6 Court Street, Room B-11
Geneseo, New York 14454
Telephone: (585) 991-5091



Mary F. Strickland, County Clerk
 Livingston County Government Center
 6 Court Street, Room 201
 Geneseo, New York 14454
 (585) 243-7010 ~ Fax (585) 243-7928

Livingston County Clerk Recording Page

Received From:
 COURT CLERK

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Document Type: CRIMINAL - MISC

Document Desc: INTERMITTENT SENTENCE & COMMITMENT

Plaintiff

Defendant
KREBBEKS MARK J AKA KREBBEKS MARK AKA

Recorded Information:
Index #: 2014-00057

State of New York
 County of Livingston

Recorded on the 9th date of January, 2015 at
 09:34:07 AM.

Livingston County Clerk

This sheet constitutes the Clerk's endorsement required by section 319 of the Real Property Law of the State of New York

INTERMITTENT SENTENCE & COMMITMENT

STATE OF NEW YORK
(SUPREME) (COUNTY) COURT: COUNTY OF LIVINGSTON

HON. Robert B. Wiggins
PRESIDING

Jennifer McDonald
COURT REPORTER

THE PEOPLE OF THE STATE OF NEW YORK

-VS-

Mark Kriebek
M 2/12/70 07049790M
SEX DATE OF BIRTH NYSID NUMBER

Indictment/SCI Number 2014-066 Dated: 3/20/14
Indicted for: Falsity Business Records 1st
False witness statement
False report incident
Date Crime Committed: 12/13/13

The above-named defendant having been

Convicted of a (FELONY) (MISD) by (PLEA) (VERDICT) for the crime(s) of: falsity business records 1st PL-175.10

Found to be a YOUTHFUL OFFENDER
in the criminal action herein, it is

ORDERED, that the defendant be and hereby is sentenced to INTERMITTENT IMPRISONMENT

That shall have a term of 4 months

That shall be served by commitment to the LIVINGSTON COUNTY JAIL,

That said sentence will commence on 1/9/15 date Friday (weekend), at 6:00 (p.m.) (~~a.m.~~)

and continue until 1/12/15 date Monday (weekend), at 8:00 (~~p.m.~~) (a.m.)

the same to be served each and every weekend thereafter in accordance with the laws pertaining to his (her) sentence until the full term of his (her) sentence is served.

That said sentence shall be served as follows:

Saturdays Only Sundays Only Jail Weekends
 Day Reporting Other _____, and
 To be placed on the Work Program by Sheriff, if eligible.

REMARKS:

Probation 3Y 5Y P/A 300.00 \$110.00 CVA 10.00 Lic. Rev. _____
PSI Waived _____ Fine \$ _____ Restitution \$ _____ + 5%
 Amended commitment Original sentence date 1/1

A TRUE EXTRACT FROM THE MINUTES:

1/6/15 (DATE) _____ (CLERK OF COURT)
BY [Signature] (SIGNATURE) _____ (TITLE)



Andrea K. Bailey, County Clerk
 Livingston County Government Center
 6 Court Street, Room 201
 Geneseo, New York 14454
 (585) 243-7010 ~ Fax (585) 243-7928

Livingston County Clerk Recording Page

Received From:
 COURT CLERK

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Document Type: **CRIMINAL - MISC**

Document Desc: **ORDER & NOTICE**

Plaintiff

Defendant
KREBBEKS MARK J AKA KREBBEKS MARK AKA

Recorded Information:
Index #: 2014-00057

State of New York
 County of Livingston

Recorded on the 9th date of January, 2015 at
 09:34:08 AM.

Livingston County Clerk

This sheet constitutes the Clerk's endorsement required by section 319 of the Real Property Law of the State of New York

STATE OF NEW YORK, COUNTY OF LIVINGSTON
SUPREME/COUNTY COURT

People of the State of New York

Mark vs Kiebbek

ORDER AND NOTICE

MANDATORY SURCHARGE (8/1/08)
SEX OFFENDER REGISTRATION (5/15/03)
DNA DATABANK FEES (5/15/03)
SUPPLEMENTAL SEX OFFENDER VICTIM FEE (2/16/05)
RESTITUTION
FINE

INDICTMENT/SCI # 2014-066
INDEX # _____
CRIME DATE 12/13/13

Mandatory Surcharge assessed pursuant to:

- Section 60.35 of the Penal Law
- Section 1192 of the Vehicle and Traffic Law (DWI)
- Section 1809(1c) of the Vehicle and Traffic Law (non-DWI)
- Article 9 of the Vehicle and Traffic Law (Equipment)
- Other

You are ORDERED to pay a Mandatory Surcharge/Crime Victim Assistance Fee for your conviction of a:

- FELONY in the amount of \$325.00 (\$300 + \$25 CVAF)
- FELONY (VTL 1192) in the amount of:
 - \$520.00 (\$300 + \$25 CVAF + \$25 + \$170 Supp)
 - \$350.00 YVO (\$300 + \$25 CVAF + \$25 Supp)
- INFRACTION (VTL 1192) in the amount of:
 - \$255.00 (\$55 + \$25 + \$5 + \$170)
 - \$85.00 YVO (\$55 + \$25 + \$5)
- INFRACTION (V&T Equipment Violations) in the amount of \$ 88.00
- OTHER LAW in the amount of \$ _____ plus any applicable \$10.00 CVAF + \$20.00 (Unless YVO) for a total of \$ _____.
- MISDEMEANOR in the amount of \$200.00 (\$175+ \$25 CVAF)
- MISDEMEANOR (VTL 1192) in the amount of:
 - \$395.00 (\$175 + \$25 CVAF + \$25 + \$170 Supp)
 - \$225.00 YVO (\$175 + \$25 CVAF + \$25 Supp)
- VIOLATION (Penal Law) in the amount of \$120.00 (\$95 + \$25 CVAF)
- SPEEDING IN WORK ZONE (\$138.00) (Unless YVO)

You are ORDERED to pay a Sex offender Registration Fee in the amount of \$50 for your conviction of:

- A sex offense as defined by Section 168-a(2) of the Correction Law
- A sexually violent offense as defined by Section 168-a(3) of the Correction Law

You are ORDERED to pay a Supplemental Sex Offender Victim Fee in the amount of \$1000 for your conviction of an offense as set forth in Section 60.35 (1)(b) of the Penal Law

You are ORDERED to pay a DNA Databank Registration Fee in the amount of \$50.00 for your conviction of an offense as set forth in Section 995(7) of the Executive Law:

- You are ORDERED to pay a Fine in the amount of \$ _____ to Livingston County Probation within _____.
- You are ORDERED to pay Restitution in the amount of \$ _____ +5% to the (Livingston County Probation) (Victim) within _____ of this date.
- Restitution in the amount of \$ _____ is reduced to judgment.

It is ORDERED that:

Payment of the surcharge will be made to the appropriate designated agency on or before 3/6/15, which is a period of sixty (60) days from your sentence date.

If you fail to make payment by the above date, the Court directs that this Order shall be filed as a civil judgment against you [CPL §420.10(6)(A)] or the Court may require an appearance, upon summons and notice, or issue a warrant for your arrest [CPL §420.10(3)].

- Payment is to be collected by the New York State Department of Corrections pursuant to Penal Law §60.35(5)
- An immediate judgment at time of sentence.

Notice will be made to the Sentencing court of any payment or nonpayment of the above ordered mandatory surcharge, crime victim assistance fee, sex offender registration fee, or DNA databank registration fee. This order is in full force and effect until payment is made in full.

A TRUE EXTRACT OF THE MINUTES DATED
AT GENESEO, NEW YORK, THIS
6 Day of January, 20 15



HON. ROBERT B. WIGGINS
(rev.07/2008)



Mary F. Strickland, County Clerk
 Livingston County Government Center
 6 Court Street, Room 201
 Geneseo, New York 14454
 (585) 243-7010 ~ Fax (585) 243-7928

Livingston County Clerk Recording Page

Received From:
 COURT CLERK

Return To:

Document Type: **CRIMINAL - MISC**

Document Desc: **CERTIFICATE OF CONVICTION & JUDGMENT**

Plaintiff

Defendant
KREBBEKS MARK J AKA KREBBEKS MARK AKA

Recorded Information:
Index #: 2014-00057

State of New York
 County of Livingston

Recorded on the 4th date of February, 2015 at
 11:25:22 AM.



Livingston County Clerk

This sheet constitutes the Clerk's endorsement required by section 319 of the Real Property Law of the State of New York

STATE OF NEW YORK - COUNTY OF LIVINGSTON
COUNTY COURT - CERTIFICATE OF CONVICTION & JUDGMENT

MARK KREBBEKS

FILED 03-20-2014

IND # 2014-066

DOB 02-12-1970

NYSID # 07049790M

SS #

JUDGE: ROBERT B. WIGGINS

COURT REPORTER: JENNIFER MCDONALD

ORIGINAL OFFENSE # 1: 1-FALSIFY BUSINES RCRDS-/1 ct(s) PL-175.10 -EF-
Disposition: CONVICTED - 09-19-2014
Sentenced: 01-06-2015 5 Years Probation
Custody/Time: 4M CUSTODY *CUSTODY INTERMITTANT

ORIGINAL OFFENSE # 2: FALSE WRITTEN STATEMENT/1 ct(s) PL-210.45 -AM-
Disposition: CONVICTED - 09-19-2014
Sentenced: 01-06-2015 3 Years Probation
*CUSTODY CONCURRENT W/CTS 1,2,3

ORIGINAL OFFENSE # 3: 3-FALSE RPT-INCIDENT DID/1 ct(s) PL-240.50-3A -AM-
Disposition: CONVICTED - 09-19-2014
Sentenced: 01-06-2015 3 Years Probation
*CUSTODY CONCURRENT W/CTS 1,2,3

CLERK - JULIE M. ANDREWS

Surcharge Imposed: \$300.00 CVA Imposed: \$25.00
DNA Registration Fee Imposed: \$50.00

Restitution Imposed: .00
Fine Imposed: .00

COUNTY CLERK CERTIFICATION: I certify that this document reflects a true and accurate record of the above defendant, filed with the County Clerk's office by the Court.

County Clerk

CC: NEW YORK STATE POLICE - GENESEO



Mary F. Strickland, County Clerk
 Livingston County Government Center
 6 Court Street, Room 201
 Geneseo, New York 14454
 (585) 243-7010 ~ Fax (585) 243-7928

Livingston County Clerk Recording Page

Received From:
 NYS APPELLATE DIVISION 4TH DEP

Return To:

Document Type: CRIMINAL - MISC

Document Desc: MEMORANDUM & ORDER

Plaintiff

Defendant
KREBBEKS MARK J AKA KREBBEKS MARK AKA

Recorded Information:
Index #: 2014-00057

State of New York
 County of Livingston

Recorded on the 21st date of June, 2016 at 01:
 55:58 PM.

Livingston County Clerk

This sheet constitutes the Clerk's endorsement required by section 319 of the Real Property Law of the State of New York

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

603

KA 15-00261

PRESENT: WHALEN, P.J., CARNI, NEMOYER, TROUTMAN, AND SCUDDER, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

MARK KREBBEKS, DEFENDANT-APPELLANT.

SESSLER LAW PC, GENESEO (STEVEN D. SESSLER OF COUNSEL), FOR
DEFENDANT-APPELLANT.

GREGORY J. MCCAFFREY, DISTRICT ATTORNEY, GENESEO (JOSHUA J. TONRA OF
COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Livingston County Court (Robert B. Wiggins, J.), rendered January 6, 2015. The judgment convicted defendant, after a nonjury trial, of falsifying business records in the first degree, making a punishable false written statement, and falsely reporting an incident in the third degree.

It is hereby ORDERED that the judgment so appealed from is unanimously affirmed.

Memorandum: Defendant appeals from a judgment convicting him following a bench trial of falsifying business records in the first degree (Penal Law § 175.10), making a punishable false written statement (§ 210.45), and falsely reporting an incident in the third degree (§ 240.50 [3] [a]). We reject defendant's contention that the evidence is not legally sufficient to support those convictions. Viewing the evidence in the light most favorable to the People, as we must (*see People v Contes*, 60 NY2d 620, 621), we conclude that there is a valid line of reasoning and permissible inferences that could lead a rational person to the conclusion reached by County Court with respect to each count (*see People v Bleakley*, 69 NY2d 490, 495; *see generally People v Danielson*, 9 NY3d 342, 349).

With respect to the count of falsifying business records in the first degree, the evidence established that, at a bank, defendant completed and signed a form wherein he alleged that another individual had used his debit card without his permission and made a series of unauthorized withdrawals from an ATM machine. Photographic evidence taken at the ATM machine from the dates and times reported on the form established that defendant himself made the alleged unauthorized withdrawals. Thus, the evidence established that defendant "inten[ded] to commit" the crime of larceny by seeking reimbursement for overdraft fees associated with those transactions (Penal Law

§ 175.10).

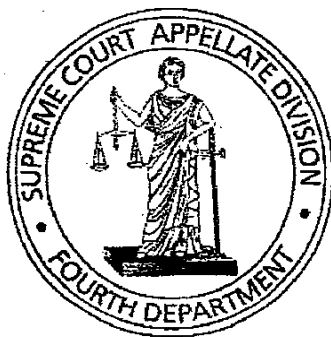
With respect to the counts charging him with making a punishable false written statement and falsely reporting an incident in the third degree, we reject defendant's contention that the evidence is legally insufficient with respect to the element of knowledge. Defendant was directed by bank personnel that he must file a criminal complaint in order to recover overdraft fees he claimed were generated by the unauthorized transactions, and the court was entitled to credit the testimony of the People's witnesses, and not defendant's testimony, in determining that defendant's report of the theft to the police and his written statement were knowingly false (see generally *Danielson*, 9 NY3d at 349; *Bleakley*, 69 NY2d at 495).

Entered: June 17, 2016

Frances E. Cafarell
Clerk of the Court

Supreme Court
APPELLATE DIVISION
Fourth Judicial Department
Clerk's Office, Rochester, N.Y. }

I, FRANCES E. CAFARELL, Clerk of the Appellate Division of the Supreme Court in the Fourth Judicial Department, do hereby certify that this is a true copy of the original order, now on file in this office.



IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court at the City of Rochester, New York, this **JUN 17 2016**

Frances E. Cafarell

Clerk



Mary F. Strickland, County Clerk
 Livingston County Government Center
 6 Court Street, Room 201
 Geneseo, New York 14454
 (585) 243-7010 ~ Fax (585) 243-7928

Livingston County Clerk Recording Page

Received From:
 COURT CLERK

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Document Type: CRIMINAL - MISC

**Document Desc: (PART 8) SENTENCE DATED
 01/06/2015**

Plaintiff

Defendant
KREBBEKS MARK J AKA KREBBEKS MARK AKA

Recorded Information:
Index #: 2014-00057

State of New York
 County of Livingston

Recorded on the 6th date of July, 2015 at 02:
 34:10 PM.

Livingston County Clerk

This sheet constitutes the Clerk's endorsement required by section 319 of the Real Property Law of the State of New York

1 STATE OF NEW YORK : COUNTY OF LIVINGSTON

2 COUNTY COURT : CRIMINAL BRANCH

3 -----x

4 **THE PEOPLE OF THE STATE OF NEW YORK,**

:IND. NO. 2014-066

-versus-

:FALSIFY BUSINESS RECORD

5 **MARK J. KREBBEKS,**

FALSE WRITTEN STATEMENT

:FALSE REPORT INCIDENT

6 Defendant.

7 -----x Sentence

8 Livingston County Courthouse

Geneseo, New York

9 January 6, 2015

10 B e f o r e :

HONORABLE ROBERT B. WIGGINS

County Court Judge

11
12
13 A p p e a r a n c e s :

14 **GREGORY McCAFFREY, ESQ.**

Livingston County District Attorney

15 On behalf of the People of the

State of New York

16 **JEANNIE D. MICHALSKI, ESQ.**

17 Genesee Valley Legal Aid

Attorney on behalf of the Defendant

18
19 Defendant Present

20
21 R e p o r t e d B y :

Jennifer M. McDonald

Official Court Reporter

RECEIVED
LIVINGSTON COUNTY
SUPREME & COUNTY COURTS
MAY 22 AM 10:41

23

24

25

1 MR. MCCAFFREY: Number 11, Mark Krebbeks. Ms.
2 Michalski. Sir, you are Mark Krebbeks?

3 THE DEFENDANT: Yes.

4 MR. MCCAFFREY: You appear here with your
5 attorney, Ms. Michalski?

6 THE DEFENDANT: Yes.

7 MR. MCCAFFREY: Your Honor, this matter is on
8 for potential sentencing with respect to verdict
9 after trial.

10 THE COURT: Ms. Michalski?

11 MS. MICHASLKI: Yes, your Honor. After
12 conferencing this in chambers today, I did have an
13 opportunity to speak with my client at length. I
14 explained to him that the Court's position was that
15 the concern is that he would not continue in his
16 mental health treatment or be able to remain off
17 substances. And that if he can make the Court those
18 promises with certainty, that you would be willing to
19 consider a sentence of four months of weekends. Is
20 that correct?

21 THE COURT: Yes.

22 MS. MICHASLKI: And five years probation.

23 I believe that that is my client's position. I
24 know the Court wants to hear from my client.

25 THE COURT: Mr. Krebbeks, your attorney has

1 correctly relayed -- there is reason to believe in
2 the various reports from investigations, presentence,
3 pre-plea type investigations that you had indicated
4 you did not want to be on probation. You had
5 indicated that you would not follow the rules or the
6 requirements, including abstention -- staying away
7 from illegal substances -- that you have made those
8 choices and you were not going to have that dictated
9 to you.

10 Then, under those circumstances, it would make
11 absolutely no sense to put you on probation because
12 you are clearly stating you are not going to do what
13 probation requires. So I'm -- nobody is trying to
14 set you up to fail.

15 Your attorney indicated that she thought that
16 was not true, that in fact --

17 THE DEFENDANT: It is not true.

18 THE COURT: That, in fact, you would be willing
19 to abide by the requirements of probation,
20 including -- we use the word abstention -- but don't
21 use illegal substances. And mental health treatment.
22 That, in fact --

23 THE DEFENDANT: Your Honor, the only reason I
24 didn't want probation is because I didn't want to
25 plead guilty. I don't know where you are getting

1 that I said I don't want probation.

2 THE COURT: Okay.

3 THE DEFENDANT: I didn't want to plead guilty,
4 no matter what probation they offered me.

5 THE COURT: Okay.

6 THE DEFENDANT: Because I had misunderstood or
7 something.

8 THE COURT: So am I understanding you today to
9 be representing to this Court that you will in fact
10 abide by the terms of probation, including no illegal
11 substances and mental health treatment?

12 THE DEFENDANT: Yes.

13 THE COURT: Fine. The Court is fine with what
14 was discussed by way of sentence, Ms. Michalski.

15 If you need to talk to your client further.

16 MS. MICHASLKI: No, we have spoken. I believe
17 he understands -- unless you have any questions?

18 THE DEFENDANT: Probation --

19 THE COURT: Always talk to your attorney first.

20 *(There was an off-the-record discussion between Defense*
21 *Counsel and Defendant.)*

22 MS. MICHASLKI: We are all set. Thank you.

23 THE COURT: Mr. McCaffrey, do you want to be
24 heard, sir?

25 MR. MCCAFFREY: Your Honor, the People would

1 move sentencing. And, just briefly, this matter did
2 go to trial. After a bench trial, your Honor came
3 back with a guilty verdict. It appears as though
4 Mr. Krebbeks has refused to accept responsibility for
5 his crime, not necessarily by taking this matter to
6 trial, but by just failure to ever accept
7 responsibility. And to this day he maintains his
8 innocence, despite overwhelming proof. I think a
9 sentence of six months incarceration straight time
10 would send a message to Mr. Krebbeks that the laws of
11 this state need to be obeyed, as well as five years
12 probation, just for the simple fact because it
13 appears as though treatment is warranted and that he
14 could benefit from that treatment.

15 So we would ask you to impose six months
16 straight incarceration and five years probation.

17 THE COURT: Ms. Michalski?

18 MS. MICHASLKI: Yes. As the Court knows, I was
19 not the attorney of record who did the trial of
20 Mr. Krebbeks. I have taken over after that.

21 I've had many opportunities to speak with
22 Mr. Krebbeks. He does maintain his innocence. That
23 being said, he is willing to comply with what we
24 discussed. He certainly will complete the weekends,
25 as required, abstain from illegal substances,

1 continue with his treatment. And I would ask the
2 Court to sentence him to the four months of weekends
3 and the five years probation.

4 THE COURT: Mr. Krebbeks, you have a right, not
5 an obligation, to be heard, sir. If you wish to say
6 anything before sentence, you have that opportunity
7 now.

8 THE DEFENDANT: Your Honor, I have been in
9 treatment voluntarily for fifteen years. I don't
10 want to lose my medication. I don't want to lose my
11 mental health treatment. I want to be able to
12 continue with that. I have no issue with staying off
13 of drugs, as I've proved it since the trial. My
14 system has been clean. I'll continue with that. I
15 have no issue whatsoever. But I'm not admitting
16 guilt, because I still don't think I'm guilty.

17 THE COURT: Okay. And guilt has already been
18 established, from the Court's perspective,
19 Mr. Krebbeks, by virtue of the trial.

20 I understand your viewpoint of that, sir. And,
21 of course, you have a right to that. I just don't
22 want your viewpoint of that to affect your
23 willingness to following through with the
24 requirements of probation.

25 I'm sure your attorney has explained to you

1 that would be extremely bad for you because whether
2 you agree with it or not, guilt has been found. And
3 to then not follow through because you feel, well, I
4 wasn't guilty to begin with, you'll get violated on
5 your probation, Mr. Krebbeks. And then the
6 alternative is --

7 THE DEFENDANT: That won't happen.

8 THE COURT: Good. I sincerely hope not.

9 It is the sentence of this Court that you will
10 serve four months of intermittent incarceration
11 Livingston County Jail, to be also on probation for
12 a period of five years.

13 I'm going to read for you the terms of
14 probation. I strongly encourage you to take the
15 time to review those terms with your attorney, with
16 your probation officer to make sure that you fully
17 understand all that is required; keep a copy,
18 whatever you need. Nobody wants you to fail, sir.
19 Make sure you stay on top of this and keep track of
20 the terms of probation.

21 There are surcharges mandated by the state of
22 New York, \$325 plus a \$50 DNA fee. Those need to be
23 paid. They are due within sixty days.

24 THE DEFENDANT: There is no possible way. I'm
25 on the lowest pay scale --

1 THE COURT: Well, you might want to talk to your
2 attorney, there might be some measures she can take
3 on your behalf. That's between you and your
4 attorney.

5 Your terms of probation, Mr. Krebbeks: Report
6 as directed, remain in the jurisdiction of the Court
7 without -- absent permission, be truthful, refrain
8 from any further crimes or offenses, work faithfully
9 at suitable employment or pursue a course of study.

10 Four months of intermittent incarceration, work
11 release eligible.

12 You are not to use or possess alcoholic
13 beverages or mood altering drugs, unless prescribed
14 and then taken only in the prescribed dosage.

15 You are not to possess or use any mood altering
16 substance labeled not for human consumption.

17 You will submit at any time to any recognized
18 tests available to determine the use of alcohol or
19 drugs.

20 You will make an appointment with a substance
21 abuse treatment agency approved by your probation
22 officer -- and it might be already ongoing -- within
23 four weeks, and participate in any recommended
24 treatment through successful completion.

25 You will sign any release of information form

1 necessary as requested by probation.

2 You will stay away from bars, taverns, parties
3 or gatherings, whether public or private, where
4 alcoholic beverages are sold, displayed or consumed;
5 unless granted the prior permission.

6 You will make an appointment with a mental
7 health treatment agency within four weeks of
8 sentencing and participate in any recommended
9 treatment through successful completion. Again,
10 that may already be ongoing.

11 You will submit a DNA sample as directed by
12 your probation officer and pay all associated fees.

13 You are not to own or possess or have in your
14 residence or motor vehicle any rifle, shotgun or
15 firearm.

16 You will submit at any time, without notice and
17 without a search warrant or order, to a search of
18 your person, residence, vehicle, or other property
19 under your control.

20 You will have no contact with persons on
21 probation or parole -- I don't know who your friends
22 are, sir -- people who use illegal drugs or alcohol
23 illegally or any other persons designated by your
24 probation officer without the prior permission of
25 your probation officer.

1 And, finally, you are not to enter into any
2 agreement to act as an informant or special agent of
3 law enforcement without the prior written permission
4 of the Court or your probation officer.

5 Do you understand those terms, sir?

6 THE DEFENDANT: I didn't -- I don't understand
7 the last one. Could you read it again?

8 THE COURT: Sure. You are not to enter into any
9 agreement to act as an informant or special agent of
10 law enforcement without the prior permission of your
11 probation officer.

12 THE DEFENDANT: Okay.

13 THE COURT: All right?

14 THE DEFENDANT: Okay.

15 THE COURT: You do have thirty days to appeal.
16 Ms. Michalski is very familiar with that process.
17 She'll advise you. But you need to file a Notice of
18 Appeal, if you are going to appeal, within thirty
19 days.

20 Mr. McCaffrey, anything further?

21 MR. MCCAFFREY: Was he convicted of all three
22 counts or just the felony count?

23 THE COURT: Was it a verdict on all three?

24 THE COURT CLERK: Yes.

25 THE COURT: The sentence on the A Misdemeanor

1 will be three years probation; concurrent, same
2 terms. And on the B Misdemeanor, conditional
3 discharge, abide by the law.

4 Good luck, Mr. Krebbeks

5 *(Certified to be a true and accurate transcript.)*

6  _____

7 *Jennifer McDonald, RPR, Official Court Reporter.*

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Mary F. Strickland, County Clerk
 Livingston County Government Center
 6 Court Street, Room 201
 Geneseo, New York 14454
 (585) 243-7010 ~ Fax (585) 243-7928

Livingston County Clerk Recording Page

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Plaintiff

Defendant
KREBBEKS MARK J AKA KREBBEKS MARK AKA

Recorded Information:
Index #: 2014-00057

State of New York
 County of Livingston

Recorded on the 22nd date of October, 2015 at
 11:13:22 AM.

Livingston County Clerk

This sheet constitutes the Clerk's endorsement required by section 319 of the Real Property Law of the State of New York

TRIAL MINUTES

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PEOPLE OF THE STATE OF NEW YORK

-vs-

Mark J. Krebbeks

Date Trial began:	9/19/14
Honorable	Robert B. Wiggins
People	Justin Hill
Defense	Daniel Magill
Type of Trial	Bench

CLERK:	Jose Cruzado	REPORTER:	Jennifer McDonald
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9:05am	Conference held.
9:13am	Judge, Counsel and Defendant present. Sandoval Hearing held on the record. Exhibits 1-20 marked for identification.
9:24am	Opening statements by ADA Justin Hill.
9:30am	Defense Counsel waives opening statement.
9:31am	ADA Justin Hill calls Laurie Peters for direct examination. Witness is sworn and offers testimony.
9:54pm	Witness is excused to obtain documents she reviewed prior to testimony.
9:54pm	ADA Justin Hill calls ██████████ for direct examination. Witness is sworn and offers testimony.
10:02pm	Cross examination of of ██████████ by Defense Counsel Daniel Magill.
10:16am	Testimony of ██████████ concludes.
10:18am	ADA Justin Hill calls Trooper ██████████ for direct examination. The witness is sworn and offers testimony.
10:37am	Short recess taken.
10:47am	Testimony of Trooper Histed on direct examination continues.
11:05am	Cross examination of Trooper Histed by Defense Counsel Daniel MaGill.
11:46am	Testimony of Trooper Histed concludes.

TRIAL MINUTES

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11:50am	ADA Justin Hill re-calls ██████████ on direct examination.
12:21pm	Lunch recess taken until 1:30pm
1:30pm	Cross examination of ██████████ by Defense Counsel, Daniel Magill.
1:48pm	Testimony of Laurie Peters concludes.
1:49pm	ADA Justin Hill calls ██████████ for direct examination.
1:54pm	Cross examination of ██████████ by Defense Counsel, Daniel Magill.
1:59pm	Testimony of ██████████ concludes.
1:59pm	People rest. Motion for Trial Order of Dismissal made by Defense Counsel. Motion argued.
	Application denied.
2:05pm	Short recess
2:08pm	Defense Counsel, Daniel Magill calls Investigator ██████████ for direct examination.
	Witness is sworn and offers testimony.
2:19pm	Testimony of Inv. Salamone concludes
2:20pm	Defense Counsel, Daniel Magill calls ██████████ for direct examination. Witness is sworn and
	offers testimony.
2:25pm	Cross examination of ██████████ by ADA Justin Hill.
2:30pm	Re-direct of ██████████
2:31pm	Testimony of ██████████ concludes.
2:33pm	Defense Counsel calls the Defendant Mark J. Krebbeks for direct examination. The witness is
	sworn and offers testimony.
2:42pm	Cross examination of Mark J. Krebbeks by ADA Justin Hill.
3:07pm	Testimony of Mark Drebbeks concludes.
3:07pm	Motion by Defense Counsel for trial order of dismissal is denied. Defense Rest.
3:07pm	Short recess taken
3:16pm	Judge, Counsel and Defendant present.
3:17pm	Closing arguments by Defense Counsel, Daniel Magill.
3:29pm	Closing arguments by ADA, Justin Hill.
3:43pm	Closing arguments conclude. Recess taken until 4:15pm

TRIAL MINUTES

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4:16pm	Judge, Counsel and Defendant present; Verdict by the court as follows; Guilty of PL 210.45 and
	PL 240.50-3A Reserved on 1 st count until 4:45pm.
4:20pm	Court in recess until 4:45pm
4:45pm	Verdict continued; The court finds the defendant guilty as to PL-175.10. Defendant's release is
	continued and the matter is adjourned for sentencing on 11/18/14 at 9am.