



Rhapsody in blues

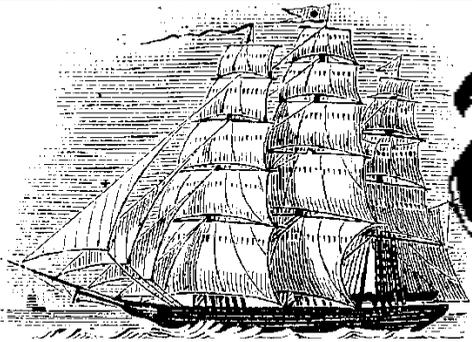
Special events at Engeman Theater

-see story, page 9

Family fun on Main St.

Street will close again Tuesdays in August

-see story, page 3



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Bayman beats bat-brawl rap

Conviction of clammer overturned due to error in use-of-force charges

By DAVID AMBRO

An East Northport clammer convicted of beating another bayman with a baseball bat—a wooden Louisville Slugger—has had the verdict overturned on appeal because the jury was not advised of a person's right to use deadly force in self defense when they are victims of a burglary.

While they were clamming at the mouth of Huntington Bay and the Long Island Sound on the morning of October 17, 2006, baymen Dennis Hurley, 30, and Race Burgess, 56, both of East Northport, became embroiled in a violent territorial dispute. Mr. Hurley had a deck hand on his boat, and there were two other clammers working nearby.

Mr. Burgess began yelling profanities at Mr. Hurley, telling him to get away from his area. Mr. Burgess then backed his boat into Mr. Hurley's boat. Mr. Hurley responded by smashing the rakes on Mr. Burgess's boat with a baseball bat. Enraged, Mr. Burgess then threatened to kill Mr. Hurley, and then jumped onto his boat with a raised fist, and attempted to hit Mr. Hurley.

Before Mr. Burgess could strike a blow, Mr. Hurley hit him with the bat. Mr. Burgess then lunged at Mr. Hurley, who responded with a second blow with the bat. Mr. Burgess lunged at Mr. Hurley again, who responded with a third and final blow with the bat. This time Mr. Burgess retreated and drove to the United States Coast Guard Station at Eaton's Neck. He suffered a fractured skull and required stitches to close a head wound.

According to legal papers in the case, witnesses testified that Mr. Hurley did not invite Mr. Burgess onto his boat or challenge him to come aboard. Mr. Hurley testified that when Mr. Burgess come onto his boat he was fearful that he could be thrown

(Continued on page 14)

TWO HANDS: Timmy Brockwell has his eye on the ball during opening day drills of the Northport Youth Football Club Wednesday, July 22. **More coverage, page 18.**

-Christine Monahan photo

Northport bayman beats bat-beating rap

(Continued from page 1)
overboard and he cannot swim.

After the incident, Mr. Hurley also went to the Coast Guard Station, where he was subsequently arrested and charged with assault with intent to cause injury with a weapon. December 8, 2006, after an investigation, three additional assault charges were added. Represented by Central Islip attorney Michael Brown, Mr. Hurley pleaded not guilty and took the case to trial, where he was convicted of one of

the four counts, assault: recklessly causing physical injury.

He was sentenced April 14, 2008 by the trial judge, Dennis Cohen, to 30 days in Suffolk County jail and three years probation. The sentenced was executed June 19, 2008, but after Mr. Hurley spent five days in jail Mr. Brown obtained a stay of the sentence pending an appeal of the verdict to the State Supreme Court Appellate Division.

On appeal, Mr. Brown argued that Judge Cohen had an obligation after

the trial to instruct the jury about Mr. Hurley's rights to self defense. According to Mr. Brown, the judge instructed the jury about the right of self defense, but not about the right to use deadly force during the commission of a burglary.

According to Mr. Brown, under New York State law, once Mr. Burgess jumped onto Mr. Hurley's boat, which is his place of business, it constituted a burglary in progress at an occupied location. Mr. Brown said that under those circumstances, Mr. Hurley has a right to use deadly force in his own defense.

In a four-page decision handed down June 29, 2009, the Appellate Division agreed with Mr. Brown. "[Mr. Hurley's] version of events demonstrates his reasonable belief that deadly physical force was necessary to prevent or terminate the commission, or attempted commission, of a burglary of an occupied building, since it was alleged that [Mr. Burgess] had attempted to enter [Mr. Hurley's] occupied commercial fishing boat... without permission, to commit a crime therein, to wit, assault [Mr. Hurley]," says the Appellate Division decision. "Consequently, the trial court should have provided the jury with a

justification charge pursuant to Penal Law Section 35.20(3), and committed reversible error in failing to do so."

"Accordingly," says the unanimous four-judge appellate division decision, "the judgment of conviction is reversed and a new trial is ordered."

Based on the appellate division decision, State Supreme Court Judge Madalio Fitzgibbon vacated the sentence. Mr. Hurley was due back in court Thursday, September 1. During an interview at Suffolk County Court in Riverhead Monday, July 27, Mr. Brown said that he never tries the same case twice, therefore, he has referred Mr. Hurley to obtain a new attorney.

"Because the judge would not charge the applicable law, I knew from that point it was a good case for appeal," Mr. Brown said. "In burglary situations you can use deadly physical force to prevent a burglary, plain and simple. The judge did instruct the jury about the right to self defense, but he left out the aspect of deadly physical force in a burglary situation."

Mr. Brown said with its June 29 decision the appellate division decision got it right. "The decision was right on point. It was everything that I argued to the trial judge."

Theater announces special events

(Continued from page 9)
that the piano is emanating light when it is opened.

Other distinctive features found on the piano are the first two measures of "Rhapsody in Blue" indelibly imprinted on the plate; the music rack carved into the silhouette of the Manhattan skyline on the backdrop of a New York City night sky mirrored on the Hudson River; the legs decorated with mother

of pearl spotlights shining into the deep blue night sky in celebration of Broadway's exciting grand openings.

See it in person now at the Green Room Piano Bar and Lounge and on stage at the John W. Engeman Theater at Northport Friday August 21 and Saturday August 22. Tickets are available for \$50 each by calling 631-261-2900 or by visiting the Box Office at 250 Main Street, Northport.

Visiting Nurse Service concert series continues

(Continued from page 3)
Northport Community Theater) and Marsha Baron and two male members, Tom Brucia and Gary Wilson. During the outdoor concert at the Toscano's the group serenaded the audience with such songs as Under the Boardwalk, My Wild Irish Rose and Paul McCartney's When I'm 65. NexTime, which has been performing together for 15 years, had the audience singing along to a quite a few numbers including their closing song, God Bless America.

To date, two other concert series are

scheduled, one in September at the home of Ann Stevens that will feature the music of Broadway leading ladies as performed by Megan DeRiso and Ann Stevens (by invitation only). The third one will be a concert that is open to the public. It will be held at Old Field Middle School in Greenlawn October 17 at 4 p.m. and will feature the music of accomplished violin students. For tickets and information on becoming a home concert series host or performer, call Barbara Sorelle at 631-261-7200.

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