

## **GUILTY ON SEVEN COUNTS**

**Man, suing Northport police, set for sentencing next month**

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The defendant in a recent four-day jury trial in Northport Village Court was convicted December 22, 2006 on seven out of nine charges, including driving while intoxicated, resisting arrest, and traffic violations in connection with his November 2005 arrest. His criminal sentencing is slated for February 12, according to court officers.

The verdict is expected to have a bearing on the \$70-million lawsuit that the defendant, Kings Park resident Kevin P. McKenna, had previously filed against the Village of Northport, its police department and the officers who arrested him.

"It affects our defense very favorably," said attorney Thomas J. Spellman Jr. of Smithtown, who is representing the village in the suit that McKenna brought to U.S. District Court Eastern Circuit last June. "Most of his allegations have been tried before a jury and they were found against him."

McKenna, as plaintiff in the civil case, claimed that Northport Village Police Officers Alan Bakker and Christopher Hughes beat him "brutally and gratuitously" without provocation and arrested him without probable cause.

The officers, however, say that they stopped McKenna because they suspected him of drunk driving; that he refused field sobriety tests; and that they struggled to take him into custody when he resisted arrest, Spellman said.

The wheels of justice began turning locally on December 19, 2006 as Northport Village Judge Paul Senzer presided over McKenna's trial in which he faced one count of petit larceny, two counts of resisting arrest, one count of driving while impaired, one count of speeding, which are all misdemeanors, and four counts of failure to maintain a lane, which are Vehicle and Traffic Law violations. A jury of Huntington citizens convicted McKenna of all counts except the petit larceny and speeding charges, of which he was found not guilty.

During the first day of the trial it was established that Officer Bakker pulled McKenna over on Fort Salonga Road near Harrison Avenue on November 5, 2005. According to Bakker, McKenna appeared intoxicated, with a "glassy stare, slurred speech and uncoordinated movements" which were reportedly revealed when he stepped out of his vehicle at Bakker's request. Also on scene was Officer Hughes. According to court testimony, when told he was under arrest after refusing to take a field sobriety test, McKenna is said to have stated, "My father is a cop in Brooklyn!" and "Are you guys Nassau or Suffolk?"

The officers have alleged that during a tussle that ensued, McKenna grabbed Hughes' flashlight from his belt as well as unsuccessfully grabbing for one of his ammunition pouches. McKenna had to be forced to the ground but Bakker and Hughes were, at that juncture, still unable to get handcuffs on him. It took the officers a few minutes to get him handcuffed, resorting to the use of pepper spray. Sergeant William Ricca arrived on the scene as the whole matter was finalized, and the defendant was driven off to headquarters, where Hughes left his vehicle and joined Bakker along with the prisoner on the trip to Huntington Hospital, a procedure required by department regulations when pepper spray has been used. At the hospital the prisoner allegedly refused to speak to the triage nurse and, when medical staff drew near to attend to him, he showed similar resistance. He was treated nonetheless with eyewash and for some abrasions and returned to custody of police for the ride back to headquarters and a waiting cell.

Pam Bloomfield from the Suffolk County District Attorney's Office handled the people's case. She laid out Bakker's qualifications and background: his eight years on the Northport police force, his three years as a New York Police Department officer, his training in the use of field sobriety test materials as well as his knowledge of the Blood Alcohol Content Intoxilizer and his record of 105 arrests. Step-by-step, Bloomfield brought out Bakker's version of the events of November 5 in minute detail, painting a detailed picture in the minds of the jury, including one alternate juror, portraying the weight of the people's case against McKenna.

Then it was the defense's turn to cross-examine Bakker. Northport attorney Michael Brown represented McKenna, treating Bakker with all the delicacy of a Jets linebacker, his physical appearance adding to that football position's imposing stature. He took Bakker through all the events with the verbal thrust, parry and riposte designed to crack the story of the activities described by the officer on the witness stand, especially the two officers' attempt to corral McKenna.

Brown was hit with a number of sustained objections from Bloomfield, most of them for deviating from the accepted line of questioning as to what was seen and heard. In the end Brown moved for a mistrial on the grounds of disparity in the police reporting, but Judge Senzer denied the motion as well as one that Brown suggested to strike all of Bakker's testimony.

Next on the stand was Officer Hughes, a six-year veteran of the Northport police. Bloomfield took him through the same concatenation of events, as Brown sought to impeach his testimony in the same way he had with Bakker. Brown then made a motion for a mistrial on the grounds that there was inconsistency in the testimony of the two officers, and that Bakker had made mention of a third attorney present in the person of Spellman, from the firm of Devitt, Spellman Barrett, LLP. Senzer, following Bloomfield's statement that the mention of Spellman was "gratuitously offered," denied the motion on both grounds.

Later in the day Brown moved for a subpoena to be issued for Huntington Hospital medical records to be given to the defense. This time, Senzer ordered that both prosecution and defense confer and, if it were mutually agreeable, the records previously forbidden to the defense would be subpoenaed.

Three more days of trial culminated with the conviction on Friday. Brown and Bloomfield did not return phone calls seeking further comment. Last week, Spellman offered his view of the criminal trial, saying, "I knew what the officers were going to testify to. I think they are upstanding types, I think the village is lucky to have them as police officers." Differing with Brown's argument, Spellman said, "There really was no inconsistency in the police officers' testimony at all. There were some inconsistencies in McKenna's testimony," he said, noting that the defense offered photos of McKenna's bruised face, saying they were taken at the hospital. However, a police mug shot taken the same day show no black and blue marks, only facial redness and puffiness.

Spellman said he doesn't expect the civil case to move forward before summer. It will be heard before The Honorable Sandra Feuerstein in U.S. District Court Eastern District.