

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NIAGARA**

----- X

In the matter of : Index No. _____

TRACY A. MURPHY,
Petitioner, :

For a Judgment Pursuant to Article 78 :
of the Civil Practice Law and Rules :

-against- : **VERIFIED PETITION**

JUSTICE BRUCE M. BARNES, TOWN OF :
NEWFANE COURT :

and

THE PEOPLE OF THE STATE OF NEW :
YORK, :

Respondents. :

----- X

Petitioner Tracy A. Murphy, by and through her undersigned counsel, respectfully alleges as follows:

PRELIMINARY STATEMENT

1. This Article 78 proceeding challenges a court order which imposes a sweeping ban on Petitioner’s exercise of her First Amendment rights – including her rights to access any form of social media, fundraise for her nonprofit animal rescue organization, and advocate for her deeply held beliefs about animal welfare – while she awaits trial on a larceny charge.

2. Specifically, this petition challenges Newfane Town Court Justice Bruce M. Barnes’ February 21, 2023, decision ordering Ms. Murphy “not to use social media, which would

specifically include [F]acebook and public billboards, etc. while her case is still pending in Justice Court.”¹

3. In imposing the Gag Order, Justice Barnes exceeded his authority and jurisdiction as a justice of Newfane Town Court.

4. At its core, the Gag Order seeks to silence Ms. Murphy’s voice in a public dispute which has consumed the Newfane community for nearly a year and attracted national attention.

5. The underlying dispute – which gave rise to a larceny charge against Ms. Murphy – is on its surface, a question about the ownership of two cows. But this property dispute quickly boiled over into a cultural flashpoint in the Newfane community, pitting the local agricultural community against the animal rights community, including Ms. Murphy and the animal sanctuary she founded and operates.

6. As part of her vegan lifestyle, Ms. Murphy believes animals should only be kept as companions, not raised for food or other consumables. Unsurprisingly, Ms. Murphy is in a philosophical minority in and around Newfane, where raising cows for beef or dairy products is commonplace.

7. In the United States, both sides of this philosophical divide enjoy robust free speech protections which guarantee the rights to disagree and debate publicly and with passion.

8. These liberties have been on full display in Newfane over the past year, as residents on both sides of the cow dispute have taken their views to the streets, to the press, and to social media.

¹ A true and correct copy of this order is attached as **Exhibit A** (“Gag Order”).

9. The Gag Order, however, bars Ms. Murphy from full participation in this marketplace of ideas. The Gag Order strips her of several platforms for defending her actions, expressing herself, engaging with others, and fundraising to keep her animal sanctuary open.

10. Justice Barnes exceeded his authority and jurisdiction as a justice of Newfane Town Court when he imposed the Gag Order.

11. The Gag Order constitutes an unconstitutional prior restraint on speech in violation of the First Amendment to the United States Constitution and Article I, Section 8 of the New York State Constitution.

12. The Gag Order is also unconstitutionally vague and overbroad, and violates New York bail laws.

13. Ms. Murphy thus seeks a writ of prohibition: (1) vacating the Gag Order and the underlying non-monetary conditions of her release; and (2) forbidding enforcement of the Gag Order and any other restriction of Ms. Murphy's First Amendment rights during the pendency of her criminal case.

PARTIES

14. Petitioner Tracy Murphy founded and operates Asha's Farm Sanctuary ("Sanctuary"), a nonprofit animal shelter located in the Town of Newfane, New York, in Niagara County.

15. The Sanctuary, a 501(c)(3) nonprofit organization, is home to approximately fifty animals, including goats, cows, pigs, and ducks. Ms. Murphy founded the Sanctuary over a decade ago to provide shelter and care for former farm animals. Ms. Murphy also uses her work through the Sanctuary to advocate for her deeply held beliefs about animal welfare.

16. Ms. Murphy is vegan. As part of this belief system, Ms. Murphy does not eat any meat, dairy, or other food derived from animals, and she refrains from using other animal products

such as wool and leather. She is passionate about animal welfare and believes that raising animals for food is ethically wrong.

17. Ms. Murphy is the defendant in the criminal matter *People v. Murphy*, Newfane Docket No. 22080008.

18. Respondent Justice Bruce M. Barnes has served as a lay justice of the Newfane Town Court since January 1996. Justice Barnes is the presiding justice in the criminal matter *People v. Murphy*, Newfane Docket No. 22080008.

19. Respondent People of the State of New York (“People”) are also designated as a respondent in this proceeding pursuant to CPLR § 7804(i), because: (1) a party to a pending criminal action, Ms. Murphy, brings this Article 78 proceeding against a justice, Justice Barnes; (2) the proceeding is based upon an act performed by Justice Barnes; (3) Justice Barnes is not himself a party to the pending criminal action; and (4) the People are another named party to the pending criminal action and therefore must be designated as an additional respondent in this Article 78 proceeding.

JURISDICTION AND VENUE

20. In imposing the Gag Order on Ms. Murphy, Justice Barnes proceeded in excess of his jurisdiction as a Newfane Town Court Justice. This Court therefore has jurisdiction over this matter pursuant to CPLR §§ 506(b) and 7803(2).

21. Pursuant to CPLR §§ 506(b) and 7804(b), this proceeding is commenced in the Supreme Court of Niagara County, the County in which the Newfane Town Court is located, where Justice Barnes made the determination petitioned against and complained of, and where events material to this proceeding otherwise took place.

STATEMENT OF FACTS²**The Cows and the Arrest**

22. On August 2, 2022, Ms. Murphy was arraigned on one count of grand larceny in the third degree, in violation of § 155.35 of the Penal Law of the State of New York.³ *See* Ex. B at 1.

23. This charge was based on Ms. Murphy's alleged "refus[al] to give back to the owner" two cows belonging to Ms. Murphy's neighbor Scott Gregson. *See* Ex. E at 1, 3.

24. Mr. Gregson alleges that two of three cows he owns went missing sometime between July 15, and July 16, 2022, and that the cows left no visible signs of how or where they left their pasture. *See* Ex. E at 2.

25. Ms. Murphy discovered two cows on her property on or around July 16, 2022. *See* Ex. C, ¶¶ 3-4.

26. When she discovered the two cows on or around July 16, 2022, Ms. Murphy provided care and shelter for the animals and contacted the Niagara County Society for the Prevention of Cruelty to Animals, which serves as the de facto animal control department for Newfane. *See* Ex. C, ¶ 3.

27. Ms. Murphy also contacted a local attorney, who advised – as Ms. Murphy understood the advice – that (1) Ms. Murphy possessed a lien on the cows based on her care for the animals

² True and correct copies of the following documents from the criminal matter *People v. Murphy*, Newfane Docket No. 22080008, are attached as exhibits:

Exhibit B: August 2, 2022, securing order reflecting original gag order as condition of release on recognizance ("Initial Gag Order")

Exhibit C: December 25, 2022, Defendant Tracy Murphy's motion to amend bail conditions and supporting papers ("Initial Gag Order Motion")

Exhibit D: January 19, 2023, People of the State of New York response to Initial Gag Order Motion ("Initial Gag Order Response")

Exhibit E: January 24, 2023, prosecutor's information against Tracy Murphy ("Misdemeanor Information")

³ The Niagara County District Attorney's office has since amended this charge to petit larceny in violation of NY Penal section 155.25. *See* Ex. C, ¶ 5; Ex. D, ¶ 13, Ex. E at 1.

and could retain possession of them until that lien was satisfied, and (2) Ms. Murphy should not release the cows to anyone claiming ownership of the animals absent proof of such ownership.

See Ex. C, ¶ 4.

28. Mr. Gregson asserts that the cows Ms. Murphy discovered on her property were his missing animals. *See* Ex. E at 3, 5.

29. On or around July 22, 2022, Mr. Gregson contacted Ms. Murphy, claiming that the cows belonged to him and requesting that Ms. Murphy give him the cows. *See* Ex. E at 3–5; Ex. C, ¶ 4.

30. Based on the legal advice she received, Ms. Murphy informed Mr. Gregson that she would not give him the cows unless he provided proof of ownership and compensation for Ms. Murphy's care of the animals.

31. Mr. Gregson declined to do so. Ms. Murphy, in turn, declined to give Mr. Gregson the cows without a warrant mandating her to do so. *See* Ex. E at 4.

32. On July 25, 2022, Ms. Murphy was arrested and charged with one count of grand larceny. *See* Ex. B, Ex. D, Ex. E. The Niagara County District Attorney's office has since amended this charge to petit larceny in violation of NY Penal section 155.25. *See* Ex. C, ¶ 5; Ex. D, ¶ 13, Ex. E at 1.

33. The criminal case against Ms. Murphy is pending in Newfane Town Court as Newfane Docket No. 22080008.⁴

⁴ On May 11, 2023, Ms. Murphy's criminal defense counsel filed a motion in the County Court to remove the criminal matter from Newfane Town Court to a superior court. The motion remains pending.

The Initial Gag Order

34. At Ms. Murphy's arraignment on August 2, 2022, Town of Somerset Justice Pamela Rider ordered Ms. Murphy released on her own recognizance, on the condition that she "cease social media posts while [her] case is pending." Ex. B at 1, 4 ("Initial Gag Order").

35. On December 26, 2022, Ms. Murphy's criminal defense counsel filed a motion in the Town of Newfane Local Criminal Court seeking to amend the conditions of Ms. Murphy's release to strike the Initial Gag Order. Ex. C ("Initial Gag Order Motion").

36. In the Initial Gag Order Motion, Ms. Murphy argued that: (1) the Initial Gag Order constituted "an unconstitutional prior restraint" on speech; (2) that the Initial Gag Order was "unconstitutionally overbroad and vague"; and (3) that the Initial Gag Order was "not the 'least restrictive' condition" available to ensure Ms. Murphy's return to court. *See* Ex. C.

37. On January 19, 2023, Respondent The People of the State of New York filed a response to the Initial Gag Order Motion. Ex. D ("Initial Gag Order Response").

38. In the Initial Gag Order Response, the People argued that, at a minimum, a gag order prohibiting Ms. Murphy from posting on social media about the pending case was merited because Mr. Gregson received "phone calls and visits to his property by members of the animal rights community." Ex. D, ¶¶ 11, 12. The People also argued that allowing Ms. Murphy to post on social media about the case "could taint the jury pool," that "[t]here is simply no reason why [Ms. Murphy] needs to post on social media about this case," and that Ms. Murphy fundraising for her defense or for the Farm Sanctuary more generally may violate New York's "Son of Sam Law" (New York Executive Law § 632-a).⁵ Ex. D, ¶¶ 13-15.

⁵ Notably, New York's "Son of Sam Law" applies only to individuals convicted of a felony crime. New York Executive Law § 632-a(1)(a), 1(b). Ms. Murphy is no longer even *charged*

39. At a hearing in January 2023 on the Initial Gag Order Motion, the People did not object to the possibility of an amended version of the Initial Gag Order permitting social media and other online postings unrelated to the case; Ms. Murphy's counsel likewise did not object to the possibility of a prohibition on Ms. Murphy disseminating Mr. Gregson's contact information or encouraging her supporters to contact him.

The Gag Order

40. On February 21, 2023,⁶ Justice Bruce M. Barnes issued an order denying Ms. Murphy's Initial Gag Order Motion. Ex. A.

41. In addition to denying the motion, Justice Barnes actually *expanded* the scope of the Initial Gag Order. The Initial Gag Order instructed Ms. Murphy to "cease social media posts while [her] case is pending." Justice Barnes' February 2023 Gag Order banned not just any *posts* on social media, but any *use* of social media whatsoever. The Gag Order also adds "public billboards" as a category of "social media" from which Ms. Murphy is banned. Ex. A.

42. The substance of Gag Order in full orders "Ms. Murphy not to use social media, which would specifically include [F]acebook and public billboards, etc. while her case is still pending in Justice Court." Ex. A.

43. As rationale for this decision, Justice Barnes stated that "Ms. Murphy has been in violation of her release all along," and that "[s]he [h]as been using various mediums to raise money, and she [c]ontinues to do so." Ex. A. The Gag Order cites no supporting caselaw or statutes.

with a felony; she has been accused of a misdemeanor, petit larceny. Ms. Murphy has been *convicted* of no crime.

⁶ Justice Barnes' order is not itself dated, but the order was emailed to counsel for Ms. Murphy on February 21, 2023.

The Community Response

44. As word spread about the dispute between Ms. Murphy and Mr. Gregson, the matter quickly became a topic of interest and controversy in the Newfane community, as well as in the broader animal rights and farming communities.

45. For example, *The Lockport Union-Sun & Journal* reported that community members lined the road on which the Sanctuary is located with signs expressing support for Gregson, such as those pictured below. The signs carried messages such as, “FARM LIFE: GET OUT OF NEWFANE ASHA,” “ASHA RETURN THE COWS,” and “LOCK HER UP!” See Fries, Jacob, *Until the Cows Come Home*, *Lockport Union-Sun & Journal*, Aug. 2, 2022, <https://perma.cc/88RK-R7TK>. See also Minkewicz, Sarah, *Cattle Battle Continues in Niagara County as People Protest Outside an Animal Sanctuary*, Aug. 1, 2022, <https://perma.cc/4XAT-PRQW>.

46. Other signs displayed near the Sanctuary read “CATTLE RUSTLIN” and “RELEASE the BEEF: DON’T MESS WITH FARMERS.” See Person, Yoselin, *Farm Drama in Newfane*



as *Protestors Calling for the Return of Cows*, WKBW, July 27, 2022, <https://perma.cc/C3RT-ZYCG> (video).

47. A protest near the Sanctuary on July 30, 2022, attracted approximately 100 individuals, mostly expressing support for Mr. Gregson. *See Fries, supra*.

48. Since Ms. Murphy's arrest, both supporters of Ms. Murphy and of Mr. Gregson have continued to post regularly on social media about the case, stage demonstrations, and post signage around Newfane expressing their views of the case and the broader issues it implicates.

49. Since her arrest, Ms. Murphy has received continued death threats and harassment via social media and by email.

Asha's Farm Sanctuary and the McKee Farm on Social Media

50. Mr. Gregson's farm, The McKee Farm, has a Facebook page with over 1,500 "likes" and over 2,000 "followers."⁷ The page has featured posts about this dispute on several occasions, including memes and commentary about the matter. The page also lists the farm's physical address in Newfane.

51. Asha's Farm Sanctuary also maintains a Facebook page, which has approximately 8,000 "likes" and 8,500 "followers."⁸ The Sanctuary has posted once about Ms. Murphy's pending criminal case since the Initial Gag Order was imposed, in a video posted April 24, 2023.⁹

52. The Sanctuary and Ms. Murphy utilize Facebook and other forms of social media for a wide range of activities: to educate the public about the Sanctuary's work, to update their

⁷ <https://perma.cc/B9S3-LZHA>.

⁸ <https://perma.cc/4787-B3XY>.

⁹ Available at <https://perma.cc/HXT7-CXPH>.

supporters about specific animals and initiatives at the Sanctuary, to advocate for animal rights, and to fundraise for the Sanctuary.

53. The Sanctuary is supported entirely by donations from the public, and social media is a critical tool in the Sanctuary's fundraising efforts.

CLAIM FOR RELIEF

54. Ms. Murphy hereby reasserts and realleges paragraphs 1 through 53 as if fully set forth herein.

55. Ms. Murphy commences this proceeding, which is in the nature of a writ of prohibition, pursuant to CPLR Article 78, because Respondent exceeded the scope of his jurisdiction in imposing the Gag Order.

56. As a wholesale ban on First Amendment-protected activity, the Gag Order constitutes an unconstitutional prior restraint on speech in violation of the First Amendment to the United States Constitution and Article I, Section 8 of the New York State Constitution. *See Packingham v. North Carolina*, 582 US 98, 107–08 (2017), *Nebraska Press Ass'n v. Stuart*, 427 U.S. 539, 559 (1976).

57. The Gag Order is also unconstitutionally vague and overbroad. The Gag Order is unconstitutionally vague because it fails to put an ordinary person on notice of what conduct it actually prohibits. *See Johnson v. United States*, 576 U.S. 591, 595 (2015). It is unconstitutionally overbroad because its scope – a total ban on *any* social media use across *all* social media platforms (plus public billboards) – extends far beyond its legitimate sweep (which is nonexistent in this case). *See Broadrick v. Oklahoma*, 413 U.S. 601, 615 (1973).

58. Further, the Gag Order violates the New York bail laws in effect at the time of Ms. Murphy's arrest. *See* CPL §§ 500.10(3a), 510.10(1), 510.10(3), 510.30(1), 530.20(1)(a), 530.30(1) (2022). These laws, as relevant here, only permit non-monetary conditions of release upon a specific finding that release upon recognizance will not reasonably assure a defendant's return to court. Justice Barnes made no such finding, nor does the Gag Order satisfy the narrow conditions under which non-monetary of release are permitted in cases of flight risk.
59. For these reasons, when he imposed the Gag Order, Justice Barnes exceeded his authority and jurisdiction as a justice of Newfane Town Court.
60. Petitioner Ms. Murphy has no other adequate remedy at law.
61. No prior application for the relief requested herein has been made to this Court.

PRAYER FOR RELIEF

WHEREFORE, Petitioner Murphy respectfully requests this Court to grant judgment:

- (a) Vacating the Gag Order and the underlying non-monetary conditions of Ms. Murphy's release;
- (b) Prohibiting enforcement of the Gag Order and any other restriction of Ms. Murphy's First Amendment rights during the pendency of her criminal case;
- (c) Awarding Ms. Murphy reasonable attorney's fees and litigation costs pursuant to CPLR § 8601; and
- (d) Awarding Ms. Murphy such further relief as the Court deems just and proper.

Dated: June 21, 2023
Ithaca, NY

Respectfully submitted,

CORNELL LAW SCHOOL
FIRST AMENDMENT CLINIC

by: /s/ Christina N. Neitzey

Christina N. Neitzey

Myron Taylor Hall

Ithaca, New York 14853

(607) 255-4196

cn266@cornell.edu

Counsel for Petitioner Tracy A. Murphy

VERIFICATION


STATE OF NEW YORK)
) ss:
COUNTY OF NIAGARA)

TRACY A. MURPHY, being duly sworn, deposes and says:

1. I am the founder and president of Asha's Farm Sanctuary, and the defendant in the criminal matter *People v. Murphy*, Newfane Docket No. 22080008, currently pending in Newfane Town Court.
2. I have read the foregoing petition. Based on my personal knowledge, and on information obtained in the ordinary course of business from records and from individuals with knowledge, the information contained herein is true to the best of my knowledge, information, and belief.


TRACY A. MURPHY

Sworn to before me this
21st day of June, 2023


Notary Public



JARECE M GLANDER
NOTARY PUBLIC-STATE OF NEW YORK
No. 01GL6419198
Qualified in Niagara County
My Commission Expires 06-28-2025

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NIAGARA**

-----X

In the matter of : Index No. _____

TRACY A. MURPHY,

Petitioner, :

For a Judgment Pursuant to Article 78 :
of the Civil Practice Law and Rules :

-against- : **NOTICE OF PETITION**

JUSTICE BRUCE M. BARNES, TOWN OF :
NEWFANE COURT **ORAL ARGUMENT
REQUESTED**

and

THE PEOPLE OF THE STATE OF NEW
YORK,

Respondents. :

-----X

PLEASE TAKE NOTICE that upon the annexed verified petition of petitioner Tracy A. Murphy, duly verified on the 21st of June, 2023, the exhibits annexed thereto and the accompanying memorandum of law, Petitioner will move this Court at the Niagara County Courthouse, 775 Third Street, Niagara Falls, New York, on the 9th day of August, 2023, at 9:30 am, or as soon thereafter as counsel may be heard, for an Order and Judgment granting relief under Article 78 of the Civil Practice Law and Rules as follows:

- (a) Vacating the February 21, 2023, order of Newfane Town Justice Bruce M. Barnes in *People v. Murphy*, Newfane Docket No. 22080008, denying Ms. Murphy’s motion seeking to amend the conditions of her release and ordering “Ms. Murphy not to use social media, which would specifically include [F]acebook and public billboards, etc. while her case is still pending in Justice Court” (“Gag Order”);

- (b) Vacating the underlying non-monetary conditions of Ms. Murphy's release;
- (c) Prohibiting enforcement of the Gag Order and any other restriction of Ms. Murphy's First Amendment rights during the pendency of her criminal case;
- (d) Awarding Ms. Murphy reasonable attorney's fees and litigation costs pursuant to CPLR § 8601; and
- (e) Awarding Ms. Murphy such further relief as the Court deems just and proper.

PLEASE TAKE FURTHER NOTICE that, pursuant to CPLR § 7804(c), an answer and supporting affidavits, if any, shall be served at least five days before the return date of this application.

Dated: June 21, 2023
Ithaca, NY

Respectfully submitted,

**CORNELL LAW SCHOOL
FIRST AMENDMENT CLINIC**

by: /s/ Christina N. Neitzey
Christina N. Neitzey
Myron Taylor Hall
Ithaca, New York 14853
(607) 255-4196
cn266@cornell.edu

Counsel for Petitioner Tracy A. Murphy

Exhibit A

Bruce M. Barnes
Newfane Court Justice
2896 Transit Rd. Newfane, NY
14108

To the Attorney's in the Tracy Murphy Court Case,

The motion for the removal of the conditions of Ms. Murphy's securing order dated August 2nd, 2022, with a non – monetary release condition that she should "cease social media posts while case is pending" is denied. Docket #22080008.

Ms. Murphy has been in violation of her release all along. She Has been using various mediums to raise money, and she Continues to do so.

The Court again orders Ms. Murphy not to use social media, which would specifically include facebook and public billboards, etc. while her case is still pending in Justice Court.


Bruce M. Barnes
Newfane Court Justice
County of Niagara

Exhibit B

STATE OF NEW YORK

COUNTY OF NIAGARA

NIAGARA COUNTY CAP COURT

The People of the State of New York

Securing Order

vs.

TRACY A MURPHY

Docket/Case Number:

T/AJEWPNJL

AKA(s): _____ _q_JN:

Address: a9LRct CenroE&RD Nw@JI 11f1CM,s10:

15037565H

Sex: F Race: IAJ DOB: Jn.i[e.:] EYO: OYes 8No

YO: OYes <iNo

The above-named defendant is CHARGED WITH or CONVICTED OF the following offense(s):

Charge	Charge Weight	Charge Description	No. of Counts
<u>PL 155.35</u>	<u>DF</u>	<u>GRAND LARC. 3</u>	<u>1</u>

- The defendant is charged with the above-listed offense(s), and pursuant to CPL §510.10(1), the Court has determined on the basis of available information the least restrictive kind and degree of control or restriction that is necessary to secure the defendant's return to court when required is as follows; or
- The defendant having been convicted off'he above-listed offense(s), the Court has determined the kind and degree of control or restriction that is necessary to secure the defendant's return to court when required is as follows;

AND, if not placed upon the record or in addition to the record, the Court hereby explains its choice of securing order:

At the request of the Judge that issued the warrants due to willful and persistent failure to appear

It is hereby ORDERED that the defendant is (check one):

Released on recognizance.

Released with non-monetary conditions as follows (check all conditions that apply):

Contact with pre-trial services as follows:

Placement in pre-trial supervision as follows:

Travel restrictions as follows:

Refrain from possessing a firearm, destructive device or dangerous weapon

Electronic monitoring under the supervision of _____ for a period of ___ days as follows:

Other conditions:

CEASE SOCIAL MEDIA POSTS WHILE CASE IS PENDING.

...ommitted to the custody of _____ until bail is posted as 100 {J, rt, V, n} 3 types):

- [Juvenile Offender] to be lodged in a place certified by the Office of Children and Family Services as a juvenile detention facility for the reception of children, being a Juvenile Offender at the time the crime was allegedly committed
- [Adolescent Offender] to be lodged in a place certified by the Office of Children and Family Services and the State Commission on Corrections as a specialized secure juvenile detention facility for older youth, being an Adolescent Offender at the time the crime was allegedly committed
- (check if applicable) Pursuant to CPL §50.10(5), although the Court would not or could not otherwise require bail or remand, the Court has set nominal bail in the form specified in CPL § 520.10(1)(a) upon the defendant's voluntary request. (NOTE: The form of bail specified in CPL § 520.10(1)(a) is cash bail.)

- D \$ _____ cash, or
- D \$ _____ credit Card or similar device, or
- D \$ _____ Insurance Company Bail Bond, or
- D \$ _____ Secured Appearance Bond (Form CRC 3292), or
- D S _____ Partially secured Appearance Bond with a ___% deposit (Form CRC 3293), or
- D \$ _____ Unsecured Appearance Bond (Form CRC 3294), or
- D S _____ Secured Surety Bond (Form CRC 3292), or
- O \$ _____ Partially Secured Surety Bond with a ___% deposit (Form CRC 3293), or NOTE: A partially secured and/or unsecured surety bond must be selected.
- \$ _____ Unsecured Surety Bond (Form CRC 3294).

NOTE: Surety or appearance bonds must be submitted to the court using the applicable form as indicated above and require approval by the court before the defendant may be released from custody.

- Committed to the custody of _____ and remanded without bail.
- [Juvenile Offender] to be lodged in a place certified by the Office of Children and Family Services as a juvenile detention facility for the reception of children, being a Juvenile Offender at the time the crime was allegedly committed
- [Adolescent Offender] to be lodged in a place certified by the Office of Children and Family Services and the State Commission on Corrections as a specialized secure juvenile detention facility for older youth, being an Adolescent Offender at the time the crime was allegedly committed

AND it is further ORDERED that the defendant's future attendance in court is required as follows:

Court Name:	TOWN OF NEW FANE
Address:	2896 TRANSIT RD
City, State, Zip:	NEW FANE NY 14108
Date/Time:	8/1/2022 at 2:00 PM (OPM)
Part/Room/Floor:	counroom
Before Judge:	B
For the purpose of:	Further Proceedings

TAKE NOTICE that:

- defendant released on recognizance, or under non-monetary conditions, or after posting bail must appear in court as directed, must not commit a crime, must obey conditions of release, if any, and shall be subject to consequences set forth on the record for violation of release conditions, including but not limited to revoking the current securing order and imposing a more restrictive securing order.
- a defendant committed to custody shall be produced by the custodial authority as directed, and upon release from custody, the custodial authority shall advise the defendant of the obligation to appear in court on the next scheduled court date as directed by the court.

Dated: 8/1/2022

Pamela S. Rider
Hon, Pamela S. Rider
Justice/Judge

STATE OF NEW YORK

RECEIVED U.S. DISTRICT COURT for the Western District of New York 06/21/2023

COUNTY Of NIAGARA

Centralized Arraignment Part

The People of the State of New York
vs.

Securing Order Decision

TRACY A ROU a. P1-tLi

Docket/Case Number: 7/NEWFWNE

AKA(s): _____

1N: _____

Address: &9\eq COOMER RD NEWFWNE

NVSIO: 15L375L5H

Sex: F Race: ID ooe: ius

EY0: Yes No VO: Yes No

Pursuant to CPL §510.30, the Court has considered the following Information regarding the defendant (check all that apply):

10" Activities and history:

ending charges:

Record of criminal convictions:

Previous youthful offender adjudications:

Previous juvenile delinquency adjudication\$ as retained pur\$uant to FCA §354.l:

Pending family court cases **where** fingerprints are retained pursuant to FCA §306.l:

Previous record of flight to avoid prosecution:

If monetary bail is authorized:

Ability to post ball without undue hardship:

Ability to obtain a secured, unsecured or **partially** secured bond:

ff the charges are allegedly committed against o member of the same Jamfly or household:

Violations of **orders** of protection issued pursuant to CPL §530.11:

History of firearm use or possession:

If an appeal Is pending:

Merit of the appeal:

-r LYt wPNve-

Pursuant to CPL §510,10(1), the Court has determined on the basis of available information the least restrictive kind and degree of control or restriction that is necessary to secure the defendant's return to court when required is (check one):

- Release on recognizance.
- Release with non-monetary conditions as follows (check all that apply):
 - Contact with pre-trial services as follows: _____
 - Placement in pre-trial supervision as follows: _____
 - Travel restrictions as follows: _____
 - Refrain from possessing a firearm, destructive device or dangerous weapon
 - Electronic monitoring under the supervision of _____ for a period of _____ days as follows: _____

Other conditions:

CEASE SOCIAL MEDIA POSTS WHILE IS PENDING

Monetary bail as follows (select at least 3 types):

- \$ _____ cash, or
- \$ _____ Credit Card or similar device, or
- \$ _____ Insurance Company Bail Bond, or
- \$ _____ Secured Appearance Bond (Form CRC 3292), or
- \$ _____ Partially Secured Appearance Bond with a _____% deposit (Form CRC3293), or
- \$ _____ Unsecured Appearance Bond (Form CRC 3294), or
- \$ _____ Secured Surety Bond (Form CRC 3292), or
- \$ _____ Partially Secured Surety Bond with a -1:Q. _____'6 deposit (Form CRC 3293), or
- \$ _____ Unsecured Surety Bond (Form CRC 3294).

NOTE: A partially secured and/or unsecured surety bond must be selected.

NOTE: Surety or appearance bonds must be submitted to the court using the applicable form as indicated above and require approval by the court before the defendant may be released from custody.

Remand without bail.

Dated: 8/2/2023

Paula S.
Hon. _____
Justice/Judge

Exhibit C

STATE OF NEW YORK
LOCAL CRIMINAL COURT

COUNTY OF NIAGARA
TOWN OF NEWFANE

----- X

PEOPLE		:	
	Plaintiff(s),	:	
		:	
	-against-	:	
TRACY MURPHY,		:	
		:	
	Defendant.	:	
		:	

----- X

Index No. 22080008
 Hon. BRUCE M. BARNES
**NOTICE OF MOTION AND
 MOTION TO AMEND BAIL
 CONDITIONS**

PLEASE TAKE NOTICE, that upon the annexed affirmation of YAMINA SARA CHEKROUN, ESQ., the undersigned will move this Court at 2896 Transit Rd., Newfane, New York on the 27th day of December at 3:45 pm or as soon thereafter as counsel may be heard for a written order modifying the defendant’s conditions of release to strike the condition that the defendant not post on social media (the “gag order”). A proposed order is attached to this notice of motion.

Dated: New York, New York
 December 26, 2022

Respectfully submitted,

Yamina Sara Chekroun /s/

Yamina Sara Chekroun, Esq.
 321 E. 83rd Street, #1C
 New York, N.Y. 10028
 347 986-4226
 yaminasara@gmail.com

Factual Background

3. On July 16, 2022, Ms. Murphy discovered two cows who had wandered onto her property. She immediately provided care and shelter for these animals and alerted the Niagara County Society for the Prevention of Cruelty to Animals.
4. When the purported owner of the cattle, Scott Gregson, demanded she give him the cows, Ms. Murphy declined to do so until she was given proof of ownership and, on the advice of an attorney's analysis of local lien laws, compensated for the cost of care for the animals.
5. For this conduct, the State arrested Ms. Murphy on August 2, 2022 and charged her with third-degree grand larceny, a class D felony. NY PENAL § 155.35. The prosecution has since indicated their intent to amend that charge to petit larceny in violation of NY PENAL § 155.25.
6. At her initial appearance, the court imposed a release condition that she "cease social media posts while case is pending" (hereafter referred to as the "gag order").
7. The court's justification for this step was apparently the prosecution's claim that Ms. Murphy had published Mr Gregson's telephone number and address on social media, leading to protests against and phone calls to Mr. Gregson.
8. To date, the prosecution has provided no evidence to the defense about the nature of this supposed publication of private information by Ms. Murphy, the nature of the protests or phone calls against Mr. Gregson, or the basis for believing that Ms. Murphy's publication of private information was the cause of those protests or phone calls.

- 9. In fact, Mr. Gregson’s phone number and address were apparently published publicly on his company’s Facebook page, The McKee Farm. (As of December 26, 2022, the address continues to be published openly on that page, though the phone number has been removed.)
- 10. McKee Farm’s own repeated posts regarding the defendant and other animal advocates, moreover, appear to be the primary reason for any antagonism against the company. An example of one such post, made on October 10, 2022, is below:



11. Accordingly, Ms. Murphy seeks to have the conditions of her release modified such that the gag order is removed.

I. The gag order is an unconstitutional prior restraint on Ms. Murphy's right to freedom of speech.

A. Legal Framework

12. "An order that prohibits the utterance or publication of particular information or commentary imposes a 'prior restraint' on speech." *United States v. Salameh*, 992 F.2d 445, 446-47 (2d Cir. 1993).
13. Prior restraints are "the most serious and least tolerable infringement on First Amendment rights" and are heavily presumed to be constitutionally invalid. *Nebraska Press Assn v. Stuart*, 427 U.S. 539, 559, 561 (1976).
14. This court should be particularly sensitive to a prior restraint directed at social media. Social media is the modern town square and provides individuals with a means to "become a town crier with a voice that resonates farther than it could from any soapbox." *Reno v. American Civil Liberties Union*, 521 U.S. 844, 870 (1997).
15. In considering a prior restraint, the trial court must balance an individual's right to free speech with a defendant's right to a fair trial. *New York Times Co. v. Rothwax*, 143 A.D.2d 592, 592 (1st Dept 1988). The party requesting the restraint bears the "heavy burden" of justifying its imposition. *Ash v. Board of City Managers of 155 Condominium*, 44 A.D.3d 324, 325 (1st Dept 2007).

16. The court must find that extrajudicial statements present a “reasonable likelihood of a serious threat to a defendant’s right to a fair trial.” *Matter of National Broadcasting Co. v. Cooperman*, 116 A.D.2d 287, 292 (2d Dept 1986).
17. Next, the court must also find less restrictive alternatives would not be just as effective in assuring a defendant the right to a fair trial. *Id.* At 293 (citing *Nebraska Press Assn.*, 427 U.S. at 562).
18. With these fundamental standards in mind, the gag order imposed on Ms. Murphy cannot survive constitutional scrutiny.

B. There is no evidence that posting on social media will reasonably likely deprive Ms. Murphy of a fair trial.

19. First, the record is devoid of any evidence that extrajudicial statements will reasonably likely deprive Ms. Murphy of a fair trial.
20. There is no particularly-identified prejudicial fact that would irreparably taint a juror pool or undermine Ms. Murphy’s right to a fair trial. *See e.g., People v. Dupree*, 88 Misc.2d 780, 783 (Sup. Ct. N.Y. Cnty. 1976) (discussing a juror’s exposure to media reports of evidence that had not yet, and might not be, admitted in trial); *also People v. Knapp*, 113 A.D.2d 154, 158 (3d Dept 1985) (discussing prejudice of media reports of a suppressed confession).
21. Further, there is a substantial length of time until a jury would be selected in this case, minimizing the risk that statements now would affect Ms. Murphy’s right to a fair trial. *See U.S. v. Bowe*, 360 F.2d 1, 11 (2nd Cir. 1966) (“Both the Supreme Court and this court have indicated that the length of time between the publication of adverse publicity and the empanel-

ling of the jury is a significant factor in assessing claims of prejudice resulting from pre-trial publicity”).

22. In sum, any concerns that extrajudicial statements might deny Ms. Murphy her right to a fair trial are speculative and thus, insufficient to justify the serious restriction of a prior restraint.

C. The court failed to consider less restrictive alternatives to the gag order.

23. Second, even if there was a reasonable likelihood that extrajudicial statements would threaten Ms. Murphy’s right to a fair trial, there is no record that less restrictive alternatives would fail to safeguard this right.

24. Less-restrictive alternatives include:

- a thorough voir dire to weed out jurors who have seen the social media posts and other pretrial publicity, *see U.S. v. Griffin*, 1996 WL 140073, * 2 (S.D.N.Y. 1996) (finding a thorough voir dire is sufficient to neutralize pretrial publicity);
- a change of venue should the jury pool be tainted;
- postponement of the trial;
- clear and direct jury instructions, *see Harris v. Rivera*, 454 U.S. 339, 346 (1981) (recognizing a rebuttable presumption that juries follow jury instructions);
- or even sequestration, *see In re Dan Farr Prods.*, 874 F.3d 590, 596 (9th Cir. 2017) (“But juror inconvenience alone cannot outweigh Petitioners’ exercise of fundamental First Amendment rights”).

National Broadcasting Co., 116 A.D.2d at 293; *Nebraska Press Assn*, 427 U.S. at 563-64.

Absent a careful consideration of any less restrictive alternatives, which apparently did not take place when the gag order was imposed, the prior restraint cannot be upheld.

25. Because there are less restrictive alternative alternatives to the gag order, the court should remove the gag order and use these less restrictive alternatives to protect the right to a fair trial.

II. The gag order is unconstitutionally overbroad and vague.

26. In addition to being an unconstitutional prior restraint, the condition that Ms. Murphy “cease social media posts while case is pending” is unconstitutionally overbroad and vague.

27. A prior restraint is overbroad if it prohibits speech on matters that would not affect the fairness of a trial. *See National Broadcasting Co.*, 116 A.D.2d at 293-94; *also Salameh*, 992 F.2d at 447 (a limitation on speech “should be no broader than necessary to protect the integrity of the judicial system and the defendant’s right to a fair trial”) (citing *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1077 (1991))

28. For instance, in *National Broadcasting Co.*, the court order prohibiting attorneys from speaking to the news media on *any matter* related to the trial was deemed overbroad and vague. 116 A.D.2d at 293-94; *see also New York Times Co.*, 143 A.D.2d at 593 (finding a similar gag order overbroad); *Salameh*, 995 F.2d at 447 (finding a gag order that imposed a blanket prohibition preventing any statements “that have anything to do with the case” or that “even *may* have something to do with the case” overbroad) (emphasis in original).

29. Here, the no social media condition goes substantially further than the overbroad gag orders in *National Broadcasting Co.*, *New York Times Co.*, or *Salameh*. Ms. Murphy is prohibited from *all speech* on social media. Such blanket prohibition goes well beyond any speculatively prejudicial comments that could be made regarding this case.

30. Rather, the gag order prevents Ms. Murphy from using social media to provide even harmless information about a case of public concern. As such, it is impermissibly overbroad.
31. The gag order is also vague. To address a vagueness challenge, the court must determine whether the condition in question is sufficiently definite to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute and whether it provides officials with clear standards for enforcement. *See People v. Stuart*, 100 N.Y.2d 412, 420 (2003) (internal citations omitted).
32. The release condition does not clarify what constitutes “social media.” (e.g. what specific websites Ms. Murphy is prohibited from posting on, what specific social media platforms she may not use). Nor does the condition clarify whether the gag order relates solely to her own personal social media accounts or the social media account of her animal sanctuary, which multiple other individuals can post from.
33. Thus, the condition fails to provide adequate notice to Ms. Murphy as to what conduct violates the gag order.

III. The gag order is more restrictive than the bail statute permits.

34. When releasing a defendant on their own recognizance, the court can only impose the least restrictive conditions that will reasonably assure the defendant’s return to court and must explain its choice on the record or in writing. NY CRIM PRO. §§ 510.10; 530.20 (securing order by local criminal court). The court *shall* consider a lessening or modification of non-monetary conditions at future court appearances based on a defendant’s compliance with conditions of release. NY CRIM PRO. § 510.40(3).

35. Under this standard, some non-monetary conditions are obvious, such as pre-trial electronic monitoring. *See People v. Seigniuos*, 75 Misc.3d 443 (N.Y. City Crim. Ct. 2022). Other conditions are unintuitive but are still affirmed as they bear some logical relevance to the case. *See, e.g. People ex rel. Morquin v. Infante*, 134 A.D.2d 764 (3d Dept 1987) (affirming bail conditions of no driving and attendance at alcohol treatment where defendant was accused of killing and seriously injury individuals while driving drunk); *People v. Bongiovanni*, 183 Misc.2d 104, 105 (Sup. Ct. Kings Co. 1999) (affirming domestic violence counseling as a condition of bail).
36. Here, the gag order is substantially more restrictive than necessary to ensure Ms. Murphy's return to court. First, there is no logical link between the gag order and whether she returns to court.
37. Second, there is no evidence that *any* additional non-monetary condition is required to ensure Ms. Murphy appears at her future court dates. Ms. Murphy is charged with a non-violent offense. She has no criminal history, has never failed to appear in this matter, nor violated any of her release conditions. She is a lifelong resident of this community and owns a local animal sanctuary that cares for fifty animals on the property.
38. Thus, the gag order must be removed as a condition of release as it is substantially more restrictive than necessary to ensure Ms. Murphy's return to court.

This court should remove the gag order forthwith or, in the alternative, schedule an immediate hearing to address this motion.

39. “The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373–74 (1976).
40. Accordingly, Ms. Murphy requests this court remove the gag order immediately. In the alternative, she requests a prompt hearing to address this motion.

RESERVATION OF RIGHTS

41. The defendant, pursuant to C.P.L. Section 255.20 (2), reserves the right to make additional pre-trial motions, including a separate omnibus motion, and brings this and other motions now due to their urgent nature.
42. The defendant further reserves the right to amend or supplement this motion if that should be made necessary or appropriate by future disclosures by the prosecution or other parties.

WHEREFORE, Ms. Murphy respectfully requests that this court remove the unconstitutional gag order imposed upon her as a condition of her bail. She makes this motion pursuant to her state and federal constitutional rights to speech, association, and due process. NY CONST Art. I, §§ 6, 8; U.S. Const. Amends. I, V, XIV.

Dated: New York, New York

December __, 2022

Yamina Sara Chekroun, Esq.
321 E. 83rd Street, #1C
New York, N.Y. 10028
347 986-4226
yaminasara@gmail.com

STATE OF NEW YORK
LOCAL CRIMINAL COURT

COUNTY OF NIAGARA
TOWN OF NEWFANE

----- X

PEOPLE		:
	Plaintiff(s),	:
		:
	-against-	:
TRACY MURPHY,		:
	Defendant.	:
		:

----- X

Index No. 22080008
Hon. BRUCE M. BARNES
[PROPOSED] ORDER

IT IS HEREBY ORDERED, that any prior restraint or other conditions on the use of social media, or any other speech activity, by Defendant Tracy Murphy are vacated.

Dated: New York, New York
December __ 2022

Hon. Bruce Barnes

Exhibit D

STATE OF NEW YORK : COUNTY OF NIAGARA
NEWFANE TOWN COURT

THE PEOPLE OF THE STATE OF NEW YORK

vs.

PEOPLE'S RESPONSE TO
DEFENDANT'S NOTICE OF
MOTION AND AFFIDAVIT
MOTION TO AMEND
BAIL CONDITIONS
Newfane Docket No. 22080008

TRACY A. MURPHY,

Defendant.

STATE OF NEW YORK:
COUNTY OF NIAGARA:ss
CITY OF LOCKPORT:

LAURA T. JORDAN, being duly sworn, deposes and says:

1. I am an attorney duly admitted to practice law before the Courts of the State of New York.
2. I am an Assistant District Attorney, in and for the County of Niagara, State of New York, and am fully familiar with the facts of this case.
3. I am the Assistant District Attorney assigned to handle the above-captioned matter.
4. The People respond to the Notice of Motion and supporting Affidavit of Yamina Sara Chekroun, Esq., attorney for defendant TRACY A. MURPHY, as follows:
5. Unless otherwise stated herein, this response is made upon information and belief, the sources of which are my investigation of the confidential file of the District Attorney's Office, records of all proceedings heretofore had, a reading of the moving papers filed herein, and conversations with witnesses hereto.

6. Defendant was arraigned on August 2, 2022 on one count of Grand Larceny in the Third Degree, in violation of §155.35 of the Penal Law of the State of New York.
7. Defendant was released on August 2, 2022 on the non-monetary condition that she “cease social medial posts while case is pending” (Securing Order dated August 2, 2022).
8. Defendant, in her motion, now claims that the condition is an unconstitutional prior restraint on her freedom of speech, that there is no evidence that posting on social medial will be reasonably likely to deprive her of a fair trial, that the Court failed to consider less restrictive alternatives to the condition, that it is unconstitutionally overbroad and vague, and that it is more restrictive than the bail statute permits. Defendant’s arguments are meritless.
9. From the outset, the People point out to this Court that defendant has not abided by the bail condition as set by the Court back on August 2, 2022. Since August 2, 2022, defendant has regularly posted on almost a daily basis on the Facebook page Asha’s Farm Sanctuary. There are multiple posts where she refers to herself in the first person, posts photographs and videos of herself, and signs her posts from “Tracy Murphy.” Defendant has also continued to fundraise for her sanctuary on her Facebook page during the pendency of this case.
10. Defendant has been in violation of the Court’s conditions of bail on an almost daily basis and is only now seeking to remove the condition. The Court should take into consideration defendant’s failure to abide by the conditions as outlined by the Court when assessing whether less-restrictive conditions would be appropriate in this case.

11. Should the Court find it appropriate to allow defendant to post on social media about the day-to-day operations of her farm sanctuary, the People request that a condition remain that she not be allowed to post about the pending case.
12. There are a number of reasons why the People are making this request. The most serious of which is the threats communicated to Scott Gregson, the owner of the cows, when this case originated. He was receiving phone calls and visits to his property by members of the animal rights community that including telling him that he should be killed and that his children should be raped and killed. Should defendant be allowed to again post on social media about this case, the People are concerned that this community would be revived and Mr. Gregson and his family would again be faced with receiving these phone calls or visits to their property. The issuance of the prohibition against the posts has quieted this type of behavior and the People ask the Court continue, at the very least, the term that defendant not post about the pending case.
13. As the People have indicated, we intend to reduce this case to a misdemeanor which will ultimately be tried, should defendant not wish to accept a plea, in the Town of Newfane. Should defendant be allowed to post on social media specifically about this case, she could taint the jury pool.
14. There is simply no reason why defendant needs to post on social media about this case. In a telephone conversation two weeks ago, one of defendant's attorney's, Wayne Hsiung, indicated that defendant needs to be able to post on social media so that she can "raise money for her defense."

15. Defendant cannot profit from a criminal case against her. New York Executive Law §632-a, more commonly known as the "Son of Sam Law", was enacted to prevent persons accused or convicted of a crime from profiting from the exploitation of their crimes. Under the law, any money that could be earned by a defendant due to the commission of a crime would first be used to compensate the victim and others who have a right to sue under the law. It allows for the filing of a civil action by a crime victim to recover losses resulting from defendant's crime (*New York State Crime Victims Bd. ex rel. Organek v Harris*, 68 AD3d 1269, 1271 [3rd Dept 2009]). Consequently, defendant should not be allowed to post about this case on social media to raise funds for her defense, or even for her sanctuary to profit from the notoriety this case brought. Frankly, any funds already raised in that manner may be subject to civil action under this statute.

WHEREFORE, the People respectfully request an Order be granted denying defendant's motion in all respects with the exception of those items specifically consented to herein.



Laura T. Jordan
Assistant District Attorney

Sworn to me this 19th day
January, 2023



Notary Public

Jill S. Cicciarella
Notary Public, State of New York
No. 010162118007
Qualified in Niagara County
My Commission Expires April 19, 2026

TO: Hon. Bruce Barnes
Town of Niagara Court
2737 Main Street
Niagara, New York 14108

Yuniar Sara Chakroun, Esq.
Attorney for Defendant
321 E. 83rd Street, # 1C
New York, New York 10028

Exhibit E

STATE OF NEW YORK
COUNTY OF NIAGARA: NEWFANE TOWN COURT

THE PEOPLE OF THE STATE OF NEW YORK

-against-

PROSECUTOR'S INFORMATION

Docket # 22080008

TRACY A. MURPHY,

Defendant

BE IT KNOWN THAT, I, LAURA T. JORDAN, Assistant District Attorney of Niagara County, New York, pursuant to the provisions of §180.50(3) of the Criminal Procedure Law of the State of New York, do hereby accuse the above-named defendant, **TRACY A. MURPHY**, of committing the crime of Petit Larceny, a class "A" misdemeanor, in violation of §155.25 of the New York State Penal Law on or about July 25, 2022 in the Town of Newfane, County of Niagara and State of New York committed as follows:

A person commits the crime of Petit Larceny when such person steals property.

To wit: The defendant, on or about July 25, 2022, in the Town of Newfane, the defendant refused to give back to the owner a goldish brown steer with horns weighing approximately 700 pounds and a black heffer that weighed approximately 1400 pounds. The steer and heffer were property of Scott T. Gregson, who did not give defendant permission to take the cows.

This accusation is made upon information and belief, based upon the information gathered during the investigation of the New York State Police and the supporting depositions of Scott T. Gregson dated July 25, 2022 and July 26, 2022.

I have read this information with the understanding that any false statements made therein are punishable as a misdemeanor pursuant to Section 200.45 of the New York State Penal Law.

Dated: **January 24, 2023**
Lockport, New York


Laura T. Jordan
Assistant District Attorney

Subscribed and sworn
to before me on this 24th
day of January, 2023.



Notary Public

Leigh A. Braun
Notary Public, State of New York
Qualified in Erie County
My Commission Expires **11/23/2023**
Reg. No. **063633387**

SUPPORTING DEPOSITION (CPL §100.20)

PAGE 1 OF 2

NEW YORK STATE POLICE

THE PEOPLE OF THE STATE OF NEW YORK

- vs. -

TRACY A MURPHY

Defendant(s)

INCIDENT LOCATION:		LOCATION OF DEPOSITION:	
STATE OF NEW YORK	LOCAL CRIMINAL COURT	STATE OF NEW YORK	
COUNTY OF NIAGARA		COUNTY OF NIAGARA	
TOWN of NEWFANE		TOWN of NEWFANE	

On <u>07/26/2022</u> at <u>10:00 AM</u> I, <u>SCOTT T GREGSON</u>	Full Name:
Date of Birth <u>03/02/1979</u>	No. and Street <u>6547 MCKEE ROAD</u>
	CITY <u>NEWFANE</u> State <u>NY</u>

State The Following:

My name is Scott T. Gregson and I am speaking with Trooper Mazurek of the New York State Police regarding two missing cows of mine. I live at 6547 McKee Road in the Town of Newfane. Two of my cows went missing sometime between Friday July 15th at 11PM and Saturday July 16th at 2:30PM. I went to feed my animals and noticed that two of the three cows that I have were missing. I contacted the neighbors, started looking around, drove around looking myself, and contacted the Niagara County Sheriffs Department, the New York State Police, put it on social media, and utilized a friends drone in an attempt to find the missing animals. There was no damage to my fence, the power was on, and no visible signs on where the cows could have gotten out of the pasture. One cow is just over a year old, goldish brown, has horns, and is a steer. It weighs about 700 pounds and was not tagged. The other one is a black colored heifer that weighs approximately 1,400 pounds. It had a red tag in its left ear with the number 26 on it.

On Friday, July 22nd I received a phone call from Investigator Salisbury of the Niagara County SPCA advising me that the cows were at Asha's Farm Sanctuary on Coomer Road. The lady who runs the sanctuary is a Tracy Murphy and I have never met her before prior to this incident. Investigator Salisbury gave me Tracy's phone number and I spoke with her on the evening of Friday, July 22nd. Investigator Salisbury recommended that I wait until Monday to retrieve my cows so that either he or another representative from the SPCA could be present. Tracy said that she had the cows and we made arrangements for me to come today, Monday July 25th, to retrieve them. Over the weekend I was advised by two separate people, Ed Petilli and Shelby Dwyer, that a former employee of Tracy Murphy was going to

Notice

(Penal Law §210.45)

In a written instrument, any person who knowingly makes a false statement which such person does not believe to be true has committed a crime under the laws of the state of New York punishable as a Class A Misdemeanor.

Affirmed under penalty of perjury

this 25TH day of JULY, 2022

Scott T. Gregson
 (SIGNATURE OF DEPONENT)

- OR -

Subscribed and Sworn to before me

this ___ day of ___

Tracy A. Mazurek
 (NAME OF PERSON TAKING DEPOSITION)

Time Ended	07/26/2022	10:40 AM
------------	------------	----------

* This form need be sworn to only when specifically required by the court

SUPPORTING DEPOSITION (CPL §160.20)

PAGE 2 OF 2

NEW YORK STATE POLICE

State The Following:

local farms stating that Tracy had two cows on her property and she was not going to give them back and that she removed an ear tag from one of them, Shelby said it was a younger male with a beard driving a light colored pickup truck. To prevent any type of issue I contacted NYSP Lockport and requested a Trooper accompany me, in addition to the SPCA.

Today, July 25th I was accompanied by Trooper Mazurek and a representative from the SPCA, along with a few family members to go to the Farm Sanctuary on Coomer Road. We got there at approximately 9:30AM. I felt that Tracy was immediately hostile and refused to allow me access to my cows. Tracy requested that we leave and come back with a warrant and we left the premises.

I estimate the value of the black colored cow to be approximately \$3,000. The golden brown cow is estimated at approximately \$1,500. I obtained this value by the weight of the cow multiplied by \$2.20. If Tracy does not cooperate and allow me to retrieve my property once the SPCA obtains the warrant I would like to pursue criminal charges against her.

[A large handwritten signature or scribble, possibly 'LW', is written across the page.]

Notice

(Penal Law §210.45)

In a written instrument, any person who knowingly makes a false statement which such person does not believe to be true has committed a crime under the laws of the state of New York punishable as a Class A Misdemeanor.

Affirmed under penalty of perjury

this 29TH day of JULY, 2022

- OR -

Subscribed and Sworn to before me

this _____ day of _____

* This form need be sworn to only when specifically required by the court

[Handwritten signature]

(SIGNATURE OF DEPARTMENT)

[Handwritten signature] #2333

(OFFICER)

Tro. Andrew Mazurek

(NAME OF PERSON TAKING DEPOSITION)

Time Stamped
07/25/2022 10:40 AM

SUPPORTING DEPOSITION (CPL §100.20)

PAGE 1 OF 1

NEW YORK STATE POLICE

THE PEOPLE OF THE STATE OF NEW YORK

vs.

Defendant(s)

INCIDENT LOCATION:		LOCATION OF DEPOSITION:	
STATE OF NEW YORK LOCAL CRIMINAL COURT		STATE OF NEW YORK	
COUNTY OF NIAGARA		COUNTY OF NIAGARA	
TOWN of NEWFANE		TOWN of NEWFANE	

Date On 07/26/2022	at Time Started 11:00 AM	Full Name SCOTT T GREGSON
Date of Birth 08/02/1979	No. and Street 1847 MCKEE ROAD	CITY NEWFANE
		State NY

State The Following:

I am currently speaking with Investigator Herod of the New York State Police under my own free will regarding two missing cows of mine. I gave a deposition to Trooper Mazurek previously about this matter. After Trooper Mazurek left On 7/20/2022 ASHA'S Farm Sanctuary posted a video on Facebook. I watched the video observed the two cows in the video that she stated traveled onto her property. I can identify that these cows are mine by the video. I am able to identify the cows due to the fact that for over a year I have taking care of these cows on my property.

Notice

(Penal Law §240.42)

In a written instrument, any person who knowingly makes a false statement which such person does not believe to be true has committed a crime under the laws of the state of New York punishable as a Class A Misdemeanor.

Affirmed under penalty of perjury:

this 26TH day of JULY, 2022

Scott T. Gregson
 (SIGNATURE OF RESPONDENT)

-OR-

Subscribed and Sworn to before me

this _____ day of _____

WITNESSES

Wanda 2661
 (NAME OF PERSON TAKING DEPOSITION)

Time Ended	07/26/2022 11:20 AM
------------	---------------------

* This form need be sworn to only when specifically required by the court