

DANIEL M. HERRIGAN

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SUMMIT COUNTY
IN THE COURT OF COMMON PLEAS
CLERK OF COURTS

SUMMIT COUNTY, OHIO

TASER INTERNATIONAL, INC. and)	CASE NO. CV 2006-11-7421
CITY OF AKRON,)	
)	
Plaintiffs,)	JUDGE TED SCHNEIDERMAN
)	<i>Sitting by Assignment</i>
v.)	
)	
CHIEF MEDICAL EXAMINER OF)	
SUMMIT COUNTY, OHIO)	
a/k/a LISA DR. KOHLER, M.D.,)	
)	<u>FINAL ORDER PURSUANT TO</u>
Defendant.)	<u>OHIO REVISED CODE §319.19</u>

A trial commenced on April 20, 2008 regarding Plaintiff TASER International, Inc. and Intervening Plaintiff City of Akron's request for review of the Chief Medical Examiner of Summit County, Ohio a/k/a Lisa Dr. Kohler, M.D.'s (Chief Medical Examiner) cause and manner and mode of death determination related to Dennis S. Hyde, date of death January 5, 2005, and regarding TASER International's request for review of the Chief Medical Examiner's cause and manner and mode of death determinations related to Richard Holcomb, date of death May 28, 2005; and Mark D. McCullaugh, date of death August 20, 2006.

At the conclusion of the four-day trial on April 24, 2008, the Court requested that counsel submit proposed findings of fact and conclusions of law. After receiving those submissions, the Court took the issues under advisement.

The parties tendered joint stipulations of fact and also stipulated to most of the exhibits. The following are the stipulated and/or undisputed facts:

Generally

The electronic control devices used during all three incidents were TASER X26 devices (TASER Devices).

The human heart has a specialized electrical system that coordinates how the heart contracts. The heart is composed of four chambers (right and left atria, and right and left ventricles. Life-threatening ventricular arrhythmia, called "ventricular fibrillation" or "VF," occurs when there is a complete breakdown of the organization of electrical activity in the ventricles. VF is life-threatening and almost always requires an intervention (defibrillation) for termination. Loss of consciousness and pulse occur within seconds after the onset of VF. Regardless of the cause, the final common pathway leading to sudden cardiac death is most often VF. The Medical Examiner stipulates that none of the Decedents (Hyde, Holcomb or McCullaugh) died by the immediate induction of ventricular fibrillation ("VF") from the application of a TASER Device.

"Excited Delirium Syndrome", also known as "Agitated Delirium" is marked by symptoms such as incoherence, disorientation as to time and place, hyper stimulated behavior, increased strength, violence, irrational behavior, agitation, decreased sensitivity to pain and discomfort and high core body temperature.

Dennis Hyde

On January 5, 2005, City of Akron Officers John Ross and Anthony Kelley were dispatched to a burglary in process at approximately 6:00 a.m. to a residential home located at 965 Triplett Boulevard. A female at the home had reported hearing glass break and an intruder announcing to her that he was "the devil" and would kill her. The dispatcher informed these officers that the female occupant heard glass break and reported that someone was currently in her house telling her he was the devil and would kill her. The dispatcher coached the victim to let the police inside the residence. The victim, came down the steps to let the police in and was hysterical, screaming about where the suspect was in her house.

Upon arrival, Ross observed a house with a front porch light on and a broken front window, with a trail of blood along the front of the house and broken windows across the porch. At this point, Officers

Kelley and Ross split up, with Kelley taking the back perimeter of the house. Ross called for back-up and shortly thereafter Akron Officer Achberger arrived solo on scene.

Then, the lights went out in the house. Officers Achberger and Ross followed the blood trail from the living room, dining room, and into the kitchen. Peering down the basement stairs with his flashlight, Ross noticed several stairs to a landing where a door exited to the back yard and several more stairs leading to the basement. He then noticed a pool of blood on the landing, as if someone had paused there for a while. Officer Ross, with Achberger following, descended the basement steps with weapons drawn and only Ross' flashlight for illumination because there were absolutely no lights in the house that worked.

Upon scanning the basement, Ross observed the suspect's right arm partially sticking out from behind the furnace. All Officer Ross could discern was a bloody arm. He could not see the suspect's entire body, later identified as Dennis Hyde, because of the waist-high debris and the obstruction from the furnace. The officers were approximately 10-15 feet from Hyde watching with their flashlights for lighting. Hyde paced before them going side to side at an 8-10 feet interval. Ross, who is a trained Critical Incident Officer (CIT), tried to verbally talk the suspect down, but to no avail.

Akron police officers Yurick and Horvath heard the dispatch over the radio and later responded to 965 Triplett Boulevard. Officers Yurick and Horvath also followed the trail of blood through the inside of the residence, including the living room, dining room and kitchen. While in the basement, Hyde began ranting about being the devil, that he was going to take the officers to meet his maker, and that they were all going to die and go to hell. Hyde also weirdly began projectile vomiting at Officers Ross and Achberger. Hyde would tell them he was going to vomit, then, at will, projected the vomit at them. Hyde told the officers he had a gun and he was going to kill them. Since the officers could not see his hands or below his waist, they retreated to the stairs for cover and tried to conceal themselves for safety. Eventually, Hyde pulled his left hand out from behind his back which made it visible. Officer Ross now could see Hyde had no gun in either hand and informed the other officers. Officers Yurick and Horvath then moved down to the bottom of the stairwell in front of Officer Murphy because they both had TASER Devices.

Officer Ross repeatedly ordered the suspect to continue showing his hands and keep his hands above his head. However, the suspect did not listen. Instead, Hyde raised up one of his hands, but with a vase in his

hand, cocked to throw. Officer Ross did not see any visible injuries but the suspect had blood all over his shirtless torso. Officer Ross, at this point, handed off his flashlight to Officer Jackson who was standing on the landing and instructed Jackson to keep the flashlight on the suspect. Officer Ross then waded through the clutter and moved toward the center of the basement with the taser in his left hand and firearm in his right. A laser sight from the TASER Device was on the center mass of Hyde about 10 feet away from Officer Ross. Ross and other officers commanded the suspect to drop the vase, put his hands above his head, then get on the ground. The suspect obeyed none of these verbal commands and remained behind the debris.

With Hyde unresponsive to anything and holding a potential weapon (vase), for officer and victim safety, Ross determined it was best to apprehend him as quickly as possible to end the threat of violence. When Hyde had the vase cocked up as if to throw it and was pacing, Ross aimed his taser at center mass and deployed it. The two TASER Device prongs hit Hyde's front chest. Initially, it appeared there had been a successful application. Ross stayed back while his partner Officer Achberger moved in toward Hyde to apprehend him.

Although Hyde fell to the ground after Ross' initial TASER Device application, he thereafter vaulted back up and started growling. Hyde was still holding the vase as Officer Achberger approached to handcuff Hyde, and then Hyde threw the vase in Achberger's direction. At this point, Achberger had neared to within 3-5 feet of Hyde. The vase hit the basement ceiling and shattered with glass going everywhere. The officers bumped into one another as they retreated in order to avoid being hit by the objects that Hyde began to throw.

Hyde was now completely out of control, screaming and yelling. Hyde was grabbing things such as boxes, a window air conditioning unit, glass and metal globes from a chandelier and overturning things within his reach. There was no way officers could safely move in with Hyde's violent behavior and the physical obstructions from all the debris in the basement. In the center of the basement was a mound of debris and as the officers were scattering and ducking from the objects being thrown, Officers Yurick and Horvath, approximately 7 to 10 feet from Hyde, applied their TASER Devices. Horvath had a clear frontal shot. Officer Ross, additionally, applied his TASER Device from his location. The three TASER Devices were deployed in rapid succession.

Horvath only knew he heard the sound, but did not know whether these other two TASER Devices actually hit Hyde. Hyde backed up,

bending at the knees, and fell backwards onto boxes. Horvath acknowledges that all he could state with confidence is how many times he pulled the trigger - he cannot state whether these trigger pulls were effective or whether Officers Ross and Yurick even made contact with their TASER Devices and were effective. Officer Yurick stated he saw his partner, Officer Horvath, cross in front of him after Hyde started throwing objects and fire his TASER Device. Yurick states he then fired his TASER Device but did not know Ross had deployed. Then, Officer Murphy looked for a fuse box in the basement with his flashlight and found it with all the switches off, with blood on the box. Finally, all the lights came on.

Other officers then moved in to handcuff Hyde. The officers gave verbal commands for Hyde to stop fighting and told him the officers were there to help him. The TASER Devices were deployed again. New prongs were not fired, but rather the officers pulled the trigger on the already deployed TASER Device.

Once officers had their hands on Hyde, Ross removed his second cartridge and used the TASER Device as a drive stun directly to the skin to enable the other officers to handcuff Hyde. Officers Yurick and Horvath moved debris out of the way so that other officers could take Hyde into custody. Officer Achberger secured Hyde's right hand and cuffed it and Officer Murphy grabbed his left arm to put Hyde on his stomach to cuff him. However, Hyde continued to kick his legs and roll side to side.

EMS moved in to treat Hyde's wrist, although he was still kicking and stating that he was going to kill the officers. Hyde was still moving. At this time, a call was made for shackles because Hyde's legs were still not under control. As the officers were attempting to place Hyde in shackles, he continued to fight, so Officer Horvath applied drive-stuns to Hyde's left thigh and calf to gain control to accomplish shackling. At this point, Hyde was still making sounds.

Officer Yurick describes Hyde's behavior after handcuffing and shackling. Yurick states: "Officer Mousetes was starting to pick this guy up . . . he, his face looked over by where I was and said "oh thank you, thank you you're sending me home." Yurick describes in his interview how eerie this was and how vividly he remembers that point.

Officers Mousetes, Achberger, Murphy and Jackson carried Hyde to the bottom and up the basement steps. At some point during that process, Hyde stopped actively resisting. Officer Achberger, one of the

four officers carrying Hyde to the stairs and up to the gurney, stated Hyde was conscious, breathing and talking -- on the way to the bottom of the steps Hyde was thanking the officers for doing this or something like that. At the bottom of the steps before they ascended, he was silent from that point.

Dr. Sterbenz performed the autopsy on Hyde and prepared the autopsy report that Dr. Kohler signed. In the Medical Examiner's cause of death statement, Dr. Sterbenz listed: "Probable cardiac arrhythmia. Due to: Acute methamphetamine intoxication and electrical pulse incapacitation with psychiatric disorder with agitated behavior; and "Blood loss by arterial injury as the cause of death." Dr. Sterbenz explained under oath, "This means that it is my opinion that TASER [Device] is not an independent cause of death in the death of Hyde. And I don't have an opinion as to if it is the primary cause of death in Hyde.

The Medical Examiner found that Hyde had a deep laceration of the wrist that severed an artery. Hyde had blood loss by arterial injury. The Medical Examiner found incised wounds of Hyde's left wrist, indicating: "The 4.5 centimeter defect has slightly jagged and irregular margins," which Dr. Kohler admits could be fatal if left untreated.

Hyde was indisputably acutely intoxicated on prescribed and illegal drugs. At the time of death, Hyde had Oxycodone and methamphetamine in his system. Methamphetamine is a powerful stimulant that affects the central nervous system. Side effects may include convulsions, dangerously high body temperature, cardiac arrhythmia, irregular heartbeat, increased blood pressure, and death. A toxic reaction or overdose can occur at relatively low levels of methamphetamine. Hyde was a chronic substance abuser (methamphetamine).

The Medical Examiner accepted the citation of the TASER Device because it was used near the time of Hyde's death. Dr. Sterbenz has no opinion, to a reasonable degree of medical certainty, as to how the TASER Device purportedly contributed to Hyde's drug-induced death. Dr. Sterbenz has never been involved in any clinical trials, studies, experiments or activities where there was an attempt to measure physiological stress—and he cannot identify anyone else's studies showing physiological stress. Dr. Sterbenz admits that physiologic stress is not measurable at the time of autopsy. Dr. Sterbenz admits that there were other physiological stresses on Hyde, many not listed in the Medical Examiner's Report of Autopsy. Dr. Sterbenz cannot render any opinion as to the amount of the supposed physiological stress that the TASER Device imparted to Hyde.

The Medical Examiner cannot determine how many TASER Device applications reached Hyde. The Medical Examiner is not certain as to how much time passed from the last TASER Device application until Hyde went into cardiac arrest. Dr. Sterbenz agrees that the longer the period of time from the last application until arrest the less likely it is that a TASER Device contributed to Hyde's death.

Dr. Sterbenz is unable to state what period of time from deployment until cardiac arrest implicates a TASER Device. Hyde may not have survived regardless of the TASER Device Deployment and Dr. Sterbenz cannot state, to a reasonable degree of medical or scientific certainty that Hyde would have lived had the police not encountered him that day.

Richard Holcomb

On May 28, 2005, the Springfield Township Police Department responded to a call about trespassing. The homeowner had seen figures running and heard screaming on her property.

After the homeowner called the police, only one remained, and he was jumping up and down like he was on a pogo stick. Springfield Police Officer Kristina Albrecht arrived and radioed in at approximately 12:54:47 a.m. After hearing screaming, Officer Albrecht told her sergeant that she believed "the subject was on 90, which is drugs," and that she "needed a 10, which is backup."

After hearing screaming, Officer Albrecht shined her flashlight on the subject who appeared to be swinging a baseball bat, although he did not have a bat. Holcomb was found in an fenced horse pasture, near a horse barn. Per Officer Albrecht, "He didn't respond to anything I was saying, didn't understand what I was saying and was muttering different things that I couldn't understand.

Holcomb then walked over towards the fence still screaming, arms flying all over, muttering different things as Officer Albrecht asked him numerous questions. While running around erratically, Holcomb admitted that he had been drinking and was on drugs, but he largely remained incoherent and non-responsive. After Holcomb moved away from Officer Albrecht, she entered the fenced pasture.

Officer Albrecht continued to try to talk to Holcomb while waiting for her backup. Holcomb then started "rapping" with his arms flying and then suddenly ran up the hill at Officer Albrecht. Officer Albrecht

considered Holcomb to be a threat. Officer Albrecht gave Holcomb verbal commands to stop. She was backing up as he was running towards her and then applied her TASER Device.

Officer Albrecht estimates the time from arrival until Holcomb sat down on a bench near the barn as 4-5 minutes. Officer Albrecht estimates that 10-20 seconds elapsed from the time that Holcomb was sitting on the bench until she deployed the TASER Device the first time. Officer Albrecht radioed dispatch after she first deployed her TASER Device.

On the radio at 1:02:16 a.m., Officer Albrecht indicated that subject had been "Tased." That radio call-in was at 1:02:16 a.m. and is reflected on the TASER Device printout from the Springfield Township's computer as 00:57:09. Dispatch recorded Officer Albrecht's call-in at 1:02:16 a.m.

Holcomb fell to the ground on his stomach, but then rolled over and proceeded to get up. Holcomb's eyes were open, "he was trying to get up." Officer Albrecht then deployed her TASER Device shortly after the first deployment. After last TASER Device deployment, Holcomb was still on the ground moaning, breathing, and making noises.

Upon arrival at the scene, Springfield Police Officer Jason Moore found Officer Albrecht standing with the TASER Device aimed at Holcomb. Holcomb was lying on his stomach. Springfield Police Officer Moore handcuffed Holcomb, who was not wearing a shirt. At that time, Officer Moore noticed that Holcomb's arms were locked. Holcomb was breathing and was moving on his own free will, moaning and making noises. Officer Moore told Holcomb to give him his hand and Holcomb stiffened up his arm.

Dispatch recorded Springfield Police Sergeant Joseph Gaffney's arrival at 1:05:22 a.m. Sergeant Gaffney saw Officer Albrecht standing to the side and Officer Moore with Holcomb lying against him, "as far as he was on his side, kind of sitting on his rear, laying against Officer Moore." Holcomb was handcuffed from behind. The muscles in Holcomb's chest and arms flexed, Holcomb's eyes were open, and Holcomb looked alert. Officer Albrecht reported to Sergeant Gaffney what happened. While they were talking, Sergeant Gaffney noted that Holcomb's mouth "started dropping." Sergeant Gaffney asked Holcomb for his name and then requested Officer Moore to look in Holcomb's pocket for identification. Officer Moore moved to comply and Holcomb slid down and Sergeant

Gaffney saw his eyes start to roll back and his mouth started to open. Sergeant Gaffney subsequently did not find a pulse.

Dr. Dean handled Holcomb's autopsy, which Dr. Kohler approved. With respect to the final autopsy report issued in the matter of Holcomb's death, Dr. Kohler admitted that Dr. Dean was more knowledgeable about the findings and opinions in the report than she was. Dr. Dean drafted the report and performed the Holcomb autopsy. Dr. Kohler's signature on Holcomb's report does not represent that she had undertaken the same level of investigative work that the assigned pathologist undertook. Dr. Dean did not speak with any witnesses who were the scene prior to and leading up to Holcomb's cardiac arrest.

The Medical Examiner's Office agrees that Holcomb was in a state of drug-induced psychosis and that he was in a state of drug psychosis before the TASER Device was applied.

Dr. Dean explained [at her deposition], "Drug-induced psychosis is a condition whereby a person who behaves in this way later succumbs to cardiopulmonary arrest because of the drugs in his blood stream which were present." Dr. Kohler testified [at her deposition] that the drug-induced psychosis was not caused by an electronic control device, but rather methamphetamine and Ecstasy. Dr. Dean agrees that chronic use of stimulants, such as methamphetamine and Ecstasy, cause damage to the cardiovascular system, and Methamphetamine has been found to cause sudden death.

Dr. Dean did not render the opinion that any TASER Device application, alone or in conjunction with others, resulted in VF in Holcomb. Dr. Dean admits that she is not an expert concerning how long after a TASER application one could conclude that the TASER Device was a contributing factor.

Dr. Dean speculate[d] [at her deposition] that the TASER Device application "contributed to [Holcomb's] death in some way, in some manner, to some extent." She stated [at her deposition], "How much, I don't know. I can't know." Dr. Dean admits that the phrase "to some extent" in her autopsy report is not a precise medical term and that she is unable to say to what extent.

Dr. Dean is unable to say, to a reasonable degree of medical certainty, the mechanism by which electrical impulse delivered by the TASER Device contributed to Holcomb's death.

Neither Dr. Dean nor Dr. Kohler can state that, but for the TASER Device application, Holcomb would have lived. Specifically, Dr. Kohler testified [at deposition]:

Q. . . . Do you have any scientific, medical or engineering proof to support an opinion that application of the TASER device contributed to Mr. Holcomb's death?

A. No.

Dr. Kohler did not share Holcomb's autopsy report with any outside doctors or other professionals for any peer review prior to its issuance. And in neither the Hyde nor the Holcomb matters did Dr. Kohler consult any cardiologist or electrophysiologist.

Neither Dr. Dean nor Dr. Kohler could state to a reasonable degree of certainty the length of time between the TASER Device deployment and Holcomb's cardiac arrest. Dr. Dean could not, under oath, state to a reasonable degree of medical certainty, that it was less than one minute, less than five minutes, less than ten minutes, or even less than 15 minutes, from the time of the last TASER Device application until Holcomb went into arrest. Dr. Dean has no opinion as to Holcomb's cardiac rhythm after each TASER Device deployment.

Mark D. McCullaugh

McCullaugh was in custody in the county jail. McCullaugh was arrested by the Akron Police Department on August 7, 2006 for assault on a police officer, disorderly arrest, and disorderly conduct. On the evening of his death, McCullaugh, who had a history of mental illness, was reportedly pacing in his cell naked (wearing only socks) and l, wounding himself.

In an effort to subdue McCullaugh, a deputy or deputies applied a TASER Device to McCullaugh. McCullaugh was then handcuffed and shackled; later he was reportedly given two injections by Nurse Denise Walsh, one of Geodon and one of Ativan. A number of minutes later, McCullaugh was found to be unresponsive and not breathing.

Dr. Sterbenz has no idea whether McCullaugh was breathing at any point in time after the last TASER Device application. Dr. Sterbenz has no idea whether McCullaugh was grunting or whether McCullaugh was resisting in any way at any point in time after the last TASER Device

application. Dr. Sterbenz claims that the precise timing of the TASER Device discharges cannot be precisely known in regard to the incident involving McCullaugh.

Information from the TASER Device was downloaded showing the time duration of the trigger being pulled on the TASER Device. Dr. Sterbenz admits that the discharge download information does not reflect successful target victim discharges resulting in electromuscular incapacitation. It reflects only that the trigger was pulled and that that was recorded by the download data on the device. Dr. Sterbenz does not know exactly when the last TASER Device application occurred. Similarly, Dr. Sterbenz does not know how long it was from the last TASER Device application until McCullaugh's cardiac arrest.

McCullaugh was obese and had liver changes likely due to his obesity. McCullaugh had a history of psychiatric illness. Dr. Sterbenz performed the autopsy for the McCullaugh death. In a report signed by Dr. Kohler on October 12, 2006, the Medical Examiner placed the cause of McCullaugh's death as asphyxia by mechanical, chemical and physical restraint.

No underlying causes were listed. The time interval between onset and death was listed as 'minutes.' Similarly, the time interval between the sequential conditions and asphyxia was listed as 'minutes.' Dr. Sterbenz does not know exactly how many TASER Device applications reached McCullaugh. Dr. Sterbenz has not opined on the duration of any TASER Device applications on McCullaugh's body on the date of his death. Dr. Sterbenz cannot render an opinion regarding "volts of exposure." Dr. Sterbenz did not review any eyewitness interviews related to the McCullaugh death.

The Court has carefully considered the testimony, the many exhibits, the statements of counsel, and their proposed findings of fact and conclusions of law. There is simply no medical, scientific, or electrical evidence to support the conclusion that the TASER X26 had anything to do with the death of Dennis S. Hyde, Richard Holcomb, or Mark D. McCullaugh. The Medical Examiner failed to present any evidence on the use and effect of TASER Devices.

Even though the Medical Examiner's conclusions are entitled to much weight, and assuming a nonbinding presumption in favor of the Medical Examiner, the Plaintiffs have proven

their claims for changing the reports of autopsy and death certificates on the three individuals by more than a preponderance of the evidence. The multiple number of experts offered by the Plaintiffs in the area of sudden and unexpected death while law enforcement attempted to obtain custody, provided overwhelming credible medical and scientific evidence to support their positions.

The experts provided evidence that Dennis S. Hyde and Richard Holcomb probably died as a result of a fatal cardiac arrhythmia due to acute illicit drug intoxication creating crazed states consistent with "Excited Delirium Syndrome," also known as "Agitated Delirium." Also, with Hyde, blood loss by arterial injury was a contributory cause. The TASER Devices had nothing to do with their deaths.

As it relates to the death of Mark D. McCullaugh, the testimony and the exhibits presented by the Plaintiffs' experts demonstrated that the TASER Devices did not cause, nor did they contribute to asphyxia as found by the Medical Examiner. More likely the death was due to a fatal cardiac arrhythmia brought on by severe heart disease, his schizophrenia, the struggle, and possibly the Geodon injection. There was no expert evidence to indicate that TASER Devices impaired respiration.

IT IS ORDERED AND ADJUDGED that Judgment is GRANTED in favor of Plaintiff, TASER International, Inc., and Intervening Plaintiff City of Akron, Ohio.

IT IS ORDERED, ADJUDGED AND DECREED that as provided in Ohio Revised Code Section 313.19, Dr. Lisa Kohler as Chief Medical Examiner of Summit County, Ohio is directed to change the reports of autopsy and death certificates of Dennis S. Hyde, Richard Holcomb, and Mark D. McCullaugh as follows:

Dennis S. Hyde: The death shall be ruled "Accidental" and any reference to "Homicide" or contributing factor of electrical pulse incapacitation shall be deleted from both the Death Certificate and Report of Autopsy.

Richard Holcomb: The death shall be ruled "Accidental" and any reference to "Homicide" or contributing factor of electrical pulse incapacitation shall be deleted from both the Death Certificate and Report of Autopsy.

Mark D. McCullaugh: The death shall be ruled "Undetermined" and any reference to death by "Asphyxia due to the combined effects of chemical, mechanical and electrical restraint," as well as any reference to "Homicide" due to "multiple restraint mechanisms with beating and anal penetration" shall be deleted from both the Death Certificate and the Report of Autopsy.

IT IS FURTHER ORDERED that the Court retain jurisdiction to ensure that the Summit County Medical Examiner makes the changes to the death determinations on the three individuals as directed herein.

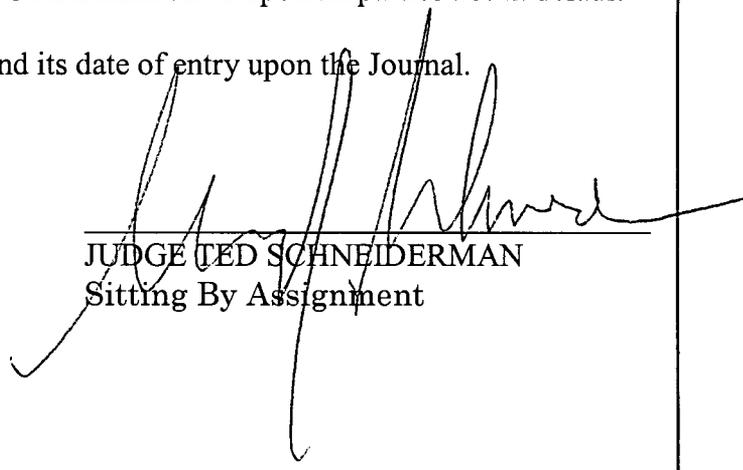
FINALLY, IT IS ORDERED that each party shall bear its own costs and fees in this matter.



JUDGE TED SCHNEIDERMAN,
Sitting By Assignment

cc: Attorney John R. Maley
Attorney R. Scott Harvey
Attorney Michael J. Defibaugh
Attorney Patricia Ambrose Rubright
Attorney John F. Manley

Pursuant to Civ.R. 58(B), the Clerk of Courts shall serve upon all parties not in default for failure to appear notice of this Judgment and its date of entry upon the Journal.



JUDGE TED SCHNEIDERMAN
Sitting By Assignment