2021-04-02

36170 Realty Ltd. v. Boyd

CIVIL COURT OF THE CITY OF NEW YORK
COUNTY OF KINGS: PART 52

36170 REALTY LTD,

Petitioner,

INDEX NO. 56347/2011

-against-

DECISION/ ORDER

HON. KATHERINE A. LEVINE
Justice Supreme Court

MICHAEL BOYD,

Respondent-Tenant

Petitioner 36170 Reality Ltd. ("petitioner" or "landlord") brings this holdover proceeding to evict respondent tenant against Michael Boyd ("respondent" or "Boyd") and to recover a rent-controlled apartment (Apt. 3A) located at 36 Clark Street, Brooklyn in which Boyd currently resides. Petitioner commenced this action upon the death in 2010 of Boyd's mother, Elizabeth Boyd, who was the tenant of record, contending that Boyd was not entitled to succeed to the statutory rights of his mother since she was merely a licensee.

This case raises novel issues of interpretation regarding the exception to 9 NYCRR §2204.6(d)(1). Under New York City's rent stabilization and control regulations, a family member who has resided with a rent-controlled tenant for at least two consecutive years prior to the tenant's death may claim succession rights to the tenancy. 9 NYCRR § 2204.6(d)(1); *90 Elizabeth Apt. LLC v Eng*, 58 Misc. 3d 300, 301 (Civ. Ct. N.Y. Co. 2017). However, §2204.6(d) contains exceptions to this two year residency requirement. It provides that the minimum period of required residence shall not "shall not be deemed interrupted by any period during which the "family member" temporarily relocates because he ...(c)"is not in residence at the housing accommodation pursuant to a court order not involving any term or provision of the lease, and not involving any grounds specified in the [RPAPL]" 9 NYCRR § 2204.6 (d)(1)(iii). At issue is whether the conditions of Boyd's parole and supervised release fall within the meaning of a "court order" and, if so, whether these conditions of parole arose out of any activities which fell within the scope of Real Property Actions and Proceedings Law ("RPAPL"), §§ 711 and 715 which prohibit any part of the premises from being "used or occupied as a bawdy-house, or house or place of assignation for lewd persons, or for purposes of prostitution, or for any illegal trade or manufacture, or other illegal business."

Respondent asserts that he is entitled to succession rights because he resided with his mother until his incarceration in May 2002, and that after his release from prison and parole, he resumed his residency with his mother in 2009. He therefore falls within the exception to the two year residency requirement governing succession rights, as contained in 9 NYCRR §2204.6(d), because the conditions of his parole, requiring him to stay away from his mother's apartment for part of the two year period immediately

before his mother's death, was part and parcel of the underlying court order and criminal conviction. Petitioner counters that conditions of parole are not equivalent to a court order since Boyd's agreement to stay away from his mother's apartment was "voluntary" and had nothing to do with his criminal conviction. It further argues that regardless of the legal meaning of the conditions of parole, as a matter of law Boyd could not succeed to the tenancy since he engaged in "illegal trade, manufacture, or other illegal business" as prohibited by §§ 711 and 715 of the RPAPL. Respondent counters that Boyd's criminal conviction of a sex act involving a minor, and burglary, did not fall within the intent of RPAPL §711(5) , which is commonly referred to as the "bawdy house, illegal use or drug house" statute.

As will be detailed below, this Court reaffirms its previous ruling that the conditions of parole are part and parcel of a court order, and that in order to be on parole Boyd had to accept the conditions offered by the Parole Board. Therefore, Boyd's absence from the apartment was a mandatory condition of parole and fell within the exception to the residency requirement provided by 9 NYCRR § 2204.6 (d)(1)(iii). However, respondent cannot reap the benefit of this exception without having the court also probe into the incidents leading to the parole order which mandated that Boyd could not reside in his mother's residence. Since the parole conditions flowed ineluctably from the sentence, which contained an order of protection for eight years, this court concluded that the parties could present evidence of the underlying conduct which led to the sentence and order of parole.

The court also finds that Boyd used both his mother's apartment and the entire premises, including the roof of the building, to manufacture a

technological apparatus which enabled him to constantly tape a minor engaging in sexual conduct for about a year and view her in "live time" on his camcorder in or about his mother's apartment, He also used the apartment to create multiple tapes of the minor. He therefore used his apartment to engage in illegal manufacturing or business for more than "an isolated use" and his activities fell within the prohibitions listed under RPAPL §§ 711 and 715 so as to defeat any claim to succession rights. Furthermore, Boyd's actions constituted a modern day version of using the premises for lewd and immoral conduct which also defeated any claim to succession rights

Procedural History and Basic Facts

History of Criminal Action

By a lengthy decision and order dated November 21, 2001, Judge Patricia DiMango ruled on defendant's motion to suppress evidence. Dimango first set forth that Boyd was charged with burglary in the second degree (Penal Law §140.25 (2) on two separate dates and five counts of possessing a sexual performance by a child in violation of Penal law §263.16. Judge DiMango first recited the testimony of the two apprehending police officers who decided to search Boyd's knapsack after observing him engage in strange behavior. The officers removed a "Sony Digital Handycam" camera with a fold out LCD screen which depicted six pictures of a female lying naked in bed. The camera also contained a video cassette tape of a female masturbating. The police officer handcuffed and frisked Boyd and brought him to the precinct without telling him if he was under arrest.

While in custody, Boyd admitted that he had additional video tapes of the girl at the apartment. The detective and officers went to the apartment and Boyd gave the officers a plastic bag filled with video tapes, covering a period of almost one year, which depicted a naked girl lying in bed and masturbating. Boyd also had "a VCR with a television set and a computer monitor with a CPU tower, which appeared to contain a porthole for eight-millimeter tapes." Subsequently, one of the officers returned to the premises with a search warrant. Upon executing the warrant, he recovered the CPU unit, CD-ROM disks, floppy discs, pornographic magazines, and what appeared to be VHS tapes and other tapes. Soon thereafter, a detective discovered the identity of the female on the video tapes, and proceeded to the minor female's apartment where the door was answered by her father. After being shown the images from the camera, the father identified the images on the tape as being of his daughter (14 years of age) and the room in the picture as her bedroom. He recounted to the police that several weeks earlier his daughter had complained that she thought she had seen a camera outside her window which was on the top floor of the building.

Defendant sought to suppress all of the physical evidence obtained from the time of the street encounter through and including the return of the search warrant, and also sought to suppress statements he made to the police at the station house because he was not informed of his Miranda warnings. He claimed that all of the evidence was improperly obtained pursuant to illegal searches and seizures and be suppressed as fruit of the poisonous tree after the police acted improperly when they initially approached him as he sat on a stoop in Brooklyn.

Judge DiMango first found [1] that Boyd's initial reactions upon countering the police on the stoop gave rise to a "founded suspicion that criminal activity was afoot" and elevated the encounter to the "common law right to enter." The search of the plastic bag was necessary as the police could not rule out the presence of a gun, although the officer thereupon discovered that the "gun" was in fact a video camera simultaneous with his seeing the six pinhole pictures. The images thus came into "plain view" through no police misconduct and the police officer properly investigated the identity and whereabouts of the female and properly seized the camera. Since the police came into possession of the camera in a lawful manner, the court denied suppression of the camera of any of its contents.

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Judge Dimango also found that the police officer's discussion with Boyd at the precinct to find out the name and location of the teenage female was proper under the "public safety" exception to the Miranda rule, given the officer's concern for the welfare of the teenager. The detective did not attempt to elicit evidence of a crime but attempted to ascertain the minor's status. However, after returning from his visit to the house where the minor resided, the detective's further questioning of Boyd constituted "custodial interrogation" as his purpose was to elicit information about the crime. Although Boyd refused to listen to the Miranda warning, the court found that there was no reason why the police did not continue to apprise Boyd of his rights before continuing their interrogation. As such, Judge Dimango found that any interrogation which took place at this point was unconstitutional and all the evidence which flowed from such interrogation had to be suppressed as "fruits of the illegal interrogation."

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[1]This opinion will only briefly discuss Justice DiMango's decision on suppression of evidence since this court concludes, infra, that such suppressed material may be introduced in this civil proceeding.

This included defendant's statements and the tapes that the police recovered from Boyd's apartment as well as all the evidence recovered pursuant to the execution of the search warrant.

As will be set forth below, the scope of the evidence recovered from Boyd's apartment, much of which was suppressed in Judge DiMango's decision, are quite relevant to a determination as to whether Boyd engaged in "illegal trade, manufacture, or other illegal business" as prohibited by §§ 711 and 715 of the RPAPL.

The Certificate of Disposition Indictment, dated June 4, 2010, indicates that on April 10, 2002, Boyd was convicted, after a bench trial before the Hon. J. Firetog, of the crime of "Possessing a Sexual Performance by a Child in violation of Penal Law ("PL") 263.16 (an E Felony) relating to 17 tapes found in his apartment which depicted a naked 14 year-old neighbor lying in her bed masturbating. Judge Firetog also convicted Boyd of Burglary in the 2d Degree in violation of PL 140.25 -(a C Felony) for breaking into the victim's apartment on two dates and installing a video camera in the air conditioner in the victim's bedroom. On May 29, 2002, Justice Firetog sentenced Boyd to imprisonment of one to three years, and issued an order of protection of eight years for the crime of Possessing a Sexual Performance by a Child. Justice Firetog also ordered imprisonment of five years for the crime of Burglary in the 3d degree and stated that there would be Post- Release Parole Supervision for three years.

On or about September 5, 2006, Boyd was granted parole. Boyd's release from prison was conditioned upon his acceptance of 26 conditions, violation of which would result in his reimprisonment. One of the conditions

prohibited Boyd from visiting his mother's apartment because of its proximity to the minor victim's apartment. This was the only reason that Boyd did not return to live in the apartment immediately after his release from prison. On or about September 5, 2009, upon completion of his parole term, Boyd began living in the apartment with his mother again. Boyd's mother died on December 27, 2010, at which point Boyd had lived in the apartment for about one year and four months

Petitioner brought a Holdover Petition against Boyd in Civil Court Housing Court seeking to recover possession of the subject apartment, and thereafter moved for summary judgment on the grounds that Boyd did not reside at the subject premises as his primary residence for the two years immediately preceding the death of his mother. Respondent asserted the same defenses raised herein - that Boyd fell within the exception to the two period pursuant to 9 NYCRR §2204.6(d). By Order dated September 10, 2012 , Judge Lansden denied the motion for summary judgment, finding that there was a dispute as to whether the parole officer actually "ordered" Boyd to stay away from the residence. He also found that a question of law existed as to whether the parole officer's orders were analogous to incarceration, and whether these instructions or orders "curtailed the free will of the parolee." The court also noted that irrespective of the exceptions listed in the statute, the courts have analogized certain situations such as incarceration or placement in a psychiatric institution to meet the requirements of court order. Based upon this decision, petitioner requested a jury trial[2] and the case was transferred to Civil Court. Four years were consumed by motion practice over a myriad of issues too voluminous to reiterate herein.

[2]At the urging of the court, petitioner at some point withdrew his request for a jury trial.

Whether the Conditions of Parole are Tantamount to Court Order

This court first ruled that once a landlord has shown that the tenant of record has died in a holdover proceeding involving a rent-controlled tenant, the burden then shifted to the party claiming succession rights (here Boyd) to present legally sufficient proof to "establish contemporaneous residency with the tenant." *Pavel v Fischer*, 2008 N.Y. Slip Op 52452[U], *3, 21 Misc. 3d 143[A] (App Term 2008) *citing Gottlieb v Licursi*, 191 A.D.2d 256 (1st Dept 1993). Petitioner clearly proved that Mrs. Boyd died and that Boyd did not reside in the premises for the two years immediately preceding her death. "Thus, Boyd bears the burden of establishing his residency and showing that his absence from the apartment was pursuant to a court order not involving any term or provision of the lease, and not involving any grounds specified in the RPAPL." The court also ruled that a landlord could bring a proceeding to evict under the RPAPL for illegal conduct at any time.

Throughout the duration of the trial, petitioner persisted in arguing that the "court order" exception does not apply to Boyd's absence because the terms of Boyd's parole and supervised release were a "voluntary" absence pursuant to an administrative determination by the Department of Parole and, thus not a court order. Petitioner further asserted that a court order can only be written by a judge whereas the special conditions of Boyd's parole were promulgated by the Parole Board, an administrative agency outside the control of any court and collateral to any court order. To that end, Boyd's parole conditions did not amount to a court order

because the collateral consequences of a criminal sentence, which include conditions of parole, are not a court order (*citing People v Stevens*, 91 N.Y.2d 270 (1998) (post-release and registration requirements for sex offenders are distinct from criminal sentence).

Boyd claimed that he is entitled to succession rights because the terms of his parole and post release supervision were part of a court order which is a "direct consequence" of his criminal conviction, which has a "definite, immediate and largely automatic effect on defendant's punishment," as opposed to a "collateral consequence" which is peculiar to the individual and generally result from actions taken by agencies the court does not control. Citing to *People v. Catu*, 4 N.Y. 3d 242 (2005) and *People v. Ford*, 86 N.Y. 2d at 403 (1995), Boyd argued that the Court of Appeals considered a parolee a warden of the state because "parole neither extends nor shortens a criminal conviction." The condition that Boyd stay away from his mother was mandatory because under the parole agreement, if he violated this condition he would be returned to the legal custody of the warden in prison.

Parole proceedings are considered to be a phase of the criminal proceeding. *Penn. Bd. Of Probation and Parole v. Scott.* 524 U.S. 357, 365, 141 L. Ed 2d 344 (1998); *United States v. Medrano*, 2012 U.S. Dist. Lexis 104700 (S.D.N.Y. 2012). "Parole is a "variation on imprisonment of convicted criminals,(*Morrissey v. Brewer*, 408 U.S. 471, 477, 33 L. Ed. 2d 484 (1972),) which is part of a "continuum of state- imposed punishments." *Robinson v. N.Y. State*, 2010 U.S. Dist. LEXIS 144553 (N.D. N.Y. 2010) *citing to Samson v. California*, 547 U.S. 843, 850, 165 L. Ed 2 250 (2006). "The essence of parole is release from prison, before the completion of sentence, on the condition that the prisoner abide by certain

rules during the balance of the sentence,'' *Morrisey, supra*, 408 U.S. at 477. The State ''accords a limited degree of freedom in return for the parolee's assurance'' that he will comply with the strict terms and conditions of his release.'' *Scott, supra*, 524 U.S. at 364. The enforcement leverage that supports the parole conditions derives from the authority to return the parolee to prison to serve out the balance of his sentence if he fails to abide by the rules.'' Id at 478-68; *Robinson v. N.Y. State, supra* at 11. *See also, People ex rel. Petite v Follette*, 24 N.Y.2d 60, 62-63 (1969) (''(T)he Parole Board may ameliorate the conditions of his sentence by allowing him to serve the remainder of it outside the walls of the prison on parole. While a prisoner is on parole, his sentence continues to run until its maximum term has expired. However, if a prisoner commits some violation of the conditions of his parole,... the running of his sentence is halted until his return to prison where he may be required to serve the maximum amount of his sentence remaining...'')

The general statutory scheme which inextricably intertwines the Department of Correctional Services with the Division of Parole was succinctly described in *Mtr of Oriole v. Saunders*, 66 A.D. 3d 280 (1st Dept. 2009). Pursuant to Penal Law § 70.40 [1], [3] [a]), a convicted person released from incarceration on parole continues to serve his or her sentence while on parole and earns credit toward the maximum expiration date of the sentence unless and until the Division of Parole declares that person to be delinquent and revokes parole. 66 Ad. 3d at 281. If parole is not revoked, a parolee is deemed to be in the legal custody of the Division of Parole "until expiration of the maximum term or period of sentence" (Executive Law § 259-I [2] [b]). However, once a parolee is declared delinquent, the sentence is interrupted as of the date of delinquency, and the interruption continues until the parolee's return to an institution under

the jurisdiction of the Department of Correctional Services (Penal Law § 70.40 [3] [a]). As a result, the term of the interrupted sentence is extended, beyond the original maximum expiration date, for a period of time equal to the delinquency period. *Id* at 281. *See, Mtr of Tineo v New York State Div. of Parole*, 14 A.D.3d 949, 950 (1st Dept. 2005) where the court found that the petitioner was not entitled to a parole revocation hearing because his parole was revoked by operation of law upon his conviction of a crime while on patrol. Pursuant to Penal Law §70.40(3), the original sentence was interrupted by the delinquency and the interruption continued until the petitioner was returned to DOCS custody whereupon he owed the time remaining on his prior sentence. *See, also, Mtr of Washington v. Dennison*, 42 A.D.3d 830 (3d Dept, 2007 *People ex rel. Melendez v Bennett*, 291 A.D. 2d 590, 590 – 591 (2002); *Mtr of Cruz v New York State Dept. of Correctional Servs.*, 288 A.D. 2d 572, 573 (2001).

"There is no federal or state constitutional right to be released to parole supervision before serving a full sentence, and, accordingly, the state has discretion to place restrictions on parole release." *People ex rel Stevenson v. Warden of Rikers Island*, 24 A.D. 3d 122, 123 (1st Dept. 2005) citing to *Mtr. Of M.G. v Travis*, 236 A.D. 2d 163, 167 (1st Dept. 1997). Parole release remains a statutory grant of "a restricted form of liberty"prior to the expiration of a sentence. *People ex rel Johnson v. Superintendent, Adirondack Corr. Facility*, 174 A.D. 3d 992994 (3d Dept. 2019), *citing to People ex rel. Matthews v New York State Div. of Parole*, 58 NY2d 196, 204 [1983]. The State Division of Parole may therefore impose restrictions or conditions before or after an inmate's release from prison (see Executive Law § 259-c [2]; 9 NYCRR § 8003.3); including reasonable residential restrictions as a condition precedent to release. See, *Mtr. of Boss v. N.Y. State Div. Of Parole*, 89 A.D. 3d 1265-66 (3d Dept.

2011) (special condition that petitioner secure approved residence prior to his release from prison given his conviction for sex offenses perpetrated against two young girls). In fact, the Board may impose special conditions "which must be satisfied prior to an inmates' release from prison." *Mtr of Breeden v. Donnelli,* 26 A.D. 3d 660, 661 (3d Dept. 2006) (condition that the prisoner procure an approved residence prior to his release where he has a history of criminal behavior, including multiple serious sex offenses); *Mtr. Of Lynch v West,* 24 AD3d 1050, 1051 (2005).

Simply put, any inmate facing parole, including Boyd, simply has no "bargaining power" with the Parole Board as to the conditions of his release and has a very limited right of appeal. The case cited by petitioner – *People v. Stevens,* 91 N.Y. 2d 270 (1998) – is inapposite and does not hold that the conditions of parole are "a collateral consequence" of a criminal sentence. At issue in Stevens was whether a convicted sex offender had a discrete right to appeal a "risk level determination" – which is a post service of sentence classification under the pursuant to CPL 460.20. A risk level determination is a post service of sentence classification under the Sex Offender Registration Act (Megan's law"). The court found that the post sentence registration and notification requirements under the act are not a "traditional, technical or integral part of a sentence that somehow relates back to or becomes incorporated into the antecedent judgment of conviction." 91 N.Y. 2d at 964. *See also, People v. Hernandez,* 93 N.Y. 2d 261, 270 (1999)(Stevens deemed a risk level determination to be "post-sentence" since the determinations were assigned to them after release from prison). Here, on the other hand, Boyd's sentence was not fully served at the time he was on parole. Rather, Boyd's parole extended to the final date of his sentence, albeit outside of the prison, and any

violation of parole would have caused Boyd to revert back to the status of prisoner where he would have to serve the remainder of his service incarcerated.

The testimony of Boyd's Parole Officer – Glenda Bubb – confirmed the mandatory nature of this condition. Bubb was a Parole Officer supervising sex offender cases from 2006-09 and supervised Boyd from September 2007 until he reached his maximum expiration date or release date of September 2009. Boyd's release sheet from the Mohawk Correctional facility had a total of 26 conditions, 14 of which were specific to Boyd based upon his conviction and "the requirements for a successful parole supervision in the community." Bubb did not present these conditions to him; this happened while he was in jail.

The first page, entitled "Application for Conditional Release to Parole Supervision" states that Boyd was sentenced by Judge Firetog on May 29, 2002 for a maximum term which expired on May 25, 2007, that he would be in the legal custody of the Division of Parole for three years until September 5, 2009, and that he would abide with the conditions of his release "with the full knowledge that failure to do so may result in imprisonment" by the Division of Parole. Some of the Special Conditions included participation in sex offender treatment/counseling; no association or communicating in any ways with the victim and her family without permission of the PO, and compliance with all orders of protection. The Special Conditions of Release to Parole Supervision included additional prohibitions such as not entering a place within 50 feet of places where children congregate, not picking up children at any time, not frequenting areas of pornographic activity, not participating in any on line computer service that involved the exchange of pornographic emails or established

sexual encounters or liaisons. Boyd also agreed not to purchase or possess pornographic or video equipment without permission of his parole officer, and not purchase or engage in the use of pornographic or erotic materials. Bubb testified that he was not allowed contact with children under 18 because his victim was a minor. The prohibition against Boyd participating in online computer services was a special condition generated for sex offenders whose crimes involve using a computer.

During his period of supervision Boyd lived at the Kingsboro Men's shelter. Bubb stated that this was not by choice but "by parole's direction." When Boyd was released from supervision, he had no other address except where his crime was committed. "We would not allow him to live there. That's standard rule that we have...for any parolee that they can't live where they committed the crime...regardless of the crime." Boyd visited, but was not allowed to live with his mother because of special conditions that would not allow him to live within a 1000 feet of a school and the mother's house fell within that zone." Bubb also informed Boyd that he could not visit his mother's residence without her knowledge or permission. After he retained an attorney, visitation was arranged with his mother at a specified time and date, which was specifically chosen to avoid him running into minors. Bubb performed a curfew check on Boyd and Boyd never violated his curfew. Bubb said that if she went to the shelter and he was not there she would have sent him back to jail immediately. If Boyd had violated his parole, he would go back to a correctional facility for a minimum of 12 months. Boyd completed parole without any interruption or violation of his supervision.

In sum, this Court reiterates its previous ruling that the conditions of parole were part and parcel of the court order, and that had Boyd stayed

in jail for the full duration of his sentence, as opposed to spending part of it on probation, he would have been entitled to the exception to the two year residency requirement. The statutory framework makes it crystal clear that the condition imposed by the Parole Board that Boyd stay away from his mother's apartment was inextricably linked to his court sentence, and that his release was predicated upon his agreeing to this condition, a violation of which would have landed Boyd back in prison for the duration of his sentence .

WHETHER BOYD'S ACTIVITIES INVOLVED ANY GROUNDS PROHIBITED UNDER THE RPAPL

The remainder of the trial concerned whether Boyd could prove that he fell within the exception to the two year residence requirement, contained in 9 NYCRR § 2204.6 (d)(1)(iii), because the court order (and subsequent terms of parole) did not involve any grounds specified in the RPAPL. Both sides agree that the pertinent sections of the RPAPL are §§ 711(5) and 715. RPAPL § 711 (5) (the "Bawdy House Law") permits a landlord to institute a special proceeding to evict a tenant if the premises or any part thereof was "used or occupied as a bawdy-house, or house or place of assignation for lewd persons, or for purposes of prostitution, or for any illegal trade or manufacture, or other illegal business."[3]

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[3]RPAPL § 715(1) defines a class of additional persons who have standing to assert the claim and grants them legal capacity to commence such a proceeding if, after notice, the owner of the premises fails to proceed under §711(5). *Hudsonview Co. V. Jenkins*, 169 Misc. 2d 389, 391 (Civil Ct., N.Y. Co. 1996).. Section 715 governs eviction for illegal use or occupancy by someone other than the landlord. The wording to these

These statutory provisions were "intended to protect the health, welfare and safety of the public residing in the same community as well as the tenants who reside in the same building." *City of New York v. Wright*, 162 Misc. 2d 572, 573-574 (App. Term 1st Dept. 1994). The purpose of the illegal use evictions under these two statutes is not to provide an additional penalty for criminal behavior but to for further the public policy to "protect the inhabitants of communities from prostitution, gambling and drug dealing." *54 West 16th st. Apt. Corp. V. Dawson*, 179 Misc. 2d 264, 268 (Civil Ct., N.Y. Co. 1998). *See, RRW Realty Corp. V. Flores*. 179 Misc. 2d 757, 760 (Civil Ct., Bronx Co. 1999).

In order to prevail under RPAPL§§ 711 (5) and 715, petitioner must show that the premises it seeks to recover has been used not just once or twice but "customarily or habitually" for an illegal trade or business like the sale of illegal drugs. *Grosfeld Realty Co. v Lagares*, 150 Misc 2d 22, 23 (App Term, 1st Dept 1989); *Clifton Ct., Inc. v Williams*, NYLJ, May 27, 1998, at 28, col 6 (App Term, 2d Dept). The illegal use "implies doing something customarily or habitually upon the premises." *855-79 LLC v. SALAS* , 40 A.D. 3d 553, 555(1st Dept. 2007) (testimony of neighbor that son and grandson of tenant sold drugs outside the building late at night, insufficient to establish customary or habitual or to infer that the tenant acquiesced in illegal drug activity). *See also, 88-09 Realty v. Hill*, 305 A.D. 2d 409 (1st Dept. 2003) (landlord established tenants' apartment was used for drug dealing where activities persisted over period of time and were subject to neighbors' complaints); *N.Y.C. Hous. Auth. v. Grillasca*, 18 Misc. 3d 524, 527 (Sup. Ct. N.Y. Co. 2007); *Cool NYC Apts. LLC v. Witter*, 2018

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two provisions are essentially the same and should be interpreted uniformly.

NY Slip Op 51485(U), 2018 NY Misc. LEXIS 4806(App. Term, 1st Dept. 2018) (eviction warranted for illegal drug activities where police recovered, pursuant to a search warrant 37 zip block bags of marijuana, a digital scale and $7230 in cash).

Contrary to defendant's argument, there is no requirement under these provisions that a petitioner serve a predicate notice to cure prior to commencement of a proceeding. *Spira v. Douglas*, 67 Misc. 3d 258, 262 (Civil Ct., Bronx Co. 2019). *See, Mullman v Hogan*, 121 Misc 2d 719 (Civ Ct, NY County 1983); *cf. Fed. Natl. Mtge. Assn. v Tenenbaum*, 63 Misc. 3d 313, 324 (Nassau Dist Ct 2019). *See also, Hunts Point Hous. Dev. Fund Corp. V. Padilla* , 2020 NY Slip OP 50708(u), *supra*. *See also. Sherer, Residential Landlord-Tenant Law in New York* § 8:109. RPAPL §§711(5) and 715 are the procedural vehicles for implementing Real Property Law §231 which is "a substantive statute that defines the legal consequence of an illegal use on a tenancy." *Hudsonview Co., supra*, 169 Misc. 2d at 390. See *Murphy v Relaxation Plus Commodore, Ltd.*, 83 Misc 2d 838, 839 (App Term, 1st Dept 1975).

Section 231 provides that whenever the leasee or tenant use the premises or building, "or any part thereof, for an illegal trade, manufacture or other business, the lease...shall become void" and the landlord may enter the building. Id at 391. "The statutory use of 'void'...means that, as a matter of substantive law, the illegal activity itself terminates the tenancy." Id. The Bawdy House law therefore is premised on a different legal theory than the usual holdover proceeding; it is based upon a violation of law, not a holding over after expiration of the lease *Murphy v Relaxation Plus Commodore, Ltd.*, 83 Misc 2d 838, 839 (App Term, 1st Dept 1975) *Murphy, supra* at 839. It is therefore not necessary for the landlord to

serve a predicate termination notice as a condition precedent for bringing an illegal use eviction proceeding." *Hudsonview Co. V. Jenkins*, 169 Misc. 2d 389, 392 (Civil Ct., N.Y. Co 1996); *Murphy, supra* at 839. See, *Samayoa LLC v. Nelson*, 2017 N.Y. Slip Op. 50797(U), 2017 N Y Misc LEXIS 2302 (Civil Ct., Bronx Co 2017). *See also, Aurora Associates LLC v Hennen* 157 AD3d 608 (1st Dept 2018) (Since the alleged conduct of profiteering is incurable, no notice to cure is required).

Nor must a landlord prove the commission of the specific illegal acts. Rather he must show that the acts and conduct proven "warrant an inference" that the premises were being used for any illegal trade or manufacture of other illegal business. *54 West 16th St. Apt. Corp. V Dawson*, 179 Misc. 2d 264, 269 (Civil Ct., N.Y. Co. 1998); *N.Y.C. Housing Auth. V. Manley, N.Y.L.J. 1/2/1997 at 26 (Civ. Ct. N.Y. Co.);* *N.Y. County Dist. Attys Office v Rodriguez*, 141 Misc. 2d 1050 1055 (Civil Ct., N.Y. Co. 1988).

Throughout the course of this case, the court stated that Boyd's development of an elaborate mechanism to view the girl through live streaming, and his creation of many tapes fell within the colloquial definition of "manufacturing," and that Boyd clearly engaged in illegal activity. The court noted that the Certificate of Disposition Indictment, dated June 4, 2010, indicates Boyd's conviction of the crime of "Possessing a Sexual Performance by a Child in violation of Penal Law ("PL") 263.16 (an E Felony) related to 17 tapes being found in his apartment which depicted a naked 14 year-old neighbor lying in her bed masturbating. Petitioner argued that the prohibition in federal and state law against child pornography is so strong that even mere possession of tapes for personal use was a crime. It argued that Boyd's manufacturing of and viewing child

pornography fell within the term "other illegal business" and thus within the purview of the Bawdy House statute. Respondent countered that there was no evidence that the tenant of record (Elizabeth Boyd) had any knowledge regarding the allegations of illegal activity in the subject premises. It further contended that petitioner did not provide evidence that Boyd engaged in a business or that there was any ongoing nexus of illegal activity with the apartment. Rather, Boyd's viewing of the tapes and or recordings were akin to a tenant smoking marijuana in the apartment which has been held to be beyond the purview of the RPAPL. Respondent also argued that Boyd's activities outside of the apartment cannot be considered under RPAPL §711(5).

The court disagrees that the case should be dismissed because petitioner failed to prove that Boyd's mother had any knowledge of his activities is inapplicable. The aforementioned requirement is a protection that covers the tenant of record who has no knowledge of and does not participate in the illicit activity yet faces eviction from the leasehold due to illegal activities of others. This protection obviously has no bearing herein since petitioner is not seeking to evict Mrs. Boyd, who passed in 2010, **but rather** her son who in essence is claiming that he is the tenant of record, and has been residing in the premises because of 9 NYCRR §2204.6(d)(1). See *855-79 LLC v. Salas*, 40 A.D. 3d 553 (1st Dept. 2007). In fact, the notice of petition and petition do not name Elizabeth Boyd but rather Michael Boyd as respondent tenant.[4]

[4]Petitioner never explained why it commenced this case as a holdover petition rather than as a summary proceeding pursuant to RPAPL §711(5) and Real Property Law §231. However, Judge Marsden allowed the case to proceed under RPAPL 711

The court also finds that Boyd utilized both the subject apartment and the area around the premises, including the roof and stair wells, to accomplish his scheme of transmitting live time images of the teenager to his video camera and then viewing her in both his apartment and outside of the premises. It is not necessary to show that the actual apartment was used for the illegal activity as long as there is "a sufficient nexus" between the use of the apartment and the illegal activity." *RRW Realty Corp. V. Flores*, 179 Misc 3d 757,761 (Civil Ct., Bronx Co 1999). The landlord-petitioner must demonstrate that the premises were used to further an illegal business. *N.Y.C. Auth., v. Lipscomb-Arrovo*, 2008 N.Y. Slip. Op 51085(U), 19 Misc 3 1140(A) (Civil Ct., Kings Co. 2008); *City of New York v. Omolukum*, 177 Misc 2d 796, 801-02 (N.Y.City Civ. Ct. 1998).

RPAPL 711(5) applies where "(t)he premises, or any part thereof, are used or occupied...for any illegal activity. The use of the premises is specifically proscribed separate and apart from occupancy, and the term premises "has a considerably broader scope than apartment" and reveals a legislative intent to hold the occupants responsible for illegal activities outside the apartment itself. *Flores, supra*, 179 Misc. 3d at 761; *City of N.Y. v. Rodriguez*, 140 Misc. 2d 467, 469 (Civil Ct, N.Y. Co. 1988). In *City of N.Y. v. Rodriguez, supra*, the court found that the appropriate meaning of "premises" should be ascertained from the warranty of habitability owed to tenants which extends from the occupancy of an apartment to the "public hallways of the building, the elevators, the roof, the lobby, the main entrance to the building, and adjacent recreational and parking areas." *Id* at 469. In fact, the dictionary (Merriam-Webster) defines premises as "a building or part of a building usually with its grounds or other appurtenances." Id. Therefore, the court found that individual' illegal drug

trade in "front of the building" was a sufficient nexus to his use of the apartment to justify eviction under RPAPL 711 and 715.

The Exclusionary Rule is Inapplicable to this Proceeding

The court then noted that the crux of its decision on the second issue – whether Boyd's conduct fell within the ambit of the Bawdy house statute– depended on how much material that was suppressed in the criminal trial would be allowed into evidence to show that Boyd engaged in illegal manufacturing, trade or other illegal business. After exhaustive argument, the court ruled that neither the exclusionary rule nor its ancillary prohibition against the admission of the fruit of the poisonous tree precluded the admission into evidence of almost all of the items listed in petitioner's Notice to Admit.

The Supreme Court has repeatedly emphasized that the State's use of evidence obtained in violation of the Fourth Amendment does not itself violate the Constitution. *See, Penn. Bd. of Prob. & Parole v. Scott*, 524 U.S. 357, 362, 141 L. Ed. 2d 344, 351 (1998). Formulated as a "pragmatic response" to police procedures violative of individual liberties, the exclusionary rule is a "judicially created remedy" designed to deter illegal search and seizures rather than a personal constitutional right of the party aggrieved." *Townes v. City of New York*, 176 F.3d 138, 145 (2d Cir. 1999), *citing* to *United States v. Calandra*, 414 U.S. 338, 348, 38 L. Ed. 2d 561, (1974); *People v. McGrath*, 46 N.Y.2d 12 (1978). The "paramount, if not sole, justification for applying the exclusionary rule is its deterrent effect on unlawful police behavior." *United States v. Janis*, 428 U.S. 433, 446, 49 L. Ed. 2d 1046 (1976); *United States v. Calandra*, supra, 414 U.S. at 347 (1974); *People v. McGrath*, 46 N.Y.2d 12(1978). As such, the rule

does not "proscribe the introduction of illegally seized evidence in all proceedings or against all persons." *Stone v. Powell,* 428 U.S. 465, 486, 49 L. Ed. 2d 1067 (1976). Since the exclusionary rule "is prudential rather than constitutionally mandated.," it is "applicable only where its deterrence benefits outweigh its 'substantial social costs.'' *See, Penn. Bd. of Probation, supra,* 524 U.S. at 363 (quoting *United States v. Leon,* 468 U.S. 897, 907, 82 L. Ed. 2d 677 (1984)).

The fruit of the poisonous tree doctrine is an evidentiary rule that operates in the context of criminal procedure. *Townes v. City of New York, supra,* 176 F.3d at 145. *See, Wong Sun v. United States,* 371 U.S. 471, 484-88, 9 L. Ed. 2d 441 (1963). This doctrine excludes evidence obtained as a result of information obtained through an unlawful search or as a consequence of lawless official acts. *Costello v. United States,* 365 U.S. 265, 280,, 5 L. Ed. 2d 551 (1961); *Lee v. City of New York,* 2011 N.Y. Misc. LEXIS 2681 (Sup. Ct. N.Y. Co. 2011). The doctrine is an extension of the long-recognized exclusionary rule.'' *Townes, supra,* 176 F. 3d at 145. *See, Segura v. United States,* 468 U.S. 796, 804,, 82 L. Ed. 2d 599 (1984). Like the exclusionary rule, the fruit of the poisonous tree doctrine "is a judicially created remedy designed to safeguard Fourth Amendment rights generally through its deterrent effect, rather than a personal constitutional right of the party aggrieved." *Calandra,* supra, 414 U.S. at 348. *See, United States v. Janis,* supra, 428 U.S. at 446-47.

These doctrines were calculated "to deter future unlawful police conduct'' and protect liberty by creating an incentive--avoidance of the suppression of illegally seized evidence--for state actors to respect the constitutional rights of suspects. *Townes v. City of New York, supra,* 176 F.3d at 145, *citing to Calandra, supra,* 414 U.S. at 347; *United States v.*

Peltier, 422 U.S. 531, 536-39, 45 L. Ed. 2d 374 (1975). As such, the rule does not "proscribe the introduction of illegally seized evidence in all proceedings or against all persons," (*Stone v. Powell, supra,* at 486), but applies only in contexts "where its remedial objectives are thought most efficaciously served." *United States v. Calandra, supra,* at 348; *United States v. Janis, supra,* 428 U.S. at 454.) *See, People v Mcgrath, supra,* 46 N.Y.2d at 21 (the Supreme Court applies a balancing approach and has refused to apply the rule "in those areas where the ultimate effectuation of its remedial objectives is only tenuously demonstrable").

Recognizing these costs, the Supreme Court has repeatedly declined to extend the exclusionary rule to non criminal proceedings. *See Pennsylvania Bd. of Probation, supra,* 524 U.S. at 363 (inapplicable to parole board proceedings); *INS v. Lopez-Mendoza*, 468 U.S. 1032, 82 L. Ed. 2d 778 (1984) (Court refused to extend the exclusionary rule to civil deportation proceedings); *United States v. Calandra, supra* (inapplicable to grand jury proceedings);. *See also, United States v. Jones*, 2018 U.S. Dist. LEXIS 162830 (S.D.N.Y. 2019). In *United States v. Janis, supra,* 428 U.S. at 448, the Court held that the exclusionary rule did not bar the introduction of unconstitutionally obtained evidence in a civil tax proceeding because the costs of excluding relevant and reliable evidence outweighed the marginal deterrence benefits, "which... would be minimal because the use of the exclusionary rule in criminal trials already deterred illegal searches." Similarly in *Penn Bd. V. Scott, supra* the Supreme Court found that application of the exclusionary rule would hinder the functioning of state parole systems and would provide only minimal deterrence. "Because the exclusionary rule precludes consideration of reliable, probative evidence, it imposes significant costs: it undeniably detracts from the truth finding

process and allows many who would otherwise be incarcerated to escape the consequences of their actions." 524 U.S. at 363.

Similarly, the exclusionary rule does not prohibit the introduction of the "fruit of the poisonous tree" obtained through an unlawful search in a civil trial. *Lee v. City of New York*, 2011 N.Y. Misc. LEXIS 2681 at 9 (Sup. Ct, N.Y. Co. 2011). *See, Townes, supra*, 176 F 3d at 145, where the court found that the fruit of the poisonous tree doctrine was inapplicable to 42 U.S.C. § 1983 actions which are assessed on ordinary principles of tort causation and entail little or nominal damages. The rule should not be used to elongate the chain of causation, and "[v]ictims of unreasonable searches or seizures" cannot press Section 1983 claims for "injuries that result from the discovery of incriminating evidence and consequent criminal prosecution." *Vassiliou v. City of New York*, 2021 U.S. Dist. LEXIS 3433 (E.D.N.Y. 2021) *citing to Townes*, supra., 176 F.3d at 148. Admission of the fruit of the poisonous tree in civil actions is consonant with the purpose underlying the exclusionary rule, namely to protect liberty and deter future unlawful searches and seizures, as exclusion of this evidence "would vastly overdeter state actors . . . and would distort basic tort concepts of proximate causation." *Lee, supra*, 2011 N.Y. Misc LEXIS 2681 at 10-11 citing to *Townes, supra*, 176 F3d at 145.

Likewise, the police's failure to continue to apprise Boyd of his Miranda rights, after he refused to listen to the Miranda warning has no bearing in the instant matter. It is well established that a person taken into "custodial interrogation" must first receive proper warnings pursuant to the Fifth Amendment's privilege against self-incrimination to admit the statements into evidence in a criminal trial. 384 U.S. 436, 444, 16 L. Ed. 2d 694,(1966). Miranda warnings are a procedural safeguard rather an

explicit right granted in the Fifth Amendment. *Neighbour v. Covert*, 68 F.3d 1508, 1510 (2d Cir. 1995) (*citing Miranda*, 384 U.S. at 467). Where plaintiffs are not attempting to suppress their statements in a criminal proceeding, they cannot assert a cause of action for damages based on Miranda in a civil rights action. *Piercy v. FRB*, 2004 U.S. Dist. LEXIS 16581, 30-31 (S.D.N.Y. 2004) . *See Aderonmu v. Heavey*, 00 Civ. 9232, 2001 U.S. Dist. LEXIS 640, at *9 (S.D.N.Y. Jan. 26, 2001). *See also, United States v. Solano-Godines*, 120 F.3d 957 *United States v. Kadem*, 317 F. Supp. 2d 239 (W.D.N.Y.2004); *Cyrus v. City of New York*, 450 Fed. Appx. 24, 25 (2d Cir. 2011) (Miranda warnings need not be given in deportation proceedings which are not criminal but civil in nature).

Statements or evidence obtained by law enforcement based upon alleged violations of a tenant's Fourth and Fifth Amendment rights have not been excluded from proceedings brought pursuant to RPAPL §§711(5) and 715. In the leading case of *Pleasant East Assocs. V. Soto*, 1993 NYLJ LEXIS 81 (Civil Ct, N.Y. Co. 1993) the court phrased the threshold issue as follows: whether the exclusionary rule is to be applied in a civil proceeding to dispossess the tenant of an apartment on the grounds of the alleged illegal use of the apartment. The court answered the question in the negative. Pursuant to a search warrant, the police had gathered reams of evidence pointing to the use of and possible sale of drugs. The respondents sought to stay the proceeding pending the outcome of the criminal case or, in the alternative determination by Civil court of the legality of the evidence and statements obtained by the police.

The court first held that the sole justification for applying the exclusionary rule is its deterrent effect on unlawful behavior. *Id* at 5, *citing* to *U.S. v. Janis, supra, U.S. v Calandra, supra*. Just as in those cases, the

court found that "(t)he probable deterrent effect resulting from suppression of illegally obtained evidence is insubstantial" since the gravamen of a summary proceeding [is] to restore possession of an apartment to a landlord, collateral to the original purpose for obtaining the challenged evidence. *Id* at 6, *citing* to *People v. McGrath*, supra 46 N.Y. 2d at 31. The purpose of illegal use evictions under RPAPL §§711 and 715 is not to provide an additional penalty for criminal behavior but to "protect the inhabitants ... from prostitution, gambling and drug dealing." *Id. See, 54 West 16th St. Apt. Corp., supra*, 79 Misc. 2d at 269. Furthermore, the standards of proof in the two actions were totally different since under the RPAPL the petitioner need only prove by a preponderance of the evidence that it is entitled to possession of the premises." (Supra, at 26, col 4). Put differently, "to assert a valid claim pursuant to RPAPL 711(5), a petitioner need not prove the commission of the specific illegal acts. Rather all that is necessary is that the acts and conduct proven warrant an inference that the premises were being used ['for any illegal trade or manufacture, or other illegal business']." *Id. See*, 54 West 16th Street, *supra*, 179 Misc 2d at 269; *New York City Hous. Auth. v Manley*, NYLJ, Jan. 8, 1997, at 26, col 2 (Civ Ct, NY Cty). *See, N.Y.C. Housing Auth. V. Grillasca*, 12 Misc 3d 223, 224 (Civil Ct., N.Y. Co. 2006) (In a drug holdover proceeding brought pursuant to RPAPL §711(5), the court refused to preclude statements made by respondent to the police, finding that any purported Miranda violations had to be raised in the criminal court, not civil court).

Based on the above, this court will consider all of the evidence gathered by the police to ascertain whether Boyd's actions, which ultimately resulted in a court order, involved any of the grounds specified in the RPAPL. The court notes parenthetically that Boyd's rights against self

incrimination and illegal search and seizures were already protected by Justice DiMango's decision and applying the exclusionary rule herein would serve no further deterrence purpose. Boyd admitted that he 1) burglarized 136 Hicks Street and installed a video camera in an air-conditioner in the bedroom of a 14 year old girl (victim) who resided at said premises; 2) replaced the existing air conditioner with a new one in which the video camera was placed; and 3) installed a video camera in the victim's air- conditioner so that he could record and then observe the girl in "various stages of undress" where she at times masturbated.. The video camera was set up to wirelessly transmit the recordings to his camcorder; Boyd stated that he needed to be "nearby" the device to retrieve the recordings. Boyd also testified that he purchased assorted transmitters and antennae to enable the transmission of signals between the girl's apartment and his mother's apartment over the roofs of both buildings and facilitate his recording and viewing video images of the 14 year old girl. He admitted that he "stored the recordings in his apartment" by making 17 video tapes of the victim masturbating in her bedroom over a one year period and date stamping the tapes, and that he regularly edited and downloaded the tapes in his apartment.

Petitioner presented as its expert witness Gary Olson, a professional in the fields of video surveillance technology and equipment installation. Olson designed wireless systems for residential buildings, command control vehicles for first responders, Con Edison, and the NYC Police and Fire Departments. Olson was familiar with the types of surveillance equipment that Boyd purchased in 2000: they were a "relatively standard compliment of equipment used for typical surveillance." Supercircuits, the store that where Boyd purchased the items, was a catalog-type electronics store where anyone could order parts and have them shipped. The invoices accepted into

evidence listed video links which were designed to attach to a camera or microphone and transmit to a receiver. The links consisted of a wireless transmitter/receiver pair that could extend the range of a video signal over a considerable distance. Olson opined that one would need some degree of technical knowledge to set up the equipment, including battery systems, cameras, a microphone, etc.

Olson walked from the roof of 36 Clark to the roof of 136 Hicks as they were connected to each other. He identified unobstructed lines of sight running from the furthest southern edge of the roof at 136 Hicks to the furthest northern edge of 36 Clark. He stated that unlike the roofs, the two bedrooms are not within line-of-sight with each other. However, the three wireless links that Boyd purchased could carry the camera's signal from the victim's apartment to the parapet window in Boyd's bedroom, since Boyd had installed a high grade antenna- a Yagi antenna - which could transmit signals up to a mile and also improve the reception of wireless signals and make the received images clearer. Olson observed a metal fire escape stairwell, a parapet, and several metal poles on the roof where the Yagi antennae could be placed for maximum effectiveness. Olson stated that the Yagi antennae would enable a signal to be sent from the victim's apartment to the neighboring roof which would then "bounce" back into the stairwell of the building. The camera and transmitter hidden in victim's apartment (link one) could send signals to a receiver transmitter on the roof of 136 Hicks (link two), which would transmit the signals to a third link receiver on the roof of 36 Clark, which would transmit the signals to Mr. Boyd's apartment. This is well within the abilities and specifications of the equipment.

If the pinhole camera and short range transmitter were connected to the power in the air conditioner vent, the camera could operate indefinitely and would constantly transmit videos. The transmitter would send signals from the pin camera over to the receiver, and the output would be transmitted through the three links to connect by wire into the Sony Handycam. The person holding the receiver could not turn off the transmitter or manipulate the pinhole camera at the location which would always be transmitting. The person at the receiving end (Boyd) would use the Handycam to view and make tapes of the output of the pinhole camera that was currently being recorded. However, if an individual did not use the apparatus for several days, he would be unable to go back and see what happened during those days. The recording could take the form of a series of still images or a video. One could connect the handycam to a computer and download the still or video images from the Sony Handycam. Although websites such as

YouTube, Instagram and Facebook did not yet exist in 2000, personal internet services did exist and images and videos could be easily shared via e mail.

LEGAL ANALYSIS AS TO WHETHER BOYD'S AFORE-DESCRIBED ACTIVITIES ARE PROHIBITED BY THE RPAPL

There is no case which discusses whether the illegal "manufacturing" and viewing of child pornography is akin to the mere use, as opposed to the sale or distribution of illegal drugs, or whether such described activity must be "commercial in nature." Nor is there any precedent, as argued by petitioner, that the illegal activities engaged in by Boyd are so heinous that it is irrelevant whether Boyd actually engaged in a commercial enterprise.

As will be set forth below, this Court adopts petitioner's argument. Boyd's extensive year long scheme to beam the young girl's acts into his home by means of transmission antennas and other apparatus, and his creation of numerous tapes of the recordings, comes within the definition of using the premises for illegal business, regardless of whether Boyd planned to sell the tapes in a commercial transaction. The distinction drawn in the plethora of cases between merely using drugs and selling the drugs are inapt since Boyd's conduct went well beyond using an already manufactured item on the computer for personal viewing. Boyd engaged in the business of manufacturing and creating a transmission scheme so that he could illegally view an underage female masturbate over a period of time in live time and then created at least 17 tapes of these recordings. He utilized the home of his mother to further his scheme.

Furthermore, Boyd's actions constituted a modern day version of using or occupying the premises as a bawdy-house, or house or place of assignation for lewd persons, or for purposes of prostitution. As will be explained below, this phrase is separated by the word "or" from the other phrase in

§711 (5) –"any illegal trade or manufacture, or other illegal business." Nothing in the actual text of §§711(5) or 715 requires proof of commercial purpose and there is no precedent requiring proof of commercial purpose in order to prove that the premises was used as a place of assignation for lewd persons..

A court's "primary consideration," when presented with a question of statutory interpretation, is to ascertain and give effect to the intention of the Legislature." *Mtr of Walsh v. N.Y. State Comptroller,* 34 N.Y.3d 520, 524(2019); *Nadkos, Inc. v Preferred Contrs. Ins. Co. Risk Retention Group LLC,* 34 N.Y. 3d 1,7-8 (2019) quoting *Mtr of Lemma v Nassau County Police Officer Indem. Bd.,* 31 NY3d 523, 528 (2018). When interpreting a statute which has clear and unambiguous language, the court must derive the legislative intent from the plain meaning of the words, as the statutory text is the clearest indicator of legislative intent. *Mtr of Peyton v N.Y.C. Bd. of Stds. & Appeals,* 2020 N.Y Lexis 2873 at 8 (2020); *Mtr. Of DeVera v. Elia,* 32 N.Y. 3d 423, 435 (2018) *citing to Mtr of Lemma supra,* 31 N.Y. 3d at 528; *Nadkos, Inc. supra,* 34 N.Y.3d at 8; *Doctors Council v. New York City Employees' Retirement System,* 71 N.Y.2d 669, 674-675 (1988).

The language of a statute is generally construed "according to its most natural and ...obvious sense." *Lohan v. Take- Two Interactive Software, Inc.,* 31N.Y. 3d 111, 11 (2018) citing to *Samiento v. World Yacht Inc.,* 10 N.Y. 3d 70, 77-78(2008). "In the absence of a statutory definition, we construe words of ordinary import with their usual and commonly understood meaning, and in that connection have regarded dictionary definitions as useful guideposts in determining the meaning of a word or phrase." *Nadkos, supra,* 34 N.Y. 3d at 8 quoting *Yaniveth R. v LTD*

Realty Co., 27 N.Y.3d 186, 192 (2016); *Walsh, supra*, 34 N.Y 3d at 524. Further, a statute "must be construed as a whole and its various sections must be considered together and with reference to each other." *Mtr. of N.Y. County Lawyers' Assn. v Bloomberg*, 19 N.Y.3d 712, 721 (2012). The meaning of words are ascertained by reference to "the words and phrases with which they are associated." Statutes, §239(a); *Mtr of DeVera, supra*, 32 N.Y. 3d at 436.

In the most recent case of *Bostock v. Clayton Cty*, 207 L.Ed. 2d 218 (2020), Justice Gorsuch specifically found that the straightforward application of Title VII's prohibition against discrimination because of "sex," interpreted in accord with its "ordinary public meaning at the time of (its) enactment," barred the termination of employees simply for being homosexual or transsexual. *Id* at 234. Justice Gorsuch engaged in tenets of statutory construction which are particularly apt to the instant matter. He found that while those who adopted the Civil Rights Act might not have anticipated their work would lead to this result, and many were not thinking about "many of the Act's consequences that have become apparent over the years," such as the prohibition against discrimination on the basis of motherhood or its ban on sexual harassment, "the limits of the drafters' imagination supply no reason to ignore the law's demands." 207 L. Ed 2d, at 230.

Justice Gorsuch then addressed the employer's arguments that since Title VII had a specific list of protected characteristics such as sex and religion that did not include homosexuality and transgender status, the latter two were implicitly excluded from Title VII's coverage – in other words, had Congress wanted to address these matters, it would have specifically referenced them in Title VII. 207 L. Ed d at 240. The Court

indicated that there is no such thing as a "canon of donut holes" in which Congress' failure "to speak directly to a specific case that falls within a more general statutory rules creates a tacit exception." Id. Instead, when Congress chooses not to include any exceptions to a broad rule, the broad rule applies. Id. Thus, while sexual harassment and motherhood discrimination are conceptually distinct from sex discrimination, they fall within Title VII"s broad sweep.

The Court also debunked the argument that few legislators would have intended or expected in 1964 that Title VII apply to discrimination against homosexual and transgender persons, given the lack of ambiguity in the statute's text. 207 L. Ed d at 242-43. The fact that the statute's application reaches "beyond the principal evil" the legislators may have intended or expected to address, or that the statute has been applied to situations not expressly anticipated by Congress "does not demonstrate ambiguity" but rather "demonstrates [the] breadth of a legislative command." Id at 243 citing to Sedima S.P.R.L. v. Imrex Co., 473 U.S. 479, 499, 87L.Ed d 346(1985). See also, A. Scalia & B. Garner, Reading Law: "The Interpretation of Legal Texts" 101(2012) (unexpected application of broad language reflect only Congress's "presumed point [to] produce general coverage –not to leave room for courts to recognize ad hoc exceptions"). Furthermore, the Court has always rejected the argument that it should refuse to enforce the plain terms of the law because a "new application" has emerged that is both "unexpected and important." Id at 244 - 246. In sum, since Congress adopted "broad language" in framing Title VII, the necessary consequence of the legislative choice is that an employer who fires an employee merely for being gay or transgender defies the law. Id at 249.

The *Botstock* decision reiterated the Supreme Court's prior ruling that "(w)hile statutes should not be stretched to apply to new situations not fairly within their scope, they should not be so narrowly construed as to permit their evasion because of changing habits due to new inventions and discoveries." *Fortnightly Corp. v. United Artists Television, Inc.*, 392 U.S. 390, 395, n.16; 20 L. Ed. 2d 1176, 1181 (1968) (whether petitioner's community antenna television ("CATV") systems "performed" respondent's copyrighted work, as defined under the Copyright Act, 17 U.S.C. §1 by broadcasting movies). Therefore, when faced with the application of a statute, drafted long before the development of the electronic phenomena before it, a court "must read the statutory language of 60 years ago in light of drastic technological change."*Fortnightly Corp, supra,*, 392 U.S. at 395, 20 L. Ed. 2d at 1181.

The California Supreme Court has ruled that in construing statutes that predate their possible applicability to new practices or technology, "courts have not relied on wooden construction of their terms." *Apple v. Superior Court*, 56 Cal. 4th 128, 137, 29 P d 883, 897 (2013) (although the Song-Beverly Credit Card Act was "enacted in 1990, almost a decade before online commercial transactions became widespread," that fact did not preclude the statute's application to such transactions). Fidelity to legislative intent does not "make it impossible to apply a legal text to technologies that did not exist when the text was created" as the drafters knew that technology will proceed and that the "rules they create will one day apply to all sorts of circumstances they could not possibly envision." *Id., citing to* Scalia & Garner, Reading Law: The Interpretation of Legal Texts (2012) pp. 85–86.) Therefore, in applying existing statutes to new circumstances, the courts must first inquire how the legislature "would have handled the problem if it had anticipated it." *Ward v. Tilly's Inc.*, 31 Cal.

App. 5th 1167, 243 Cal. Repr. 3d 461 (Ct of Appeals Second App. Dist., 2019). There, the California Court of Appeals ruled that retail store employees were due reporting time pay pursuant to Wage Order 7, when they called into the store two hours before their shift. Although at the time Wage Order 7 was enacted, telephonic reporting had not been contemplated, such "contemporaneous understanding of 'report for work' (was) not dispositive," since its history reveals that the purpose in adopting reporting time pay requirements was two-fold: to "'compensate employees' and 'encourage proper notice and scheduling.'" Id. at 472-72. Therefore, had the "Industrial Welfare Commission ("IWC") considered the issue, it would have concluded that telephonic call-in requirements trigger reporting time pay, and that the on-call scheduling alleged . . . triggers Wage Order 7's reporting time pay requirements" even though the employees did not physically show up to work and then were Id. at 473. See also, O"Grady v. Superior Court, 139 Cal. App. 4th 1423, 44 Cal. Rptr. 3d 72, 104-05 (Ct. App. 2006) (holding that an online news magazine constitutes a "periodical publication" under a law that was enacted well before the advent of digital magazines).

The New York Courts have also addressed how to analyze statutory terms in light of technological advances. In Mtr of Comptroller of City of N.Y. v. Mayor of City of N.Y., 7 N.Y.3d 256 (2006) the Court of Appeals determined that the term "property" included in the NYC Charter § 362 (a)- which provides that a " "Concession" shall mean a grant made by an agency for the private use of city-owned property for which the city receives compensation... - was not limited to only "real property" but also included intangible or intellectual property. The only qualifier to the term "property" in the statute was "city owned" - and the drafters had removed the word "on" before the term "city owed property," thereby

demonstrating some intent not to limit the types of property covered by section 362 (a). 7 N.Y.3d at 264-65. Furthermore, "(i)t would be an unjust reflection upon the wisdom and intelligence of the [legislature] to assume that they intended to confine the scope of their legislation to the present, and to exclude all consideration for the developments of the future." 7 N.Y. 3d at 266.

In *Lohan v. Take-Two Interactive Software, Inc.* 31 N.Y. 3d 11 (2006), the Court of Appeals held that an avatar- a graphical representation of person in a video game or like media - may constitute a portrait within the meaning of Civil Rights Law §§50 and 51. These two statutes, enacted in 1903, created a limited right of privacy by requiring a living person's written consent before their "name, portrait or picture" for advertising purposes. In response to the query as to how a reasonable person in 1903 could even imagine much less equate a portrait with computer imagery, the Court replied that it must employ the theory of statutory construction that "general terms encompass future developments and technological advancements." 31 N.Y. 3d at 121. "In view of the proliferation of information technology and digital communication, a graphical representation in a video game or like media may constitute a 'portrait' within the meaning of the Civil Rights Law." *Id.* At 122. *See People v. Fraser*, 264 A.D. 2d 105 (4th Dept 2000) *aff'd* 96 N.Y. 2d 318((2001), where the Fourth Department upheld a jury instruction that a "photograph" could include a computer graphic image and noted that "it is impossible for the Legislature to consider every societal and technological change that may occur and the effect those changes may have upon the particular conduct it is seeking to regulate," 264 A.D.2. at 109 and that the Legislature did not have to amend the law to accommodate every advancement in technology. *Id.* At 110. *See also, See also, People v.*

Santiago,1999 N.Y. Slip Op 40004(U), 1999 NY. Misc. 671 (Co Ct. Monroe Cty 1999) (" this court must try to harmonize technology with statutory construction in accordance with the plain purpose, viz, the underlying policy, of the legislative enactment").

Application to Instant Matter

Applying these tenets of statutory construction to the instant matter, it is clear that Boyd's conduct falls within the term of other illegal business or illegal manufacture and constitutes the modern day version of engaging in illegal lewd behavior by use of technology. Certain of the terms included within §§ 711 and 715 are unambiguous and cover Boyd's conduct. The ordinary meaning of the term "manufacture" is "[a thing that is made or built by a human being or by a machine) as distinguished from something that is the product of nature." Black's Law Dictionary (7th edition) as cited in *Baird Props., LL v. Town of Coventry*, 2015 R.I. Super. LEXIS 111 (Superior Court R.I. 2015) . *See also, Lonesource, Inc. V. United Stationers Supply co.*, 2013 U.S. Dist. LEXIS 44023 (E.D.N.C. Western Div. 2013) ("manufacturer" is a person or entity "engaged in producing or assembling new products" citing to Blacks Law Dictionary 984 (8th ed 2004)). Clearly Boyd manufactured a product by strategically placing antennae, transmitters and receivers in the girl's apartment and on the roofs so that he could view the continuous recording of the teenage girl in his mother's apartment on his camcorder. Furthermore, Boyd manufactured 17 tapes from the continuous recordings which were transmitted to his camcorder, These activities constituted manufacturing and, by virtue of his conviction under Penal Law §263, his recording of a minor in compromising positions constituted "illegal manufacturing."

It is also clear that Boyd engaged in an Illegal activity or business endeavor to record the teenage in her home and create tapes of such conduct. In *Atl. Cas. Ins. Co. v. River Hills Antique Tractor Club, Inc.*, 2012 U.S. Dist. LEXIS 2266, *18 (Mo. E.D. 2012), the parties disputed whether the definition of business had a definite or legal meaning which included "some element of commercial enterprise or profit motive." *Id.*, at *16. Each side quoted different dictionary definitions, including Black's Law Dictionary, 198 (6th Ed. 1990), which defines business as "[t]hat which habitually busies or occupies or engages the time, attention, labor and effort of persons as a principal serious concern or interest or for livelihood or profit." The court found that despite the existence of different meanings for the term business, the term was not ambiguous and that not all definitions of "'business' include a commercial or profit aspect." *Id* at 18-19. The court pointed to one definition of business - "A matter or affair that engages a person's time, care and attention; that which one does for a livelihood; occupation; employment; mercantile concerns, or traffic in general; ... what belongs to one to do; task or object undertaken; concern; right of action or interposing; affair; point; matter..." (New Webster Encyclopedia Dictionary of the English Language109 (1952 Ed.)) - as proof that business is "often used independently of an notion of profit" and is used in the broader sense to "to describe one's 'affairs, activities"' or 'livelihood."' *Id.*, at 18-19. *See also, People v. Johnson*, 52 Misc. 2d 1087 *(Crim Ct., N.Y. Co. 1967), citing to People v Gilette*, 172 Misc. 847, 849 (City Ct., Rochester, 1939), where the court found that the term "business" in VTL §20(4), which limited the use of a motor vehicle a holder of a junior permit to the "usual and ordinary pursuit of the business of the parent or guardian" was not restricted solely to a productive trade, profession or occupation. The court looked to the broader definition of business found in the Standard Dictionary which provided: "1. A pursuit or

occupation; trade; profession; calling; also, commercial affairs. 2. A matter or affair. 3. Interest; concern; duty. 4. A commercial enterprise or establishment. 5. A state of being busy.'' *People v. Gillette, supra*, 172 Misc. at 849, 850).

This court adopts the broad definition of business set forth above, which is confirmed by the definition of "business" found in Black's Law Dictionary, i.e., "[t]hat which habitually busies or occupies or engages the time, attention, labor and effort of persons as a principal serious concern or interest.'' The court finds that Boyd's creation over a year of a laborious technological set up to continuously tape the minor over a year, and his creation of 17 tapes of these recordings habitually busied and occupied his time as a serious concern or interest regardless of whether he earned money for this endeavor, Although petitioner does not claim that Boyd sold the obscene material which he produced, he nonetheless conceded in his testimony that he busied himself with watching the obscene videotapes that he produced. Accordingly, this court deems Boyd's violation of PL § 263.16 to be a ground for his eviction under RPAPL § 711(5). No where in the text of RPAPL §§711(5) or 715 is there a requirement that the illegal or manufacture or business or immoral conduct be commercial, and only a few civil court decisions have read into the text the requirement that there be a commercial activity. Based upon the plain language of the statute and the canons of statutory construction, this court chooses not to read said requirement into these statutory provisions.

Historically, in order for a petitioner to prevail under RPAPL §§711(5) and 715, he must show that the tenant is using the premises "for an illegal or immoral purpose.'' *See generally, Paragon Realty Corp. v. Kelly*, 1996 NYLJ LEXIS 881 at 13 (Civil Court, Bronx County,

10/30/1996); *Grosfeld Realty Co. v. Lagares,* 150 Misc. 2d 22 (App. Term, 1st Dept. 1989); *Lloyd Realty Corp. v. Albino,* 146 Misc. 2d 841(Civ Ct. N.Y.1990); *City of New York v. Rodriguez,* 140 Misc. 2d 467 (Civ. Ct. Co 1988). Therefore, the terms "any illegal trade, manufacture or other illegal business" in RPAPL §711(5) were interpreted in light of the preceding terms "bawdy house"or place of assignation for lewd persons. In *Spira v. Spiratone Inc.,* 148 Misc. 2d 787 (Civil Ct., Queens Co. 1990), the court denied petitioner's landlord's request to expand the definition of "illegal use" to include public assembly for church purposes, despite the landlord's contention that the illegality was based upon building code violations such as inadequate exits, lack of fire retardent etc. and the "immediate danger and potential life threatening hazard" caused by the use.

The court first construed the terms "illegal trade, manufacture or business" in §711(5) to be an activity which is either criminal in nature, such as gambling, theft or prostitution, or an illegal manner of conducting an otherwise legal activity, such as the illegal manufacture of goods." 148 Misc 2d 789. The court then found that **apart from specifying the use of the premises as a place of assignation for lewd persons or a bawdy house, the RPAPL contained no definition** of what was encompassed under the phrase "or for any illegal trade, or manufacture, or other illegal business" *Id.* at 789 citing to 2 Rasch, N.Y. Landlord and Tenant –Summary Proceedings §34.3 at 529. "There must be a showing that the **tenant has departed from the legitimate or legal use for which the premises were hired, by some measurable degree of continuity of acts of vice related to the occupancy of the premises or to the method of conducting the business therein."** 2 Dolan, Rasch's Landlord and Tenant--Summary Proceedings § 34:5, at 516 [4th ed] *See. Solow Bldg. Co., II, L.L.C.* v. *Banc of Am. Sec.,* LLC, 13 Misc. 3d 55 (App. Term, 1st Dept. 2006). The court found the cases advanced

by the landlord were inapposite since they involved "**inherently criminal and immoral activities such as gambling, prostitution and theft**, none of which pertained to the running of a church." *Id* at 790 Simply put, the fact that the respondents operate the church in violation of the certification of activity did not constitute an activity that fell with the meaning of an illegal trade or business under §711(5). *See also, New York v. Rodriguez, supra,* 140 Misc. 2d at 470 (Another factor to be taken into consideration is the "ill repute" of the building or the occupants thereof). *See, Mtr of Kellner,* NYLJ, Nov. 26, 1986, at 11, col 6 (Civ Ct, NY County).

In *1165 Broadway Corp. v. Dayana of N.Y. Sportswear, Inc.*, 166 Misc. 2d 939, 944-947 (Civil Ct., N.Y. Co. 1995), the court engaged in an intensive analysis of the legislative history of RPAPL 715 which this court adopts herein. The court found that a "a plain reading of the statute" and the legislative history supported a "nonrestrictive application" of RPAPL 715 (1) to "any illegal business, trade or manufacture," and that said language covered an illegal business involving the sale and storage of counterfeit trademark goods: "By their very terms, these statutes were specifically intended to address any illegal business, trade or manufacture and should not be interpreted to arbitrarily exclude those illegal businesses which fail to directly impact on the health, morals, welfare or safety of the public," as urged by the respondents. 166 Misc. 2d at 943.

The court then found that nothing in the legislative history of RPAPL 715 (1) would warrant the restrictive construction urged by the respondents. In 1868, the Legislature first passed an amendment to a statute that became known as the "bawdy-house" law, which provided that the owner of "any house or other real property ... used or occupied as a bawdy house, or house of assignation for lewd person" could apply for a

"warrant of dispossession." (L 1868, ch 764, § 55) In 1880, the statute was amended and placed in the Code of Civil Procedure as section 2231 (4). The revised statute provided that the landlord could remove a tenant from property "where the demised premises, or any part thereof, are used or occupied as a bawdy-house, or house of assignation for lewd persons, or for any illegal trade or manufacture, or other illegal business."(L 1880, ch 178.). The 1947 Bill Jacket accompanying the amendments to the statute included a recommendation for approval by New York County Lawyers' Association which noted that the amendment "**broadens the scope of the law" by including "not merely cases of lewdness**, but also 'any illegal trade, business or manufacture' ," such as "gambling, or the surreptitious distillation of alcohol".

In fact, many courts have ruled that for a petitioner to prevail under RPAPL §§711(5) and 715, he must show that the tenant is using the premises "for an illegal or immoral purpose". See generally, *Paragon Realty Corp. v. Kelly*, 1996 NYLJ LEXIS 881 at 13 (Civil Court, Bronx County, 10/30/1996); *Grosfeld Realty Co. v. Lagares*, 150 Misc. 2d 22 (App. Term, 1st Dept. 1989); Lloyd Realty Corp. v. Albino, 146 Misc. 2d 841(Civ Ct. N.Y.1990); *City of New York v. Rodriguez*, 140 Misc. 2d 467 (Civ. Ct. Co 1988).

Therefore, the legislative history of RPAPL §§711(5) and 715 reveal that illegal business was traditionally interpreted within the context of lewd or immoral conduct. The term "lewdness" is not a legal term of art but a word of common usage. *State ex rel Miller v. Rear Door Bookstore*, 1991 Ohio App. LEXIS 1243 at 8 (Ct of Appeals of Ohio, 10th App. Dist. 1991). Webster Dictionary defines "lewd" as ..."sexually unchaste or licentious...lascivious inciting to sexual desire or imagination" *Id* at 9, where

as Black's Law Dictionary, 11th Edition, defines "lewd" as "[o]bscene or indecent; tending to moral impurity or wantonness," while "lewdness" is defined as "[g]ross, wanton, and public indecency that is outlawed by many state statutes; a sexual act that the actor knows will likely be observed by someone who will be affronted or alarmed by it." *See, People v Fibble,* 2015 NY Slip Op 51822(U), 2015 N.Y. Misc. LEXIS 4511, *7 (Crim. Ct. Kings Co. 2015). The New Oxford American Dictionary defines lewd as "crude and offensive in a sexual way." (Third ed., 2010).

The common definition of "lewd" clearly shows that there are activities of a sexual nature which are beyond the limits of what society deems tolerable." *State ex rel Miller, supra* at 12 . Black's Law Dictionary, 11th Edition, defines "lewd" as "[o]bscene or indecent; tending to moral impurity or wantonness," while "lewdness" is defined as "[g]ross, wanton, and public indecency that is outlawed by many state statutes; a sexual act that the actor knows will likely be observed by someone who will be affronted or alarmed by it." *See, People v Fibble,* 2015 NY Slip Op 51822(U), 2015 N.Y. Misc. LEXIS 4511, *7 (Crim. Ct. Kings Co. 2015). The New Oxford American Dictionary defines lewd as "crude and offensive in a sexual way." (Third ed., 2010). Lewd has been defined as "characterized by lust, obscene or indecent," and "offensive to accepted standards of decency." and "not so arcane as to escape the understanding of the average juror". *People v. Pinkoski,* 300 A.D.2d 834, 837-38 (3d Dept. 2002). One court has found that, like acts of obscenity, lewd acts are measured by the average citizen applying contemporary community standards (Penal Law § 235.00 [1]). *People v Wade,* 51 Misc. 3d 612, 617-618 (Kings Co. Crim. Ct. 2016). While these definitions are broad and not identical, they clearly encompass the activities of Boyd described above.

In fact, implicit in Boyd's conviction under Penal Law §263, much less Boyd's broader conduct in creating the videos and tapes, is the recognition that the materials he created might make their way into the outside market for sale and exploitation of the youth. Penal Law §263.16 provides that: "A person is guilty of possessing a sexual performance by a child when, knowing the character and content thereof, he knowingly has in his possession or control, or knowingly accesses with intent to view, any performance which includes sexual conduct by a child less than sixteen years of age." "The Fourth Department found that the statute's purpose in prohibiting possession of child pornography, in every form, was a means to "eradicate the market for such material, and that former Governor Pataki had noted that "(s)omeone who possesses] child pornography does so at the expense of an exploited child, and society cannot hope to eradicate this evil unless the market for these perverse materials is destroyed" (Governor's Mem approving L 1996, ch 11, 1996 NY Legis Ann, at 630). 264 A.D.2d at 110. Therefore, the prohibition against possession was inextricably linked to the goal of eradicating the spread of these materials in the perverted market that exploited children Id at 110-11. A graphic image of a child engaged in sexual conduct captures the child's humiliation and preserves it into the future as permanently as does any photograph. Id. Furthermore, the advent of the computers "to transmit and possess child pornography can only increase the market for child pornography--especially with the clarity of images, the speed of transmission, and the ability to upload or download the images with ease" *Id* citing to *State v Cohen*, 696 So 2d 435, 440, n 5 (Court of Appeal of Florida, Fourth District, 1997).

In sum, this court finds that Boyd's extensive year long scheme to beam the young girl's acts into his home by means of transmission antennae

and other apparatus, and his creation of numerous tapes of the recordings, comes within the definition of using the premises for illegal business regardless of whether Boyd planned to sell the tapes in a commercial transaction. The distinction drawn in the plethora of cases between merely using drugs and selling the drugs are inapt since Boyd's conduct went well beyond using an already manufactured item on the computer for personal viewing. In other words, Boyd did more than just view the pornography on the computer and create tapes of the pornography Boyd engaged in the business of manufacturing illegal child pornography by creating an elaborate transmission scheme in or about his premises so that he could view the underage female in various sexual acts in real time.

This Court also finds that Boyd's conviction under PL § 263.16, and his underlying actions in utilizing the premises and its surroundings to create a technological apparatus to view a child masturbating in live time for over a year, constitutes a continuity of acts of vice or lewdness related to the occupancy of the premises. The legislature could not have been expected to anticipate, when it first started passing the Bawdy House Laws, that technology and video conferencing and video usage would permit someone to invade the privacy of a minor's home and illegally view and create tapes of sexual acts that exploited the minor and aroused lewd and lascivious feelings in the eyes of the beholder,

Although Boyd met the first prong of 9 NYCRR § 2204.6(d), since his conviction and conditions of parole were tantamount to a court order which prevented him from residing at the subject premises for the requisite two year period prior to the tenant of record's death, he did not meet the second prong. His court order and his underlying actions constituted grounds for eviction specified in the RPAPL. Therefore, Boyd does not meet the

residency requirement and he is not entitled to succeed to the tenancy of Elizabeth Boyd. Petitioner is directed to prepare an order of eviction for this court to sign. This constitutes the Decision and Order of the court.

Dated: February 22, 2021

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HON. KATHERINE A. LEVINE
Justice Supreme Court

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