

Attorneys Leave Client's Fate to Judge in Fourth Murder Trial

Joel Stashenko, New York Law Journal

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From left, Barket Marion Epstein & Kearon attorneys Aida Leisenring and Donna Aldea join client Calvin Harris with attorney Bruce Barket after Harris' acquittal last month.

After his client had been convicted twice of murdering his estranged wife and a third trial ended with a deadlocked jury, a desperate defense attorney, Bruce Barket, adopted a winning strategy: he would leave his client's fate in the hands of a judge he had studied carefully.

Supreme Court Justice Richard Mott found Calvin Harris not guilty on May 24, ending nearly 15 years during which Harris was investigated and prosecuted by authorities in Tioga County for the death of Michele Harris on Sept. 11, 2001, or early the next morning.

In a recent interview, Barket said it was crucial to have the venue of the case moved from Tioga County about 120 miles to the northeast, to Schoharie County, because of the high likelihood that publicity surrounding the case would make a fair trial for him in Tioga County impossible.

An Appellate Division, Third Department, panel approved the venue change in January 2014 ([NYLJ, Jan. 22, 2014](#)).

Nevertheless, Calvin Harris' third trial ended with the jury in Schoharie County deadlocked in May 2015 after a three-month trial before Acting Supreme Court Justice George Bartlett III and 52 hours of deliberation.

Barket said something had to change in a fourth trial or the outcome for Harris was likely to be the same as in the previous three: conviction or deadlock. He has been representing Harris since the third trial.

"The best we could do [at trial No. 3] was 6-6," said Barket, of Barket Marion Epstein & Kearon in Garden City. "It proved that, maybe with a little more evidence, maybe we could get it to 9-3 in favor of acquittal. But our thought was you are always going to have somebody who was sympathetic to Michele's family."

Barket said he saw an opportunity when Bartlett, citing a busy caseload, asked last fall that another judge be assigned to preside over the fourth trial. Mott, who normally hears cases in Supreme Court in Columbia County or Albany County, was appointed by court administrators to step in.

Barket said that prompted Harris' lawyers to study Mott's record since he became a judge in 2013 with the hope it might make sense for the defense to request that Mott decide the case from the bench.

"We read a couple of his decisions concerning the parole board," Barket said. "He really took the parole board to task. I was impressed with that."

In several rulings, Mott has complained of state Board of Parole panels' by-the-numbers determinations that appeared to fail to take into account all the factors surrounding an inmates' behavior and background that the law dictates boards must look at when weighing parole ([NYLJ, Aug. 20, 2013](#), and [Oct. 1, 2013](#)).

"The board's disingenuous and purely ceremonial description of the factors and reasons for its decision transform the parole process into a charade in which meaningful judicial review is repeatedly subverted," Mott said in one of these parole rulings, *West v. New York Board of Parole*, 3069-13.

Mott's willingness to take on parole boards suggested that he might also view the investigatory work by state police and prosecutors on the Harris case skeptically, which Calvin Harris' defense lawyers have urged since Harris first went on trial, Barket said.

"We always believed that any objective, smart review would lead to an acquittal," Barket said. "It was just a question that we have a judge willing to stand up to the political whims and to the state police. We thought that Judge Mott had the integrity to do that."

Nonetheless, Barket said he hardly regarded Mott as sympathetic to the defense's case as Barket presented evidence to the court during the fourth trial, which began on March 31. Mott told both sides at the outset that if the prosecution presented a case that implicated Harris beyond a reasonable doubt, he would convict the defendant "in a heartbeat," but that if Harris' guilt was not proven, "I will acquit."

The evidence presented against Harris in the fourth trial was virtually the same as in the third trial and the theories put forth by the two sides were unchanged.

Prosecutors said Harris, a successful Binghamton-area car dealer, killed his wife because she was close to concluding a divorce that would have significantly depleted his personal wealth of more than \$5 million. The couple had four children.

The defense countered that the divorce was concluding in a reasonably civil way while Michele Harris continued to live in the Harris home and that except for 10 drops of her blood found in the house that were of an indeterminable age, there was no evidence suggesting that Calvin Harris killed her either there or anywhere else.

Neither the body of 35-year-old Michele Harris nor a murder weapon were ever found.

The defense contended that Michele Harris may have been killed by an ex-boyfriend and her body disposed of in a fire pit near the Harris home in Spencer.

On May 24, five days after summations, Mott announced from the bench in the Schoharie County Courthouse that he had found Calvin Harris was not guilty. He did not elaborate while pronouncing the verdict nor has filed any written judgment since.

Tioga County District Attorney Kirk Martin, who prosecuted Harris in the 2015 and 2016 trials, said during the fourth trial that Michele Harris was murdered "in the act of domestic violence by ... her estranged, controlling husband Calvin Harris who previously threatened to kill her and make her disappear."

After Mott pronounced the sentence, Martin said, "We'll abide by the verdict." The prosecutor said police investigators made a "thorough and complete investigation" of Michele Harris' disappearance, which led to her husband's four prosecutions.

Martin did not return calls seeking further comment since the verdict.

Calvin Harris, 54, spent about three-and-a-half of the previous 15 years in jail or prison serving time or in detention as his convictions were on appeal.

In remarks made immediately after his acquittal, Harris was angry and defiant.

"It's hard for people to understand if they haven't gone through it," he said. "But, from my standpoint personally, I think one of the greatest hypocrisies in our country is our criminal justice system. There is nothing fair about it. There is nothing honorable about it. There is no rules and nothing matters in that courtroom."

He added, "Wait till you see what we present going forward. It will be a shocking display of abuse of power and corrupt conduct that this area has never seen."

Harris said he believed state police working out of the department's regional Troop C headquarters in Sidney had it in for him because he once fired the father of the troops' chief investigator on the Michele Harris case, the now-retired Susan Mulvey, from one of the several car dealerships Calvin Harris operated in the Binghamton area.

"That's why this investigation focused on me," Harris said. "She was never looking for Michele. She was coming after me."

State Police spokesman Beau Duffy said that while Harris was acquitted by Mott, "the fact remains that the New York State Police conducted an exhaustive investigation of Michele Harris' murder, which led to a grand jury indictment and conviction of Mr. Harris by juries in two previous trials."

"For more than 14 years, we continued to pursue all leads, right through the last trial, including those generated by defense counsel," Duffy said. "We continue to stand by the work our investigators and members did on this case."

Barket said it has cost Harris "well in excess of \$1 million" to defend himself. Barket said he plans to file a suit on Harris' behalf in federal court in Binghamton alleging civil rights violations by prosecutors and police. Part of Harris' motivation will be to try to recoup money he spent on attorney fees, Barket said.

The suit will focus on actions by Mulvey, the alleged refusal of police and prosecutors to consider some evidence and leads that the Harris defense team said would have tended to exonerate the defendant and instances where witnesses changed their statements, Barket said.

"This wasn't an accidental, 'oh-we-got-the-wrong-guy' prosecution that failed because there was not enough evidence," Barket contended. "This was a manufactured case against Cal in all of its core elements."

Barket said he believe Martin acted honorably in pursuing the prosecutions in 2015 and 2016 of a case he inherited from former Tioga County District Attorney Gerald Keene. Harris and Barket contend that Keene and state police investigators were responsible for developing and continuing to pursue a baseless case against Harris while ignoring other leads that could have pointed them to Michele Harris' killer.

Keene has since been elected to the multi-titled position as Tioga County, Surrogate's Court and Family Court judge.

Calvin Harris' defense lawyer through his first two trials, Joseph Cawley, is now a Broome County Court judge and supervising judge of the county courts in the Sixth Judicial District.

Barket credited Cawley with pursuing the testimony of a witness who came to Cawley just after Harris' first conviction, in 2007, and said he believed he had seen Michele Harris in the driveway of the Harris' home on Sept. 12, 2001—after prosecutors said Calvin Harris had already killed her. Kevin Tubbs testified that he thought he saw Michele Harris standing with a former boyfriend.

Calvin Harris' first convictions in 2007 and 2009 by Tioga County Court juries were overturned on appeal. The Court of Appeals threw out the second conviction, concluding in 2012 that the trial judge in 2009, Tioga County Court Judge James Hayden, failed to properly question a prospective juror who said she had a preexisting opinion about Harris' guilt or innocence, but that it would play only a "slight part" in her consideration of the evidence ([NYLJ, Oct. 19, 2012](#)).

William Easton of Easton Thompson Kasperek Shiffrin in Rochester and Terence Kindlon of Kindlon Shanks & Associates in Albany represented Harris in that appeal prior to Barket Marion's entry into the case.

Neither Keene nor Cawley returned calls seeking comment on the Harris case.

Barket Marion partner Donna Aldea, a former Queens prosecutor, and associate Aida Leisenring were also on the Harris defense team.