

## Inmate cellphone a felony

### Judge's ruling sets state precedent

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MONTICELLO — Sullivan County Judge Frank LaBuda has ruled an inmate caught with a cellphone last September can be sentenced to a felony, a case that sets a precedent in New York.

Barry Green, 33, who is serving time for a 1993 Brooklyn murder, was convicted by a jury of prison contraband after he was caught with the cellphone and charger while serving time at Woodbourne Correctional Facility. His attorney, Stephan Schick, sought to have the case dismissed before sentencing on grounds the cellphone could not be deemed "dangerous contraband," normally defined for such things as weapons or significant amounts of drugs.

The District Attorney's Office had the option of prosecuting this case as a misdemeanor.

LaBuda in a written ruling Tuesday that will be published by the State Reporter as a case of "first impression" sided with prosecutors. Without much guidance from New York, LaBuda cited statutes in Texas, Illinois, Pennsylvania and Louisiana, which have deemed cellphones dangerous contraband, and a 2006 appellate ruling out of Kentucky.

"This poses an immediate safety risk to any institution where an inmate possesses a cellphone, given the possibility that cellphones would allow inmates to conduct clandestine dealing with the outside world to form an escape plan, arrange for a murder of a prosecution witness or coordinate other illegal operations within the detention facility," LaBuda wrote.

LaBuda also wrote the Department of Corrections should formulate a list of items deemed dangerous contraband to assist the courts.

Green was suspected of making hundreds of calls during eight months, but the DA's office wasn't able to establish he was using the phone to commit crimes. He was calling his wife. He now faces a sentence of up to seven years on the felony.

Schick said he will file an appeal.

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