

To commence the statutory time period of appeals as of right (CPLR 5513[a]), you are advised to serve a copy of this order, with notice of entry, upon all parties.



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

-----X
MARY LU LEPORE,

Plaintiff/Petitioner,

-against-

**VILLAGE OF MAMARONECK and WESTCHESTER
COUNTY DISTRICT ATTORNEY,**

Defendants/Respondents.
-----X

**DECISION, ORDER
AND JUDGMENT
Motion Seq. No. 001**

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DIBELLA, J.

The following papers were read and considered on this Petition for return of a vehicle seized and held by respondents:

- 1) Notice of Petition; Verified Petition¹; Affirmation in Support of David I. Rifas, Esq.;
- 2) Verified Answer of Westchester County District Attorney's Office; Affirmation in Opposition of John Carmody, Esq.; Memorandum of Law; and
- 3) Verified Answer of Village of Mamaroneck; Affirmation in Opposition of Kevin E. Staudt, Esq.; Memorandum of Law.

Plaintiff/petitioner commenced this action for the return of her vehicle which is being held in the custody of defendants. Petitioner is the owner of a 2013 Toyota Corolla, which was seized by the Mamaroneck Police Department on or about April 30, 2013. Petitioner's vehicle was seized, as it was involved in the commission of a crime. The Village of Mamaroneck was investigating an armed robbery where the alleged events happened in the vehicle on April 30, 2013. The incident involved an armed robbery and assault of the

¹ Attached to the Notice of Petition is a 3-page document of the petitioner's allegations with a verification; however, nowhere does it specifically state it is a Verified Petition.

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victim in the vehicle. Petitioner's daughter was present and allegedly involved in the commission of the crime.

Petitioner alleges the seizure was unlawful and she moves for the prompt return of the vehicle. Petitioner alleges that respondents have had exclusive possession of said vehicle and any investigation should have been completed. Further, petitioner alleges that there have been no arrests or grand jury action in relation to this investigation.

Respondents Village of Mamaroneck and Westchester County District Attorney answer petitioner's petition and seek to dismiss the petition. As affirmative defenses and as objections in points of law, the Westchester County District Attorney alleges: (1) the Petition fails to state a cause of action; (2) the actions complained of in the Petition were reasonable, proper and lawful; and (3) the continued retention of the subject vehicle is legal and necessary as there is an ongoing criminal investigation and prosecution. As affirmative defenses and as objections in points of law, the Village of Mamaroneck alleges: (1) failure to state a cause of action; (2) improper service of process; (3) failure to file a notice of claim; and (4) failure to exhaust administrative remedies

The Petition is denied and the proceeding is dismissed.

A special proceeding will lie to require the return of property seized pursuant to a search warrant and held for an unreasonable length of time without the commencement of a criminal action. *Moss v. Spitzer*, 19 AD3d 599, 600 (2d Dep't 2005). Respondents have demonstrated that three arrests have since been made in June 2013 with regard to the April 30, 2013 incident, including petitioner's daughter who was in the car, and there

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is an ongoing criminal investigation. As there is an ongoing criminal investigation, the seized property is evidence in any criminal action, and petitioner has not demonstrated that the seized property has been held for an inordinately long period of time, there is no clear right to return of the property at this time. *See id.; Whitehead v. District Attorney of Columbia County*, 289 AD2d 728 (3d Dep't 2001).

Accordingly, it is

Ordered and Adjudged that the petition is denied and the proceeding is dismissed.

This is the Decision, Order and Judgment of the Court.

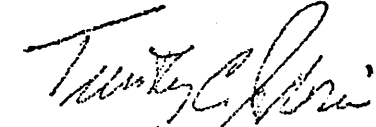
Dated: September 7, 2013
White Plains, New York


Hon. Robert DiBella, JSC

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October 8, 2013