Indigent Legal Services

Decisions of Interest

FEBRUARY 19, 2025

CRIMINAL

COURT OF APPEALS

People v Howard | February 13, 2025 (Memorandum)

LEGAL SUFFICIENCY | SINGLE WITNESS RULE INAPPLICABLE IF USED FOR IMPEACHMENT | AFFIRMED

Appellant appealed from a Second Department order affirming his conviction for third-degree robbery. The Court of Appeals affirmed. The complainant was the only witness who testified at trial about the facts of the alleged crime, and through an interpreter, had made a statement to police that was inconsistent on a material element of the offense with his trial testimony. The Court of Appeals held that the rule of *People v Ledwon*, 153 NY 10 (1897), where the testimony of a single witness involved in hopeless contradiction cannot establish guilt beyond a reasonable doubt, is not implicated when the contradictory prior statement is admitted solely for the purpose of impeachment. Judge Garcia's concurring opinion disagreed that the complainant "gave" an inconsistent statement to police where the complainant did not recall making the alleged statement that was admitted solely for impeachment purposes.

People v Howard (2025 NY Slip Op 00804)

Oral Argument

APPELLATE DIVISION, FIRST DEPARTMENT

People v Correll | February 11, 2025

INSUFFICIENT EVIDENCE | VARIANCE BETWEEN INDICTMENT AND PROOF | MODIFIED

Appellant appealed from a New York County Supreme Court judgment convicting him of enterprise corruption, fourth-degree grand larceny and first-degree scheme to defraud. The First Department vacated the fourth-degree grand larceny count and certain findings relating to enumerated criminal acts underlying the enterprise corruption count, and otherwise affirmed. The trial evidence, including evidence suggesting that appellant threatened physical damage to construction sites through vandalism, varied from the theory of indictment. The evidence relating to the remaining counts was sufficient. Appellant failed to show that he committed less than three of the criminal acts alleged in the indictment, as required to render the enterprise corruption evidence insufficient. Office of the Appellate Defender (Rosemary Herbert, of counsel) represented Correll.

People v Correll (2025 NY Slip Op 00796)

Oral Argument (starts at 01:03:45)

People v Godsent | February 13, 2025

FLAWED JURY INSTRUCTION | FAILURE TO CHARGE MOTIVE TO LIE | HARMLESS ERROR | AFFIRMED

Appellant appealed from a New York County Supreme Court judgment convicting him of third-degree sexual assault. The First Department affirmed. Although Supreme Court erred in failing to give the CJI charge explaining that the jury should consider whether any witness had a motive to lie, the error was harmless. The court's charge as given provided accurate criteria for the jury to assess witness credibility.

People v Godsent (2025 NY Slip Op 00833)

Oral Argument (starts at 01:09:03)

APPELLATE TERM

People v Klein | 84 Misc.3d 133(A)

SIMPLIFIED TRAFFIC INFORMATION | FACIALLY INSUFFICIENT | DISMISSED

Appellant appealed from a Rockland County Village Court judgment convicting him of using a mobile telephone while operating a motor vehicle in motion. The Appellate Term, Second Department reversed, vacated the order denying appellant's motion to dismiss the simplified traffic information, granted the motion, and remitted any fines paid. The simplified traffic information was facially insufficient because the supporting deposition failed to set forth any facts providing reasonable cause to believe that appellant had violated VTL § 1225-c (2) (a). The complaining officer did not allege any facts describing how appellant was using the cell phone, such as by stating how or where appellant was holding it, or that appellant was actually engaged in a call. Zev Goldstein represented Klein.

People v Klein (2024 NY Slip Op 51799(U))

People v Ortega | 84 Misc.3d 134(A)

ACCUSATORY INSTRUMENT | FACIALLY INSUFFICIENT | REVERSED AND DISMISSED

Appellant appealed from a Kings County Criminal Court judgment convicting him of disorderly conduct. The Appellate Term, Second Department dismissed the accusatory instrument as facially insufficient. Appellant pled guilty to disorderly conduct in full satisfaction of an accusatory instrument in which he was charged with driving while ability impaired and related charges. All four counts charged required the prosecution to allege that appellant was operating a motor vehicle. As the accusatory instrument failed to allege this essential fact, it was facially insufficient. New York City Legal Aid Society (Jonathan Garelick, of counsel) represented Ortega.

People v Ortega (2024 NY Slip Op 51812(U))

TRIAL COURTS

People v Cash | 2025 WL 452940

SPEEDY TRIAL | FAILURE TO APPEAR | NO EXTRAORDINARY CIRCUMSTANCES |DISMISSED

Cash was charged in Columbia County Court with first-degree assault, second-degree assault and third-degree CPW. County Court granted the defense motion to dismiss on speedy trial grounds. The prosecution filed its SOR five months after the statutory speedy

trial period had elapsed and subsequently sought to exclude the time periods during which Cash had failed to appear. As the prosecution had not requested a bench warrant, these periods were chargeable. Nor was the prosecution entitled to exclusion of these periods based on the exceptional circumstances tolling provisions given that they failed to exercise due diligence in securing the complainant's testimony even though they knew he was abroad. Accordingly, the charges were dismissed. Columbia County Public Defender (Bryan Bergeron, of counsel) represented Cash.
People v Cash (2025 NY Slip Op 50141(U))

People v Goris | 2025 WL 453161
SPEEDY TRIAL | COC AND SOR ILLUSORY | DISMISSED
Goris was charged in Kings County Criminal Court with DWI and related charges. Criminal Court granted the defense motion to dismiss on speedy trial grounds. The prosecution's failure to disclose the motor vehicle accident report, which was "so germane to the charges," rendered their COC invalid. The prosecution did not contest that the accident report existed and thus its existence was conceded. Merely emailing the arresting officer to ask if the report existed did not constitute due diligence. The prosecution's supplemental COCs providing additional police paperwork, photographs and BWC footage were inadequate because this missing discovery should have been obvious to a reasonably diligent prosecutor. The failure to provide IDTU paperwork was not adequately explained. As the COC was invalid and the SOR illusory, the defense motion to dismiss was granted. The Legal Aid Society of NYC (Titus Mathai, of counsel) represented Goris.
People v Goris (2025 NY Slip Op 50147(U))

FAMILY

APPELLATE DIVISION, FIRST DEPARTMENT

Matter of April B. v Relisha H. | February 11, 2025
CUSTODY | STANDING BY EQUITABLE ESTOPPEL | REVERSED
Appellant appealed from a Bronx County Family Court order finding, after a hearing, that a non-parent petitioner on a custody matter had standing by equitable estoppel to seek custody of the child. The First Department reversed. Dismissal of the custody petition did not render the appeal moot, since the parties' ability to pursue another court action would be directly affected by a determination of the appeal. The custody petitioner had a relationship with the child, but she did not prove by clear and convincing evidence that it rose to the level of parenthood and that it was in the child's best interests for them to remain in contact. Petitioner did not financially support the child or engage in decision making with the mother on important issues, and the child did not regard her as a parent. The court also noted its "significant concerns" with this matter, specifically that it took 16 months for the appointed AFC to meet with and interview the child. Daniel P. Moskowitz represented appellant.
Matter of April B. v Relisha H. (2025 NY Slip Op 00782)

TRIAL COURTS

People v S.B. | 2025 WL 4832087

RAISE THE AGE | REMOVAL TO FAMILY COURT| NO EXTRAORDINARY CIRCUMSTANCES

In this Raise the Age case, the prosecution moved to prevent removal of S.B.'s case, along with two co-defendants, to Erie County Family Court. Erie County Supreme Court (Youth Part) concluded that there were no extraordinary circumstances under CPL § 722.23 preventing removal, and ordered the cases removed to the juvenile delinquency part of Family Court. Although extraordinary circumstances are not defined in the statute, courts typically balance aggravating and mitigating factors, including the youth's history and personal circumstances and the nature of the crime. Here, the mitigating factors of poverty, mental health struggles, and other personal challenges outweighed the aggravating factor of committing several crimes—stealing or attempting to steal several cars—over a period of several days. All three juveniles were likely to be amenable to and benefit from the enhanced services offered in Family Court. Connor Dougherty, Daniel Schaus, and Giovani Genovese represented the youths.

Matter of S.B. (2025 NY Slip Op 50148(U))

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