Indigent Legal Services

Decisions of Interest

MARCH 12, 2025

CRIMINAL

APPELLATE DIVISION, FIRST DEPARTMENT

People v Walker | March 4, 2025

SUPPRESSION | REASONABLE SUSPICION | REVERSED, PLEA VACATED & INDICTMENT DISMISSED

Appellant appealed from a New York County Supreme Court judgment convicting him of attempted second-degree CPW. The First Department reversed the denial of suppression, vacated the plea, and dismissed the indictment. Police observed appellant carrying half-full, but capped, liquor bottles, with a "heavy object" weighing down his coat pocket. When they summoned him, appellant fled. The police pursued, tackled him and subsequently recovered a gun. The First Department reversed the suppression court's finding that the police had reasonable suspicion to pursue appellant. Simple possession of closed bottles, even when unsealed, was suggestive of innocent behavior, as transporting closed bottles is a legal activity, and the police never saw appellant drink from an open container. Observation of a heavy object or mere bulge does not support a reasonable conclusion that a person is armed without a showing that the object resembled a gun. A pocket bulge, as opposed to a waistband bulge, is not the tell-tale sign of a weapon. Flight, even with equivocal circumstances suggesting criminality, does not establish reasonable suspicion to justify pursuit. The Legal Aid Society of NYC (Stephen Nemec, of counsel) represented Walker.

People v Walker (2025 NY Slip Op 01194)

Oral Argument (starts at 00:09:15)

People v Coke | March 6, 2025

LEGAL SUFFICIENCY | CIRCUMSTANTIAL DNA EVIDENCE | REVERSED AND INDICTMENT DISMISSED

Appellant appealed from a Bronx County Supreme Court judgment convicting him of second-degree murder and second-degree CPW and from an order denying his 440.10 motion to vacate the judgment. The First Department found evidence of guilt insufficient, reversed, and dismissed the indictment. The prosecution's entirely circumstantial case was legally insufficient to establish appellant's intent or his presence at the crime scene. The presence of appellant's DNA as a contributor to a sample recovered from the gun slide and his presence hours earlier accompanied by those with whom he was accused of acting-in-concert did not establish that appellant intended to aid them in the shooting. The DNA evidence was highly equivocal, as it was impossible to determine when each contributor deposited his DNA on the gun, how appellant's DNA might have been transferred, or whether appellant ever touched the gun. There was no physical, video, or

testimonial evidence supporting the conviction. The First Department also noted that the FST method of DNA analysis used to analyze the mixture had been excluded following a *Frye* hearing in another case and that the OCME no longer used this statistical tool. While not dispositive, these circumstances highlighted the weakness of the DNA evidence. Applying the same reasoning, the judgment was found to be against the weight of the evidence. Law Office of Joel V. Rubin, P.C. (Joel V. Rubin, Norman Reimer and Jacob Loup, of counsel) represented Coke.
People v Coke (2025 NY Slip Op 01297)
Oral Argument (starts at 01:05:01)

People v Davila | March 6, 2025

CPL § 440.10 | ACTUAL INNOCENCE | SUMMARY DENIAL REVERSED & HEARING ORDERED

Appellant appealed from a Bronx County Supreme Court order summarily denying his CPL § 440.10 motion to vacate his murder conviction. The First Department reversed the part of the order denying appellant a hearing on his actual innocence claim. Appellant presented evidence, including statements from Assistant U.S. Attorneys who handled a cooperating witness who had credibly exonerated appellant and took credit for the shooting. Although the cooperator had since died, his confession would be admissible as a statement against penal interest. Center for Appellate Litigation (Alexander Mitter, of counsel) represented Davila.
People v Davila (2025 NY Slip Op 01300)
Oral Argument (starts at 02:31:10)

APPELLATE DIVISION, SECOND DEPARTMENT

People v Faustin | March 5, 2025

BIASED PROSPECTIVE JUROR | FOR-CAUSE CHALLENGE | REVERSED

Appellant appealed from a Kings County Supreme Court judgment convicting him of first-degree burglary, second-degree burglary, and fourth-degree grand larceny after a jury trial. The Second Department dismissed the fourth-degree grand larceny count as legally insufficient, reversed the judgment, and ordered a new trial on the remaining counts. The trial court erred in denying appellant's for-cause challenge to a prospective juror who stated that his mother-in-law had been sexually assaulted and then raised his hand when counsel inquired if any of the potential jurors felt this was not the "right case" for them because it involved sexual assault allegations. The prospective juror's statements and conduct raised a serious doubt regarding his impartiality. As the court failed to elicit an unequivocal assurance on the record from the prospective juror regarding his ability to render a fair and impartial verdict, and appellant had exhausted his peremptory challenges, the denial of his for-cause challenge constituted reversible error. Appellate Advocates (Martin B. Sawyer, of counsel) represented Faustin.
People v Faustin (2025 NY Slip Op 01231)
Oral Argument (starts at 00:05:39)

People v Creary | March 5, 2025

PROSECUTION'S APPEAL | SUPPRESSION | NO GROUNDS TO SUSPECT CRIMINALITY | AFFIRMED

The prosecution appealed from a Queens County Supreme Court order granting the defense's motion to suppress a gun. The Second Department affirmed. The officer testified that she approached respondent's lawfully parked car, observed the occupant asleep in the driver's seat, and attempted to open the locked driver's side doors. After directing the occupant to unlock the door and exit the car, the officers recovered a gun from the car door's pocket. The officers had an objective, credible reason to approach respondent's lawfully parked car to request information. They did not, however, have a lawful basis for subjecting the occupant to additional restraint by directing him to open the car's door. The occupant was not considered a suspect, and no testimony was elicited that the officers suspected the car contained evidence of a crime. Camille O. Russell represented Creary.
People v Creary (2025 NY Slip Op 01230)
Oral Argument (starts at 00:08:33)

People v Cespedes | March 5, 2025
OOP DURATION EXCEEDED STATUTORY MAXIMUM | AFFIRMED | OOP MODIFIED
Appellant appealed from a Queens County Supreme Court judgment convicting him of petit larceny following his guilty plea. The Second Department affirmed but vacated the durational provisions of the orders of protection and remitted for a new determination as to their duration. The orders of protection exceeded the maximum time limit for a class A misdemeanor, pursuant to CPL § 530.13(4)(B). Preservation was not required because appellant had no practical ability to register a timely objection given the court's failure to announce the duration of the orders of protection at either the plea or sentencing proceedings. Appellate Advocates (Rebekah J. Pazmiño, of counsel) represented Cespedes.
People v Cespedes (2025 NY Slip Op 01229)

APPELLATE DIVISION, THIRD DEPARTMENT

People v Ambrosio | February 27, 2025
JURY INSTRUCTION | STANDARD FOR IMPAIRMENT | AFFIRMED | DISSENT
Appellant appealed from two County Court judgments convicting him of two counts of driving while ability impaired and a violation of probation. The Third Department affirmed. Defense counsel was not ineffective for failing to request a jury instruction in accordance with the heightened standard of intoxication delineated in *People v Caden N.*, 189 AD3d 84 (3d Dept 2020), *lv denied* 36 NY3d 1050 (2021]). Counsel is not ineffective when the issue in question is "not so clear-cut and dispositive that no reasonable defense counsel would have failed to assert it." The majority reasoned that *Caden N.*'s holding was limited to vehicular manslaughter. The majority also observed that the amended CJI suggested that the *Caden N.* definition of impairment be given with the charge of manslaughter but need not be given relative to the charge of DWAI. Justice Lynch in dissent would have invoked interest of justice jurisdiction to vacate appellant's conviction and remit for a new trial utilizing the heightened standard for impairment. *Caden N.* did not explicitly discuss whether the standard for impairment for purposes of a prosecution for second-degree vehicle manslaughter was also the standard to be applied in a prosecution for only VTL § 1192(4). Matthew C. Hug represented Ambrosio.

[People v Ambrosio (2025 NY Slip Op 01133)]

People v Darby | February 27, 2025

CPL § 440.20 | PREDICATE STATUS | EQUIVALENCY OF FEDERAL DRUG CONVICTION | REVERSED IN PART & REMITTED

Appellant appealed from an Albany County Supreme Court order summarily denying his CPL §§ 440.10 and 440.20 motions. The Third Department remitted for a hearing on appellant's 440.20 motion to give the parties the opportunity to litigate whether 21 USC § 841(a)(1) (manufacturing, distributing, dispensing or possessing with the intent to manufacture, distribute or dispense a controlled substance) is equivalent to Penal Law § 220.39 (third-degree CSCS). The trial court had sentenced appellant as a predicate felon based on a 2006 federal conviction under 21 USC § 841(a)(1), but the federal statute arguably has a broader knowledge requirement, as held by the First Department in *People v Campanioni*, 99 AD3d 474 (1st Dep't 2021), *lv denied* 38 NY3d 926 (2022). Accordingly, to determine whether appellant's federal conviction is equivalent to a felony in New York, the trial court must evaluate the facts underlying the federal conviction. Albany County Public Defender (James A. Bartosik Jr., of counsel) represented Darby.
[People v Darby (2025 NY Slip Op 01134)]
[Oral Argument]

People v Gray | January 6, 2025

PROCEEDING PRO SE | INADEQUATE WAIVER OF THE RIGHT TO COUNSEL | REVERSED | REMITTED

Appellant appealed from an Ostego County Court judgment convicting him of third-degree robbery. The Third Department reversed, vacated appellant's guilty plea, and remitted for further proceedings. County Court erred in granting appellant's request to proceed pro se, because the court's inquiry was insufficient to establish that appellant's waiver of the right to counsel was knowing and voluntary. The record does not reflect that appellant was informed of or understood that, despite being permitted to proceed with standby counsel, there were risks inherent in proceeding pro se.
[People v Gray (2025 NY Slip Op 01259)]

TRIAL COURTS

People v Pridgen | 2025 WL 666203

SPEEDY TRIAL | COC/SOR ILLUSORY | LACK OF DUE DILIGENCE | MOTION DENIED

Pridgen moved to dismiss on speedy trial grounds. Kings County Supreme Court denied the motion to dismiss but granted his motion to challenge the original and supplemental COC's. The prosecution did not establish that diligent and reasonable inquiries were made to locate the names and contact information of the individuals arrested with Pridgen. The prosecutor did not request or review the sergeant's logbook to see who was brought in the day of Pridgen's arrest until after filing the challenged COCs. Once the prosecutor requested the precinct's command logs, she was able to see the names of the other individuals arrested and obtain their pedigree cards. Dismissal was not warranted because the prosecution did not exceed the six-month period for trial readiness.
[People v Pridgen (2025 NY Slip Op 50259(U))]

People v Oaks | 2025 WL 680012

ERLINGER | SENTENCING ENHANCEMENT | JURY DETERMINATION REQUIRED

The prosecution filed a CPL § 400.16 statement to have Oaks designated a persistent felony offender pursuant to PL § 70.08. The Erie County Supreme Court declined to make such a finding. *Erlinger* set forth a clear constitutional imperative that such determinations are of a magnitude that invoke the fundamental constitutional protections of due process and a right to a trial by an impartial jury. *Erlinger* applied to prohibit the court from engaging in the fact finding (tolling) that would be necessary to qualify a prior violent felony conviction as a predicate for purposes of the persistent violent felony offender analysis; at the same time, however, *Erlinger* did *not* prohibit the court from determining whether a predicate violent felony conviction rendered Oaks a second violent felony offender where tolling would not apply, since the prior conviction, on its face, falls within the requisite ten-year period. Robert D. Steinhouse represented Oaks.

People v Oaks (2025 NY Slip Op 25052)

People v Haggan | 2025 WL 680013

SPEEDY TRIAL | COC/SOR ILLUSORY | DUE DILIGENCE | DISMISSED

Haggan moved to dismiss on speedy trial grounds. New York County Supreme Court granted the motion. The prosecution's COC was invalid and their statement of readiness illusory because they failed to exercise due diligence to obtain and disclose complainant's employment records, entity report, and medical records. While the employment records and medical records were not within the prosecution's possession and control, they were required to make diligent efforts to obtain them under CPL § 245.20(2). The employment records were relevant to the subject matter of the case, because they may establish whether the complainant took time off work due to the alleged injuries, relevant to the forcible nature of the alleged robbery. The prosecution "failed to detail how they determined that the [employment records] did not exist, what efforts they made to obtain them, or who they consulted for the documents." Likewise, the prosecution did not explain their efforts to "follow up" with the hospital after serving a subpoena for the complaint's medical records. By simply stating the entity report had "no information," the prosecution also failed to provide enough information to establish that the report did not pertain to the subject matter of the case. New York County Defender Services (Amanda Barfield, of counsel) represented Haggan.

People v Haggan (2025 NY Slip Op 50266(U))

People v Dean | 2025 WL 700688

SPEEDY TRIAL | LACK OF DUE DILIGENCE PRODUCING ACCUSED FOR TRIAL | DISMISSED

Dean moved to dismiss on speedy trial grounds. Bronx County Criminal Court granted the motion. Once Dean was in the custody of law enforcement in Schenectady County under the same name and NYSID number, knowledge of his whereabouts was imputed to the prosecution. Dean therefore became "unavailable" under CPL § 30.30(4)(c)(i) as of the date of his arrest in Schenectady County, and, as such, the People were required to show that they had exercised due diligence in attempting to obtain his presence for trial. Because the prosecution did not exercise due diligence, it cannot be said that Dean was attempting to avoid prosecution during the time he was in the custody of the Schenectady County Sheriff's Office. The court relied on *People v Mapp*, 308 A.D.2d 463

(2d Dep't 2003) and *People v McLaurin*, 38 NY2d 123 (1975) as controlling authority, declining to follow contrary trial court decisions. The Legal Aid Society of NYC (Marcus Hyde, of Counsel) represented Dean.
People v Dean (2025 NY Slip Op 50280(U))

People v Sanchez | 2025 WL 716963
SPEEDY TRIAL | COC/SOR ILLUSORY | DUE DILIGENCE | DISMISSED
Sanchez moved to dismiss on speedy trial grounds. Nassau County District Court, First District, granted the motion. The prosecution's failure to turn over the terms and conditions of Sanchez's probation, including the period of time during which he was subject to them, rendered the COC and SOR invalid, where the entire case rested on the scope of the probation officer's authority pursuant to the terms of probation. The prosecution's claim that they have no discovery obligation regarding probation material because it was not in their control was therefore incorrect. Such material is discoverable as it "related[s] to the subject matter of the case" and the prosecution had to make diligent, good-faith efforts to ascertain its existence and make it available. Because the prosecution failed to do so, they cannot certify compliance and validly state readiness for trial. The Law Offices of Christopher Graziano represented Sanchez.
People v Sanchez (2025 NY Slip Op 50283(U))

FAMILY

APPELLATE DIVISION, SECOND DEPARTMENT

Matter of Rodriguez v Escobar | March 5, 2025
UCCJEA | AFFIX AND MAIL SERVICE | REVERSED & REMITTED
The father appealed from a Queens County Family Court order granting the mother's motion to dismiss the father's habeas corpus petition for lack of personal jurisdiction due to improper service. The Second Department reversed the order dismissing the father's petition, reinstated it, and remitted. Family Court had no authority to dismiss the father's petition for lack of personal jurisdiction. The UCCJEA required that the father serve the mother "in a manner reasonably calculated to give actual notice" to her, as she was residing with the child outside of New York. The father served the mother via affix and mail service after an order authorizing it. The mother acknowledged receipt of the affixed copy, and her bare denial that she ever received the mailed copy was insufficient to refute the father's proof of mailing. The Family Court thus erred in directing a hearing to determine the validity of service of process upon the mother and should have found that service was properly effectuated pursuant to the UCCJEA. Nestor Soto represented the father.
Matter of Rodriguez v Escobar (2025 NY Slip Op 01224)
Oral Argument (starts at 00:09:50)

TRIAL COURTS

People v W.C. | 2025 WL 700772

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

In this Raise the Age case, the prosecution moved to prevent removal of W.C.'s case 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 case removed to the juvenile delinquency part of Family Court. Although the statute does not define "extraordinary circumstances," courts typically balance aggravating and mitigating factors, including the youth's history and personal circumstances and the nature of the crime. Here, W.C. was charged with second-degree CPW after officers, responding to a report of a domestic disturbance, viewed what appeared to be a rifle in his bedroom. No one was harmed, and no property was damaged. W.C. was receiving intensive rehabilitative services as part of his subsequent placement with OCFS, and the court granted W.C. the time and opportunity to benefit from them. Giovani Genovese represented W.C.

People v W.C. (2025 NY Slip Op 50276(U))

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