Indigent Legal Services

Decisions of Interest

MARCH 19, 2025

CRIMINAL

SECOND CIRCUIT

United States v Harry | March 7, 2025

FOURTH AMENDMENT | WARENTLESS POLE CAMERA SURVEILLANCE NOT A SEARCH | AFFIRMED

Appellant appealed from a District of Connecticut judgment convicting him of possessing controlled substances with intent to distribute and conspiracy to accomplish the same. The Second Circuit affirmed. Addressing a question of first impression in the Second Circuit, the Court held that the DEA's warrantless use of a stationary pole camera situated outside of appellant's business for approximately 50 days did not constitute a Fourth Amendment search, and the district court was not required to exclude the pole-camera footage at appellant's criminal trial for drug trafficking. Appellant did not meet his burden of showing that he maintained an expectation of privacy in his auto business's exterior and adjoining parking lot. Other than a very low fence bordering one side of his parking lot, appellant made little to no effort to conceal the goings-on outside his business and left the premises clearly visible to the public, thereby undermining his argument that he had a legitimate expectation of privacy. The stationary pole camera monitored only what was publicly visible and did not employ any modern technology capable of capturing details otherwise unknowable without physical intrusion or trespass, such as thermal-imaging or GPS tracking, to enhance the DEA's traditional surveillance capabilities.
Oral Argument (Argued: December 2, 2024) [Search for Docket # 23-7106 to find the audio recording of the oral argument. NOTE: This case is improperly captioned as *United States of America v. Wiley*.]

COURT OF APPEALS

People v Willis | March 13, 2025 (Troutman, J.)

People v Martinez-Fernandez | March 13, 2025 (Troutman, J.)

MISDEMEANOR COMPLAINTS | FACIAL SUFFICIENCY | AFFIRMED

Appellants appealed from Appellate Term, First Department, orders affirming their convictions for third-degree aggravated unlicensed driving, following their guilty pleas. The Court of Appeals affirmed. The Appellate Term properly held that the misdemeanor complaints were facially sufficient. According to the sworn factual allegations in each complaint, each appellant was operating a motor vehicle after having had their license suspended at least three times for failing to answer traffic tickets. Where appellants consented to prosecution by misdemeanor complaint, the prosecution was relieved of the

prima facie case requirement applicable to an information. Thus, the complaints did not need to specifically allege that appellants personally received the summonses and only needed to set forth facts that establish reasonable cause to believe that the appellants committed the charged offenses. Here, it was reasonable to infer that appellants had knowledge of their license suspensions based on allegations that their licenses had been suspended on at least three occasions for failing to respond to traffic summonses, together with the supporting DMV abstracts, where the traffic summonses allegedly provided notice that failure to answer within 15 days would result in their licenses being automatically suspended. Because Martinez-Fernandez pleaded guilty to the facially sufficient charge of third-degree aggravated unlicensed operation of a vehicle, in satisfaction of the complaint, the Court did not need to reach his facial sufficiency claim regarding the reckless driving charge, or his claim that the traffic infraction should be dismissed.
People v Willis (2025 NY Slip Op 01405)
Oral Argument (People v Willis)
Oral Argument (People v Martinez-Fernandez)

APPELLATE DIVISION, FIRST DEPARTMENT

People v Johnson | March 11, 2025
BURGLARY | EXCESSIVE SENTENCE | MODIFIED
Appellant appealed from a New York County judgment convicting him, after a jury trial, of first-degree burglary, second-degree burglary, attempted fourth-degree grand larceny, and fourth-degree CPSP, and sentencing him to an aggregate term of 20 years' imprisonment. The case involved two burglaries where appellant gained entry by deception, attacked one victim and stole their phone, and withheld another victim's passport and documents while demanding money from him. Rejecting appellant's weight-of-the-evidence and legal sufficiency claims and characterizing appellant's testimony regarding a justification defense "illogical," the First Department nonetheless reduced the sentence in the interest of justice to an aggregate term of 16 years and otherwise affirmed the conviction. Office of the Appellate Defender (Sean Nuttall, of counsel) represented Johnson.
People v Johnson (2025 NY Slip Op 01326)
Oral Argument (starts at 01:18:25)

People v Wann | March 11, 2025
INVALID APPEAL WAIVER | SURCHARGE AND FEES VACATED | MODIFIED
Appellant appealed from a Bronx County judgment convicting him of third-degree robbery and sentencing him to 5 years' probation (Lewis, J.). The First Department vacated the surcharge and fees and otherwise affirmed. Additionally, the First Department found the appeal waiver invalid because the plea court's brief explanation did not adequately explain the nature of the right to appeal and suggested that the right was automatically forfeited by guilty plea. It also failed to advise that the right to appeal was separate and distinct from the trial rights being waived, and there was no written waiver. Center for Appellate Litigation (Emilia Kind-Musza, of counsel) represented Wann.
People v Wann (2025 NY Slip Op 01322)

People v McCray | March 11, 2025

INVALID APPEAL WAIVER | AFFIRMED

Appellant appealed from a New York County judgment convicting him of second-degree CPW (Ross, J.). The First Department found the appeal waiver invalid. The court merely asked during the proceedings if appellant had signed and understood the written waiver, but did not ask any additional questions to confirm that appellant understood it. The court did not explain that the right to appeal was separate and distinct from the trial rights waived by guilty plea and made no mention of the appeal rights that survive a valid waiver. These errors could not be cured by a written waiver. Office of the Appellate Defender (Rosemary Herbert, of counsel) represented McCray.

People v McCray (2025 NY Slip Op 01324)

Oral Argument (starts at 01:52:30)

APPELLATE DIVISION, SECOND DEPARTMENT

People v Allen | March 12, 2025

440.20 | RIGHT TO BE PRESENT AT RESENTENCING | REVERSED

Appellant appealed from a Kings County Supreme Court resentencing order imposed upon the grant of his CPL § 440.20 motion to set aside his sentence, following his conviction of third-degree rape, upon his guilty plea. The Second Department reversed and remitted for resentencing. As conceded by the prosecution, the lower court violated appellant's right to be present at resentencing. Appellant was not present at resentencing because he was incarcerated in Florida, and he did not waive his right to be present. Appellant's "fundamental right to be personally present" at sentencing "extend[ed] to resentencing or to the amendment of a sentence." The Legal Aid Society of NYC (Nancy E. Little, of counsel) represented Allen.

People v Allen (2025 NY Slip Op 01381)

People v Johnson | March 12, 2025

EXCESSIVE SENTENCE | CONSECUTIVE TO CONCURRENT | MODIFIED

Appellant appealed from two judgments of Dutchess County Court convicting him, under one indictment, of two counts of third-degree CSCS and two counts of third-degree CPCS, and, under the other indictment, of one count of third-degree CSCS, and sentencing him, as a second felony offender, to an aggregate 20 years' imprisonment followed by 6 years' PRS. The sentences on the third-degree CSCS convictions from the first indictment were to run consecutively with each other, and all other sentences were to run concurrently. The Second Department modified, in the interest of justice, by running the sentences on the third-degree CSCS convictions from the first indictment concurrently with each other, reducing the sentence to an aggregate prison term of 10 years' imprisonment followed by 3 years' PRS, and otherwise affirmed. Kelley M. Enderley represented Johnson.

People v Johnson (2025 NY Slip Op 01388)

People v Suckoo | March 12, 2025

YOUTHFUL OFFENDER | FAILURE TO CONSIDER YO | REMITTED FOR DETERMINATION & RESENTENCING

Appellant appealed from a Queens County Supreme Court judgment convicting him of first-degree manslaughter, following his guilty plea. The Second Department modified, vacated his sentence, and remitted for a youthful offender determination and resentencing. Appellant was an eligible youth, and the record did not demonstrate that the court made a YO determination. On remittal, the court must reconsider the imposition of mandatory surcharges and fees. Appellate Advocates (Maisha Kamal, of counsel) represented Suckoo.

People v Suckoo (2025 NY Slip Op 01396)

People v Ramirez | March 12, 2025

DEFICIENT *ANDERS* BRIEF | NEW COUNSEL ASSIGNED

Appellant appealed from a Queens County Supreme Court judgment convicting him of operating a motor vehicle while under the influence of alcohol, following his guilty plea. Appellant's assigned counsel filed an *Anders* brief to withdraw. The Second Department found counsel's brief deficient, granted leave to withdraw, and assigned new counsel. The brief failed to adequately "highlight facts in the record that might arguably support the appeal" or "analyze potential appellate issues," including "whether the orders of protection were validly entered."

People v Ramirez (2025 NY Slip Op 01392)

APPELLATE DIVISION, FOURTH DEPARTMENT

People v Berry | March 14, 2025

AGUILAR-SPINELLI | CI'S BASIS OF KNOWLEDGE | AFFIRMED | DISSENT

Appellant appealed from a judgment of Monroe County Supreme Court convicting him, after a jury trial, of various drug and weapon possession charges. A three-justice majority (Lindley, Bannister, and Delconte, JJ.), affirmed the conviction, holding that the confidential informant's (CI) hearsay allegations supporting a search warrant application satisfied the basis-of-knowledge prong of *Aguilar-Spinelli*. The warrant application, which sought a warrant to search two neighboring addresses, included six pages of information from a CI about the second address, but only two sentences about the first address, averring that the CI "was aware of the ongoing presence of narcotics at the subject location because the informant had been present at that location on multiple occasions, including for at least one drug transaction." Justices Ogden and Nowak dissented and would have suppressed the evidence found at the first address and remitted for resentencing on the counts unaffected by suppression. The dissenters noted that the warrant application detailed no specific transactions at the first address, no type of narcotic exchanged, and no time frame for the alleged transaction. Moreover, "the police provided no additional corroborating observations to support issuance of the warrant," such as ongoing surveillance or controlled buy attempts at that address. This "paucity of information" stood in contrast to the extensive detail provided regarding the second address.

People v Berry (2025 NY Slip Op 01523)
Oral Argument (starts at 01:02:15)

People v Jones | March 14, 2025

MISTAKEN IDENTITY | PROBABLE CAUSE TO ARREST | AFFIRMED | DISSENT

Appellant appealed from a Monroe County Supreme Court judgment convicting him, upon a guilty plea, of second-degree attempted CPW and sentencing him as a predicate felony offender. A three-justice majority (Lindley, Bannister, and Delconte, JJ.) affirmed the conviction, but vacated the sentence, on consent, and remitted for resentencing, because the prosecution failed to establish that appellant's conviction in a foreign jurisdiction was equivalent to a New York felony. The arrest occurred after a four-member apprehension team from the Department of Corrections and Community Supervision (DOCCS) with an arrest warrant for a parole absconder received information from the absconder's girlfriend that he might be in a one-block area in Rochester. They also knew the absconder's race, height, and weight (6'1" and 180 pounds). Upon arrival, the officers noticed appellant, who was 5'11" and between 185-200 pounds, walking on the street, wearing a ski mask. When two DOCCS officers approached him, appellant fled. The other two officers, who were 20-30 yards away, then pursued appellant, who allegedly discarded a gun during flight. The majority held that the pursuit was justified, because the officers reasonably believed appellant was the parole absconder based on their similar heights and weights, his ski mask, his location in the general location described by the absconder's girlfriend, and his immediate flight. The dissent would have reversed, granted suppression, and dismissed the indictment. There was insufficient evidence that the pursuing officers, who testified, had even a subjectively—let alone objectively—reasonable basis to stop appellant. The approaching officers never testified. It was not unusual for appellant to be wearing a ski mask on a cold December morning, and appellant's race was not discernible given his clothing. Nor was the similarity in height and weight alone sufficient, since both men are of average build relative to the general public. According to the dissent, "the majority's conclusion is tantamount to holding that the parole investigators had a reasonable belief sufficient to stop and arrest any average-sized man, of any race, in the general area where the parolee may have been."

People v Jones (2024 NY Slip Op 01524)

Oral Argument (starts at 01:32:50)

People v Hall | March 14, 2025

WINDOW TINT VIOLATION | TESTIMONY NOT CONCLUSORY | AFFIRMED | DISSENT

Appellant appealed from two Onondaga County Court judgments convicting him of fifth-degree CPCS and criminal possession of a firearm. The Fourth Department affirmed. The court determined that the officer had reasonable suspicion to believe the windows of appellant's vehicle were excessively tinted in violation of VTL § 375(12-a)(b)(2), and the stop was therefore legal, based on his testimony that he was "unable to see the driver of the vehicle" through the window. Justice Whalen in dissent would have reversed because the prosecution failed to elicit evidence to support the officer's conclusory belief that the tinted windows violated the law. The officer testified that he believed any level of window tint was illegal and that the actual tint on the vehicle's windows was never tested with a tint meter. He also testified that he initially observed the vehicle when it was dark outside and he did not clarify whether it was the window tint, as opposed to the ambient darkness, that prevented him from seeing the driver. Because of that lapse, the officer failed to link

his conclusory belief that the windows were excessively tinted with an objective fact in support of that belief.
People v Hall (2025 NY Slip Op 01457)

People v Mitchell | March 14, 2025

30.30 | TRIAL COURT'S FAILURE TO FOLLOW APPELLATE DIVISION | HELD IN ABEYANCE & REMITTED

Appellant appealed from an Ontario County judgment convicting him of second-degree unlawful imprisonment, third-degree rape, and related charges. The Fourth Department, in an earlier appeal, had held the matter in abeyance, finding that the prosecution had not exercised due diligence in its failure to discover the complainant's criminal record, rendering its COC illusory. The matter had been remitted for the motion court to determine whether, given the illusory COC, the prosecution had timely declared readiness, given that statutory amendments affecting the defense's reciprocal discovery obligations had been enacted while the case was pending. On remittal, the prosecution argued, for the first time, that appellant had never validly moved to dismiss the indictment on speedy trial grounds. The motion court denied the 30.30 motion on that basis, and the defense appealed. The Fourth Department held that the prosecution's argument, raised for the first time following remittal, was improperly considered, as it was inconsistent with the Fourth Department's earlier findings. A trial court, upon remand or remittitur, has no authority to disregard the mandate of a higher court. The appeal was again held in abeyance and the matter remitted for further proceedings. Easton Thompson Kasperek Shiffrin LLP (Brian Shiffrin, of counsel) represented Mitchell.
People v Mitchell (2025 NY Slip Op 01456)

Matter of Bright v Martuscello | March 14, 2025

PRISON DISCIPLINARY | INSUFFICIENT EVIDENCE | DUE PROCESS DENIED | MODIFIED & REMITTED

Petitioner appealed from the denial of his Article 78 motion seeking to annul several disciplinary determinations. The Fourth Department ruled, and respondent conceded, that two charges were not supported by substantial evidence and that the determinations upholding those charges should be annulled. With respect to two additional charges, petitioner was denied due process when the hearing officer refused to allow him to view the videotape of the incident underlying one charge and call witnesses relating to the other charge. An incarcerated person has the right to call witnesses and present evidence in his defense when doing so would not be unduly hazardous to institutional safety, and the hearing officer did not mention any such concerns in denying petitioner access to the videotape and the requested witness. The Fourth Department annulled the violation findings on two charges, ordered the findings expunged from petitioner's record, affirmed the findings relating to one charge and remitted for further proceedings including consideration of appropriate penalty. Wyoming County-Attica Legal Aid Bureau, Warsaw (Leah R. Nowotarski, of counsel) represented Bright.
Matter of Bright v Martuscello (2025 NY Slip Op 01538)

People v Cousins | March 14, 2025

IAC | FAILURE TO REVIEW DISCOVERY | REVERSED

Appellant appealed from a Jefferson County Court judgment convicting him, after a jury trial, of attempted first-degree CPCS and attempted third-degree CPCS. The Fourth

Department reversed and granted a new trial. The record showed that defense counsel failed to review critical discovery, including a flash drive containing the entire contents of his client's cell phones. This omission led to subsequent failures to object to inadmissible evidence and failure to request limiting instructions. There was no strategic explanation for these errors, which compromised appellant's right to a fair trial. Cambareri & Brenneck (Melissa K. Swartz, of counsel) represented Cousins.
People v Cousins (2025 NY Slip Op 01535)
Oral Argument (starts at 01:02:50)

People v Niles | March 14, 2025

INCLUSORY CONCURRENT COUNTS | MODIFIED

Appellant appealed from an Oneida County Court judgment convicting him of second- and third-degree assault. The Fourth Department modified by dismissing the third-degree assault count. Third-degree assault is an inclusory, concurrent count of second-degree assault, requiring dismissal of the lower count. Preservation of this issue is not required. Oneida County Public Defender (James P. Godemann, of counsel) represented Niles.
People v Niles (2025 NY Slip Op 01502)

People v Clark | March 14, 2025

30.30 | HEARING REQUIRED | *SUA SPONTE* DETERMINATION IMPROPER | REMITTED

Appellant appealed from a Steuben County Court judgment convicting her of third-degree CPCS. The Fourth Department remitted to County Court for further proceedings and reserved decision on the appeal. County Court "erred in failing to hold a hearing [on the 30.30 motion], in conducting its own *sua sponte* investigation, and in excluding time not advocated for by the People in opposition to defendant's CPL 30.30 motion." Once appellant had established through sworn allegations that there was an unexcused delay exceeding the speedy trial time, the burden shifted to the prosecution to show that time should be excluded. It was improper for County Court to substitute its own investigation, separate from the prosecution's arguments, based on documents not even contained in the appellate record. County Court also failed to address time periods that the prosecution argued were excludable time in their responding papers. The Fourth Department remitted for a hearing on the disputed time periods and directed that the hearing must not include argument about the time periods upon which the court based its *sua sponte* conclusion. Caitlin M. Connelly represented Clark.
People v Clark (2025 NY Slip Op 01463)

People v Crane | March 14, 2025

SORA | INSUFFICIENT EVIDENCE OF ALCOHOL ABUSE | MISCONDUCT NOT WHILE IN CUSTODY | MODIFIED

Appellant appealed from a Steuben County Court order designating him a level three sex offender under SORA. The Fourth Department modified by designating him a level two sex offender and otherwise affirmed. County Court erred in assessing points under risk factor 11, history of drug or alcohol abuse, and risk factor 13, conduct in custody. A statement from the complainant to a caseworker that appellant had been "outside by the fire drinking" on the night of the offense was not clear and convincing evidence that he was abusing alcohol at the time of the offense, particularly where the complainant also denied appellant had been drinking during the second incident and indicated that he

"normally doesn't drink." A victim impact statement from appellant's ex-wife that he was "drunk" on the night of the incident was not reliable hearsay under *Mingo* where the source of her information was unclear. No points should have been scored for conduct while in custody under risk factor 13, where the alleged misconduct occurred when appellant was not in fact in custody, or on probation or parole. Maurice J. Verrillo represented Crane.
People v Crane (2025 NY Slip Op 01530)

People v Fulcott | March 14, 2025

PSR REFERENCES TO AQUITTED CONDUCT | FAILURE TO RULE ON MOTION TO STRIKE | REMITTED

Appellant appealed from a Monroe County Court judgment convicting him of first-degree criminal possession of marihuana, following a jury verdict. The Fourth Department ordered the case held, the decision reserved, and the matter remitted. The trial court erred by failing to rule on appellant's motion to strike from the presentence report any references to the conduct underlying the charges of which he was acquitted. A court's failure to rule on a motion cannot be deemed a denial thereof. Steven A. Feldman represented Fulcott.
People v Fulcott (2025 NY Slip Op 01467)

People v Houle | March 14, 2025

DEFECTIVE GRAND JURY PROCEEDINGS | FAILURE TO RULE ON MOTION TO DISMISS | REMITTED

Appellant appealed from an Ontario County Court judgment convicting him of second-degree assault, following a jury verdict. The Fourth Department ordered the case held, reserved decision, and remitted. As conceded by the prosecution, the trial court erred by failing to rule on appellant's motion seeking inspection of the grand jury minutes and dismissal of the indictment on the ground that the grand jury proceeding was defective. A court's failure to rule on a motion cannot be deemed a denial thereof. Ontario County Public Defender's Office (Leanne Lapp, of counsel) represented Houle.
People v Houle (2025 NY Slip Op 01437)
Oral Argument (starts at 00:20:55)

APPELLATE TERM, SECOND DEPARTMENT

People v Martell-Olvero | March 7, 2025

CONDITION OF PROBATION IMPROPERLY IMPOSED | NOT REASONABLY RELATED | MODIFIED

Appellant appealed from a Richmond County Criminal Court judgment convicting him of DWI and sentencing him to 5 days incarceration and a 3-year term of probation. The Appellate Term, Second Department, 11th & 13th Judicial Districts, modified the sentence by deleting one condition of probation and, as modified, affirmed. The condition required appellant to consent to a search by a probation officer, or a probation officer and his or her agent, of his person, vehicle, and place of abode, and the seizure of any illegal drugs, drug paraphernalia, gun/firearm or other weapon, or contraband found during the search. Here, appellant was not armed with a weapon at the time he committed the offense, and he was not assessed as needing alcohol or substance abuse treatment. Under those circumstances, the condition was improperly imposed because it was not individually tailored in relation to the offense and was not, therefore, reasonably related to appellant's

rehabilitation or necessary to ensure that defendant would lead a law-abiding life. Appellate Advocates (Maisha Kamal and Sam Feldman, of counsel) represented Martell-Olvero.
People v Martell-Olvero (2025 NY Slip Op 50305 (U))

TRIAL COURTS

People v Mandujano | 2025 WL 779530

SEARCH AND SEIZURE | LEVEL ONE UNLAWFULLY ELEVETATED TO LEVEL THREE | SUPPRESSION GRANTED

Mandujano moved to suppress noticed statements, physical evidence, evidence of his refusal to submit to chemical testing, police observations, video recordings, photographs, and all other fruits of his arrest. Kings County Criminal Court granted the motion. Police had a level one, objective, credible reason to approach Mandujano's vehicle, because an officer observed the aftermath of a multivehicle accident and noticed Mandujano's truck stopped several yards ahead. However, the officer unlawfully escalated the encounter to a forcible stop requiring level three suspicion when, within seconds of reaching Mandujano's truck, he opened the door and removed the keys. There was no evidence supporting the heightened suspicion prior to the seizure: the officer did not observe any damage to Mandujano's vehicle to suggest he had been involved in the accident, he did not ask Mandujano to open his window or ask him any questions, and, though the officer testified that Mandujano had the odor of alcohol on his breath, he could not have made that observation through the closed window. Further, there was no attenuation, since both Mandujano and the officer remained near Mandujano's vehicle for the full duration of the stop. Mandujano's refusal to submit to a breathalyzer was inadmissible as both fruit of the poisonous tree and because it occurred more than two hours after his arrest. Brooklyn Defender Services (Lilian Giacoma, of counsel) represented Mandujano.
People v Mandujano (2025 NY Slip Op 50311 (U))

People v Jie Lin | 2025 WL 729788

SEARCH AND SEIZURE | TRAFFIC STOP NOT JUSTIFIED | DOG SNIFF | SUPPRESSION GRANTED

Jie Lin moved to suppress the physical evidence seized from his vehicle. Richmond County Supreme Court granted the motion. The initial stop of Jie Lin's vehicle was not justified, because police merely observed Jie Lin "roll through a stop sign." The officer neither described what he meant by this conclusory statement nor related his observations to the requirements of the statutory violation of failure to stop at a stop sign. Therefore, the officer's characterization constituted an unsupportd legal conclusion that Jie Lin violated VTL §§ 1142 and 1172. Further, even if the officer's conclusions had been sufficient, Google Maps reveals that the location testified to is controlled not by a stop sign, but a traffic light. Finally, even if the stop was justified by a traffic violation, the prosecution did not demonstrate that the results of the canine sniff provided probable cause to search the trunk of Jie Lin's vehicle, as there was no testimony about the dog's training and reliability. The Kasen Law Firm (Robert J. Adinolfi, of counsel) represented Jie Lin.
People v Jie Lin (2025 NY Slip Op 50285 (U))

People v Martinez | 2025 WL 747927

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

Martinez moved to dismiss on speedy trial grounds. Kings County Supreme Court granted the motion. The prosecution's COC was invalid and their statement of readiness illusory, because their efforts to comply with the discovery statute's directives amounted to a single request for evidence from police, without any review. The prosecution failed to disclose a grand jury synopsis report, handwritten notes from a responding officer, an aided card, text messages between a detective and complainant, and the detective's case files. The prosecution argued that the grand jury report was not disclosed because of an "inadvertent error"; that making handwritten notes "is not a common practice," and they were not aware of the notes until Martinez requested them; that the aided card and identity of the authoring officer was not disclosed because the reports were made in a different precinct; and that the detective's case files and text messages with complainant were not disclosed based on the detective's representation to the prosecution that he was not investigating any case involving complainant. However, the court's review of body worn camera footage made "blatantly obvious" that the detective communicated with both the complainant and responding officers during the investigation and that a responding officer made handwritten notes during the investigation. Any prosecutor who watched the footage would reasonably believe there was outstanding discovery. The prosecution's lapses demonstrated that they did not review the discovery in their possession, did not make reasonable inquiries, and certificated their case while discovery was obviously missing. This was a lack of due diligence, not "inadvertent error." Brooklyn Defender Services (Izabel Garcia, of counsel) represented Martinez.

People v Martinez (2025 NY Slip Op 25056)

People v R.G. | 2025 WL 747925

30.30 | EXCEPTIONAL CIRCUMSTANCES FOR WITNESS UNAVAILABILITY | DISMISSED

R.G. moved to dismiss arson charges on speedy trial grounds. Kings County Supreme Court granted the motion. In a post-readiness posture, the prosecution failed to establish that the unavailability of their witness, a fire marshal, was an "exceptional circumstance" warranting exclusion of the delay from speedy trial calculations. For a witness' unavailability to qualify as an exceptional circumstance, the prosecution must establish three prongs: (1) that the witness is material; (2) that the prosecution has exercised due diligence to secure the witness' presence; and (3) that there are reasonable grounds to believe that the evidence will become available in a reasonable period of time. Here, the court questioned whether the prosecution had established that the witness was material under prong one, and ultimately held that the prosecution failed to establish prong three, because they had no detailed information regarding the nature of the witness' illness or the basis of his medical leave. More significantly, the prosecution had been repeatedly advised that there was "no return date" for the witness' medical leave and that "he will be out for the foreseeable future." Even when the witness returned to "light duty" work in early 2024, he was still not cleared to testify in court. That the witness would not be available to testify in a reasonable period was further evinced by the fact that in late January 2025, the prosecutor was informed that the fire marshal was no longer on light duty and was once again on "full medical leave." As such, the prosecutor had no

reasonable grounds to believe that the witness would be available to testify in a reasonable period of time. André G. Travieso represented R. G.
People v R.G. (2025 NY Slip Op 50296 (U))

FAMILY

APPELLATE DIVISION, FIRST DEPARTMENT

Matter of Steven C. v Ayelet C. | March 11, 2025

FAMILY OFFENSE | MOTION TO DISMISS | REVERSED AND PETITION DISMISSED

Wife appealed from a New York County Family Court order denying her motion to dismiss a family offense petition for failure to state a cause of action. The First Department reversed, granted the motion, and dismissed the petition. Petitioner husband failed to establish either second-degree harassment or fourth-degree stalking in his petition, because he failed to plead the requisite state of mind for either party. Rather, the allegations were solely based on the wife's prior family offense petitions against him and his fear of "yet another bogus petition," as well as her presence at the marital residence on a day she knew she was not supposed to be there. Carol A. Kahn represented the wife.
Matter of Steven C. v Ayelet C. (2025 NY Slip Op 01311)

APPELLATE DIVISION, SECOND DEPARTMENT

Matter of Marco F. | March 12, 2025

JUVENILE DELINQUENCY | WEIGHT OF THE EVIDENCE | MODIFIED

Appellant appealed from a Nassau County Family Court order adjudicating him a juvenile delinquent after finding that he committed acts which, if committed by an adult, would constitute second-degree kidnapping and other crimes and placed him on 12 months' probation. The Second Department modified by dismissing the finding of second-degree kidnapping, and otherwise affirmed. Family Court's determination that appellant committed second-degree kidnapping was against the weight of evidence. The evidence established that appellant restrained the complainant, without the requisite "secreting or holding [her] in a place where [she] [was] not likely to be found," and the restraint did not substantially interfere with complainant's liberty. The restraint occurred after appellant pulled complainant into a vehicle, it lasted "a very short time," and "at least one door of the vehicle remained open and the vehicle traveled only a very short distance before stopping again within a matter of mere seconds." Geanine Towers represented Marco F.
Matter of Marco F. (2025 NY Slip Op 01365)

Matter of David J. (Danielle J.) | March 12, 2025

NEGLECT | MEDICAL NEGLECT | MODIFIED

A parent appealed from a Queens County Family Court order finding, after a hearing, that she neglected the subject children by failing to provide them with an adequate education, appropriate medical and dental care, proper supervision, or guardianship, in that her

mental illness impaired her ability to care for them. The Second Department modified by deleting the provision of the order finding that the parent medically neglected the children and otherwise affirmed. Family Court erred in finding that the parent medically neglected her children. ACS neither alleged actual impairment to the children due to lack of preventative medical care, nor presented evidence that the failure to seek such care placed the children in imminent danger of becoming impaired. To the contrary, the evidence demonstrated that the parent promptly called 911 and sought medical care when one of the children presented symptoms of near syncope. Austin I. Idehen represented the parent.
Matter of David J. (Danielle J.) (2025 NY Slip Op 01366)

APPELLATE DIVISION, FOURTH DEPARTMENT

Matter of Shakema R. v Mesha B. | March 14, 2025

CUSTODY | MENTAL HEALTH TREATMENT AS CONDITION OF VISITATION | MODIFIED

A parent appealed from Erie County Family Court orders awarding full custody of the children to each of their respective other parents, directing that the appellant parent have supervised visitation with the children, and requiring the appellant parent to participate in mental health treatment before filing modification petitions. The Fourth Department modified by deleting the portion of the order conditioning the filing of modification petitions on mental health treatment and substituting a provision making mental health counseling a component of supervised visitation, and otherwise affirmed. Family Court may not condition any future application for custody or visitation on participation in mental health treatment. Caitlin M. Connelly represented the appellant parent.
Matter of Shakema R. v Mesha B. (2025 NY Slip Op 01512)

TRIAL COURTS

Matter of A.H. (J.H.) | 2025 WL 798265

NEGLECT | EXCESSIVE CORPORAL PUNISHMENT | PETITION DISMISSED

A parent was a respondent on a neglect petition alleging excessive corporal punishment of the child. New York County Family Court dismissed the petition after a fact-finding hearing. The sole allegation was that the parent hit the child on the arm on a single occasion, resulting in a bruise. The court found that ACS failed to prove that this had occurred and credited the parent's denial. In her defense, the parent introduced photos and video of the child in the days after the alleged incident took place, showing no mark on the child's arm. A doctor also testified about the age of the bruise, indicating it was fresher than the allegations claimed. The court further found that even if the single incident had occurred, it would have been insufficient to sustain a finding of neglect. Moses Richards Notaro and Tankha, LLP (Meaghan Carey and Adam Richards, of counsel) represented the parent.
Matter of A.H. (J.H.) (2025 NY Slip Op 50317(U))

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