

# Decisions of Interest

OCTOBER 9, 2024

## CRIMINAL

### APPELLATE DIVISION, FIRST DEPARTMENT

#### ***People v Zubidi*** | October 3, 2024

REASONABLE SUSPICION BASED ON PAST CRIMINAL CONDUCT | CAR STOP | DISSENT

Appellant appealed from a New York County judgment convicting him of second-degree CPW and first-degree reckless endangerment. The First Department affirmed the conviction, holding that the police had reasonable suspicion to stop appellant's car where it was known to be involved in two recent prior criminal incidents, including a road rage incident during which a weapon was fired and flight from a ticketing agent during which the agent was almost struck. The dissent would have ruled the stop unlawful. Without confirmation that either the vehicle's owner or the driver the day of the stop matched the descriptions provided by witnesses following the prior incidents, the information known by the police prior to the stop was insufficient to provide reasonable suspicion that appellant had committed a crime. Center for Appellate Litigation (Barbara Zolot, of counsel).

[Oral Argument \(starts at 1:31:37\)](#)

[People v Zubidi \(2024 NY Slip Op 04824\)](#)

#### ***People v Rivera***

#### ***People v Rodriguez Hernandez Santiago*** | October 3, 2024

FIRST-DEGREE MURDER | LEGAL SUFFICIENCY | MODIFIED

Appellants appealed from a Bronx County judgment convicting them of first- and second-degree murder, second-degree gang assault, and second-degree conspiracy and sentencing them to 25 years-to-life in prison. The First Department modified, finding the evidence of first-degree murder legally insufficient. "Pursuant to [People v Estrella](#) (41 NY3d 514 [2024]) in which the Court of Appeals concluded that the evidence was legally insufficient to prove co-defendant's Estrella's guilt of murder in the first degree, Rivera and Santiago's convictions of that crime must likewise be vacated." In *Estrella*, the Court of Appeals held that the first-degree murder statute requires the accused to take pleasure in inflicting extreme physical pain, not merely the murder itself—a finding the prosecution's evidence did not support. Mark S. Demarco represented Rivera; The Center for Appellate Litigation (Carola Beeney, of counsel) represented Santiago.

[Oral Argument \(starts at 2:19:08\)](#)

[People v Rivera \(2024 NY Slip Op 04832\)](#)

## APPELLATE DIVISION, SECOND DEPARTMENT

### ***People v King*** | October 2, 2024

INVALID WAIVER OF APPEAL | SENTENCE NOT EXCESSIVE | AFFIRMED

Appellant appealed from a Queens County Supreme Court judgment sentencing him following a guilty plea. The Second Department found the written appeal waiver invalid. The lower court's oral colloquy erroneously advised appellant that his waiver barred the right to appeal, the right to counsel, and poor person's relief. However, appellant's sentence was not excessive.

[People v King \(2024 NY Slip Op 04781\)](#)

### ***People v Trent*** | October 2, 2024

ANDERS BRIEF | NONFRIVOLOUS APPELLATE ISSUES | MOTION TO WITHDRAW GRANTED

Appellant's counsel filed an *Anders* brief. The Second Department granted counsel's motion to withdraw and assigned new counsel to prosecute the appeal. Nonfrivolous issues existed, including whether appellant's right to appeal was valid and whether the sentence was excessive.

[People v Trent \(2024 NY Slip Op 04785\)](#)

### ***People v Vanhoven*** | October 2, 2024

ORDER OF PROTECTION | FAILURE TO TAKE INTO ACCOUNT JAIL TIME | OOP VACATED

Appellant appealed from a Queens County Supreme Court judgment convicting him of first-degree criminal contempt following a guilty plea. The Second Department affirmed but vacated the order of protection and remitted for a new determination on its duration. Preservation was not required, because appellant had no practical ability to register a timely objection. The duration of the order of protection exceeded the maximum time limit pursuant to CPL § 530.12(5), because appellant was not credited for jail time served. The Legal Aid Society of NYC (Rachel L. Pecker, of counsel) represented Vanhoven.

[People v Vanhoven \(2024 NY Slip Op 04786\)](#)

## APPELLATE DIVISION, THIRD DEPARTMENT

### ***People v White*** | October 3, 2024

CLASS A FELONY | INDICTMENT NOT WAIVABLE | REVERSED AND REMITTED

Appellant appealed an Albany County Supreme Court order convicting him of first-degree criminal sexual act after a plea, in satisfaction of charges that included predatory sexual act against a child. The Third Department reversed, finding that it was required to reach a jurisdictional issue, even though appellant requested sentence modification rather than plea vacatur. Although appellant agreed to waive indictment and be prosecuted by SCI, this was not an option available to him under CPL 195.10, which excludes Class A felonies punishable by death or life imprisonment. Because predatory sexual act against

a child is a class A-II felony with a mandatory maximum sentence of life imprisonment, the waiver of indictment was impermissible. The court therefore vacated the plea, dismissed the SCI, and remitted for further proceedings. Alternate Public Defender, Albany (Steven M. Sharp, of counsel) represented White.

[Oral Argument](#)

[People v White \(2024 NY Slip Op 4850\)](#)

***People v Howard*** | October 3, 2024

INVALID WAIVER OF APPEAL | SENTENCE NOT EXCESSIVE | AFFIRMED

Appellant appealed an Albany County Court (Youth Part) judgment convicting him of second-degree CPW after a plea. The Third Department affirmed the denial of removal to Family Court for adjudication as a Juvenile Offender under Raise the Age, concluding that photographs and text messages submitted by the prosecution established, by a preponderance of the evidence, that appellant had caused significant physical injury to the victim. The Third Department did find the waiver of appeal to be invalid, as the prosecution conceded. The court nevertheless affirmed the trial court's denial of YO status and found the 15-year term of imprisonment, plus 5 years of PRS, not unduly harsh or severe. Nor was counsel ineffective for waiving an *Outley* hearing and acquiescing to enhanced sentencing based on post-plea arrests, since the record demonstrated counsel had negotiated concurrent sentences on pending charges. Stephan R. Weiss represented Howard.

[People v Howard \(2024 NY Slip Op 4844\)](#)

## APPELLATE DIVISION, FOURTH DEPARTMENT

***People v Kratz*** | October 4, 2024

INVALID WAIVER OF APPEAL | SENTENCE NOT EXCESSIVE | DISCREPANCY BETWEEN SENTENCING MINUTES AND CERTIFICATE OF CONVICTION | REMITTED

Appellant appealed an Onondaga County Court judgment convicting him of second-degree CPW after a plea. The Fourth Department found the waiver of appeal invalid, because the record failed to show that appellant fully understood the rights he was waiving. Although the court found the sentence not unduly harsh or severe, it remitted for resentencing because of a discrepancy in the PRS term noted in the sentencing minutes compared to the certificate of conviction. Cambareri & Brenneck (Melissa K. Swartz, of counsel) represented Kratz.

[People v Kratz \(2024 NY Slip Op 4889\)](#)

***People v Stewart*** | October 4, 2024

INEFFECTIVE ASSISTANCE OF COUNSEL | REVERSED | DISSENT

Appellant appealed an Oswego County Court judgment convicting him of first-degree assault, second-degree kidnapping, third-degree CPW, and second-degree menacing. The Fourth Department reversed, finding that appellant was deprived of the effective assistance of counsel. Counsel failed to object to the court's procedure of having each side alternate peremptory challenges, in violation of CPL 270.15(2) (requiring the prosecution to exercise peremptory challenges first). The defense attorney also failed to

object to prejudicial remarks by the prosecutor during voir dire regarding his ability to sleep at night now that he is a prosecutor rather than a defense attorney. The dissent would have found that appellant received meaningful representation, concluding that some of counsel's conduct had a potentially legitimate strategic explanation and appellant was not prejudiced by the failure to object to the peremptory challenge procedure. Cambareri & Brenneck (Melissa K. Swartz, of counsel) represented Stewart.

[Oral Argument](#)

[People v Stewart \(2024 NY Slip Op 4863\)](#)

## TRIAL COURTS

***People v Lampe*** | 2024 WL 4352746

30.30 | UNREDACTED CW ENTITY REPORT NOT DISCLOSED | CHARGES DISMISSED

Lampe was charged in with third-degree assault, fourth-degree CPW, and second-degree harassment. Bronx County Supreme Court granted the 30.30 motion and dismissed the indictment. The prosecution turned over a heavily redacted entity report, from which it was "not clearly discernible whether the information in [the report] does or does not relate to the subject matter" of the case. Accordingly, the prosecution was required to seek a protective order pursuant to CPL §§ 245.10(1)(a) and 245.70. Failure to do so prior to filing the COC rendered it illusory. Nor did the prosecution act in good faith, since they "redacted all the information on all the pages notwithstanding...entries bearing a strong similarity to [Lampe's] name and bearing the same date of incident." John A. Guarneri represented Lampe.

[People v Lampe \(2024 NY Slip Op 51353\(U\)\)](#)

***People v Crosse*** | 2024 WL 4377541

30.30 | BWC FOOTAGE & METADATA | LACK OF DUE DILIGENCE | CHARGES DISMISSED

Crosse was charged with second-degree burglary and related charges. Kings County Criminal Court granted the 30.30 motion and dismissed the charges. Late disclosure of footage and metadata from a body-worn camera, filmed during a successful home visit that occurred one day after Crosse's arraignment, rendered the COC invalid. Reviewing DD5 index sheets, rather than the DD5's themselves (which referenced the home visit) did not constitute due diligence.

[People v Cross \(2024 NY Slip Op 51361\(U\)\)](#)

## FAMILY

## TRIAL COURTS

***Matter of JB (LI)*** | September 30, 2024

GROUP HOME RESIDENTS | LACK OF INTIMATE RELATIONSHIP | PETITIONS DISMISSED

Respondent was the subject of separate family offense petitions filed by three other residents of Aberth House, a residential group home for people with intellectual and developmental disabilities. Wyoming County Family Court held that it lacked subject matter jurisdiction under Family Court Act § 812 and dismissed the petitions. Following

a hearing due to the “primacy of this issue” and the “requisite case-by-case analysis to examine the particular nature of a relationship between two individuals,” the court concluded that none of the petitioners had an “intimate relationship” with respondent. While they all lived together, there was no evidence that they shared “personal or private thoughts, feelings, secrets or desires,” that they had established trust that “allow[ed] them to be open, honest, and vulnerable with each other,” or that they had “sexual relations, emotional bonds, or a warm, close friendship developed through a long association.” Valerie G. Gardner represented JB.

[Matter of JB \(LI\) \(2024 NY Slip Op 51357\(U\)\)](#)



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