

CRIMINAL

COURT OF APPEALS

People v Lawson | December 12, 2024 (Memorandum)

SUPPRESSION | UNLAWFUL STOP | FULL AND FAIR OPPORTUNITY | REVERSED & DISMISSED

Appellant appealed from an Appellate Term, First Department order affirming his conviction, following a guilty plea, for operating a motor vehicle while intoxicated. The Court of Appeals reversed and dismissed the accusatory instrument. The suppression court initially granted appellant's suppression motion on the basis that the traffic stop was unlawful after the prosecution failed to present any evidence that appellant's U-turns violated VTL § 105. However, the court erred by later granting the prosecution's motion to reargue, under a new legal theory, and by ultimately denying appellant's suppression motion, where the prosecution already had a "full and fair opportunity" to oppose suppression but had been unprepared, running afoul of the underlying policies of finality and judicial efficiency. The Legal Aid Society NYC (Ivan Pantoja, of counsel) represented Lawson.

[People v Lawson \(2024 NY Slip Op 06238\)](#)

[Oral Argument](#)

People v Garcia | December 12, 2024 (Memorandum)

SUPPRESSION | SHOWUP IDENTIFICATION | UNPRESERVED | AFFIRMED

Appellant appealed from a Second Department order affirming his conviction, following a bench trial, for second-degree assault, fourth-degree CPW, and EWC. The Court of Appeals affirmed. Appellant failed to preserve his argument that the show-up identification procedure was unduly suggestive on a theory of "identification by association"—that he was presented for identification alongside two codefendants, and the strength of the complainant's identification of one codefendant, who was known to the complainant, infected the identification of appellant.

[People v Garcia \(2024 NY Slip Op 06236\)](#)

[Oral Argument](#)

People v Watkins | December 12, 2024 (Memorandum)

SUPPRESSION | *DEBOUR* | UNPRESERVED | AFFIRMED

Appellant appealed from a Fourth Department order affirming his conviction for second-degree CPW, following a guilty plea. The Court of Appeals affirmed. Appellant failed to

preserve his argument as to whether the initial stop by the police constituted a level four encounter, pursuant to *DeBour*.

[People v Watkins \(2024 NY Slip Op 06237\)](#)

[Oral Argument](#)

APPELLATE DIVISION FIRST DEPARTMENT

People v Pan | December 10, 2024

RIGHT TO COUNSEL | CONFLICT OF INTEREST | MISADVICE | REVERSED

Appellant appealed from a New York County judgment convicting him of first-degree assault and EWC. The prosecution conceded that appellant's right to counsel was violated when the plea court prohibited him from retaining an unpaid public defender who worked with him on a related matter and when his assigned attorney made disparaging statements about appellant's accidental stabbing defense, creating a conflict of interest. Counsel also misadvised appellant about the consequences of his guilty plea by explaining that he was likely to be deported when deportation was mandatory. As a result of the ineffective assistance of counsel, appellant's plea was involuntary and needed to be vacated. Center for Appellate Litigation (Lena Jenoda, of counsel) represented Pan.

[People v Pan \(2024 NY Slip Op 06166\)](#)

[Oral Argument \(starts at 01:36:19\)](#)

People v Dominguez | December 12, 2024

MUG SHOT PHOTOS | ERRONEOUS INTRODUCTION HARMLESS | AFFIRMED

Appellant appealed from a Bronx County judgment convicting him of second-degree murder. The trial court erred in admitting multiple arrest photos from three prior arrests. While the photos were relevant to showing that appellant had long hair, which he cut prior to arrest, prior mug shots can convey a criminal history thus causing prejudice outweighing their probative value. Nevertheless, the First Department deemed the error harmless due to the photos being redacted, the overwhelming evidence of guilt, and the trial court's curative instructions that the jury should not speculate about the source of the photos.

[People v Dominguez \(2024 NY Slip Op 06280\)](#)

[Oral Argument \(starts at 02:13:20\)](#)

APPELLATE DIVISION, SECOND DEPARTMENT

People v Moore | December 11, 2024

30.30 | PRE-INDICTMENT SOR | REVERSED & DISMISSED

Appellant appealed from a Queens County Supreme Court judgment convicting him of second-degree CPW, following a guilty plea. The Second Department reversed, granted appellant's CPL § 30.30 motion, and dismissed the indictment. As conceded by the prosecution, their pre-indictment statement of readiness was illusory and ineffective to stop the speedy trial clock, and they failed to declare readiness until after the six-month period had expired. Russell Law Group, PLLC (Camille O. Russell, of counsel) represented Moore.

[People v Moore \(2024 NY Slip Op 06214\)](#)

People v Lisbon | December 11, 2024

DEFICIENT *ANDERS* BRIEF | NEW APPELLATE COUNSEL ASSIGNED

Appellant appealed from an Orange County Court judgment convicting him of DWI, following a guilty plea. Appellant's counsel filed an *Anders* brief. The Second Department found the *Anders* brief to be deficient, granted counsel's motion to withdraw, and assigned new counsel. The brief failed to review the court's colloquy related to the rights appellant was waiving or to provide any detail related to appellant's factual admissions. The brief also failed to adequately analyze the voluntariness of the plea, the validity of the appeal waiver, or whether the sentence was excessive.

[People v Lisbon \(2024 NY Slip Op 06212\)](#)

People v Espinosa | December 11, 2024

DEFICIENT *ANDERS* BRIEF | NONFRIVOLOUS APPELLATE ISSUES | NEW APPELLATE COUNSEL ASSIGNED

Appellant appealed from a Kings County Supreme Court judgment convicting him of third-degree attempted burglary, following a guilty plea. Appellant's counsel filed an *Anders* brief. The Second Department granted counsel's motion to withdraw and assigned new counsel. Nonfrivolous issues exist, including but not limited to whether the court had authority to issue an order of protection.

[People v Espinosa \(2024 NY Slip Op 06209\)](#)

People v Islam | December 11, 2024

OOP | SURCHARGES & FEES | MODIFIED | OOP VACATED & REMITTED AS TO DURATION

Appellant appealed from two Kings County Supreme Court judgments convicting him of second-degree attempted CPW and second-degree criminal trespass, following his guilty pleas. The Second Department affirmed the convictions but modified in the interest of justice by vacating the mandatory surcharge and fees in the attempted CPW case; and by vacating the duration portion of the OOP and remitting for a new determination on its duration in the criminal trespass case. Preservation was not required as to the OOP issue because appellant had no practical ability to object where the court did not announce the duration of the OOP at either the plea or sentencing proceedings. The duration of the OOP exceeded the maximum time limit pursuant to CPL § 530.12(5) and failed to consider appellant's jail-time credits. Appellate Advocates (Joshua M. Levine, of counsel) represented Islam.

[People v Islam \(2024 NY Slip Op 06210\)](#)

People v Islam | December 11, 2024

SURCHARGES & FEES | MODIFIED

Appellant appealed from a Kings County Supreme Court judgment convicting him of fourth-degree CPSP, following his guilty plea. The Second Department modified in the interest of justice by vacating, on consent of the prosecution, the imposition of the mandatory surcharge and fees. Appellate Advocates (Joshua M. Levine, of counsel) represented Islam.

[People v Islam \(2024 NY Slip Op 06211\)](#)

People v Navarro | December 11, 2024

INVALID WAIVER OF APPEAL | SENTENCE NOT EXCESSIVE | AFFIRMED

Appellant appealed from a Kings County Supreme Court judgment convicting him of second-degree assault, following his guilty plea. The Second Department affirmed but found that, under the totality of the circumstances, the appeal waiver was invalid. However, appellant's sentence was not excessive. The Legal Aid Society NYC (Sylvia Lara Altreuter, of counsel) represented Navarro.

[People v Navarro \(2024 NY Slip Op 06215\)](#)

People v Yentes | December 11, 2024

INVALID WAIVER OF APPEAL | SENTENCE NOT EXCESSIVE | AFFIRMED

Appellant appealed from a Queens County Supreme Court judgment convicting him of third-degree robbery, following his guilty plea. The Second Department affirmed but found that the appeal waiver was invalid because the written waiver inaccurately stated that appellant was waiving his rights to poor person relief and postconviction remedies in state and federal courts, and the oral colloquy failed to cure these defects. However, appellant's sentence was not excessive. Appellate Advocates (Sarah B. Cohen, of counsel) represented Yentes.

[People v Yentes \(2024 NY Slip Op 06220\)](#)

APPELLATE DIVISION, THIRD DEPARTMENT

People v Poulos | December 12, 2024

RIGHT TO SELF-REPRESENTATION | NO PROBABLE CAUSE FOR CELL PHONE SEARCH | REVERSED

Appellant appealed from a Warren County Court judgment convicting him of numerous charges related to his alleged possession and sale of narcotics and sentencing him to an aggregate term of 32 years' imprisonment, followed by 3 years' PRS. The Third Department reversed, dismissed two counts, and ordered a new trial on the others. County Court erred in summarily denying appellant's request to represent himself at trial and in denying his request to suppress evidence obtained after a search of his cell phone. The initial warrant application did not demonstrate a link between information in the phone and evidence of a crime, and a second warrant application failed to cure the defect because the phone had already been searched. Two of the counts were therefore dismissed since they relied on fruits of that illegal search. Paul J. Connolly represented Poulos.

[People v Poulos \(2024 NY Slip Op 06239\)](#)

[Oral Argument](#)

People v Ava 00. | December 12, 2024

CPL 60.12 DVSJA SENTENCE | REVERSED

Appellant appealed from an Albany County Supreme Court judgment convicting her of second-degree robbery after a plea, denying her application to be sentenced under the Domestic Violence Survivors Justice Act (DVSJA), and sentencing her to 5 years' imprisonment, followed by 5 years' PRS. The Third Department reversed, granted appellant's DVSJA application, and resentenced her to a term of 3 ½ years' imprisonment

followed by 6 years' PRS. It was undisputed that appellant experienced substantial abuse perpetrated by her codefendant: during their seven-month relationship. He physically assaulted her, isolated from her family, and forced her to engage in sex work. But while the trial court found that the abuse was not a significant contributing factor to the crime, the Third Department stressed the need to view the act in the context of the abuse, even in the absence of evidence that would negate culpability, such as duress or justification. Here, there was evidence that appellant was codefendant's accomplice in the robbery, but that this occurred in the context of sex trafficking. Finally, the court noted appellant's family support, as well as that the entirety of appellant's criminal history arose after she became romantically involved with the codefendant and began abusing drugs, finding that a traditional sentence would be unduly harsh under the circumstances. Aaron A. Louridas represented Ava OO.

[People v Ava OO. \(2024 NY Slip Op 06245\)](#)

TRIAL COURTS

People v Korovsky | 2024 WL 5063917

SPEEDY TRIAL | EDDS FILING DEADLINES | DISMISSED

Korovsky was charged in Kings County Criminal Court with fifth-degree CPSP. The prosecution, relying on General Construction Law 25-A, did not serve discovery until the 91st day of the speedy trial clock, contending that their filing was timely because the 90th day fell on a Sunday. Criminal Court granted the defense motion to dismiss. While the court observed that the advent of electronic filing through EDDS allowed the prosecution to file their COC and SOR throughout the weekend and holidays, it ultimately deemed the filing timely but observed that the concept of having a document filed the next business day rather than on its due date is "an outdated legacy of a prior practice." While timely, omissions in the prosecution's discovery rendered its COC invalid and its SOR illusory. The Legal Aid Society NYC (Perri Fagan, of counsel) represented Korovsky.

[People v Korovsky \(2024 NY Slip Op 51664U\)](#)

People v McCollum | 2024 WL 5036861

FAILURE TO TIMELY FILE OMNIBUS EXCUSED | INEFFECTIVE ASSISTANCE | GOOD CAUSE SHOWN

McCollum was charged in New York County Criminal Court with operating a motor vehicle while intoxicated and related charges. The prosecution urged denial of the defense omnibus motion because it was untimely filed after the 45 days provided by statute. Criminal Court found there was good cause to excuse the delay. The original defense attorney failed to file any motions, although there were grounds to do so. She then left the office. When the case was reassigned to another attorney and the error of prior counsel was discovered, there was no explanation for the prior attorney's actions. But Criminal Court recognized that if it denied the motion on timeliness grounds the default of the prior attorney could be raised on appeal to overturn the conviction. Failure to move for suppression hearings without a strategic reason can constitute ineffective assistance. There was no value in denying the motion as untimely and denying McCollum the constitutionally effective representation to which he was entitled. Neighborhood Defender Services of Harlem (Frankie Hedgepeth, of counsel) represented McCollum.

FAMILY

TRIAL COURTS

C.M. v S.J. | 2024 WL 5050115

EQUITABLE ESTOPPEL | DNA TESTING ORDERED

The putative father asserted an equitable estoppel defense—specifically, that the child recognized another man as her father—in response to a child support proceeding initiated by the mother through the NYC Office of Corporation Counsel. After a hearing, Kings County Family Court issued an order requiring all parties to submit to DNA testing to determine paternity. The putative father had established by clear and convincing evidence that the mother acquiesced in the child’s development of a relationship with another father figure. But he failed to prove that an order of filiation would be contrary to the child’s best interests. Rather, the record established that the child knew that the putative father, not the father figure, was her biological father, and that no harm would result from an order establishing that.

[C.M v S.J. \(2024 NY Slip Op 51653\(U\)\)](#)

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