

# Decisions of Interest

JULY 24, 2024

## CRIMINAL

### SECOND DEPARTMENT

***People v Serrano*** | July 17, 2024

VEHICLE STOP | COMMUNITY CARETAKING | REVERSED

The appellant appealed from a Suffolk County Court judgment convicting him of 2<sup>nd</sup> degree criminal impersonation, DWAI, and 2<sup>nd</sup> degree AUO. The Second Department reversed, granted suppression, and dismissed the indictment. After the appellant flashed his high beams several times, officers stopped his car out of concern for the occupants' wellbeing. Although they quickly determined that no one was in distress, they continued to ask questions of the appellant, who gave a wrong birthdate and then failed a field sobriety test. The initial stop was justified under the community caretaking function, but the scope of the stop was not narrowly tailored to address any need for help. Once it was apparent that no one was in distress, the officer's continued questioning was unjustified. Suffolk County Legal Aid (Felice B. Milani, of counsel) represented the appellant.

[Oral Argument \(starts at 6:30\)](#)

[People v Serrano \(2024 NY Slip Op 03833\)](#)

### THIRD DEPARTMENT

***People v Angela VV.*** | July 18, 2024

DVSJA | RESENTENCE DENIED | DISSENT

The appellant appealed from a Franklin County Court order denying her DVSJA resentencing motion. The Third Department affirmed, with two justices dissenting. The majority rejected the appellant's testimony as not credible and held that there was insufficient proof that domestic abuse was a significant contributing factor to her crime. Further, the sentence was not unduly harsh given the victim's extensive injuries and the appellant's history, character and condition. In the dissent's view, the court's critique of the appellant's credibility was unfair and unwarranted. She consistently claimed to have acted in self-defense after enduring months of physical, sexual, and mental abuse at the decedent's hands; presented independent corroborative evidence of her injuries and the decedent's abusive behaviors; and demonstrated that the abuse was a significant contributing factor.

[Oral Argument](#)

[People v Angela VV. \(2024 NY Slip Op 03851\)](#)

## TRIAL COURTS

### ***People v Andrews*** | 2024 WL 3435113

INDELIBLE RIGHT TO COUNSEL | SUPPRESSION GRANTED

Andrews moved to suppress his inculpatory, custodial statements. Albany County Supreme Court granted the motion. Shortly after Andrews was arrested in connection with a stabbing investigation, he directed officers to call his lawyer and tell her that he was being detained. He later clarified that he wanted his attorney to know he was there, but he did not necessarily want her to come to the station. He then waived his *Miranda* rights and voluntarily discussed the case. Andrews' initial direction to call his lawyer unequivocally invoked his indelible right to counsel. His later waiver of that right, though intelligent and voluntary, was ineffective without his attorney present. Trevor Hannigan represented Mr. Andrews.

[People v Andrews \(2024 NY Slip Op 24196\)](#)

### ***People v Beausejour*** | 2024 WL 3419303

ACCUSATORY INSTRUMENT | FACIALLY INSUFFICIENT | CHARGES DISMISSED

Beausejour moved to dismiss an information charging him with unlawful dissemination or publication of an intimate image (three counts), unlawful disclosure of an intimate image (three counts), and 3<sup>rd</sup> degree coercion as facially insufficient. Kings County Criminal Court granted the motion and dismissed the charges. Beausejour allegedly texted the complainant pictures of herself performing oral sex on him and threatened to disseminate the images if she "continued to refuse" him. Although the complainant had a reasonable expectation that these images would remain private, the People failed to establish how texting them to her violated that expectation or showed an intent to cause harm. The threat to disseminate the images if the complainant "continued to refuse" Beausejour was impermissibly vague, and there were no allegations that she was coerced into engaging in any specific conduct. The Legal Aid Society of NYC (Leila Selchaif, of counsel) represented Beausejour.

[People v Beausejour \(2024 NY Slip Op 24193\)](#)

## FAMILY

## SECOND DEPARTMENT

### ***Matter of Dionis F. Daniela Z.*** | July 17, 2024

VISITATION | REVERSED AND REMITTED

The child appealed from a Queens County Family Court consent order awarding the father supervised and therapeutic parenting access. The Second Department reversed and remitted. An *in camera* hearing was required. The AFC reported that the child hated and feared his father, had expressed concerns about the father's lifestyle, and did not want to visit him. When a child is adamantly opposed to parental access, an order expanding parental access based solely on the parents' consent is improper—a best interests finding is still required. Robert E. Silverberg represented the child.

[Matter of Dionis F. v Daniela Z. \(2024 NY Slip Op 03822\)](#)

***Matter of Veronica M. (Ana M.)*** | July 17, 2024

NEGLECT | UNTREATED MENTAL HEALTH | NO IMMINENT RISK

The mother appealed from a Kings County Family Court order finding that she had neglected the subject children. The Second Department reversed the neglect finding based on her alleged untreated and undiagnosed mental illness and otherwise affirmed. There was no evidence that the mother's alleged untreated and undiagnosed mental health condition placed the children at imminent risk of harm to their physical, mental, or emotional condition. Elliott Green represented the appellant.

[Matter of Veronica M. \(Ana M.\) \(2024 NY Slip Op 03823\)](#)

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