

# Decisions of Interest

AUGUST 14, 2024

## CRIMINAL

### SECOND DEPARTMENT

***People v Rivera*** | August 7, 2024

DVSJA | SUBSTANTIAL ABUSE | TEMPORAL NEXUS | DENIAL AFFIRMED

The appellant appealed from Suffolk County Court order denying his resentencing motion under the Domestic Violence Survivors Justice Act (DVSJA). The Second Department affirmed. The more recent psychological abuse the appellant alleged—his mother’s neglect, emotional unavailability, and drug addiction during his childhood—was not sufficiently substantial under the statute. Moreover, citing *People v White* (226 AD3d 1054 [2d Dept 2024]), *People v Fisher* (221 AD3d 1195 [3d Dept 2021]), and *People v Williams* (198 AD3d 466 [1st Dept 2021]), the Second Department concluded that, while the appellant had suffered substantial abuse at the hands of his father, that abuse was too temporally attenuated from the offense to consider him a DV “victim at the time of the offense” (CPL 440.47 [2] [c]; Penal Law § 60.12 [1] [a]). Further, the abuse was not a significant contributing factor to the appellant’s conduct in committing 2<sup>nd</sup> degree murder and 2<sup>nd</sup> degree CPW.

[Oral Argument \(starts at 25:12\)](#)

[People v Rivera \(2024 NY Slip Op 04153\)](#)

### THIRD DEPARTMENT

***People v Pica-Torres*** | August 8, 2024

DISTURBING PHOTOS | HARMLESS ERROR | CONCURRENT SENTENCES REQUIRED

The appellant appealed from a Broome County Court judgment convicting him of 2<sup>nd</sup> degree murder, attempted 2<sup>nd</sup> degree murder, and 1<sup>st</sup> degree arson. The Third Department modified by running the sentences concurrently and otherwise affirmed. The appellant attacked two people with a blunt object, locked them inside an apartment, and lit the building on fire. One victim survived, the other did not. Trial counsel should have objected to the admission of photos depicting the decedent’s charred corpse; they were “extremely disturbing” and served no material purpose. However, given the overwhelming evidence of guilt, this error was harmless. But the court erred in running the attempted murder sentence consecutively with the murder and arson sentences. Because the People alleged and argued at trial that the appellant beat the victims before trapping them in the burning building to die, the murder and attempted murder charges were materially

tied to the act of starting the fire—the same act that formed the basis of the arson charge. Paul J. Connolly represented the appellant.

[Oral Argument](#)

[People v Pica-Torres \(2024 NY Slip Op 04163\)](#)

***People v Waterbury*** | August 8, 2024

SORA | DOWNWARD MODIFICATION GRANTED

The appellant appealed from an Ulster County Court order adjudicating him a level two sex offender. The Third Department reversed and adjudicated him a level one offender, with one justice dissenting. The appellant presented significant evidence—compiled by two experts and supported by several risk assessment tests widely accepted in the scientific community—demonstrating that he had a below average risk of reoffending. He also presented evidence of unusually strong familial support, a factor correlating with decreased recidivism. These submissions expanded the information available to the SORA court beyond that provided by the RAI. In the dissent’s view, test results and expert opinions at variance with the RAI are not mitigating factors, and family support is already taken into account by the guidelines. Michael S. Pollock represented the appellant.

[Oral Argument](#)

[People v Waterbury \(2024 NY Slip Op 04169\)](#)

***People v Gilmore*** | August 8, 2024

INVALID WAIVER OF APPEAL | AFFIRMED

The appellant appealed from a Sullivan County Court judgment convicting him of 2<sup>nd</sup> degree CPW. The Third Department affirmed. The appellant’s waiver of appeal was invalid. The court’s explanation was overly broad and signified a complete bar to any appellate rights. However, considering the nature of the crime and the appellant’s criminal history, the sentence was not unduly harsh or severe. Jane M. Bloom represented the appellant.

[People v Gilmore \(2024 NY Slip Op 04164\)](#)

***People v Morgan*** | August 8, 2024

BATSON | NOT PRETEXTUAL | DISSENT

The appellant appealed from a Columbia County Court judgment convicting him of 1<sup>st</sup> degree manslaughter. The Third Department affirmed, with two justices dissenting. The appellant challenged the peremptory strike of two prospective jurors of color. The prosecutor explained that he struck those jurors because they had moved to Columbia County only two and five years prior. In response, County Court stated that it “believe[d] there [was] a race-neutral reason . . . which would permit a challenge or a peremptory challenge by the People.” In the dissent’s view, the court’s language could not be construed as making an implicit determination; it demonstrated that the court considered only whether the People had proffered a race-neutral explanation, not whether it was pretextual.

[Oral Argument](#)

[People v Morgan \(2024 NY Slip Op 04165\)](#)

## TRIAL COURTS

### ***People v David R.*** | 2024 WL 3659582

FACIAL SUFFICIENCY | CPL 30.30 | CHARGES DISMISSED

David R. moved to dismiss the information based on the facial insufficiency of one of the charges. New York County Criminal Court granted the motion. The accusatory instrument was facially insufficient as to the 4<sup>th</sup> degree criminal mischief charge; it did not set forth a monetary amount of damages. The motion was not untimely; facial sufficiency is a prerequisite to the court's jurisdiction and can be raised at any time. Further, CPL 245.50 (4) (b), which requires a discovery motion be made as soon as practicable, did not apply. An accusatory instrument must be facially sufficient as to all charges when the People state readiness; otherwise, the SOR is invalid (see CPL 30.03 [5-a]). Here, even the most cursory review of the instrument would have revealed its insufficiency. Thus, the COC and SOR were invalid and illusory. The Legal Aid Society of NYC (Richelle Lisboa, of counsel) represented David R.

[People v David R. \(2024 NY Slip Op 51004\[U\]\)](#)

### ***People v Morales*** | 2024 WL 3710806

MOTION TO EXTEND DISCOVERY DEADLINE | DENIED

Morales was charged with several DWI-related VTL violations. The People moved to extend their discovery deadlines based on good cause under CPL 245.70 (2). Kings County Criminal Court denied the motion. The missing items were standard materials in possession of the NYPD. The People made general assertions of their good faith efforts to obtain the materials, but they provided no details, such as the dates and times of any attempts. Further, the People filed their COC on the 89<sup>th</sup> day of their speedy trial time and filed the instant motion three days later. Given the amount of missing discovery, it appeared that the People were camouflaging their failure to comply by making a belated request for additional time. Brooklyn Defender Services (Emani Pollard, of counsel) represented Morales.

[People v Morales \(2024 NY Slip Op 51016\[U\]\)](#)

## FAMILY

## TRIAL COURTS

### ***J.N. v T.N.*** | 2024 WL 3710792

CRIMINAL CONTEMPT | GRANTED

The mother moved to hold the father in contempt for violating several court orders. New York Supreme Court granted the motion and sentenced the father to 150 days in jail for criminal contempt. The father willfully and openly flouted the authority of the court by disobeying its clear mandates. He disobeyed a confidentiality order by disclosing confidential information on three separate occasions; disobeyed a communication order by failing to utilize Our Family Wizard or neutral intermediary to communicate with the

mother; and failed to pay his portion of fees under a professionals fee order. Teitler & Teitler, LLP (Jaime Weiss and Nicholas Lobenthal, of counsel) represented the mother. [J.N. v T.N. \(2024 NY Slip Op 51017\[U\]\)](#)

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