

Decisions of Interest

AUGUST 7, 2024

CRIMINAL

SECOND DEPARTMENT

People v Calixte | July 31, 2024

JURY NOTE | COERCIVE ALLEN CHARGE | REVERSED AND REMITTED

The appellant appealed from a Nassau County Supreme Court judgment convicting him of 2nd degree conspiracy and 1st degree CPCS. The Second Department reversed and remitted for a new trial. Although unpreserved, the Second Department invoked its interest of justice jurisdiction and held that the trial court erred by failing to discharge the jury based on jury deadlock. The jury's third note, sent on the fourth day of deliberations, said that they were hopelessly deadlocked, a unanimous verdict would only be achieved if they abandoned their firm convictions, and any change in their decision would be untrue and unjust. The court's note in response was potentially coercive, indicating that the jurors were being inflexible and had violated their oath as jurors. Notably, the jury returned a unanimous guilty verdict later that day. Jerald S. Carter represented the appellant.

[People v Calixte \(2024 NY Slip Op 04079\)](#)

THIRD DEPARTMENT

People v Nedd | August 1, 2024

INVALID WAIVER OF APPEAL | AFFIRMED

The appellant appealed from a Sullivan County Court judgment convicting him of 2nd degree assault (two counts) based on his guilty plea. The Third Department affirmed. The appellant's waiver of appeal was invalid. The oral colloquy and written waiver were overly broad and purported to completely bar appellate and collateral review. Neither conveyed that some appellate review and other postjudgment relief would survive. However, the sentence was not unduly harsh or severe. Jane M. Bloom represented the appellant.

[People v Nedd \(2024 NY Slip Op 04101\)](#)

TRIAL COURTS

People v Lopez | 2024 WL 3575008

ERLINGER | SENTENCING ENHANCEMENT | JURY DETERMINATION REQUIRED

In a case of first impression following SCOTUS' recent decision in *Erlinger v United States* (144 S Ct 1840 [2024]), New York County Supreme Court held that: (1) tolling

determinations under New York's persistent violent felony offender sentencing statute must be proven beyond a reasonable doubt and found by a unanimous jury; (2) such a procedure is explicitly prohibited by New York law; and (3) courts are not authorized to create an entirely new procedure for bifurcated jury trials. Thus, the court could not sentence Lopez as a persistent violent felony offender or second violent felony offender. James Phillips and James Magee represented Lopez.

[People v Lopez \(2024 NY Slip Op 24207\)](#)

People v Saquijxol | 2024 WL 3575019

CPL 30.30 | NO MOTION FILED | CHARGES DISMISSED

Saquijxol moved to dismiss on 30.30 grounds. Queens County Criminal Court granted the motion. The People requested an adjournment and motion schedule to file a motion to reargue, but then never filed one. The 30-day period to file a motion to reargue under CPLR 2221 did not authorize an exception of speedy trial time. And the People could not rely on CPL 30.30 (4) (a) to exclude time when a motion was never actually filed. Their apparent good faith in making the request did not excuse the delay. The Legal Aid Society of NYC (Susan Crile, of counsel) represented Saquijxol.

[People v Saquijxol \(2024 NY Slip Op 50970\[U\]\)](#)

People v Burden | 2024 WL 3575023

DISCOVERY | SPEEDY TRIAL | CHARGES DISMISSED

Burden moved to dismiss on 30.30 grounds based on the People's failure to timely comply with their discovery obligations. New York County Criminal Court granted the motion. The People failed to establish that the scratch arrest report and handwritten notes of the arresting officer—who had since left the NYPD but was a named trial witness—were lost or destroyed. The People made a single e-mail attempt to contact the officer before she left and made no attempts to contact her directly following her departure. That her desk sergeant and partner were unaware of the documents did not unequivocally support a conclusion that they were lost or destroyed. Further, the defense did not lie in wait. The People filed their discovery materials and COC at 7:00 p.m. on the 90th day, and the missing materials should have been obvious. The Legal Aid Society of NYC (Danielle Haley, of counsel) represented Burden.

[People v Burden \(2024 NY Slip Op 50968\[U\]\)](#)

People v Schlueter | 2024 WL 3575603

DISCOVERY | NO DUE DILIGENCE | CHARGES DISMISSED

Schlueter moved to dismiss on 30.30 grounds based on the People's failure to comply with their discovery obligations. Suffolk County First District Court granted the motion. The People failed to demonstrate that they exercised due diligence in obtaining certain body-worn camera footage. They requested all body-worn camera footage and assumed that they received a complete set of files in response. But notably, they did not receive or disclose footage from the arresting officer, who was one of the four officers on scene. Making a rote request and disclosing without any review of the discovery materials did not constitute due diligence. Michael P. Bassett, Jr., Esq. represented Schlueter.

[People v Schlueter \(2024 NY Slip Op 50975\[U\]\)](#)

FAMILY

FOURTH DEPARTMENT

Matter of Onondaga County v Taylor | July 26, 2024

CHILD SUPPORT | UNFAIR HEARING | REVERSED

The respondent appealed from an Onondaga County Family Court order finding him in willful violation of his child support obligation and sentencing him to six months in jail. The Fourth Department reversed and remitted to a different judge. The court denied the respondent's assigned counsel's request for an adjournment to prepare for the hearing—of which she had no prior notice—and prohibited her from conferring with the respondent before attempting to swear him in to testify. In so doing, the court denied the respondent his right to an attorney and a fair hearing. Further, the court predetermined the outcome of the case. It sua sponte transformed what was scheduled as an appearance into a fact-finding hearing, which it advised would only take 10 minutes; sought to call the respondent for the court's own line of questioning; and implied that he would be going directly to jail after the hearing. Veronica Reed represented the respondent.

[Matter of Onondaga County v Taylor \(2024 NY Slip Op 04040\)](#)

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