

Decisions of Interest

FEBRUARY 12, 2024

CRIMINAL

FIRST DEPARTMENT

People v Cabrera | February 8, 2024

INVALID SEARCH | NO MEANINGFUL INVENTORY | DISMISSED

The appellant appealed from a Bronx County Supreme Court judgment convicting him of 3rd degree CPW. The First Department reversed, vacated the plea, granted suppression of physical evidence, and dismissed the indictment. An inventory search of the appellant's car was not valid. Police did not prepare the prescribed inventory search form. While this technical defect was not necessarily fatal, nothing in the record indicated that they vouchered the evidence or otherwise created a meaningful inventory list. Even if the evidence was vouchered, nothing established that no items other than the contraband were found in the car. Joseph A. Bondy represented the appellant.

[People v Cabrera \(2024 NY Slip Op 00685\)](#)

THIRD DEPARTMENT

People v Goff | February 8, 2024

JURY NOTE | NO MEANINGFUL RESPONSE | NEW TRIAL

The appellant appealed from an Essex County Court judgment convicting him of 2nd degree course of sexual conduct against a child and endangering the welfare of a child after a jury trial. The Third Department reversed in the interest of justice and ordered a new trial. In response to a jury note asking for clarification about the minimum three-month time frame required to prove course of sexual conduct, County Court reread the original instruction instead of clarifying the point of confusion. This response was not meaningful and deprived the appellant of a fair trial. The court also erred by allowing a witness to testify about child sexual abuse accommodation syndrome without first determining that she was an expert in that field, and instead instructing the jury that it was up to them to decide if the witness was an expert. The Law Office of James E. Tyner (Kathy Manley, of counsel) represented the appellant.

[People v Goff \(2024 NY Slip Op 00656\)](#)

People v Williams | February 8, 2024

BELATED DISCOVERY | SUFFICIENT DILIGENCE | AFFIRMED

The appellant appealed from a Broome County Court judgment convicting him of 2nd degree assault (two counts) after a jury trial. The Third Department affirmed. County Court

properly denied the appellant's CPL 30.30 motion to dismiss. While the People belatedly provided certain discovery, they acted with sufficient good faith and due diligence. Among other things, they expressed a safety concern over providing the adult complainant's contact information, which was reasonable at the time and did not require invalidating their COC—even though they did not seek a protective order and later provided the information.

[People v Williams \(2024 NY Slip Op 00654\)](#)

FOURTH DEPARTMENT

People v Lee | February 9, 2024

INVALID SEARCH | EVIDENCE SUPPRESSED | PARTIAL DISMISSAL

The appellant appealed from a Jefferson County Court judgment convicting him of 3rd degree CPW (three counts), criminal possession of a firearm, 1st degree menacing, and endangering the welfare of a child (two counts) after a jury trial. The Fourth Department granted the appellant's motion to suppress a switchblade knife and his related statements, reversed and dismissed four counts, and otherwise affirmed. The appellant was arrested based on a domestic dispute in his home. After he was secured and all the other occupants were outside, an officer entered the home without a warrant and saw a switchblade in plain view. The appellant later admitted to owning the switchblade. The emergency exception did not apply once the appellant and all occupants were outside the home and the warrantless search was unconstitutional. Further, one count of endangering and the menacing conviction were against the weight of the evidence. Cambareri & Brenneck (Kenneth H. Tyler, Jr., of counsel) represented the appellant.

[People v Lee \(2024 NY Slip Op 00718\)](#)

People v Henderson | February 9, 2024

SENTENCES NOT SEPARATELY PRONOUNCED | REMITTED

The appellant appealed from a Cayuga County Court judgment convicting him of 3rd degree CPCS (two counts) and 2nd degree criminally using drug paraphernalia based on his guilty plea. The Fourth Department vacated the sentence and remitted for resentencing. County Court failed to pronounce sentence for each count of which the appellant was convicted, requiring remittal. Ryan James Muldoon represented the appellant.

[People v Henderson \(2024 NY Slip Op 00717\)](#)

People v Howard | February 9, 2024

DISSENT | IAC | OPENED DOOR TO PRIOR BAD ACTS

The appellant appealed from a Monroe County Supreme Court judgment convicting him of 1st degree burglary, 2nd degree assault, aggravated criminal contempt and resisting arrest after a jury trial. The Fourth Department affirmed with two justices dissenting. In the dissent's view, the appellant received ineffective assistance of counsel. Defense counsel failed to ensure that the appellant's criminal history was redacted from an order of protection before it was admitted into evidence and opened the door to evidence of the appellant's prior bad acts and convictions when cross examining the complainant.

[People v Howard \(2024 NY Slip Op 00711\)](#)

TRIAL COURTS

People v Bracy | 2024 WL 413529

INCOMPLETE CRIMINAL RECORD | COC/SOR INVALID | DISMISSED

Bracy moved to dismiss the charges against him on speedy trial grounds. Queens County Criminal Court granted the motion. The disclosed document that the People claimed to be the complaining witness's "criminal record" listed information about his arrests and charges but did not include prior convictions. Since a reasonable prosecutor would have reviewed the document to confirm that it included a complete list of the complainant's prior convictions and would have noticed the omission of that necessary information, the People's COC/SOR was invalid and illusory. The Legal Aid Society of NYC (Allen Popper, of counsel) represented Bracy.

[People v Bracy \(2024 NY Slip Op 50112\[U\]\)](#)

People v Bartlotta | 2024 WL 413393

CPL 30.30 | EXTENSION REQUEST NOT EXCLUDABLE | DISMISSED

Bartlotta moved to dismiss DWI and other related charges on speedy trial grounds based on the People's failure to file a COC/SOR within 90 days of his arraignment. Webster Town Court granted the motion. The disputed period of time, from August 30, 2023 to October 4, 2023, was chargeable to the People. Defense counsel's request for an extension of time to file motions did not amount to a request for an adjournment, which would have rendered the time excludable under CPL 30.30. The extension was requested because the defense had not yet received all of the discovery. Since defense counsel did not specifically agree to the matter being adjourned, the People were responsible for that portion of the delay. P. Adam Militello represented Bartlotta.

[People v Bartlotta \(2024 NY Slip Op 50109\[U\]\)](#)

FAMILY

FOURTH DEPARTMENT

Matter of Allen v Courtney | February 9, 2024

RELOCATION | NEW FACTS | REVERSED AND REMITTED

The mother and AFC appealed from a Wayne County Family Court order granting the father permission to relocate to Wisconsin with the child. The Fourth Department reversed and remitted for an expedited hearing. The AFC submitted new information that the child has been living with the mother since December 2023 and that she was awarded temporary custody of the child. The record was no longer sufficient to determine whether relocation was in the child's best interest, requiring remittal and an expedited hearing. Thomas L. Pelych represented the mother and Matthew R. St. Martin was attorney for the child.

[Matter of Allen v Courtney \(2024 NY Slip Op 00702\)](#)

SECOND DEPARTMENT

Chu v Chu | February 7, 2024

FORENSIC EVALUATOR REMOVED | REPORT PRECLUDED

The father appealed from a Westchester County Supreme Court order that, among other things, denied his motion to remove a court-appointed forensic evaluator, deem his report inadmissible, and refund the fees paid to him. The Second Department modified by granting that relief and otherwise affirmed. When appointed, the forensic evaluator was a member of the Mental Health Professionals Panel for the First and Second Departments. He issued his forensic report seven months after the court-ordered deadline and several weeks after the parties stipulated to a visitation schedule. Two weeks later, he was removed from the Panel as the result of a complaint filed against him. His removal indicated that that he was no longer qualified to assist courts in reaching appropriate decisions as to custody and visitation. Further, the court's order and rules permitted sanctions against the evaluator if he failed to issue his report by the deadline.

[Chu v Chu \(2024 NY Slip Op 00610\)](#)

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80 S Swan St, Ste 1147, Albany, NY 12210 | www.ils.ny.gov

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