

## 2023 CRIMINAL DECISIONS

### PRETRIAL

#### Accusatory instrument

*People v Rodriguez*

214 AD3d 908

(2d Dept) (3/27/23 DOI)

Reversed, plea vacated, and misdemeanor information for 3<sup>rd</sup> degree possession of a forged instrument dismissed as facially insufficient. Allegation that defendant's car had a "forged buy tag" based on an NYPD officer's training in the detection and identification of forged instruments was too conclusory.

[People v Rodriguez \(2023 NY Slip Op 01593\)](#)

*People v Camlin*

215 AD3d 1013

(3d Dept) (4/10/23 DOI)

SCI dismissed as jurisdictionally defective. Although the waiver of indictment was signed by the defendant and dated, the record did not show that it was signed in open court as constitutionally required.

[People v Camlin \(2023 NY Slip Op 01821\)](#)

*People v West*

215 AD3d 1067

(3d Dept) (4/17/23 DOI)

SCI charging criminal mischief in the 3<sup>rd</sup> degree dismissed as jurisdictionally defective. When the defining statute of the crime charged contains an exception, the charging instrument must allege that the crime is not within that exception.

[People v West \(2023 NY Slip Op 01921\)](#)

*People v Solomon*

39 NY3d 1114

(COA) (4/24/23 DOI)

People's appeal from a Third Department order reversing defendant's conviction and dismissing the SCI, pursuant to CPL 195.10 (2), because it was filed after the grand jury's indictment. Affirmed. The SCI was a nullity, and it was properly dismissed.

[People v Solomon \(2023 NY Slip Op 02030\)](#)

*People v Lacy*

216 AD3d 439

(1st Dept) (5/8/23 DOI)

Indictment for persistent sexual abuse dismissed as jurisdictionally defective because it did not specify which of the three discrete qualifying offenses the defendant was alleged to have committed.

[People v Lacy \(2023 NY Slip Op 02394\)](#)

*People v Saenger*

39 NY3d 433

(COA) (5/22/23 DOI)

Aggravated family offense charge dismissed as jurisdictionally defective. That count in the indictment alleged that defendant had “committed an offense specified in [Penal Law § 240.75 (2)]” but did not specify the offense, and that subdivision contains 54 specified offenses. Defendant was not given sufficient notice to the charges against him.

[People v Saenger \(2023 NY Slip Op 02735\)](#)

*People v Walker*

80 Misc 3d 132(A)

(App Term, 1<sup>st</sup> Dept) (10/30/23 DOI)

Guilty plea vacated and accusatory instrument dismissed as facially insufficient. Defendant was charged with violating Agriculture and Markets Law § 353 after two emaciated and unsanitary dogs were found in an apartment, but there were no facts alleged in the complaint connecting defendant to either the dogs or the apartment.

[People v Walker \(2023 NY Slip Op 51119\[U\]\)](#)

*People v Berry*

222 AD3d 1109

(3d Dept) (12/18/23 DOI)

Judgment reversed and SCI dismissed as jurisdictionally defective. Although appellant orally agreed to waive indictment in open court, the signed written waiver bore a different date. The minutes did not show that the written waiver was signed in open court, as constitutionally required.

[People v Berry \(2023 NY Slip Op 06410\)](#)

*People v Smith*

222 AD3d 118

(3d Dept) (12/26/23 DOI)

Judgment reversed and SCI dismissed as jurisdictionally defective. A defendant cannot waive indictment and proceed by SCI if he is charged with a class A felony punishable by life imprisonment.

[People v Smith \(2023 NY Slip Op 06563\)](#)

**Grand jury**

*People v Congdon*

214 AD3d 1454

(4th Dept) (3/27/23 DOI)

Reversed and indictment dismissed. Defendant was charged with multiple counts of promoting a sexual performance by a child. Error for prosecutor not to instruct the grand jury that an affirmative act, beyond viewing the images of a sexual performance by a child on a computer, is required to establish promotion of images.

[People v Congdon \(2023 NY Slip Op 01622\)](#)

*People v Ashley*

216 AD3d 1439

(4th Dept) (5/8/23 DOI)

Guilty plea vacated and indictment dismissed. The grand jury was illegally constituted because one of the jurors had previously been convicted of a felony offense. County Court erred in requiring the defendant to show prejudice—a violation of CPL 210.35 (1) requires automatic dismissal of the indictment.

[People v Ashley \(2023 NY Slip Op 02432\)](#)

### **Statutory speedy trial**

*People v Brown*

214 AD3d 823

(2d Dept) (3/20/23 DOI)

People's appeal. Affirmed. People's statement of readiness, made within the speedy trial limit, was illusory because they did not file a COC. Defense counsel did not allege that any discovery was missing but, because the People never filed a COC, dismissal of indictment was warranted.

[People v Brown \(2023 NY Slip Op 01306\)](#)

*People v Gaskin*

214 AD3d 1353

(4th Dept) (3/20/23 DOI)

Trial court erred in denying defendant's 30.30 motion solely because defendant did not establish that he had been prejudiced by the late disclosure. CPL 245.50 is clear that a COC is proper where its filing is "in good faith and reasonable under the circumstances," not whether defendant was prejudiced. Decision reserved and case remitted.

[People v Gaskin \(2023 NY Slip Op 01415\)](#)

*People v King*

216 AD3d 1400

(4th Dept) (5/8/23 DOI)

Conviction after trial reversed and indictment dismissed. The People announced readiness in March 2019. Trial was scheduled for 1/27/2020. Defense counsel moved for 30.30 dismissal on the day of trial because the People had not filed a COC. Supreme Court erred in denying 30.30 motion. Because the case was pending in the trial court, and not on appeal, when the discovery laws changed, *People v Galindo* (38 NY3d 199 [2022]) was not controlling.

[People v King \(2023 NY Slip Op 02409\)](#)

*People ex rel. Fast v Molina*

219 AD3d 1384

(2d Dept) (9/25/23 DOI)

Writ of habeas corpus seeking to be released on bail or his own recognizance pursuant to CPL 30.30 (2) (a) sustained and matter remitted. Delay in producing the grand jury minutes, attributable to a backlog in the court reporter's production of transcripts, did not constitute excusable delay.

[People ex rel. Fast v Molina \(2023 NY Slip Op 04641\)](#)

*People v Justice A.*

40 NY3d 1009

(COA) (10/23/23 DOI)

Conviction reversed, 30.30 motion granted, and accusatory instrument dismissed. The period of time in dispute was chargeable to the People. While a different Legal Aid attorney appeared with the defendant after arraignment and explained that the case was being reassigned within the office, the defendant was represented and was not “without counsel” such that the time was excludable.

[People v Justice A. \(2023 NY Slip Op 05306\)](#)

*People v Lovett*

40 NY3d 1018

(COA) (10/30/23 DOI)

People’s appeal from the dismissal of a simplified traffic information charging a single traffic infraction. The COA affirmed, holding that the People’s erroneous concession in Town Court that CPL 30.30 applied in this case rendered the issue unreviewable. The dissent disagreed and would have reversed and remitted.

[People v Lovett \(2023 NY Slip Op 05348\)](#)

*People v Pittman*

221 AD3d 1256

(3d Dept) (11/27/23 DOI)

Appeal held in abeyance and remitted for a hearing. County Court erred in denying the appellant’s speedy trial motion without a hearing. The appellant alleged that the People were aware of her whereabouts for a good portion of the time that she was in another state and, despite her repeated detention, they failed to secure her presence in NY for five years.

[People v Pittman \(2023 NY Slip Op 06001\)](#)

*People v Bay*

2023 NY Slip Op 06407

(COA) (12/18/23 DOI)

Order affirming the appellant’s harassment 2<sup>nd</sup> conviction reversed and charge dismissed. Trial court erred by not granting the appellant’s speedy trial motion based on the People’s failure to comply with their discovery obligations. Prosecutors failed to exercise due diligence or make reasonable inquiries before filing the COC. Prejudice need not be shown to obtain a speedy trial dismissal.

[People v Bay \(2023 NY Slip Op 06407\)](#)

## **SUPPRESSION**

### **Arrest warrant**

*People v Jones*

214 AD3d 483

(1st Dept) (3/20/23 DOI)

Error to deny suppression motion. Although the officers executing the arrest warrant identified themselves as police before entering the apartment, they did not give notice of their purpose before entering (CPL 120.84[4]).

[People v Jones \(2023 NY Slip Op 01262\)](#)

*People v Burke*

220 AD3d 1217

(4th Dept) (10/10/23 DOI)

Reversed, guilty plea vacated, suppression motion granted, and indictment dismissed. It was improper for the officer to detain the defendant on a warrant before it was endorsed by a local court within that county (see CPL 120.70 [2] [b]). The arrest was therefore unauthorized.

[People v Burke \(2023 NY Slip Op 05083\)](#)

### **Canine sniff search**

*People v Butler*

2023 NY Slip Op 06468

(COA) (12/26/23 DOI)

Reversed and remitted for the trial court to determine the standard governing a canine sniff search of a person, whether the standard was met here, and the issue of abandonment. Following a traffic stop, a police canine sniffed and alerted to drugs on the appellant's body. The appellate court correctly held that the sniff was a search but exceeded its jurisdiction by holding that the search was justified under a reasonable suspicion standard—a ground not decided adversely to the appellant by the suppression court (see CPL 470.15 [1]; *People v LaFontaine*, 92 NY2d 470 [1998]).

[People v Butler \(2023 NY Slip Op 06468\)](#)

### **Identification**

*People v Alcaarez-Ubiles*

214 AD3d 1470

(4th Dept) (3/27/23 DOI)

Reversed and remanded for *Rodriguez* hearing. Lower court erred by relying on a witness' trial testimony to establish that a pretrial photographic ID procedure was confirmatory and did not require CPL 710.30 notice. Prior familiarity should be established before trial.

[People v Alcaarez-Ubiles \(2023 NY Slip Op 01637\)](#)

## **Inventory search**

### *People v Douglas*

40 NY3d 385

(COA) (10/30/23 DOI)

COA affirmed conviction, holding that NYPD's inventory search protocol is constitutional. Judge Rivera dissented. In dissent's view, the protocol is unconstitutional because it fails to instruct officers about how much time may pass between an inventory search and the invoicing of property or how the property must be safeguarded during the process.

[People v Douglas \(2023 NY Slip Op 05350\)](#)

### *People v David*

2023 NY Slip Op 05970

(COA) (11/27/23 DOI)

COA affirmed conviction, with one judge dissenting. Protocol requiring an officer to ask if the car's owner was available before having it towed did not render the inventory search invalid. The officer was not required to ask about alternative options that were not readily apparent; the appellant did not tell him that the car's owner was nearby and could retrieve the vehicle.

[People v David \(2023 NY Slip Op 05970\)](#)

## **Miranda**

### *People v Trice*

213 AD3d 954

(2d Dept) (2/27/23 DOI)

Guilty plea vacated and case remanded. Defendant's un*Mirandized* statements – made when questioned by a State trooper after he and another man were detained for matching a suspect description – constituted custodial interrogation. Defendant's hands were placed on the hood of a police car, at least 10 police vehicles had responded to the location and blocked off the street, and he was not free to leave.

[People v Trice \(2023 NY Slip Op 01015\)](#)

### *People v Savage*

220 AD3d 599

(1st Dept) (10/30/23 DOI)

Conviction after trial reversed, certain evidence suppressed, and new trial ordered. While Supreme Court properly suppressed defendant's statements to police after they told him that his statements might not be used against him and that he would benefit by confessing, it should have also suppressed his statements to the ADA and evidence thereafter discovered. The break between interrogations was insufficient to dispel the taint of the initial *Miranda* violation.

[People v Savage \(2023 NY Slip Op 05452\)](#)

### *People v Robinson*

221 AD3d 435

(1st Dept) (11/13/23 DOI)

Conviction affirmed after a nonjury trial. Appellant was not in custody and police were not required to read him *Miranda* warnings before asking "What happened?" A reasonable innocent

person in appellant's situation would have believed that the police were still gathering information.

[People v Robinson \(2023 NY Slip Op 05669\)](#)

*People v Cabrera*

2023 NY Slip Op 05968

(COA) (11/27/23 DOI)

COA reversed 2<sup>nd</sup> degree CPW conviction and remitted, with two judges dissenting. Appellant was in custody when he was handcuffed and questioned by three officers about firearms in his vehicle. He admitted to having guns but had not yet been given *Miranda* warnings. While the use of handcuffs is not custodial per se, it merits substantial weight. However, appellant's written consent to search—signed at the precinct after his handcuffs were removed and after he was given *Miranda* warnings—was not tainted. In the dissent's view, anyone in handcuffs is entitled to *Miranda* warnings and the appellant's written consent to search was involuntary.

[People v Cabrera \(2023 NY Slip Op 05968\)](#)

*People v Kelly*

221 AD3d 1265

(3d Dept) (11/27/23 DOI)

Conviction reversed, plea vacated, statements suppressed, and case remitted. After going through prison security, a dog alerted to the presence of narcotics on the appellant. She was then brought to a separate administrative wing, where she admitted to carrying drugs. A reasonable, innocent person would not feel free to leave under these circumstances, and the investigator's questioning was designed to elicit an incriminating response. Appellant's subsequent written statement was tainted by the improper custodial interrogation.

[People v Kelly \(2023 NY Slip Op 06003\)](#)

**Parent-child privilege**

*People v Kemp*

213 AD3d 1321

(4th Dept) (2/14/23 DOI)

Lower court erred in denying suppression of recorded statements made by 15-year-old defendant to his father in police station interview room. Parent-child privilege applied because defendant was attempting to speak to his father in confidence and for the purpose of obtaining support, advice, or guidance.

[People v Kemp \(2023 NY Slip Op 00776\)](#)

**Payton**

*People v McCracken*

217 AD3d 1543

(4th Dept) (7/3/23 DOI)

Decision reserved and case remitted after guilty plea. Supreme Court wrongly interpreted *People v Johnson* (140 AD3d 1630 [4th Dept 2016]). It was error to decline to hold a hearing where the defendant challenged the factual basis for and the validity of the parole violation warrant.

[People v McCracken \(2023 NY Slip Op 03614\)](#)

## **Preservation**

### *People v Miller*

212 AD3d 735

(2d Dept) (1/23/23 DOI)

People's appeal. Suppression affirmed. The People's contention that an exception should be made to the exclusionary rule was unpreserved. Supreme Court's statements in this regard were mere dicta, which did not influence the court's final determination and thus did not establish that the court "expressly decided" the issue (*see* CPL 470.05 [2]).

[People v Miller \(2023 NY Slip Op 00219\)](#)

## **Probable cause**

### *People v Watkins*

213 AD3d 467

(1st Dept) (2/14/23 DOI)

Reversed and suppression motion granted. Defendant's post-arrest statement should have been suppressed because People failed to submit evidence that would permit the inference that information constituting probable cause of the arrest had been communicated from the interviewing detective to the arresting officers.

[People v Watkins \(2023 NY Slip Op 00742\)](#)

### *People v Suttles*

214 AD3d 1313

(4th Dept) (3/20/23 DOI)

Plea vacated, suppression motion granted, and indictment dismissed. Two officers testified that they stopped the vehicle in which defendant was a passenger after visually estimating the speed at 40-45 mph in a 30 mph zone but there was no testimony to establish the officers' qualifications to support their estimates.

[People v Suttles \(2023 NY Slip Op 01380\)](#)

### *People v Tyler*

215 AD3d 884

(2d Dept) (4/24/23 DOI)

People's appeal after lower court granted defendant's suppression motion. Affirmed. Traffic stop was not legal. There was no evidence that the officer was trained in visual speed estimation or that the defendant's speed was unreasonable under the conditions.

[People v Tyler \(2023 NY Slip Op 02020\)](#)

### *People v Scott*

216 AD3d 552

(1st Dept) (5/30/23 DOI)

Guilty plea vacated and suppression motion granted. The traffic stop was valid, but the warrantless sweep of the car did not fall within any exception to the warrant requirement and was therefore unconstitutional. Officers never saw the defendant or the driver turn to the back seat and nothing indicated that a weapon in the vehicle posed an actual and specific danger.

[People v Scott \(2023 NY Slip Op 02769\)](#)



*People v Montgomery*

217 AD3d 1526

(4th Dept) (7/3/23 DOI)

Guilty plea vacated and suppression motion granted. Defendant's act of walking in the roadway did not provide probable cause to believe he violated the VTL, where there was no evidence that a safe sidewalk was available or that walking on the left side of the road, or its shoulder, was practicable.

[People v Montgomery \(2023 NY Slip Op 03606\)](#)

*People v Walker*

221 AD3d 1568

(4th Dept) (11/20/23 DOI)

Conviction reversed, suppression granted, and indictment dismissed. Appellant's vehicle was stopped after a DMV check of his license plate came back suspended for an insurance lapse—but appellant submitted verification that there was no lapse in coverage at that time. The presumption of reliability of this sort of transmitted information disappears when challenged, and the People did not affirmatively prove the officer's probable cause to act.

[People v Walker \(2023 NY Slip Op 05902\)](#)

*People v Barner*

221 AD3d 1493

(4th Dept) (11/20/23 DOI)

Guilty plea reversed and indictment dismissed. Appellant's consent to search his car was involuntarily because the officer said that, if he did not consent, he would detain the car until he got a warrant and search the car anyway—but the officer did not have sufficient probable cause to get a warrant, making his threat hollow and misleading.

[People v Barner \(2023 NY Slip Op 05839\)](#)

**Protective sweep**

*People v Hadlock*

218 AD3d 925

(3d Dept) (7/17/23 DOI)

Marijuana charge dismissed because warrantless protective sweep was unauthorized. County Court should have suppressed certain evidence because it was only observed during the protective sweep. There were no articulable facts that anyone was present in the house who posed a danger.

[People v Hadlock \(2023 NY Slip Op 03819\)](#)

**Reasonable suspicion**

*People v Johnson*

40 NY3d 172

(COA) (5/22/23 DOI)

Conviction reversed and evidence suppressed. Police observation of defendant making movements inside his vehicle; pulling up his pants and attempting to buckle his belt; and

appearing nervous while being questioned did not amount to reasonable suspicion to believe that defendant committed a crime. Thus, level-three stop and frisk was not warranted.

[People v Johnson \(2023 NY Slip Op 02734\)](#)

*People v Rhames*

218 AD3d 610

(2d Dept) (7/17/23 DOI)

People’s appeal. Order granting defendant’s motion to suppress physical evidence after a hearing affirmed. Police officers were not authorized to pursue defendant; the observation of a “V-shaped object” weighing down defendant’s sweatshirt did not provide reasonable suspicion that he was engaged in criminal activity.

[People v Rhames \(2023 NY Slip Op 03805\)](#)

*People v Joyette*

219 AD3d 628

(2d Dept) (8/14/23 DOI)

People’s appeal. Order granting defendant’s motion to suppress physical evidence after a hearing affirmed. Blocking a driveway after seeing defendant enter the front seat of a car parked therein constituted a stop requiring reasonable suspicion. While the smell of marijuana would have provided reasonable suspicion, officers testified that they did not smell anything until after the stop occurred.

[People v Joyette \(2023 NY Slip Op 04216\)](#)

*People v Johnson*

219 AD3d 1660

(4th Dept) (9/11/23 DOI)

Conviction for CPW 2 reversed, guilty plea vacated, motion to suppress granted, and indictment dismissed. Vague tip from an anonymous 911 caller was insufficient to establish reasonable suspicion to stop the defendant when there was no indication that the event occurred contemporaneously with the 911 call and the caller was not at the location when police arrived.

[People v Johnson \(2023 NY Slip Op 04493\)](#)

*People v McMillon*

20 AD3d 1181

(4th Dept) (10/10/23 DOI)

Conviction for CPSP 4 reversed, guilty plea vacated, motion to suppress granted, and indictment dismissed. The information available to officers—mainly that “two suspicious black males” were seen exiting a mall “with H&M bags full of merchandise,” then seen reentering the mall with an empty H&M bag and leaving about five minutes later with a full bag—did not provide reasonable suspicion. The observed conduct was susceptible of an innocent or culpable interpretation.

[People v McMillon \(2023 NY Slip Op 05064\)](#)

*People v Rodriguez*

2023 NY Slip Op 05972

(COA) (11/27/23 DOI)

Order affirming appellant's 2<sup>nd</sup> degree CPW conviction reversed, suppression granted, and indictment dismissed. Three judges dissented. The appellant was stopped by police while riding a bicycle. Because there is no meaningful constitutional distinction between stopping a vehicle and stopping a bicycle, the standard for a seizure should be the same. There was no suspected VTL violation and the officers' observation of a bulky object in appellant's waistband did not establish reasonable suspicion of criminality.

[People v Rodriguez \(2023 NY Slip Op 05972\)](#)

**Roadblocks**

*People v Pastrana*

2023 NY Slip Op 05966

(COA) (11/27/23 DOI)

Conviction for 2<sup>nd</sup> degree CPW affirmed, with three judges dissenting. The People's showing of authorization for a roadblock was barely sufficient. Appellant's challenge was largely to a detective's credibility—a factual finding over which the Court lacked jurisdiction—and claim that roadblock was discriminatory was unsupported by the record. MRTA did not apply retroactively.

[People v Pastrana \(2023 NY Slip Op 05966\)](#)

**Search warrants**

*People v Capers*

213 AD3d 947

(2d Dept) (2/27/23 DOI)

People's appeal. Suppression affirmed. The search warrant – which described the subject location as a two-story, two-family home with separate entrances and alleged that there was reason to believe that guns and ammo might be found at the subject premises – was overly broad. Sole basis for warrant was info from a CI, who had only seen guns in the downstairs unit.

[People v Capers \(2023 NY Slip Op 01011\)](#)

*People v Vincent*

218 AD3d 614

(2d Dept) (7/17/23 DOI)

Guilty plea vacated, motion to controvert search warrant granted, and evidence suppressed. Police failed to establish the reliability of information a confidential informant (CI) provided in support of the search warrant application. The CI did not have a proven track record of providing reliable information, the statements were not under oath or against penal interests, and the only information independently corroborated was the defendant's residence at the subject apartment and a description of the premises.

[People v Vincent \(2023 NY Slip Op 03808\)](#)

*People v Saeli*

219 AD3d 1122

(4th Dept) (8/14/23 DOI)

Judgment after a jury trial reversed, defendant's suppression motion granted, and new trial ordered. The search warrant for defendant's cellphone lacked particularity and did not restrict the search of the phone by reference to any particular crime, impermissibly leaving discretion to the executing police officers.

[People v Saeli \(2023 NY Slip Op 04268\)](#)

*People v Huginnie*

2023 NY Slip Op 05516

(2d Dept) (11/6/23 DOI)

Appeal held in abeyance and case remitted for a *Darden* hearing. A detective's on-the-scene observations could not establish probable cause without information provided by the CI; he saw the CI walk toward the building and return with drugs, but did not see the CI purchase narcotics from the subject apartment.

[People v Huginnie \(2023 NY Slip Op 05516\)](#)

**Standing**

*People v Ocasio*

222 AD3d 1364

(4th Dept) (12/26/23 DOI)

Appeal held and case remitted. The appellant's waiver of appeal was invalid, and the trial court erred in denying his suppression motion based on lack of standing. Although the appellant failed to allege his standing to challenge the eavesdropping warrants, the People did not object. Rather, they conceded his standing to challenge the warrants relating to the phone numbers he utilized.

[People v Ocasio \(2023 NY Slip Op 06623\)](#)

**Warrantless entry**

*People v Cuencas*

2023 NY Slip Op 05974

(COA) (11/27/23 DOI)

Convictions for murder 2 reversed and case remitted, with three judges dissenting. Appellant's arrest after a warrantless, nonconsensual entry into his home was illegal. Without an affirmative statement or demonstration of authority, officer's belief that the man who opened the door of the multi-family building came from the same apartment as appellant was insufficient to establish the man's apparent authority to consent to a search.

[People v Cuencas \(2023 NY Slip Op 05974\)](#)

## **Wiretap**

*People v Myers*

39 NY3d 130

(COA) (2/14/23 DOI)

Reversed. Communication intercepted by a wiretap is not exempt from CPL 700.70 notice requirements because it was incidentally captured on a separate jail call recording. Because the jail call was “derived” from the wiretap, the People’s failure to comply with statute precluded its admission at trial.

[People v Myers \(2023 NY Slip Op 00691\)](#)

## **GUILTY PLEAS**

### **Alford**

*People v Sanford*

218 AD3d 1277

(4th Dept) (7/31/23 DOI)

Conviction based on *Alford* plea reversed in the interest of justice because the record lacked the requisite strong evidence of defendant’s guilt. During the plea, defendant maintained that there was insufficient evidence of the elements of the crime and the court’s further inquiry failed to ascertain the strength of the proof as to that element.

[People v Sanford \(2023 NY Slip Op 04037\)](#)

### **Appeal waiver**

*People v Rabidou*

214 AD3d 1004

(2d Dept) (4/3/23 DOI)

Waiver of appeal was invalid. The written waiver mischaracterized the rights being forfeited as encompassing the right to counsel and poor person status, and as an absolute bar to all postconviction relief, including relief under CPL 440.

[People v Rabidou \(2023 NY Slip Op 01692\)](#)

*People v Torres*

216 AD3d 675

(2d Dept) (5/8/23 DOI)

Court erroneously conditioned the promised sentence on the defendant’s waiver of his right to appeal, making the waiver invalid. While a court may condition its acceptance of a plea agreement on such a waiver, it should articulate on the record its reason for doing so. Generic reasons such as judicial economy and avoiding a trial are insufficient.

[People v Torres \(2023 NY Slip Op 02335\)](#)

## **Unfulfilled promise**

*People v Cruz*

221 AD3d 465

(1st Dept) (11/20/23 DOI)

Conviction for attempted 3<sup>rd</sup> degree CSCS reduced to 7<sup>th</sup> degree CPCS and sentence of 3½ years reduced to time served in the interest of justice. As part of the plea bargain, appellant was promised a chance to complete a drug treatment program as an alternative to prison—but he was not given that chance, nor an opportunity to withdraw his plea before sentencing. Appellant was entitled to the benefit of the original promise.

[People v Cruz \(2023 NY Slip Op 05695\)](#)

*People v Dibble*

222 AD3d 1110

(3d Dept) (12/18/23 DOI)

Sentence vacated and case remitted for an *Outley* hearing. As part of her plea bargain, appellant was informed that the lower court would not be bound by its sentencing commitment if she failed to truthfully answer probation's questions during her PSI. The court imposed an enhanced sentence based on statements she made to probation and denied her request for a hearing on the alleged violation of the plea agreement.

[People v Dibble \(2023 NY Slip Op 06411\)](#)

## **Coerced**

*People v Brower*

81 Misc 3d 4

(App Term, 2d Dept) (11/6/23 DOI)

Judgement reversed, guilty plea vacated, and case remitted for further proceedings before a different judge. The City Court judge's insistence that the defendant plead guilty to both charges if he wanted to be released from jail, combined with his stated personal beliefs about the seriousness of the crime, unduly coerced the guilty plea.

[People v Brower \(2023 NY Slip Op 23358\)](#)

## **Duress**

*People v Rodriguez*

213 AD3d 778

(2d Dept) (2/14/23 DOI)

Reversal warranted where defendant's allocution raised issues of duress, and trial court failed to inquire into the plea's validity.

[People v Rodriguez \(2023 NY Slip Op 00678\)](#)

## **Gravity knives**

*People v Arroyo*

215 AD3d 475

(1st Dept) (4/17/23 DOI)

Conviction for CPW 4 vacated and dismissed in the interest of justice. Although the legislative amendment that decriminalized the simple possession of gravity knives does not apply retroactively, the People consented to dismissal.

[People v Arroyo \(2023 NY Slip Op 01945\)](#)

## **Negated element**

*People v Vanwuyckhuysse*

213 AD3d 1286

(4th Dept) (2/14/23 DOI)

Criminal contempt 2<sup>nd</sup> requires “intentional disobedience or resistance.” Defendant’s plea allocution negated an element of the crime when he stated that he “did not intend to violate” and “didn’t intentionally violate” the underlying OOP, and asserted that any violation “was unintentional.”

[People v Vanwuyckhuysse \(2023 NY Slip Op 00754\)](#)

*People v Van Alstyne*

220 AD3d 1105

(3d Dept) (10/30/23 DOI)

Reversed, plea vacated, and case remitted. At sentencing, the defendant made statements that raised the possibility of a defense. County Court erred by not conducting a further inquiry or providing the defendant with an opportunity to withdraw his plea.

[People v Van Alstyne \(2023 NY Slip Op 05423\)](#)

## **Peque violations**

*People v Hernandez*

214 AD3d 900

(2d Dept) (3/27/23 DOI)

Appeal held in abeyance and remitted to allow defendant to move to vacate his plea. Although the defendant acknowledged that he might lose his Temporary Protected Status because of his plea, record did not demonstrate that the court mentioned, or that defendant was aware of, the possibility of deportation.

[People v Hernandez \(2023 Slip Op 01530\)](#)

*People v Almonte*

216 AD3d 811

(2d Dept) (5/15/23 DOI)

County court failed to warn defendant of the possible deportation consequences of plea. Considering the defendant’s showing that he probably would have gone to trial had he been warned about the possibility of deportation, the error warranted vacatur of the plea.

[People v Almonte \(2023 NY Slip Op 02531\)](#)

## **Post-release supervision**

*People v Bell*

213 AD3d 1273

(4th Dept) (2/6/23 DOI)

Judgment reversed, remittal. Defendant's VOP admission was involuntary because County Court never informed him that PRS would be imposed if he was sentenced to prison.

[People v Bell \(2023 NY Slip Op 00594\)](#)

*People v Pryor*

217 AD3d 780

(2d Dept) (6/20/23 DOI)

Reversal of judgment upon guilty plea. The defendant was not informed of the specific period of post-release supervision to be imposed or the maximum potential duration.

[People v Pryor \(2023 NY Slip Op 03241\)](#)

## **Right to counsel**

*People v Holmes*

40 NY3d 947

(COA) (6/20/23 DOI)

Guilty plea vacated. Although the trial court correctly recognized that the defendant unequivocally requested to proceed pro se, it failed to conduct the requisite "searching inquiry" to ensure that his waiver of the right to counsel was knowing, voluntary and intelligent.

[People v Holmes \(2023 NY Slip Op 03186\)](#)

# **TRIALS**

## **Voir dire**

*People v Garcia*

2023 NY Slip Op 05969

(COA) (11/27/23 DOI)

Conviction for 2<sup>nd</sup> degree CPW affirmed with one judge dissenting. In the dissent's view, an exception to the preservation requirement applied to the appellant's *Bruen* arguments. Further, Supreme Court abused its discretion by restricting defense counsel's questioning of prospective jurors about their views of gun ownership and justification. Similar questions in earlier rounds of voir dire resulted in successful for-cause challenges.

[People v Garcia \(2023 NY Slip Op 05969\)](#)



## **Batson**

*People v Julio*

219 AD3d 415

(1st Dept) (8/21/23 DOI)

Judgments reversed and new trial ordered. Supreme Court improperly limited the defendant's presentation of their *Batson* challenges. The court erred in not requiring the People to provide race neutral explanations for all six of the challenged strikes.

[People v Julio \(2023 NY Slip Op 04349\)](#)

## **Challenge for cause**

*People v Smith*

217 AD3d 1580

(4th Dept) (7/3/23 DOI)

Reversed and new trial ordered. Error to deny for cause challenges of two prospective jurors who indicated that they would be more likely to credit a police officer's testimony over the defendant's testimony. When the court tried to rehabilitate them, they both repeated that they would likely credit a police officer over the defendant.

[People v Smith \(2023 NY Slip Op 03647\)](#)

*People v Santiago*

218 AD3d 1270

(4th Dept) (7/31/23 DOI)

Reversed and indictment dismissed without prejudice. In a trial for DWAI and AUO 1<sup>st</sup>, it was error to deny for-cause challenge to a prospective juror who indicated that the presence of a child in the vehicle could influence her impartiality. Nothing less than an unequivocal assurance of impartiality can cure a perspective's indication of bias.

[People v Santiago \(2023 NY Slip Op 04035\)](#)

## **Amended theory**

*People v Reid*

218 AD3d 1273

(4th Dept) (7/31/23 DOI)

Conviction for failure to register and/or verify status as a sex offender reversed and indictment dismissed. At trial, the People changed the theory of the case, but they were bound by the theory set forth in the indictment.

[People v Reid \(2023 NY Slip Op 04036\)](#)

## **Confrontation Clause**

*People v Coley*

219 AD3d 1673

(4th Dept) (10/2/23 DOI)

Supreme Court erroneously denied the defendant's motion to preclude the admission of a codefendant's statements. The court admitted the statements for the nonhearsay purpose of

showing the state of mind of investigators—but the investigators’ states of mind were not relevant to any issue in the case. The error was harmless, however, in light of the overwhelming proof of guilt.

[People v Coley \(2023 NY Slip Op 04855\)](#)

*People v Jordan*

40 NY3d 396

(COA) (11/27/23 DOI)

Conviction reversed and new trial ordered. The record did not establish that the proper witness testified about the creation of the DNA profiles. The criminalist who testified made imprecise and conclusory statements that failed to establish that he used his independent analysis on the raw data and was not merely proffering the conclusions of others. The error was not harmless.

[People v Jordan \(2023 NY Slip Op 05957\)](#)

*People v Espinosa*

40 NY3d 1065

(COA) (11/27/23 DOI)

Conviction affirmed, with one judge dissenting. Attorney’s failure to assert a Confrontation Clause objection to the admission of DNA reports through testimony of an analyst who did not perform, witness, or supervise the testing or independently analyze the raw data did not equate to ineffective assistance of counsel. The issue was not so clear-cut and dispositive that no reasonable attorney would have failed to assert it.

[People v Espinosa \(2023 NY Slip Op 05971\)](#)

*People v Ortega*

2023 NY Slip Op 05956

(COA) (11/27/23 DOI)

Murder convictions affirmed despite a Confrontation Clause violation. Autopsy reports, which were testimonial, were admitted at trial through the testimony of a ME who was not present during the autopsies. It was not clear if the testifying ME’s conclusions were based on her independent review of primary data. The error was harmless because appellant admitted to the murders.

[People v Ortega \(2023 NY Slip Op 05956\)](#)

### **Constitutional speedy trial**

*People v Regan*

39 NY3d 459

(COA) (3/20/23 DOI)

Reversed and indictment dismissed. People’s inexplicable 31-month preindictment delay in obtaining a warrant for the defendant’s DNA to compare against a sample recovered from the complainant violated the right to prompt prosecution.

[People v Regan \(2023 NY Slip Op 01353\)](#)

## **Evidentiary errors**

### ***Expert testimony***

#### *People v Ramis*

213 AD3d 951

(2d Dept) (2/27/23 DOI)

New trial granted on several counts. Experts testified that substances allegedly possessed by defendant were heroin or cocaine based on a comparison to standard samples in the lab known to be those drugs, but none of the experts' testimony established the standard or testing used to ensure the lab reference samples were in fact those drugs. People failed to establish a foundation for the competence of the expert testimony.

[People v Ramis \(2023 NY Slip Op 01013\)](#)

#### *People v Mawhiney*

220 AD3d 1055

(3d Dept) (10/23/23 DOI)

Reversed and remitted for a new trial. County Court erred when it precluded the defendant from presenting expert testimony on how the synergistic effect of alcohol and prescription medication affected intoxication, which was relevant to his intent.

[People v Mawhiney \(2023 NY Slip Op 05289\)](#)

#### *People v Neustadt*

221 AD3d 618

(2d Dept) (11/6/23 DOI)

Reversed and remitted for new trial. Error for trial court to preclude a defense expert from testifying in rebuttal to the People's expert in the field of child psychology and child sex abuse because expert was central to the defense case, the People were not prejudiced by the late notice, and the delay was not willful.

[People v Neustadt \(2023 NY Slip Op 05519\)](#)

### ***Identification***

#### *People v Perdue*

2023 NY Slip Op 06404

(COA) (12/18/23 DOI)

Judgment affirmed, with one judge dissenting. When the People plan to call a witness who will make a first-time, in-court ID, the defendant must be informed as early as practicable and, upon request, the trial court may fashion a pre-trial procedure to reduce the risk of mis-ID. Here, appellant was not prejudiced by the lack of formal notice. The dissent would adopt a rule requiring a pre-trial procedure when ID is at issue, the witness is a stranger, and the witness's memory of the crime is the only basis for the ID.

[People v Perdue \(2023 NY Slip Op 06404\)](#)

## ***Impeachment***

### *People v Sams*

216 AD3d 1003

(2d Dept) (5/22/23 DOI)

Reversal. Error to permit the prosecutor to impeach her own witness. The witness's testimony that he did not see the perpetrator's face and did not see the defendant fire a gun did not contradict or disprove any of the People's evidence.

[People v Sams \(2023 NY Slip Op 02684\)](#)

## ***Improper police opinion***

### *People v Ramos*

218 AD3d 495

(2d Dept) (7/10/23 DOI)

New trial ordered on some counts. Supreme Court should have precluded a detective's opinion testimony about what was depicted in a video of the assault on one of two victims. The detective's testimony included improper narration and personal interpretation of the video.

[People v Ramos \(2023 NY Slip Op 03709\)](#)

## ***Molineux***

### *People v Smith*

214 AD3d 679

(2d Dept) (3/6/23 DOI)

Reversed and remitted for new trial. Testimony that the defendant committed an armed bank robbery one month after the murder was improperly admitted as *Molineux* evidence.

[People v Smith \(2023 NY Slip Op 01106\)](#)

### *People v Woody*

214 AD3d 157

(1st Dept) (3/20/23 DOI)

Reversed and remanded for new trial. Trial court erred by allowed the People to admit evidence of defendant's prior gun conviction to explain the reporting officer's belief that defendant was armed and why 100 officers responded to the scene after he fled. Defendant did not open the door, the evidence was not necessary as background information or to complete the narrative, and other, less prejudicial evidence was available.

[People v Woody \(2023 NY Slip Op 01263\)](#)

### *People v Telfair*

2023 NY Slip Op 05965

(COA) (11/27/23 DOI)

Conviction for 2<sup>nd</sup> degree CPW reversed and case remitted, with three COA judges dissenting. Trial court erred in allowing the People to admit evidence of two prior incidents where the appellant denied knowing that he had guns in his possession. These incidents were remote in

time and irrelevant to any issue other than propensity. The error was not harmless; the appellant's knowledge of the guns was the primary focus at trial.

[People v Telfair \(2023 NY Slip Op 05965\)](#)

### ***Qualified immunity***

*Matter of Canning v Revoir*

220 AD3d 16

(3d Dept) (9/18/23 DOI)

County Court erroneously ordered the petitioner to testify at a retrial to information protected by the qualified immunity for journalists under the New York Shield Law (Civil Rights Law § 79-h [c]). The People failed to establish that the petitioner's testimony was "critical or necessary" or that the protected material was unobtainable from another source.

[Matter of Canning v Revoir \(2023 NY Slip Op 04623\)](#)

### ***Rape Shield Law***

*People v Cerda*

40 NY3d 369

(COA) (10/23/23 DOI)

Reversed and remitted for a new trial. Trial court erroneously applied the Rape Shield Law to deny defendant's motion to admit forensic reports, which offered plausible alternative explanations for the complainant's injuries and were "relevant and admissible in the interests of justice" (CPL 60.42 [5]).

[People v Cerda \(2023 NY Slip Op 05305\)](#)

### ***Rosario***

*People v Matthews*

212 AD3d 512

(1st Dept) (1/23/23 DOI)

Appeal held in abeyance and remand for an in camera review of two police officers' memo books. Supreme Court should have reviewed the memo books to determine if they contained statements the victim made to the officers and therefore constituted *Rosario* material to which the defendant had been entitled.

[People v Matthews \(2023 NY Slip Op 00243\)](#)

### ***Sandoval***

*People v Colon*

217 AD3d 1494

(4th Dept) (7/3/23 DOI)

Reversed and remanded for a new trial on CPW 2 charge. Trial court abused its discretion when it allowed the People's request to cross-examine the defendant about a prior conviction for attempted CPW 2, and include the name of the offense, pursuant to *Sandoval*. The court erroneously stated that it was bound by *People v Stanley* 155 AD3d 1684 (4th Dept 2017) to

allow the questioning, rather than weighing the probative value of the conviction against the potential for undue prejudice.

[People v Colon \(2023 NY Slip Op 03583\)](#)

### **Grossly unqualified jurors**

*People v Fisher*

212 AD3d 984

(3d Dept) (1/23/23 DOI)

Dissent opined that juror was grossly unqualified pursuant to CPL 270.35 (1). After deliberations had begun, an inquiry in response to a juror note indicated that she was certain that the defendant had followed her home after jury selection, raising startling safety concerns. Further, the subject juror discussed the incident with the other jurors. Yet County Court failed to engage in the necessary inquiries.

[People v Fisher \(2023 NY Slip Op 00248\)](#)

*People v Mentor*

213 AD3d 775

(2d Dept) (2/14/23 DOI)

Reversed. Trial court erred in failing to conduct a sufficiently probing and tactful inquiry of a juror that defense counsel twice asked to have removed as grossly unqualified. Juror had fallen asleep or was “extremely sleepy” through the trial.

[People v Mentor \(2023 Slip Op 00677\)](#)

### **Ineffective assistance**

*People v Alvarenga*

218 AD3d 485

(2d Dept) (7/10/23 DOI)

New trial ordered. Defense counsel failed to: object when the People elicited proof about a non-testifying accomplice’s plea agreement; timely request a missing witness charge as to the non-testifying accomplice; and request any accomplice instruction regarding the testimony of the People’s principal witness. The cumulative effect of these errors deprived defendant of the effective assistance of counsel.

[People v Alvarenga \(2023 NY Slip Op 03704\)](#)

### **Judicial conduct**

*People v Pulliam*

217 AD3d 968

(2d Dept) (7/3/23 DOI)

Reversed and remitted for a new trial before a different judge. Error for the court to participate in the questioning of witnesses, particularly taking on the function and appearance of an advocate by sometimes giving the impression that it found the testimony credible and the People’s case meritorious.

[People v Pulliam \(2023 NY Slip Op 03482\)](#)

## **Jury charges**

### *People v Reid*

212 AD3d 845

(1st Dept) (1/30/23 DOI)

New trial. Because the defendant had been arraigned on a special information and admitted a prior conviction, the court instructed the jury that, to find him guilty of 2<sup>nd</sup> degree CPW, they only needed to find that he knowingly possessed a loaded firearm. But the prosecution was limited by the indictment, so it was error to omit the element of possession outside the defendant's home or business from the jury charge.

[People v Reid \(2023 NY Slip Op 00336\)](#)

### *People v Rayford*

213 AD3d 1337

(4th Dept) (2/14/23 DOI)

Reversed. Error in determining that a justification charge is unavailable where there is an unintentional stabbing. Based on the defendant's testimony, jury could have reasonably found that complainant was the initial aggressor and that the defendant's actions were justified, even if resulting injuries were unintended.

[People v Rayford \(2023 NY Slip Op 00786\)](#)

### *People v Ross*

214 AD3d 1319

(4th Dept) (3/20/23 DOI)

Reversed. Error to grant People's request for a constructive possession jury charge where defendant was charged with possession of a weapon and there was no view of the evidence from which the jury could have concluded that the defendant constructively possessed a handgun.

[People v Ross \(2023 NY Slip Op 01381\)](#)

### *People v Newman*

214 AD3d 1451

(4th Dept) (3/27/23 DOI)

Error to grant People's request to charge 3<sup>rd</sup> degree criminal trespass as a lesser included offense of 3<sup>rd</sup> degree burglary. It was possible to commit the greater offense, as charged in the indictment, without committing the lesser offense. d

[People v Newman \(2023 NY Slip Op 01621\)](#)

### *People v Garcia*

216 AD3d 438

(1st Dept) (5/8/23 DOI)

New trial. Lower court should have granted defendant's request for a circumstantial evidence charge because there was no direct evidence of his participation in the conspiracy. The standard instructions on reasonable doubt and inferences were insufficient.

[People v Garcia \(2023 NY Slip Op 02392\)](#)

*People v Swanton*

216 AD3d 1441

(4th Dept) (5/8/23 DOI)

New trial ordered on several counts. Trial court erred in not charging the jury with the defense of justification. Even if the defendant’s account of a physical altercation was “extraordinarily unlikely,” a reasonable view of the evidence supported defendant’s request for the justification charge.

[People v Swanton \(2023 NY Slip Op 02433\)](#)

*People v Debellis*

40 NY3d 431

(COA) (11/27/23 DOI)

Conviction reversed and case remitted for new trial, with three judges dissenting. After a traffic stop where he was found in possession of a gun and ammunition, appellant claimed that he was on his way to a local police department for a gun buyback program. Trial counsel was ineffective for failing to request a jury charge on the only defense supported by the evidence—voluntary surrender under Penal Law § 265.20 (a) (1).

[People v Debellis \(2023 NY Slip Op 05964\)](#)

## **Mode of proceedings error**

### ***Jury notes***

*People v Baptiste*

216 AD3d 577

(1st Dept) (5/30/23 DOI)

New trial ordered based on *O’Rama* error in response to four jury notes. The trial court did not even show the notes to the parties and the record does not indicate that the court responded to the notes at all. At least two of the jury notes warranted input from counsel and required meaningful notice to the parties.

[People v Baptiste \(2023 NY Slip Op 02835\)](#)

## **Notice of defendant’s statement**

*People v Weathers*

213 AD3d 466

(1st Dept) (2/14/23 DOI)

New trial. People should not have been permitted to submit evidence of defendant’s statement to police because it was not properly noticed under CPL 710.30 (1) (a). The interview generally had been disclosed, but the specific statement was first revealed during trial testimony. Error was not harmless.

[People v Weathers \(2023 NY Slip Op 00741\)](#)



## **Prosecutorial misconduct**

*People v Nellis*

217 AD3d 1056

(3d Dept) (6/12/23 DOI)

Reversal based on multiple instances of prosecutorial misconduct, compounded by the repeated presentation of bad act evidence, the court's failure to intervene, and the absence of proof at trial of motive. Error for the prosecution to try to create the impression that defendant had a violent propensity when angered, rather than properly attempting to impeach his credibility.

[People v Nellis \(2023 NY Slip Op 03046\)](#)

## **Quantum of evidence**

### ***Assault / physical injury / serious physical injury***

*People v Davis*

214 AD3d 1334

(4th Dept) (3/20/23 DOI)

One of two assault counts dismissed because the evidence adduced at trial was legally insufficient as to the element of physical injury.

[People v Davis \(2023 NY Slip Op 01393\)](#)

*People v Dowdell*

214 AD3d 1363

(4th Dept) (3/20/23 DOI)

Evidence was legally insufficient to prove 2<sup>nd</sup> degree assault. The complainant never testified to the degree of pain he experienced, and the injury only resulted in slight scratches, redness, minor swelling, and possible minor bruising.

[People v Dowdell \(2023 NY Slip Op 01432\)](#)

*People v Wheeler*

40 NY3d 925

(COA) (5/22/23 DOI)

People's appeal after defendant's 2<sup>nd</sup> degree assault conviction was reversed. Testimony of the complainant, a police detective, that defendant punched him in the mouth, causing "aching" pain, bleeding and swelling, and that he was directed to take over-the-counter painkillers for the injury, was legally sufficient to establish physical injury under PL 120.05 (3). Conviction reinstated.

[People v Wheeler \(2023 NY Slip Op 02736\)](#)

*People v Thorpe*

218 AD3d 1124

(4th Dept) (7/31/23 DOI)

Convictions for aggravated family offense and aggravated harassment reversed and dismissed. The evidence of physical injury was legally insufficient to support those charges. Complainant testified that the defendant's bite on her arm was painful and caused her to sustain a bruise that

hurt for 2-3 days at a pain level 6, but did not break her skin or bleed, and that she did not seek medical attention, take pain medication, or miss work for her injury.

[People v Thorpe \(2023 NY Slip Op 03981\)](#)

*People v Murray*

222 AD3d 496

(1st Dept) (12/18/23 DOI)

Judgment modified by dismissing the 1<sup>st</sup> degree assault charge, reducing the 2<sup>nd</sup> degree assault to a 3<sup>rd</sup> degree assault conviction, and case remanded for resentencing. A two-to-three-centimeter forehead laceration does not constitute serious disfigurement or serious physical injury.

[People v Murray \(2023 NY Slip Op 06454\)](#)

***Burglary***

*People v Taylor*

215 AD3d 431

(1st Dept) (4/10/23 DOI)

Defendant's conviction for burglary of a doctor's office – based solely on the presence of his DNA on an open soda can in the reception area – was against the weight of the evidence. Testimony of the office manager failed to address whether there was an innocent explanation for the presence of defendant, or of the soda can, at that location.

[People v Taylor \(2023 NY Slip Op 01848\)](#)

***Coercion***

*People v Knapp*

220 AD3d 1018

(3d Dept) (10/16/23 DOI)

Coercion conviction reversed as legally insufficient. The People could not try to prove an alternative theory at trial. Proof that varies from the indictment may compromise the notice to the accused and the grand jury's exclusive power to determine the charges.

[People v Knapp \(2023 NY Slip Op 05168\)](#)

***Conspiracy***

*People v Lundy*

218 AD3d 839

(3d Dept) (7/10/23 DOI)

Conspiracy conviction reversed and count dismissed. Evidence was legally insufficient to infer that the defendant specifically intended to engage in conduct constituting the administration, organization, or leadership of a controlled substance organization. Proof that defendant purchased dealer quantities of cocaine and cooked crack for his supplier did not connect him to the supplier's broader cocaine dealing network.

[People v Lundy \(2023 NY Slip Op 03727\)](#)

## **CPW**

### *People v Alcaarez-Ubiles*

215 AD3d 1264

(4th Dept) (5/1/23 DOI)

Weapons-related convictions reversed. Defendant's mere presence in the house where a rifle was located was insufficient to establish constructive possession.

[People v Alcaarez-Ubiles \(2023 NY Slip Op 02226\)](#)

### ***Criminal possession of stolen property***

#### *People v Giles*

214 AD3d 1460

(4th Dept) (3/27/23 DOI)

Conviction for 3<sup>rd</sup> degree CPSP reduced to 4<sup>th</sup> degree CPSP. Evidence established that the defendant had stolen property but proof that the property was worth more than \$3,000 was legally insufficient.

[People v Giles \(2023 NY Slip Op 01628\)](#)

### ***Criminally negligent homicide***

#### *People v Lewinski*

221 AD3d 1468

(4th Dept) (11/20/23 DOI)

People's appeal. Order dismissing indictment affirmed. Proof that the respondent shoved the victim once during an argument, which caused the victim to fall and hit his head, did not establish that the respondent acted with criminal negligence.

[People v Lewinski \(2023 NY Slip Op 05827\)](#)

#### *People v Munise*

222 AD3d 1183

(3d Dept) (12/26/23 DOI)

Judgement reversed and indictment dismissed. A failure to brake, without more, is legally insufficient to establish criminal negligence.

[People v Munise \(2023 NY Slip Op 06562\)](#)

### ***Dangerous instrument***

#### *People v Weng*

215 AD3d 986

(2d Dept) (5/1/23 DOI)

Convictions for assault 2, CPW 4, and assault 3 vacated and those counts dismissed. Evidence was not legally sufficient to establish that the bamboo stick with which the defendant struck her two-year-old child—which was not produced at trial—constituted a “dangerous instrument” that is “readily capable of causing death or other serious physical injury.”

[People v Weng \(2023 NY Slip Op 02134\)](#)

*People v Ames*

217 AD3d 510

(1st Dept) (6/20/23 DOI)

Conviction for assault 2 vacated because proof was legally insufficient to establish that defendant used subway tracks as a dangerous instrument. Even if the defendant caused the complainant to fall, the People failed to prove that defendant intended for the complainant to be injured by striking the tracks.

[People v Ames \(2023 NY Slip Op 03205\)](#)

***Falsifying business records***

*People v Andrews*

220 AD3d 1227

(4th Dept) (10/10/23 DOI)

Conviction for 1<sup>st</sup> degree falsifying business records reversed and indictment dismissed. The People's theory was that, by lying to the officer, defendant caused a false entry in the business records of the sheriff's office. But trial testimony established that the officer's report accurately documented defendant's responses to investigatory questions.

[People v Andrews \(2023 NY Slip Op 05085\)](#)

***Incest***

*People v Sharlow*

217 AD3d 1120

(3d Dept) (6/20/23 DOI)

Conviction for incest 1 vacated and indictment dismissed. Proof did not establish that the complainant was young enough to meet the age element required.

[People v Sharlow \(2023 NY Slip Op 03260\)](#)

***Manslaughter***

*People v Skeeter*

217 AD3d 422

(1st Dept) (6/5/23 DOI)

Conviction for manslaughter 1 vacated and dismissed in the interest of justice. The People did not meet their burden of disproving the defendant's justification defense. The mere fact that the deceased was shot in the back did not establish that the defendant was the initial aggressor or that he did not reasonably believe deadly force was still being used.

[People v Skeeter \(2023 NY Slip Op 02946\)](#)

*People v Lavelle*

221 AD3d 1594

(4th Dept) (11/20/23 DOI)

Conviction for manslaughter 2 reversed and indictment dismissed. Proof that appellant briefly drove on the shoulder of the road to pass a car turning in front of him, took a sharp left turn and crossed a double yellow line into the opposite lane of traffic, without more, was insufficient to establish the element of recklessness.

[People v Lavelle \(2023 NY Slip Op 05920\)](#)

*People v Jones*

221 AD3d 1285

(3d Dept) (11/27/23 DOI)

Conviction for manslaughter 1 reversed and indictment dismissed. Verdict was against the weight of the evidence as to identity. The People’s circumstantial proof—a surveillance video of a driver exiting a car and shooting the victim—failed to exclude beyond a reasonable doubt the possibility that one of the other vehicle occupants was the driver.

[People v Jones \(2023 NY Slip Op 06007\)](#)

***Murder 1***

*People v Estrella*

214 AD3d 459

(1st Dept) (3/13/23 DOI)

Murder 1 conviction vacated and dismissed. Act of fatally stabbing the victim in the neck during a gang assault did not support murder 1 conviction because defendant and his accomplices did not engage in a “course of conduct” of torturing the victim and did not “relish” inflicting extreme physical pain.

[People v Estrella \(2023 NY Slip Op 01240\)](#)

***Murder 2***

*People v Ramos*

218 AD3d 1113

(4th Dept) (7/10/23 DOI)

Convictions for Murder 2 and CPW 2 reversed and dismissed as against the weight of the evidence. The People’s case, which consisted of proof that defendant may have dropped off his codefendant near the bar before a shooting and the incredible testimony of a jailhouse informant about defendant’s purported confession, simply did not support the inference that defendant shared his codefendant’s criminal intent.

[People v Ramos \(2023 NY Slip Op 03755\)](#)

***Rape 1***

*People v Patterson*

214 AD3d 674

(2d Dept) (3/6/23 DOI)

Reversed and dismissed. No evidence that the defendant used actual force or expressly threatened the complainant. Complainant’s testimony was insufficient to establish that defendant implicitly threatened her; there was no proof that defendant did anything threatening or abusive before the incident.

[People v Patterson \(2023 NY Slip Op 01103\)](#)

## ***Rape 2***

### *People v Bateman*

212 AD3d 993

(3d Dept) (1/23/23 DOI)

Reversal of conviction and dismissal of one count of 2<sup>nd</sup> degree rape. No evidence corroborated the defendant's admission that he and the victim engaged in sexual intercourse "a few times" in August 2017 when he was 46 and she was 14. Thus, the evidence was legally insufficient.

[People v Bateman \(2023 NY Slip Op 00249\)](#)

## **Repugnant verdict**

### *People v Hines*

219 AD3d 506

(2d Dept) (8/7/23 DOI)

Affirmance. Although the jury's verdict was repugnant as to two counts based on the jury charge, it was not improper for County Court to explain the error, reread the elements of the repugnant counts, and direct the jury to reconsider those counts.

[People v Hines \(2023 NY Slip Op 04139\)](#)

## **Restraints/shackles**

### *People v Sanders*

39 NY3d 216

(COA) (2/14/23 DOI)

Reversed. In the absence of special need, shackling defendant during the jury's reading of its verdict and the court's polling of the jurors was a due process violation. Error was not harmless.

[People v Sanders \(2023 NY Slip Op 00692\)](#)

## **Right to call witness**

### *People v Osman*

213 AD3d 1256

(4th Dept) (2/6/23 DOI)

Reversed. In addition to a jury instruction error under PL § 265.15, County Court abused its discretion by precluding the defendant from calling his psychiatric nurse practitioner, who would have provided relevant defense testimony. The defendant showed good cause for his delay in noticing the witness, and the People established no prejudice.

[People v Osman \(2023 NY Slip Op 00581\)](#)

## **Right to counsel**

### *People v Spellicy*

217 AD3d 1359

(4th Dept) (6/12/23 DOI)

Affirmed. Defendant argued that his constitutional right to self-representation was violated because the court granted his request to proceed pro se only six days before trial, leaving him

unable to properly prepare. Because defendant’s challenge was to the timing and manner of the court’s decision—rather than his right to self-representation—it was subject to harmless error review.

[People v Spellicy \(2023 NY Slip Op 03099\)](#)

*People v Hernandez-Molina*

219 AD3d 1232

(1st Dept) (10/2/23 DOI)

Reversed and remanded for a new trial. Supreme Court erred in denying the defendant’s request for new counsel without inquiring about the basis for the application. While the request may well have been a delay tactic, the court should not have denied the application without allowing the defendant to explain his reasons for the request.

[People v Hernandez-Molina \(2023 NY Slip Op 04732\)](#)

*People v Scott*

222 AD3d 663

(2d Dept) (12/11/23 DOI)

Conviction for murder 2 reversed and new trial granted before a different judge. Supreme Court violated appellant’s right to counsel by summarily denying his request for an adjournment to retain a different lawyer—after appellant made serious complaints against his assigned counsel—and telling him his only alternative was to proceed pro se.

[People v Scott \(2023 NY Slip Op 06261\)](#)

### **Right to public trial**

*People v Reid*

40 NY3d 198

(COA) (5/30/23 DOI)

Defendant’s Sixth Amendment right to a public trial was violated when the judge closed the courtroom for the last four days of an eight-day jury trial. *Waller* (467 US 39 [1984]) requirements were not met. The judge did not create a sufficient record to justify a complete closure and, as a result, the closure was not narrowly tailored to the interests sought to be protected.

[People v Reid \(2023 NY Slip Op 02755\)](#)

*People v Muhammad*

40 NY3d 26

(COA) (5/30/23 DOI)

Judge’s policy of prohibiting the public from entering or exiting the courtroom during witness testimony resulted in a violation of the defendant’s Sixth Amendment right to a public trial. The judge failed to establish procedures to ensure that those who timely arrived would be permitted entry, resulting in the spectator’s unjustified exclusion.

[People v Muhammad \(2023 NY Slip Op 02756\)](#)

### **Sirois hearing**

*People v Robinson*

216 AD3d 1252

(3d Dept) (5/15/23 DOI)

New trial. Supreme Court erred by summarily granting the motion for a *Sirois* hearing because the People's proof (jail calls) failed to show by clear and convincing evidence that defendant procured the witness' unavailability. The evidence was subject to competing inferences, and the defendant should have been afforded an opportunity to test the causal link between the complainant's refusal to testify and the jail calls.

[People v Robinson \(2023 NY Slip Op 02561\)](#)

## **SENTENCING**

### **Appellate Division authority**

*People v Ba*

39 NY3d 1130

(COA) (3/27/23 DOI)

Remanded for a determination of whether the sentence was unduly harsh and excessive. Concurring opinion found that the Appellate Term's language showed that the court incorrectly believed that it was bound to uphold the sentence because it was bargained for and within the legal parameters.

[People v Ba \(2023 NY Slip Op 01468\)](#)

### **Court's discretion**

*People v Amin*

217 AD3d 1338

(4th Dept) (6/12/23 DOI)

Sentence vacated after guilty plea. Supreme Court failed to apprehend the extent of its sentencing discretion. The court erroneously indicated that a showing of mitigating circumstances was required before it could impose a sentence other than a determinate term of imprisonment. However, a determinate sentence was not mandatory except in circumstances absent here.

[People v Amin \(2023 NY Slip Op 03093\)](#)

### **Concurrent/consecutive**

*People v Bailey*

213 AD3d 499

(1st Dept) (2/21/23 DOI)

Sentences for murder and CPW (intent to use unlawfully) modified to run concurrently. People did not show that consecutive sentences were permissible. Without evidence of possession of the



firearm other than at the moment of the shooting, it was not clear that possession and use were separate acts.

[People v Bailey \(2023 Slip Op 00822\)](#)

*People v Truitt*

213 AD3d 1145

(3d Dept) (2/27/23 DOI)

Convictions for murder 2 reversed because they were inclusory concurrent counts of murder 1 under CPL 300.40.

[People v Truitt \(2023 NY Slip Op 01028\)](#)

*People v Burton*

215 AD3d 1054

(3d Dept) (4/24/23 DOI)

Convictions for murder 2 reversed because they were inclusory concurrent counts of murder 1 under CPL 300.40.

[People v Burton \(2023 NY Slip Op 01919\)](#)

*People v McKoy*

217 AD3d 1396

(4th Dept) (6/12/23 DOI)

Sentences for murder 2 and CPW 2 convictions modified to run concurrently. The People failed to present evidence that the defendant's possession of the loaded firearm on the date of the offense was separate and distinct from the act of shooting the victim.

[People v McKoy \(2023 NY Slip Op 03119\)](#)

## **DVSJA**

*People v Partlow*

216 AD3d 1469

(4th Dept) (5/15/23 DOI)

Sentence cut in half. Evidence supported a finding that defendant was a victim of domestic violence during her relationship with the victim; she was subjected to substantial physical, sexual or psychological abuse; and such abuse was a significant contributing factor to her criminal behavior. A sentence within the normal sentencing range would be "unduly harsh," given the nature and circumstances of the crime and the history, character, and condition of the defendant.

[People v Partlow \(2023 NY Slip Op 02479\)](#)

*People v Susan C.*

217 AD3d 1576

(4th Dept) (7/17/23 DOI)

Order denying defendant's application for resentencing pursuant to DVSJA affirmed. Defense counsel provided defendant with meaningful representation at the hearing on the application.

[People v Susan C. \(2023 NY Slip Op 03643\)](#)

*People v Heft*

220 AD3d 806

(2d Dept) (10/16/23 DOI)

Sentence cut in half. While County Court had granted the defendant's application for an alternative sentence under the DVSJA, the reviewing court further reduced her sentence in the interest of justice.

[People v Heft \(2023 NY Slip Op 05148\)](#)

*People v Riley*

221 AD3d 1162

(3d Dept) (11/13/23 DOI)

Order denying appellant's CPL 440.20 motion affirmed. Trial counsel's failure to seek a lesser sentence under the DVSJA does not constitute ineffective assistance of counsel when that application has little to no chance of success.

[People v Riley \(2023 NY Slip Op 05645\)](#)

*People v Fisher*

221 AD3d 1195

(3d Dept) (11/20/23 DOI)

Order denying appellant's CPL 440.47 resentencing motion after a hearing affirmed. The evidence did not show that the substantial physical abuse by her father occurred at the time of her offense, or that the abuse was a significant contributing factor to the offense. While the abuse does not need to occur contemporaneously with the offense, the statute's language creates a requirement of a temporal nexus between the abuse and the offense.

[People v Fisher \(2023 NY Slip Op 05764\)](#)

*People v Liz L.*

221 AD3d 1288

(3d Dept) (11/27/23 DOI)

Order denying appellant's CPL 440.47 resentencing motion after a hearing reversed, motion granted, and sentence cut in half. The hearing court erred as to each of the DVSJA's three prongs: (1) the requirement that an applicant was a victim of substantial abuse "at the time of the offense" does not mean that the abuse and the offense must occur contemporaneously; (2) the court failed to determine whether the abuse was a "significant contributing factor" to the offense; and (3) that the plea bargain already considered the DV history, or that the sentence was relatively favorable, are not relevant to whether the original sentence is unduly harsh.

[People v Liz L. \(2023 NY Slip Op 06008\)](#)

*People v Brenda WW.*

222 AD3d 1188

(3d Dept) (12/26/23 DOI)

Order denying appellant's CPL 440.47 resentencing motion reversed and her 20-year sentence reduced to 8 years plus 5 years of PRS, making her eligible for immediate release. Mutually abusive relationships are typical of people suffering from battered person syndrome and do not preclude DVSJA relief. A history of abuse must be considered cumulatively; the appellant saw and was a victim of DV throughout her life. Neither the unavailability of a justification defense

nor an “extensive criminal history” forecloses DVSJA relief. A prior denial of an excessive sentence claim on direct appeal is not determinative; the DVSJA involves a different analysis. [People v Brenda WW. \(2023 NY Slip Op 06564\)](#)

### **Excessive sentence enhancement**

*People v Carson*

213 AD3d 690

(2d Dept) (2/6/23 DOI)

Defendant pleaded guilty in exchange for capped sentences of five-year terms with two years of PRS on each count, to run concurrently. While County Court had a sufficient basis to impose an enhanced sentence after defendant violated certain terms prior to sentencing, the enhanced sentence of consecutive nine-year terms followed by three years of PRS was excessive.

[People v Carson \(2023 NY Slip Op 00435\)](#)

*People v Tirado*

221 AD3d 832

(2d Dept) (11/20/23 DOI)

Appellant’s enhanced aggregate sentence of 50 years to life modified by running the two 25-year terms concurrently. Although Supreme Court had a sufficient basis for imposing an enhanced sentence based on two plea condition violations, the enhancement was excessive.

[People v Tirado \(2023 NY Slip Op 05745\)](#)

### **Harsh and excessive**

*People v West*

218 AD3d 798

(2d Dept) (7/31/23 DOI)

Conviction for four counts of 2<sup>nd</sup> degree burglary affirmed with one justice dissenting. In the dissent’s view, defendant’s sentence of 34 years to life—tantamount to a life sentence—was grossly disproportionate to the harm caused. The gravity of the offenses, the defendant’s criminal history, and public safety were already accounted for by the persistent violent felony offense sentence; further enhancement was not warranted.

[People v West \(2023 NY Slip Op 03932\)](#)

*People v Morrison*

217 AD3d 1424

(4th Dept) (6/12/23 DOI)

PRS term reduced from 3 years to 2 ½ years in the interest of justice. At sentencing, a 3-year term of PRS was imposed, departing from the express terms of the plea agreement, despite acknowledging that there had been no material change since the plea.

[People v Morrison \(2023 NY Slip Op 03145\)](#)

*People v Williams*

219 AD3d 409

(1st Dept) (8/14/23 DOI)

Aggregate sentence of 11-years of incarceration, following defendant's guilty plea, was harsh and excessive given defendant's relative youth, lack of prior convictions, favorable reputation in school and community, strong family background, positive school and employment record, personal stressors, potential for rehabilitation, and a favorable prison record. Sentences modified to run concurrently, resulting in a six-year sentence.

[People v Williams \(2023 NY Slip Op 04260\)](#)

*People v Anonymous*

221 AD3d 509

(1st Dept) (11/27/23 DOI)

Aggregate sentence of 32 years vacated in the interest of justice and case remanded for resentencing. Supreme Court improperly based the 25-year sentence on the manslaughter conviction on its belief that the appellant intended to kill the victim, since appellant was acquitted of murder 2. Further, consecutive sentences for manslaughter and simple CPW were improper; there was no proof the appellant possessed the firearm before shooting the victim.

[People v Anonymous \(2023 NY Slip Op 05990\)](#)

*People v Glenn*

221 AD3d 544

(1st Dept) (12/4/23 DOI)

PFO adjudication vacated and concurrent sentences of 15 years to life reduced to 3 ½ to 7-year terms. Reduction was warranted based on the appellant's advanced age, health problems, history of drug addiction, nonviolent nature of his offenses, positive behavior while incarcerated, and his sentence of 15 years to life in an unrelated case.

[People v Glenn \(2023 NY Slip Op 06094\)](#)

*People v Thaxton*

222 AD3d 1171

222 AD3d 1175

(3d Dept) (12/26/23 DOI)

Appellant's aggregate 25-year sentence reduced to an aggregate 20-years. The sentence was unduly harsh; appellant was 18 years old, had been placed in foster care at the age of two, and had a family history of substance abuse, trauma, domestic violence, and mental illness.

[People v Thaxton \(2023 NY Slip Op 06560\)](#)

[People v Thaxton \(2023 NY Slip Op 06561\)](#)

**Illegal**

*People v Nyack*

214 AD3d 903

(2d Dept) (3/27/23 DOI)

Although not charged with 3<sup>rd</sup> degree CPW, defendant pleaded guilty to attempted 3<sup>rd</sup> degree CPW as a count added to the indictment upon consent. Because he did not plead guilty to the attempted crime as a lesser included offense of a count charged in the indictment, the conviction

did not constitute a violent felony offense and being sentenced as a violent felony offender was illegal.

[People v Nyack \(2023 Slip Op 01532\)](#)

*People v McDowell*

214 AD3d 1437

(4th Dept) (3/27/23 DOI)

Defendant's bargained-for sentence of 8 years to life, in exchange for pleading guilty to 2<sup>nd</sup> degree CPW, was illegally low because it fell below the statutory minimum. The remedy was to vacate the sentence and remit for County Court to either resentence the defendant or permit both parties an opportunity to withdraw from the agreement.

[People v McDowell \(2023 NY Slip Op 01606\)](#)

*People v Lamoy*

215 AD3d 1136

(3d Dept) (4/24/23 DOI)

Term of conditional discharge vacated. Only a one-year term of conditional discharge may be imposed in relation to a misdemeanor conviction, so the three-year term imposed for defendant's misdemeanor DWI conviction was illegal.

[People v Lamoy \(2023 NY Slip Op 02035\)](#)

*People v McCall*

216 AD3d 1317

(3d Dept) (5/22/23 DOI)

Remitted for re-sentencing. Defendant's predicate felony conviction occurred more than 10 years before the instant offense, and the People did not demonstrate that the 10-year look-back period was tolled by incarceration. Although not preserved, the illegality of the sentence was clear from the face of the appellate record.

[People v McCall \(2023 NY Slip Op 02719\)](#)

## **Orders of protection**

*People v Augustin-Miranda*

215 AD3d 981

(2d Dept) (5/1/23 DOI)

Remitted for a determination of the OOP's definite expiration date. Lower court erred in setting the duration of the OOP until a certain date, "less the defendant's jail time credit, which [was] to be computed by the applicable department of correction." CPL 530.10 [4], [5] requires a definite expiration date be set for an OOP.

[People v Augustin-Miranda \(2023 NY Slip Op 02131\)](#)

*People v Delaurentis*

216 AD3d 664

(2d Dept) (5/8/23 DOI)

Expiration provision of the OOP vacated and remitted for new determination of duration of the order. An OOP issued at the time of sentencing should credit defendant for jail time served.

[People v Delaurentis \(2023 NY Slip Op 02326\)](#)

### **Predicate and timing issues**

*People v Scott*

221 AD3d 1566

(4th Dept) (11/20/23 DOI)

Sentence vacated and case remitted. County Court erred in sentencing the appellant as a persistent violent felony offender. Defendant admitted his prior violent felony convictions but did not concede that he was sentenced on at least two of those convictions within 10 years of the instant offense.

[People v Scott \(2023 NY Slip Op 05900\)](#)

### **Predicate not equivalent**

*People v Hairston*

213 AD3d 694

(2d Dept) (2/6/23 DOI)

Vacatur of persistent violent felony offender in the interest of justice. Defendant's prior convictions from Ohio did not involve all of the essential elements of any NY violent felony.

[People v Hairston \(2023 NY Slip Op 00439\)](#)

*People v Caraballo*

213 AD3d 1152

(3d Dept) (2/27/23 DOI)

Sentence vacated and remitted for resentencing. People's submissions to prove defendant's prior felony conviction— the Massachusetts equivalent of a commitment order and defendant's public docket report – lacked the out-of-state certification required under CPLR 4540 (c).

[People v Caraballo \(2023 NY Slip Op 01029\)](#)

### **Presence required**

*People v Barksdale*

216 AD3d 534

(1st Dept) (5/22/23 DOI)

Sentence vacated and remitted for resentencing. The defendant had a right to be personally present at sentencing, and he did not expressly waive that right during the virtual proceeding.

[People v Barksdale \(2023 NY Slip Op 02744\)](#)

### **Probation condition**

*People v Mensah*

221 AD3d 732

(2d Dept) (11/13/23 DOI)

Appellate court deleted the probation condition that required the appellant to consent to a search of his person, vehicle, and home and to the seizure of any illegal drugs, paraphernalia or other contraband found. The condition was not reasonably related to the appellant's rehabilitation.

[People v Mensah \(2023 NY Slip Op 05622\)](#)

## **Restitution**

### *People v Chung*

213 AD3d 107

(2d Dept) (2/21/23 DOI)

Restitution provision of sentence vacated and remitted for a hearing. Trial court must hold a hearing if the defendant requests one or the record does not contain sufficient facts to support a finding regarding the amount of restitution.

[People v Chung \(2023 NY Slip Op 00880\)](#)

### *People v Case*

214 AD3d 1379

(4th Dept) (3/20/23 DOI)

Restitution amount reduced to the cost of complainant's insurance deductible payment. Labor costs for the complainant's employees to investigate the offense were "consequential financial losses," not "actual out-of-pocket losses" where the conviction was not for identity theft, and travel expenses for employees who testified at trial were not compensable as restitution.

[People v Case \(2023 NY Slip Op 01438\)](#)

## **YOUTHFUL OFFENDER**

### *People v Raul A.*

215 AD3d 500

(1st Dept) (4/24/23 DOI)

Conviction vacated and charge for CPW dismissed. CPW count charged the defendant with possession a firearm in his home but under Penal Law 30.00 [2], the 15-year-old defendant could not be held criminally liable unless he possessed the gun on school grounds. Defendant was entitled to a YO determination on the remaining conviction.

[People v Raul A. \(2023 NY Slip Op 01970\)](#)

### *People v Carranza*

216 AD3d 814

(2d Dept) (5/15/23 DOI)

Conviction affirmed but sentence vacated and remitted for YO determination. A court must make a YO determination in every case where the defendant is eligible, even in the absence of a request or where there is a plea agreement to forgo the determination.

[People v Carranza \(2023 NY Slip Op 02535\)](#)

### *People v Jones*

219 AD3d 1610

(3d Dept) (9/25/23 DOI)

Sentence vacated and case remitted. A conviction of an armed felony does not automatically preclude an adjudication as a YO—the court must first consider the factors of CPL 720.10 (3) to determine if the defendant is an eligible youth and, if so, then must decide whether the eligible youth is a youthful offender.

[People v Jones \(2023 NY Slip Op 04689\)](#)

*People v Tyjhe H.*

221 AD3d 731

(2d Dept) (11/13/23 DOI)

Resentence reversed in the interest of justice, conviction vacated and replaced with a YO finding, and remitted. The case had previously been remitted by the COA for resentencing (37 NY3d 1076) based on Supreme Court's failure to make an on-the-record determination of YO eligibility. The People conceded that appellant should have been afforded YO treatment.

[People v H. \(2023 NY Slip Op 05620\)](#)

*People v Rivera*

2023 NY Slip Op 05967

(COA) (11/27/23 DOI)

Affirmance of a Fourth Department order affirming appellant's resentencing on a 2<sup>nd</sup> degree CPW conviction, with one judge dissenting on the *Bruen* issue (see analysis here). Though the court did not artfully articulate the relevant standards for a YO eligibility determination, it applied the right statutory framework and properly denied the appellant YO status. Given the threatening way the appellant used the gun, insufficient mitigating circumstances existed to support YO adjudication.

[People v Rivera \(2023 NY Slip Op 05967\)](#)

*People v Nathan*

222 AD3d 1416

(4th Dept) (12/26/23 DOI)

Appeal held and case remitted. Because 1st degree manslaughter is not an armed felony under CPL 720.10, the court was required to make a discretionary YO determination before imposing sentence.

[People v Nathan \(2023 NY Slip Op 06659\)](#)

## **SORA**

### **Registration requirement**

*People v Conyers*

212 AD3d 417

(1st Dept) (1/9/23 DOI)

The defendant was convicted of attempted 2<sup>nd</sup> and 3<sup>rd</sup> degree burglary as sexually motivated felonies and certified as a sex offender. Sex offender certifications were vacated, since the convictions were not registerable sex offenses.

[People v Conyers \(2023 NY Slip Op 00042\)](#)



*People v Luck*

212 AD3d 535

(1st Dept) (1/30/23 DOI)

Underlying elements of defendant's federal conviction for conspiracy to commit sex trafficking of a minor were "within the scope of the New York offense" of 2<sup>nd</sup> degree promoting prostitution, thus requiring sex offender registration.

[People v Luck \(2023 NY Slip Op 00275\)](#)

*People v Winter*

215 AD3d 1010

(3rd Dept) (4/10/23 DOI)

Lower court improperly imposed a SORA registration requirement on defendant after his conviction for 3<sup>rd</sup> degree burglary. Burglary 3<sup>rd</sup> as a sexually motivated felony is not a registerable offense as defined by Correction Law § 168-a (2)

[People v Winter \(2023 NY Slip Op 01820\)](#)

*People v Vakhoula*

215 AD3d 1134

(3d Dept) (4/24/23 DOI)

Convicted modified to vacate the provision certifying the defendant as a sex offender required to register. Burglary 2<sup>nd</sup> as a sexually motivated felony is not a registerable offense as defined by Correction Law § 168-a (2).

[People v Vakhoula \(2023 NY Slip Op 02034\)](#)

*People v Sittler*

217 AD3d 632

(1st Dept) (7/3/23 DOI)

Affirmance of order adjudicating defendant a level one sex offender. His prior Nebraska misdemeanor conviction of enticement by electronic communication was equivalent to the New York felony of 1<sup>st</sup> degree disseminating indecent material to minors. Although the out-of-state misdemeanor was broader than the New York felony, defendant's conduct brought him within the scope of the New York registration statute.

[People v Sittler \(2023 NY Slip Op 03550\)](#)

*People v Brown*

2023 NY Slip Op 05973

(COA) (11/27/23 DOI)

Order reversed and appellant's sex offender designation vacated, with three judges dissenting. The SORA court found that the appellant posed no sexual threat and his crime was not sexual. Mandatory SORA registration was unconstitutional in this case. It was not rationally related to SORA's purpose of protecting the public from sex offenders, and the stigma of a sex offender designation did not rationally fit the appellant's conduct.

[People v Brown \(2023 NY Slip Op 05973\)](#)

## **Risk factors**

### *People v Delacruz*

212 AD3d 469

(1st Dept) (1/17/23 DOI)

SORA risk level reduced from two to one. The victim’s testimony—that she was “fighting” with the defendant, trying to push him away, and shouting “stop” during the sexual assault—did not support the assessment of 20 points for a physically helpless victim.

[People v Delacruz \(2023 NY Slip Op 00165\)](#)

### *People v Perez*

214 AD3d 682

(2d Dept) (3/6/2023 DOI)

Reversed and remanded. Lower court improperly assessed 20 points on factor 7 because the People failed to establish that defendant and victim were strangers. To the contrary, the People conceded that defendant and victim were related, which excludes points under factor 7.

[People v Perez \(2023 NY Slip Op 01108\)](#)

### *People v Cortez-Moreno*

215 AD3d 698

(2d Dept) (4/10/23 DOI)

Although defendant was improperly assigned 30 points on risk factor 1 for being “armed with a dangerous instrument,” he should have been assigned 10 points on this factor for the use of forcible compulsion, resulting in a presumptive risk level two. The Second Department held that an upward departure to level three was warranted, despite the lower court having not addressed the People’s alternative request for one.

[People v Cortez-Moreno \(2023 Slip Op 01811\)](#)

### *People v Straker*

215 AD3d 503

(1st Dept) (4/24/23 DOI)

Appeal held in abeyance. Lower court assessed twenty points on risk factor 7, relationship between offender and victim, but made no findings of fact or conclusions of law relevant to this factor. Case remitted for lower court to specify requisite findings and conclusions of law based on evidence already introduced.

[People v Straker \(2023 NY Slip Op 01971\)](#)

### *People v Parkins*

219 AD3d 642

(2d Dept) (8/14/23 DOI)

SORA risk level reduced from a level two sexually violent offender to a level one sexually violent offender. Although the People conceded that the defendant did not receive the required 10-day statutory notice of their intent to seek a different determination than the Board, remittal was unnecessary because the People failed to prove defendant’s conduct under the risk factor that was not accounted for in the Board’s determination.

[People v Parkins \(2023 NY Slip Op 04221\)](#)

*People v Jony*

219 AD3d 1438

(2d Dept) (9/25/23 DOI)

Order designating defendant a level two sex offender affirmed with one justice dissenting. In the dissent's view, 20 points should not have been assessed on factor seven for the establishment of a relationship with the complainant for the primary purpose of victimization. The defendant met the complainant through her uncle, who was the defendant's co-worker. Points are not intended to be assessed on risk factor seven based on grooming alone.

[People v Jony \(2023 NY Slip Op 04674\)](#)

*People v Currington*

219 AD3d 1701

(4th Dept) (10/2/23 DOI)

SORA risk level reduced from a level two to a level one. County Court erred when it assessed 15 points for a history of substance abuse based on the defendant's purported abuse of steroids. His conviction was insufficient to establish a history of abuse without other proof, such as substance abuse screening, and the only other evidence of alleged drug abuse was unsubstantiated hearsay.

[People v Currington \(2023 NY Slip Op 04874\)](#)

*People v Isaacs*

220 AD3d 815

(2d Dept) (10/16/23 DOI)

SORA risk level reduced from a level two sexually violent offender to a level one sexually violent offender. Supreme Court erred in assessing 15 points for inflicting physical injury and, under the same risk factor, an additional 30 points for being armed with a dangerous instrument. Only the points associated with the most serious wrongdoing within a risk factor may be assessed.

[People v Isaacs \(2023 NY Slip Op 05159\)](#)

*People v Parez*

221 AD3d 626

(2d Dept) (11/6/23 DOI)

SORA risk level reduced from a level two to a level one. Supreme Court should not have assessed 20 points under risk factor four because the People failed to establish that two acts of sexual conduct against the same victim were separated by at least 24 hours.

[People v Parez \(2023 NY Slip Op 05526\)](#)

*People v Vandermallie*

221 AD3d 1500

(4th Dept) (11/20/23 DOI)

SORA risk level reduced from a level three to a level two. The appellant's uncertain living situation, alone, is insufficient to assess 10 points under risk factor 15.

[People v Vandermallie \(2023 NY Slip Op 05845\)](#)

*People v Godwin*

221 AD3d 918

(2d Dept) (11/27/23 DOI)

SORA risk level reduced from a level two to a level one. Points were improperly assessed on factors 4 and 12 because the People failed to prove that the offense was a continuing course of conduct and that the appellant did not accept responsibility for his conduct.

[People v Godwin \(2023 NY Slip Op 06064\)](#)

**Departures**

*People v Hernandez*

213 AD3d 705

(2d Dept) (2/6/23 DOI)

SORA risk level reduced from three to one. The presumptive risk level one was increased to a level three because the defendant's prior sex offense conviction (3<sup>rd</sup> degree rape based solely on complainant's age) triggered the automatic override provision. However, a downward departure was warranted because strict application of the override provision would result in an overassessment of the defendant's risk to public safety.

[People v Hernandez \(2023 NY Slip Op 00451\)](#)

*People v Cortez-Moreno*

215 AD3d 698

(2d Dept) (4/10/23 DOI)

The defendant should have been assigned 10 points (instead of 30 points) on risk factor 1, resulting in a presumptive risk level two. However, the Second Department determined that an upward departure to level three was warranted, even though the lower court did not address the People's alternative request for one.

[People v Cortez-Moreno \(2023 Slip Op 01811\)](#)

*People v Donshik*

215 AD3d 597

(1st Dept) (5/1/23 DOI)

SORA risk level reduced from two to one because the record did not support an upward departure. Lower court erred in relying on the number of images possessed and the length of time the defendant had been collecting/viewing child porn. The original source of those allegations were unknown and the court's conclusions were not supported by the record.

[People v Donshik \(2023 NY Slip Op 02186\)](#)

*People v Weber*

40 NY3d 206

(COA) (6/20/23 DOI)

In a prior appeal, the Fourth Department reversed an order classifying the defendant as a level 3 offender based on erroneously scored points but, instead of reducing the risk level to a 2, remitted for a hearing on whether an upward departure was warranted. On remittal, the People requested an upward departure for the first time and the request was granted. COA affirmed, finding that remittal was proper. Judge Wilson dissented, noting that appellate courts are not

authorized to grant relief to a nonappealing party, and the opportunity to raise an omitted argument was plainly affirmative relief.

[People v Weber \(2023 NY Slip Op 03301\)](#)

*People v Anthony*

40 NY3d 976

(COA) (6/20/23 DOI)

Affirmance of defendant's level 3 sex offender designation and denial of his request for a downward departure. Not an abuse of discretion for lower court to credit the defendant's proffered mitigation factors but nonetheless conclude that a downward departure was not warranted. Judges Rivera and Wilson dissented, emphasizing that the SORA Guidelines work in one direction—upwardly graduating an offender's risk level—but never work downward based on positive, rehabilitative factors.

[People v Anthony \(2023 NY Slip Op 03303\)](#)

*People v Johnson*

218 AD3d 1363

(4th Dept) (7/31/23 DOI)

SORA risk level reduced from three to two after County Court erroneously concluded that the underlying offense was so egregious that it could not grant a downward departure under any circumstances. The court was required to weigh the mitigating and aggravating factors to determine if a downward departure was warranted.

[People v Johnson \(2023 NY Slip Op 04075\)](#)

*People v Worrell*

221 AD3d 542

(1st Dept) (12/4/23 DOI)

Although Supreme Court erroneously applied the override provision for the infliction of serious physical injury, an upward departure was warranted based on the egregiousness of the offense and the appellant's extensive history of similar sex offenses.

[People v Worrell \(2023 NY Slip Op 06093\)](#)

## **Overrides**

*People v Hernandez*

213 AD3d 705

(2d Dept) (2/6/23 DOI)

SORA risk level reduced from three to one. Defendant's RAI score indicated a presumptive level one, but his prior sex offense conviction (3<sup>rd</sup> degree rape based solely on complainant's age) triggered the automatic override provision to level three. A downward departure was warranted because strict application of the override provision would result in an overassessment of the defendant's risk to public safety.

[People v Hernandez \(2023 NY Slip Op 00451\)](#)

*People v Worrell*

221 AD3d 542

(1st Dept) (12/4/23 DOI)

Although Supreme Court erroneously applied the override provision for the infliction of serious physical injury, an upward departure was warranted based on the egregiousness of the offense and the appellant's extensive history of similar sex offenses. A conviction for 1<sup>st</sup> degree robbery based on the use or threatened use of a dangerous instrument does not warrant an override for the infliction of serious physical injury where the record fails to otherwise establish that fact.

[People v Worrell \(2023 NY Slip Op 06093\)](#)

**Designations**

*People v Morgan*

213 AD3d 1244

(4th Dept) (2/6/23 DOI)

Sexually violent designation vacated. Defendant's out-of-state conviction covered the same conduct as the NY offense of 2<sup>nd</sup> degree sexual abuse, which is not a sexually violent offense under SORA.

[People v Morgan \(2023 NY Slip Op 00569\)](#)

**Modification**

*People v Ghose*

215 AD3d 886

(2d Dept) (4/24/23 DOI)

Order dismissing petition for downward modification and reconsideration of original determination that his foreign conviction qualified as a registerable sex offender reversed. Lower court erroneously qualified the petition was one under Correction Law 168-o (1), which limits review to "once every two years." But petitions for downward modification are permitted annually so there was no procedural bar and the lower court should have held a hearing.

[People v Ghose \(2023 NY Slip Op 02021\)](#)

**Ineffective assistance of counsel**

*People v Motta*

215 AD3d 771

(2d Dept) (4/17/23 DOI)

Order reversed and remanded for new hearing. Although defense counsel agreed that defendant was a presumptive level three, he did not indicate that the defendant consented to a level three designation. Defense counsel failed to litigate any aspect of the adjudication, which deprived the defendant of his right to meaningful representation.

[People v Motta \(2023 NY Slip Op 01908\)](#)

*People v Wilcox*

221 AD3d 1370

(3d Dept) (12/4/23 DOI)

Order classifying the appellant as a level three sex offender reversed and case remitted. Counsel was ineffective by raising a single, meritless challenge to the assessment of points under one factor but not challenging any other points proposed by the Board, excusing the People from presenting any proof at the hearing; and failing to request a downward departure despite caselaw supporting a reasonable argument based on the circumstances.

[People v Wilcox \(2023 NY Slip Op 06175\)](#)

**Procedural / due process errors**

*People v Green*

216 AD3d 1115

(2d Dept) (5/30/23 DOI)

People's failure to give defendant at least 10 days' notice that they were seeking a different determination than the Board recommended for factor 1 deprived him of a meaningful opportunity to respond. New hearing was required, but it would be limited to challenging the points on factor 1 and defendant's request for a downward departure.

[People v Green \(2023 NY Slip Op 02799\)](#)

*People v Worley*

40 NY3d 129

(COA) (6/20/23 DOI)

Remitted for new hearing after SORA court violated defendant's due process rights. Although defendant's risk assessment score made him a presumptive risk level 2, the court stated that an upward departure was warranted based on extensive disciplinary history. Upon objection from defense counsel that the court could not upwardly depart absent a request from the People, on notice, the court then invited the ADA to request an upward departure. The ADA obliged, and the court granted the application, denying defendant a meaningful opportunity to be heard.

[People v Worley \(2023 NY Slip Op 03300\)](#)

*People v Perez*

220 AD3d 818

(2d Dept) (10/16/23)

Order designating defendant a level two sex offender reversed and case remitted. Because defendant was not present at the SORA hearing, the record failed to establish that he voluntarily waived his right to be present. A new hearing was required.

[People v Perez \(2023 NY Slip Op 05161\)](#)

*People v Maurer*

220 AD3d 1061

(3d Dept) (10/23/23 DOI)

Reversed and remitted. Defendant was not given notice of some of the factors County Court relied on in granting the People's request for an upward departure, depriving him of the opportunity to be heard.

[People v Maurer \(2023 NY Slip Op 05290\)](#)

*People v Cutting*

221 AD3d 622

(2d Dept) (11/6/23 DOI)

Order designating defendant a level three sex offender reversed and remitted for a new hearing. Defendant was not given notice of some of the factors the court relied on in granting the People's request for an upward departure, depriving him of the opportunity to contest.

[People v Cutting \(2023 NY Slip Op 05524\)](#)

*People v Kelsey*

221 AD3d 1399

(3d Dept) (12/4/23 DOI)

Order classifying the appellant as a level two sex offender and denying his motion to reargue reversed and case remitted. The SORA risk level order entered by County Court did not set forth findings of fact and conclusions of law but referenced supporting facts that had been set forth in the hearing. However, the hearing transcript was not included in the record.

[People v Kelsey \(2023 NY Slip Op 06186\)](#)

**Standard of proof**

*People v Stagles*

222 AD3d 1341

(4th Dept) (12/26/23 DOI)

SORA risk level reduced from a level two to a level one. County Court erred in applying a clear and convincing standard to deny a downward departure and overestimated the appellant's risk of re-offense and danger to the public. He was 19 years old, had no prior criminal record, was never accused of sex abuse, was cooperative and readily admitted guilt, never shared the relatively few images he possessed, deleted the files months before being contacted by police, and received a probationary sentence.

[People v Stagles \(2023 NY Slip Op 06613\)](#)

**Void for vagueness**

*People v Allen*

213 AD3d 73

(1st Dept) (2/6/23 DOI)

Correction Law § 168-f (3) is unconstitutionally vague as applied to a homeless individual who does not have an address to report or verify.

[People v Allen \(2023 NY Slip Op 00496\)](#)



## **POST-CONVICTION**

### **440.10 motions**

#### ***Denial reversed***

##### *People v McCray*

213 AD3d 423

(1st Dept) (2/6/23 DOI)

Reversal of denial of CPL 440.10 motion claiming IAC after hearing. Highly prejudicial decisions by trial counsel, determined to be neither strategic nor objectively reasonable, included waiving preclusion of an unnoticed ID made the only eyewitness to the crime and untimely seeking preclusion of that ID after cross-examining the witness.

[People v McCray \(2023 NY Slip Op 00502\)](#)

##### *People v Thornton*

213 AD3d 987

(3d Dept) (2/6/23 DOI)

Summary denial reversed in the interest of justice. County Court judge should have recused himself because his law clerk was the former District Attorney responsible for defendant's indictment, prosecution, and conviction. Judges must appear neutral.

[People v Thornton \(2023 NY Slip Op 00460\)](#)

##### *People v Everson*

213 AD3d 1294

(4th Dept) (2/14/23 DOI)

Reversal of denial of CPL 440.10 motion claiming IAC after hearing. There was no tactical reason for defense counsel's failure to investigate one of the complainants as a potential defense witness.

[People v Everson \(2023 NY Slip Op 00761\)](#)

##### *People v Rice*

214 AD3d 1075

(3d Dept) (3/13/23 DOI)

Lower court should have conducted a hearing to allow defendant to create a record as to whether she was entitled to assert the "*Hodgdon* defense." Because *Hodgdon* announced a new rule after defendant's direct appeal was decided, her failure to raise the issue on appeal was justified.

[People v Rice \(2023 NY Slip Op 01211\)](#)

##### *People v Guzman-Caba*

214 AD3d 564

(1st Dept) (3/27/23 DOI)

Lower court abused its discretion in summarily denying CPL 440.10 motion based on *Padilla* where the motion contained adequately supported allegations of fact for an IAOC claim and counsel did not recall discussing immigration consequences with his client and admitted that he was not well versed in immigration law.

[People v Guzman-Caba \(2023 NY Slip Op 01593\)](#)

*People v Robinson*

214 AD3d 904

(2d Dept) (3/27/23 DOI)

Reversal of denial of CPL 440.10(1)(g-1) motion after hearing. New DNA evidence showed that the defendant was not the source of male DNA recovered from victim. Because the defense theory at trial was mistaken ID and the People's evidence presented at trial to establish ID was weak, there was a reasonable probability that the verdict would have been different had the DNA evidence been admitted.

[People v Robinson \(2023 Slip Op 01533\)](#)

*People v Flores*

217 AD3d 29

(1st Dept) (5/30/23 DOI)

440.10 denial reversed, conviction vacated, and indictments dismissed. Failure to disclose impeachment evidence that the People's Crime Victim Assistance Unit was helping the complainant obtain a U visa was *Brady* violation. The complainant's credibility was central to the case, and the suppressed U visa evidence could have raised enough reasonable doubt to affect the outcome of trial.

[People v Flores \(2023 NY Slip Op 02768\)](#)

*People v Bradford*

40 NY3d 938

(COA) (6/20/23 DOI)

Unbeknownst to the trial court or the prosecution, the Sheriff's Department made defendant wear a stun belt during his trial. Because a hearing was necessary to determine whether defense counsel was aware of the use of the restraint, it was an error to summarily deny the portion of defendant's 440 motion contending IAC. Two dissenters found that the use of the stun belt was a mode of proceedings error and that defense counsel's failure to object constituted IAC warranting new trial.

[People v Bradford \(2023 NY Slip Op 03187\)](#)

*People v Maull*

218 AD3d 1236

(4th Dept) (7/31/23 DOI)

Summary denial of CPL 440.10 motion reversed and remitted for a hearing. At sentencing, defendant informed the court that his trial counsel had police notes indicating that an investigator had eavesdropped on jail calls between the defendant and his attorney on unrelated charges. A hearing was required to determine the circumstances of the eavesdropping, whether it led to evidence introduced at trial, and whether trial counsel was ineffective for failing to request a hearing.

[People v Maull \(2023 NY Slip Op 04022\)](#)

*People v Hoffman*

221 AD3d 1269

(3d Dept) (11/27/23 DOI)

Order denying CPL 440.10 motion after a hearing reversed and new trial granted. After his conviction for 1<sup>st</sup> degree manslaughter, the appellant submitted evidence in a CPL 440 motion

that the People were aware and failed to disclose that officers who operated a Total Work Station mistook shadows from overhead utility lines as tire marks. This information would have changed the defense strategy, as accident reconstruction was a material issue in the case.

[People v Hoffman \(2023 NY Slip Op 06004\)](#)

#### **440.20 motions**

##### ***Denial reversed***

*People v Shearer*

213 AD3d 699

(2d Dept) (2/6/23 DOI)

Error for trial court to rely on PSI prepared in connection with defendant's unrelated prior conviction. CPL 390.20 precludes the waiver of a presentence report when an indeterminate sentence is imposed.

[People v Shearer \(2023 NY Slip Op 00445\)](#)

*People v Parsley*

216 AD3d 1001

(2d Dept) (5/22/23 DOI)

Defendant was convicted in 2012 of 2<sup>nd</sup> degree murder (two counts), attempted 2<sup>nd</sup> degree murder, 1<sup>st</sup> degree assault, and 1<sup>st</sup> degree burglary after a jury trial. At sentencing, the court stated that the attempted murder and the assault sentences were to run consecutively to the intentional murder sentence. In 2013, the court issued an amended sentence and commitment form indicating the sentences for intentional murder, attempted murder, and assault were all to run consecutively to each other. This was error—County Court illegally altered the sentence in violation of CPL 430.10. The initial sentence and commitment form reflected the sentence unambiguously imposed by the sentencing court.

[People v Parsley \(2023 NY Slip Op 02683\)](#)

#### **440.46-a**

*People v Graubard*

214 AD3d 143

(2d Dept) (3/20/23)

Reversal of an order granting CPL 440.26-a motion, which replaced conviction for criminal possession of marijuana 1 with criminal possession of cannabis 1. While trial court had the authority to substitute convictions, it erred by failing to consider whether substitution for a lesser offense was in the interest of justice.

[People v Graubard \(2023 NY Slip Op 01308\)](#)

## **BRUEN – PRESERVATION**

### **Bruen**

#### *People v Cabrera*

2023 NY Slip Op 05968

(COA) (11/27/23 DOI)

Reversal of a First Department order affirming appellant’s conviction for 2<sup>nd</sup> degree CPW. The COA held that the appellant’s Second Amendment claims were unpreserved but reversed and remitted based on a *Miranda* violation ([summary here](#)). Although *Bruen* dramatically changed states’ regulation of public gun possession, the high bar for excusing preservation based on an intervening SCOTUS decision was not met. The claims were not foreclosed by controlling caselaw, unanticipated at the time of trial, or addressed in *Bruen*, and the record was insufficiently developed.

[People v Cabrera \(2023 NY Slip Op 05968\)](#)

#### *People v Telfair*

2023 NY Slip Op 05965

(COA) (11/27/23 DOI)

Reversal of a First Department order affirming appellant’s conviction for 2<sup>nd</sup> degree CPW. The COA held that the appellant’s *Bruen* claims were unpreserved (*see Cabrera*) but reversed and remitted based on a *Molineux* error ([summary here](#)).

[People v Telfair \(2023 NY Slip Op 05965\)](#)

#### *People v David*

2023 NY Slip Op 05970

(COA) (11/27/23 DOI)

Affirmance of a Fourth Department order affirming appellant’s conviction for 2<sup>nd</sup> degree CPW. The COA held that the appellant’s *Bruen* claims were unpreserved (*see Cabrera*) and were unpersuaded by appellant’s claim that the inventory search of his car was invalid ([summary here](#)).

[People v David \(2023 NY Slip Op 05970\)](#)

#### *People v Garcia*

2023 NY Slip Op 05969

(COA) (11/27/23 DOI)

Affirmance of a First Department order affirming appellant’s conviction for 2<sup>nd</sup> degree CPW. The COA held that the appellant’s *Bruen* claims were unpreserved (*see Cabrera*) and were unpersuaded by appellant’s argument that the trial court improperly curtailed defense counsel’s questioning of prospective jurors during voir dire ([summary here](#)).

[People v Garcia \(2023 NY Slip Op 05969\)](#)

#### *People v Rivera*

2023 NY Slip Op 05967

(COA) (11/27/23 DOI)

Affirmance of a Fourth Department order affirming appellant’s resentencing on a 2<sup>nd</sup> degree CPW conviction, with one judge dissenting. The COA held that the appellant’s *Bruen* claims

were unpreserved (*see Cabrera*) and found that the lower court properly denied appellant YO status ([summary here](#)). In the dissent's view, the *Bruen* arguments were preserved (*see Cabrera*), but those claims would fail here because the minor appellant had no unrestricted right to possess an unlicensed weapon in public.

[People v Rivera \(2023 NY Slip Op 05967\)](#)

*People v Pastrana*

2023 NY Slip Op 05966

(COA) (11/27/23 DOI)

Affirmance of a First Department order affirming appellant's conviction for 2<sup>nd</sup> degree CPW, with three judges dissenting. The COA held that the appellant's *Bruen* claims were unpreserved (*see Cabrera*) and were unpersuaded by appellant's claim that a roadblock was discriminatory ([summary here](#)).

[People v Pastrana \(2023 NY Slip Op 05966\)](#)

## **MISCELLANEOUS**

### **MHL Art. 10**

*Matter of Charles L. v State of NY*

220 AD3d 1200

(4th Dept) (10/10/23 DOI)

Reversal of an order denying petitioner's motion to vacate an order that sua sponte directed his Mental Hygiene Article 10 annual review hearing to be conducted on submissions only. Petitioner was entitled to an evidentiary hearing with live witness testimony.

[Matter of Charles L. v State of New York \(2023 NY Slip Op 05075\)](#)

### **Parole**

*People ex rel. Marrero v Stanford.*

218 AD3d 1105

(3d Dept) (7/31/23 DOI)

A non-technical violation does not have to involve a special condition of parole; it can be based on a violation of a specific condition that is reasonably related to the offense and intended to help protect the public from similar re-offense. Here, the petitioner absconded from parole. His intentional avoidance of supervision violated a condition reasonably related to his sex offense that sought to protect the public from a repeat offense.

[People ex rel. Marrero v Stanford \(2023 NY Slip Op 03964\)](#)

## **Record on appeal**

*People v Cox*

221 AD3d 1057

(3d Dept) (11/6/23 DOI)

Appeal held in abeyance and remitted for a reconstruction hearing. The transcript of the plea proceeding could not be obtained, impeding appellate review of whether the appellant's plea was involuntary and a determination whether issues had been preserved.

[People v Cox \(2023 NY Slip Op 05552\)](#)

## **SARA**

*People ex rel. E.S. v Livingston Corr. Fac.*

40 NY3d 230

(COA) (6/20/23 DOI)

COA reversed Fourth Department order converting the habeas corpus proceeding to an article 78 proceeding and converted the proceeding to a declaratory judgment action, declaring that the SARA school grounds restriction applies to youthful offenders.

[People ex rel. E.S. v Supt., Livingston Corr. Facility \(2023 NY Slip Op 03298\)](#)

*People ex rel. Rivera v Woodbourne Corr. Fac.*

40 NY3d 307

(COA) (6/20/23 DOI)

Affirmance of Third Department order declaring respondents' implementation of SARA did not violate the Ex Post Facto Clause. There is a strong presumption that legislative enactments are constitutional, and only the clearest proof will override legislative intent and transform a denominated civil remedy into a criminal penalty.

[People ex rel. Rivera v Supt., Woodbourne Corr. Facility \(2023 NY Slip Op 03299\)](#)

## **FOIL**

*Matter of NYP Holdings, Inc. v NYC Police Dept.*

220 AD3d 487

(1st Dept) (10/16/23 DOI)

Appellate court granted petitioner's request for attorneys' fees in Article 78 proceeding. At issue was whether the repeal of Civil Rights Law § 50-a applied retroactively to records created prior to June 12, 2020. The reviewing court held that it did. The petitioner substantially prevailed in the proceeding and the respondents had no reasonable basis for denying access to most of the records for more than one year.

[Matter of NYP Holdings, Inc. v NYC Police Dept. \(2023 NY Slip Op 05193\)](#)