

# CENTER FOR APPELLATE LITIGATION

120 WALL STREET - 28<sup>TH</sup> FLOOR, NEW YORK, NY 10005 TEL. (212) 577-2523 FAX 577-2535



*EXECUTIVE DIRECTOR*  
JENAY NURSE GUILFORD

*LEGAL DIRECTOR*  
MARK W. ZENO

*MANAGING ATTORNEY*  
DAVID J. KLEM

BARBARA ZOLOT  
*SENIOR COUNSEL*  
*CO-DIRECTOR COURT OF APPEALS LITIGATION*

## MEMORANDUM

**To:** Chief Defenders & Colleagues  
**From:** Barbara Zolot  
**Date:** January 15, 2026  
**Subject:** Attached

---

Here is a list of significant criminal cases pending in the New York Court of Appeals and the issues presented. Cases that the Court has selected for SSM consideration are generally not included. Leave grants were to the defendant unless otherwise noted.

The Center does this update every two months for its own attorney staff. As a matter of professional courtesy, we also send it to Chief Defenders who do substantial appellate work. Feel free to distribute copies to any members of your staff. This update is also available on our web site ([www.appellate-litigation.org](http://www.appellate-litigation.org)).

Although every attempt has been made to ensure the accuracy of the summaries, no express or implied guarantees are made. If your office is handling one or more of these cases and wishes to share some insight not apparent from the intermediate appellate court decision or the Clerk's summary of issues, please feel free to contact me. Your input will be added to the next edition.

We offer a special feature to our online visitors. Our online "Eye on Eagle" section (NYCA link) includes pdf links to all decided cases, and, for selected cases, a short CAL blog flagging what we think is important or noteworthy about the cases.

**COURT OF APPEALS UPDATE -  
Center for Appellate Litigation**

---

CRIMINAL CASES CURRENTLY PENDING IN  
THE NEW YORK COURT OF APPEALS

**I. Cases Awaiting Decision**

People v. Samuel Shaw

AD4 order dated July 26, 2024, modifying judgment by reversing convictions for murder in the second degree and dismissing those counts as lesser inclusory counts of first-degree murder convictions, and by directing that sentences for criminal possession of a weapon run concurrently with other sentences, and otherwise affirming. Decision below: 229 A.D.3d 1180, 216 N.Y.S.3d 340. Dissenter below (Ogden, J.) granted leave to appeal on September 16, 2024. Argued November 19, 2025.

ISSUES PRESENTED: (1) Whether law enforcement's use of coercive means to order a suspect out of a house in order to conduct a warrantless arrest constitutes a Payton violation; (2) whether the tenant's consent to search the house following her warrantless arrest was involuntary and, even if voluntary, was not attenuated from the alleged Fourth Amendment violation of seizing the occupants of the home; (3) whether the evidence seized should have been suppressed. (Assigned counsel: Julia A. Cianca, Esq., Monroe County Public Defender, 10 North Fitzhugh Street, Rochester, NY 14614.)

People v. Carlos Galindo

AT2 order dated April 21, 2023, affirming judgment. Decision below: 78 Misc.3d 134(A). Wilson, C.J., granted leave on October 21, 2024. Argued January 6, 2026.

ISSUES PRESENTED: (1) Whether the People failed to present legally sufficient evidence to establish that defendant operated motor vehicle; (2) whether jury instruction on operation of a motor vehicle was misleading. (Assigned counsel: Twyla Carter, Esq., Legal Aid Society, 199 Water Street, New York, NY 10038.)

People v. Augustin Morel

AT1 order dated January 11, 2024, affirming judgment of conviction. Decision below: 48 Misc.3d 1226(A), 26 N.Y.S.3d 215. Wilson, C.J., granted leave on June 27, 2024. Argued January 6, 2026.

**COURT OF APPEALS UPDATE -  
Center for Appellate Litigation**

---

ISSUE PRESENTED: Whether the accusatory instrument charging defendant with driving while ability impaired by drugs was facially insufficient when its factual allegations failed to demonstrate that his use of marijuana either rendered him incapable of employing, or actually impaired, the physical and mental abilities which he is expected to possess in order to operate a motor vehicle as a reasonable and prudent driver and when the complaint contained no allegations about his manner of driving, nor an other indicia of impairment such as slurred speech or stumbling, and defendant had merely consumed “two puffs” of marijuana. (Assigned counsel: Twyla Carter, Esq., Legal Aid Society, 199 Water Street, New York, NY 10038.)

People v. Phillip Dondorfer

AD4 order dated December 20, 2024, reversing county court’s granting defendant’s motion to dismiss count one of the indictment, reinstating that count, and remitting for proceedings. Decision below: 235 A.D.3d 71. Halligan, J., granted leave on March 24, 2025. Argued January 6, 2026.

ISSUE PRESENTED: Whether the grand jury was properly instructed on what facts the People must prove to establish that a person was driving while “impaired” by drugs or a combination of drugs and alcohol (VTL § 1192 (2-a)(b); (4-a)). (Assigned counsel: Wyoming County Public Defender’s Office, 18 Linwood Ave., Warsaw, NY 14569.)

People v. Jason J. Ambrosio

AD3 order dated February 27, 2025 affirming judgment. Decision below: 235 A.D.3d 1181. Dissenter (Lynch, J.) granted leave on April 7, 2025. Argued January 6, 2026.

ISSUES BELOW: (1) Whether trial counsel was ineffective for, among other things, failing to request a jury instruction defining “impairment” under VTL § 1192(4); (2) whether the judgment of conviction was supported by legally sufficient evidence. (Counsel: Hug Law PLLC, PO Box 14263, Albany, NY 12212.)

People v. Errick Guerrero

AD4 order dated February 7, 2025, affirming judgment. Decision below: 235 A.D.3d 1276. Dissenter (Montour, J.) granted leave on April 1, 2025. Argued January 7, 2026.

**COURT OF APPEALS UPDATE -  
Center for Appellate Litigation**

---

ISSUE PRESENTED: Whether the trial court abused its discretion in granting the People’s motion under CPL 722.23(1)(b) based on the existence of “extraordinary circumstances” to prevent the removal of defendant’s case to Family Court. (Counsel: Keem Appeals, PLLC, 333 E. Onondaga St. Ste 301, Syracuse, NY 13202-2056; *amicus* brief: Proskauer Rose LLP)

People v. Kelly L. Anderson

AD4 order dated October 6, 2023, affirming judgment. Decision below: 220 A.D.3d 1223. Wilson, C.J., granted leave to appeal on December 27, 2024. Argued January 7, 2026.

ISSUES PRESENTED: (1) Whether Appellate Division applied correct legal standard in weighing the evidence; (2) whether conviction was supported by legally sufficient evidence; (3) whether defense counsel was ineffective; (4) whether trial court properly allowed testimony relating to prior abuse of victim. (Counsel: Cambareri & Brenneck, 300 south State Street - First Floor, Syracuse, NY 13202.)

People v. Darling Alba

AD1 order dated February 8, 2024, affirming judgment. Decision below: 224 A.D.3d 461. Troutman, J., granted leave to appeal on December 30, 2024. Argued January 8, 2026.

ISSUES PRESENTED: (1) Whether a waiver of the right to be present at jury-selection sidebar conferences limited to those where jurors want to “talk privately” allows the court to exclude defendant from sidebar conferences where there is no indication that the prospective juror has privacy concerns; (2) whether it is an error of law to refuse a defendant’s request to rescind his waiver of the right to be present at jury-selection before a single juror is questioned, the scope of the sidebar questioning exceeds what had been explained to defendant, and the court offers no reason for its denial. (Assigned counsel: Mark W. Zeno and Jenay Nurse Guilford, Center for Appellate Litigation, 120 Wall Street - 28<sup>th</sup> floor, New York, NY 10005.)

People v. Jonathan Rios

AD4 order dated March 22, 2024, affirming judgment. Decision below: 225 A.D.3d 1285. Halligan, J., granted leave to appeal on February 7, 2025. Argued January 8, 2026.

**COURT OF APPEALS UPDATE -  
Center for Appellate Litigation**

---

ISSUE PRESENTED: Whether the *People v. Lopez* (71 NY2d 662 [1988]) exception to the preservation rule can be triggered by post-allocation statements made at sentencing which call into question the voluntariness of the guilty plea or negate an element of the offense. (Assigned counsel: Sarah Holt, Esq., Monroe County Conflict Defender, 16 East Street, Suite 600, Rochester, NY 14614.)

People v. Amado Zubidi

AD1 order dated October 3, 2024, affirming judgment. Decision below: 219 N.Y.S.3d 297. Dissenter below (Rodriguez III, J.) granted leave to appeal on November 7, 2024. Argued January 8, 2026.

ISSUE PRESENTED: Whether the People may presume, for purposes of establishing reasonable suspicion to justify a car stop, that the car's unidentified driver is the same driver who was involved in a criminal act weeks before. (Assigned counsel: Barbara Zolot and Jenay Nurse Guilford, Center for Appellate Litigation, 120 Wall Street - 28<sup>th</sup> floor, New York, NY 10005.)

**II. Cases Scheduled for Argument**

People v. Donald Bender - APL-2025-00087

AD3 order dated March 20, 2025, affirming judgment. Decision below: 236 A.D.3d 1184. Dissenter (Clark, J.) granted leave on April 30, 2025. Scheduled for argument February 10, 2026.

ISSUES PRESENTED: (1) Whether defendant's conviction of reckless endangerment in the first degree is supported by legally sufficient evidence, including proof that defendant acted with depraved indifference to human life; (2) whether the conviction may be reduced to reckless endangerment in the second degree and remitted for resentencing as a lesser included crime if there is legally insufficient evidence to support the first-degree conviction and defendant did not request the charge; (3) whether the trial court erred by prohibiting defendant from offering certain psychiatric evidence. (Counsel: Powers & Santola, 100 Great Oaks Blvd Ste 123, Albany, NY 12203-7925.)

People v. Luke J. Gaffney - APL-2025-00077

AD4 order dated November 15, 2024, affirming judgment. Decision below: 232 A.D.3d 1228. Wilson, C.J., granted leave on April 22, 2025. Scheduled

**COURT OF APPEALS UPDATE -  
Center for Appellate Litigation**

---

for argument February 10, 2026.

ISSUE PRESENTED: Whether counsel was ineffective for failing to object to the verdict as repugnant. (Counsel: Cambareri & Brenneck, LLP, 300 South State Street - First Floor, Syracuse, NY 13202.)(*amicus curiae*: District Attorneys Association of the State of New York.)

People v. Eugene Curry - APL-2025-00076

AD4 order dated December 20, 2024, affirming judgment. Decision below: 233 A.D.3d 1487. Singas, J., granted leave on April 22, 2025. Scheduled for argument February 11, 2026.

ISSUES PRESENTED: Whether in the absence of a written declaration of delinquency under CPL 410.30, an admission to a violation of probation tolls the probationary period under Penal Law § 65.15 (2) such that a court has jurisdiction to revoke the term of probation and resentence a defendant under CPL 410.70 (5) after the probationary period has elapsed; (2) whether counsel was ineffective for failing to object to resentencing. (Assigned counsel: Julie A. Cianca, Esq., Monroe County Public Defender, 10 North Fitzhugh Street, Rochester, NY 14614.)(*amicus curia*: Daniel Rosero, 4545 Center Boulevard, Long Island City, NY 11109.)

People v. Joseph C. Jones - APL-2025-00086

AD4 order dated March 14, 2025, modifying judgment by vacating sentence and remitting for resentencing. Decision below: 236 A.D.3d 1410. Dissenter below (Nowak, J.) granted leave on April 29, 2025. Scheduled for argument February 11, 2026.

ISSUES PRESENTED: (1) Whether physical evidence should have been suppressed because parole officers lacked a reasonable belief that defendant was the person for whom they had an arrest warrant; (2) whether the reasonable belief test under *People v Tejada* (270 AD2d 655 [3d Dept 2000]) is the same as the reasonable suspicion test under *People v De Bour* (40 NY2d 210 [1976]).(Assigned counsel: Julie A. Cianca, Esq., Monroe County Public Defender, 10 North Fitzhugh Street, Rochester, NY 14614.)

People v. Lashawn Miller Henderson

AD4 order dated January 31, 2025 affirming judgment. Decision below: 234 A.D.3d 1254. Dissenter (Nowak, J.) granted leave on March 18, 2025. Scheduled for argument February 11, 2026.

**COURT OF APPEALS UPDATE -  
Center for Appellate Litigation**

---

ISSUES PRESENTED: (1) Whether the trial court erred in permitting the People to introduce evidence of defendant's prior conviction of attempted criminal possession of a controlled substance in the third degree; (2) whether defendant was denied the effective assistance of counsel. (Assigned counsel: Julie A. Cianca, Esq., Monroe County Public Defender, 10 North Fitzhugh Street, Rochester, NY 14614.)

People v. Kenneth Tyson -APL-2025-00075 (People's Appeal)

AD 4 order dated January 31, 2025, affirming judgment. Decision below: 234 A.D.3d 1282. Dissenter (Curran, J.) granted leave on April 10, 2025. Scheduled for argument February 11, 2026.

ISSUE PRESENTED: Whether County Court properly granted defendant's motion to dismiss indictment charging him with aggravated harassment of an employee by an incarcerated individual on the ground that he was denied his constitutional right of due process as a result of preindictment delay. (Assigned counsel: David C. Schopp, Esq., Legal Aid Bureau of Buffalo, Inc., 290 Main Street, Suite 400, Buffalo NY 14202.)

People v. Ricky Billups - APL-2025-00108

AD1 order dated December 10, 2024 affirming judgment. Decision below: 233 A.D.3d 492. Rivera, J., granted leave on May 30, 2025. Scheduled for argument February 12, 2026.

ISSUE PRESENTED: Whether the sentence for criminal possession of a weapon was properly run consecutively to sentences for other crimes under Penal Law § 70.25 (2) and *People v Brown* (21 NY3d 739 [2013]). (Assigned counsel: Caprice R. Jenerson, Esq, Office of the Appellate Defender, 11 Park Place, Suite 1601, New York, NY 10007.)

People v. Jarvis Lewis

AD4 order dated June 14, 2024 affirming judgment. Decision below: 228 A.D.3d 1226. Wilson, C.J. granted leave on January 24, 2025. Scheduled for argument February 12, 2026.

ISSUES PRESENTED: (1) Whether defendant was deprived of the right to a fair trial due to the ineffective assistance of counsel and the denial of his request for new counsel prior to trial; (2) whether the trial court erred in convicting and sentencing defendant of duplicitous charges of criminal possession of a weapon in the second degree in violation of Penal Law §

**COURT OF APPEALS UPDATE -  
Center for Appellate Litigation**

---

265.03(3); (3) whether the trial court erred in denying defendant's request for a CPL article 730 examination prior to the start of trial; (4) whether the trial court erred in imposing consecutive sentences of incarceration and imposing a sentence that was unduly harsh and excessive. (Assigned counsel: Zoe Root and Jenay Nurse Guilford, Center for Appellate Litigation, 120 Wall St., 28<sup>th</sup> Floor, NYC 10005.)

People v. Jhajuan Sabb -APL-2025-00125 (People's appeal)

AD3 order dated May 1, 2025, modifying sentence. Decision below: 238 A.D.3d 1212. Dissenter (Egan, J.) granted leave to the People on June 24, 2025. Scheduled for argument February 12, 2026.

ISSUES PRESENTED: (1) Whether consecutive sentences imposed by Supreme Court, in accordance with the terms of the plea agreement, were unlawful because there is no evidence in the record to show the victims were wounded by separate and distinct acts; (2) whether information in a presentence report may be considered when imposing consecutive sentences pursuant to a plea agreement. (Counsel: Steven Sharp Law, PLLC, PO Box 1004, Albany, NY 12201-1004.)

People v. Miguel Angel Palacios - APL-2025-00097

AD2 order dated January 8, 2025, affirming judgment. Decision below: 234 A.D.3d 716. Rivera, J., granted leave on May 16, 2025. Scheduled for argument March 10, 2026.

ISSUES PRESENTED: (1) Whether the existence of a probable cause "I-card" and the testimony of the officer who issued the I-card was sufficient to establish the legality of defendant's arrest at a suppression hearing when the arresting officer did not testify; (2) whether the evidence at the suppression hearing established that defendant properly waived his *Miranda* rights when the People did not enter into the record a translation of the Spanish interrogation and defendant was told that he had to answer officers' questions. (Assigned counsel: Patricia Pazner, Appellate Advocates, 111 John St., 9<sup>th</sup> Floor, NYC 10038.)

People v. David Ehinmiakhena - APL-2025-00014

AT1 order dated May 21, 2024, affirming order. Decision below: 82 Misc.3d 132 (A). Troutman, J., granted leave to appeal on January 8, 2025. Scheduled for argument March 10, 2026.

**COURT OF APPEALS UPDATE -  
Center for Appellate Litigation**

---

ISSUE PRESENTED: Whether defendant’s identity, his Department of Motor Vehicles records and police officer’s post-stop observations of defendant were suppressible as fruit of unlawful police conduct. (Assigned counsel: Twyla Carter, Esq., Legal Aid Society, 199 Water Street, New York, NY 10038.)(*amicus curiae*: NAACP Legal Defense and Education Fund.)

People v. Travis Woods -APL-2025-00033

AD1 order dated April 25, 2024, affirming judgment. Decision below: 226 A.D.3d 597. Wilson, C.J., granted leave to appeal on January 29, 2025. Scheduled for argument March 11, 2026.

ISSUES PRESENTED: (1) Whether the State violated the speedy-trial right (US Const. Amend. 6; NY Const. Art I, § 6) by delaying – after three trials resulting in deadlocked juries – the fourth trial by more than three years; (2) whether fourth-trial counsel was ineffective under state and federal constitutions in, among other things, failing to object to identification and prior-bad-act evidence; (3) whether CPL 310.30, which requires notice of a deliberating jury’s request for “the content or substance of any trial evidence” or “any matter pertinent to the jury’s consideration fo the case,” requires notice of a jury’s request for a prosecution trial exhibit; (4) whether prejudice is presumed under *Molina-Martinez v. United States*, 578 US 189 (2016); (5) whether the Appellate Division erred in holding that the first trial court’s failure to provide notice of substantive jury notes was harmless. (Assigned counsel: Matthew Bova and Jenay Nurse Guilford, Center for Appellate Litigation, 120 Wall St., 28<sup>th</sup> Floor, NYC 10005.)

People v. Naim Roper - APL-2025-00024

AD1 order dated October 8, 2024, affirming judgment. Decision below: 231 A.D.3d 491. Cannataro, J., granted leave to appeal on January 23, 2025. Scheduled for argument March 11, 2026.

ISSUES PRESENTED: (1) Whether the trial court erred in denying defendant’s CPL 30.30 motion as untimely and not on reasonable notice when counsel sought to file the motion the day after the prosecution had, for the first time, answered ready in court and before the case was sent out to a trial part; (2) whether the trial court erred in refusing to grant a defense request for an adverse inference instruction regarding the Department of Corrections’s destruction of surveillance video of the incident when the video was material and the Department was the investigating agency.(Assigned counsel: Twyla Carter, Esq., Legal Aid Society, 199 Water Street, New York, NY 10038.)(*amicus curiae*: The Bronx Defenders.)

**COURT OF APPEALS UPDATE -  
Center for Appellate Litigation**

---

Matter of Nicole Hudson -APL-2025-00025

AD2 order dated September 25, 2024, affirming judgment. Decision below: 232 A.D.3d 200. Cannataro, J., granted leave to appeal on January 23, 2025. Scheduled for argument March 12, 2026.

ISSUE PRESENTED: Whether a defendant’s right to a Penal Law § 60.12 hearing under the Domestic Violence Survivors Justice Act is waivable as a condition of the plea agreement. (Assigned counsel: Twyla Carter, Esq., Legal Aid Society, 199 Water Street, New York, NY 10038.)(*amicus curiae*: Sher Tremonte LLP; Survivors Justice Project at Sullivan & Cromwell, LLP.)

People v. Warren Burgess -APL-2025-0083

AT1 order dated April 9, 2024, modifying judgment. Decision below: 82 Misc.3d 128(A). Troutman, J., granted leave on April 25, 2025. Scheduled for argument March 12, 2026.

ISSUE PRESENTED: Whether the intermediate appellate court should have dismissed the accusatory instrument in its entirety when defendant successfully challenged the facial sufficiency of the charge to which he pleaded guilty and the element of the jurisdictionally defective count applied to each other count. (Assigned counsel: Twyla Carter, Esq., Legal Aid Society, 199 Water Street, New York, NY 10038.)

**III. Cases Waiting to be Scheduled**

People v. Brandon Craddock -APL-2025-00068

AD3 order dated February 20, 2025, modifying judgment. Decision below: 235 A.D.3d 1105. Dissenter below (Mackey, J.) granted leave on April 3, 2025. *Sua sponte* examination of whether the Appellate Division order of modification “was on the law alone or upon the law and such facts which, but for the determination of law, would not have led to . . . modification” (CPL 450.90[2][a]).

ISSUE PRESENTED: Whether physical evidence should have been suppressed on the ground that the inventory search of a vehicle departed from police procedures and was invalid. (Assigned counsel: Ulster County Public Defender, Carly Burkhardt Esq., 280 Wall Street, 2nd Floor, Suite 3,

**COURT OF APPEALS UPDATE -  
Center for Appellate Litigation**

---

Kingston NY 12402-1800.)

People v. Joseph A. Meyers - APL-2025-00109

AD4 order dated March 21, 2025 affirming judgment. Decision below: 236 A.D.3d 1499. Dissenter below (Whalen, P.J.) granted leave on March 27, 2025.

ISSUES PRESENTED: (1) Whether the reconstruction hearing was adequate to protect defendant's right of appeal; (2) whether the reconstruction court erred in denying defendant's motion to, among other things, compel the People to provide him with copies of or access to original trial exhibits that had been returned to the People following trial. (Counsel: The Abbatoy Law Firm, PLLC, 350 East Avenue, Suite 208, Rochester, NY 14604.)

People v. Jarelle Brazeal -APL-2025-00111

AD2 order dated February 19, 2025 affirming judgment. Decision below: 235 A.D.3d 890. Wilson, C.J. granted leave on June 3, 2025.

ISSUE PRESENTED: Whether Supreme Court properly imposed a probation condition, under Penal Law § 65.10, requiring defendant to consent to searches of his person, vehicle, and place of abode for firearms and other weapons by a probation officer or agent. (Assigned counsel: Patricia Pazner, Appellate Advocates, 111 John St., 9<sup>th</sup> Floor, NYC 10038.)

People v. David A. Berry - APL-2025-00079 (SSM)

AD4 order dated March 14, 2025, affirming judgment. Decision below: 236 A.D.3d 1405. Dissenter (Ogden, J., granted leave on April 23, 2025.

ISSUE PRESENTED: Whether a search warrant application including hearsay information from a confidential informant satisfied the *Aguilar-Spinelli* test and the warrant was issued upon probable cause. (Assigned counsel: Julie A. Cianca, Esq., Monroe County Public Defender, 10 North Fitzhugh Street, Rochester, NY 14614.)

People v. Diego Guerra (People's appeal) - APL-2025-00080

AD2 order dated October 9, 2024, reversing judgment. Decision below: 231 A.D.3d 852. Dissenter (Brathwaite Nelson, J.) granted leave to the People on April 18, 2025.

**COURT OF APPEALS UPDATE -  
Center for Appellate Litigation**

---

ISSUE PRESENTED: Whether defendant was denied the effective assistance of counsel because defense counsel signed and permitted the jury to consider a stipulation containing definitions of the crimes charged that eliminated the required mens rea element. (Assigned counsel: Patricia Pazner, Appellate Advocates, 111 John St., 9<sup>th</sup> Floor, NYC 10038.)

People v. Kham Khiamdavanh - APL 2025-00114

AD4 order dated January 31, 2025, affirming judgment. Decision below: 234 A.D.3d 1353. Rivera, J., granted leave on June 2, 2025.

ISSUES PRESENTED: Whether the trial court erred in refusing to give a missing witness charge on the basis that the witness's testimony would have been cumulative; (2) whether the trial court erred by instructing the jury on the initial aggressor exception to the justification defense. (Counsel: Christopher Jude Pelli, Esq. PLLC, 3 Derbyshire Place, Utica, NY 13501.)

**A series of SORA leave grants:**

People v. Elijah C.

AD2 order dated December 18, 2024, affirming judgment. Decision below: 233 A.D.3d 903. Court of Appeals granted leave on June 17, 2025.

ISSUE PRESENTED: Whether defendant's age at the time of offense was adequately taken into account by the guidelines such that it did not constitute a mitigating circumstance for purposes of the downward departure request; whether proffered grounds for downward departure—including family support—were adequately taken into account by the guidelines such that they did not constitute mitigating circumstances. (Assigned counsel: Patricia Pazner, Appellate Advocates, 111 John St., 9<sup>th</sup> Floor, NYC 10038.)

People v. Anthony D.

AD2 order dated December 11, 2024, affirming judgment. Decision below: 233 A.D.3d 808. Court of Appeals granted leave on June 17, 2025.

ISSUES PRESENTED: (1) Whether defendant's age at the time of offense was adequately taken into account by the guidelines such that it did not constitute a mitigating circumstance for purposes of the downward departure request; (2) whether Supreme Court was required to consider the potential application of the Sexual Assault Reform Act residency restrictions in connection with defendant's request for a downward departure. (Assigned

**COURT OF APPEALS UPDATE -  
Center for Appellate Litigation**

---

counsel: Patricia Pazner, Appellate Advocates, 111 John St., 9<sup>th</sup> Floor, NYC 10038.)

People v. Hikeem G.

AD2 order dated July 31, 2024, affirming judgment. Decision below: 229 A.D.3d 814. Court of Appeals granted leave on June 17, 2025.

ISSUE PRESENTED: Whether proffered grounds for downward departure—including employment, a family support network, and completion of sex offender treatment—were adequately taken into account by the guidelines such that they did not constitute mitigating circumstances. (Assigned counsel: Patricia Pazner, Appellate Advocates, 111 John St., 9<sup>th</sup> Floor, NYC 10038.)

People v. Kenneth T.

AD1 order dated December 17, 2024, affirming judgment. Decision below: 233 A.D.3d 548. Court of Appeals granted leave on June 17, 2025.

ISSUE PRESENTED: Whether defendant’s prior criminal history was adequately taken into account by the guidelines such that it could not constitute an aggravating factor for purposes of the People’s upward departure request. (Assigned counsel: Nkechi N. Erondy and Jenay Nurse Guilford, Center for Appellate Litigation, 120 Wall Street, 28<sup>th</sup> Floor, New York, NY 10005.)

People v. Justin M. (*Sua sponte* examination of whether a substantial question is directly involved in the order appealed from)

AD2 order dated June 11, 2025. Decision below: A.D.3d, 2025 WL 1646497.

ISSUE PRESENTED: (1) Whether the hearing court properly assessed defendant points under risk factors 3 and 7; (2) whether the assessment of points under risk factors 3 and 7 in child pornography cases violated defendant’s right to due process; (3) whether the hearing court properly denied defendant’s application for a downward departure. (Assigned counsel: Twyla Carter, Esq., Legal Aid Society, 199 Water Street, New York, NY 10038.)

People v. Andre Fernandez - APL-2025-00133

**COURT OF APPEALS UPDATE -  
Center for Appellate Litigation**

---

AD1 order dated March 18, 2025 affirming judgment. Decision below: 236 A.D.3d 527. Rivera, J., granted leave on July 2, 2025.

ISSUE PRESENTED: Whether defendant was denied the effective assistance of counsel by trial counsel's failure to investigate defendant's mental health and substance abuse history in connection with a challenge to the voluntariness of defendant's statements to the police. (Assigned counsel: Caprice R. Jenerson, Esq, Office of the Appellate Defender, 11 Park Place, Suite 1601, New York, NY 10007 and Cravath, Swaine & Moore LLP.)

People v. Johnathon Flesch - APL-2025-00134

AD4 order dated March 21, 2025, affirming judgment. Decision below: 236 A.D.3d 1469. Wilson, C.J., granted leave on July 7, 2025.

ISSUE PRESENTED: Whether the People violated a term of the plea agreement and whether, as a result, defendant was entitled to sentencing before a different judge rather than, or in addition to, an opportunity to withdraw his plea, even though the original promised sentence was illegal. (Counsel: Law Office of J. Scott Porter, 78 Cayuga Street, Seneca Falls, NY 13148.)

People v. Jamien Harris -APL-2025-00144

AD4 order dated June 6, 2025, reversing order granting motion to dismiss and reinstating indictment. Decision below: 239 A.D.3d 1279. Dissenter (Lindley, J.) granted leave on July 22, 2025.

ISSUE PRESENTED: Whether prosecution of the murder indictment was barred by CPL 40.40 because the conduct underlying the charge of murder was part of the same criminal transaction as conduct underlying previous charges against defendant for firearm possession. (Counsel: Texido Law, 69 Delaware Avenue, Suite 1100, Buffalo, NY 14202.)

People v. Jose Lacen - APL-2025-00135

AD1 order dated July 18, 2024 affirming judgment. Decision below: 229 A.D.3d 435. Troutman, J., granted leave on July 9, 2025.

ISSUE PRESENTED: Whether the record establishes that the testifying analyst sufficiently participated in the testing process or conducted a meaningful review of the DNA data for purposes of the Confrontation Clause. (Assigned counsel: Barbara Zolot and Jenay Nurse Guilford, Center

**COURT OF APPEALS UPDATE -  
Center for Appellate Litigation**

---

for Appellate Litigation, 120 Wall Street - 28<sup>th</sup> floor, New York, NY 10005.)

People v. Miguelina Lora -APL-2025-00145

AD2 order dated March 12, 2025 affirming judgment. Decision below: 236 A.D.3d 820. Halligan, J., granted leave on July 25, 2025.

ISSUE PRESENTED: Whether Supreme Court properly imposed a probation condition, under Penal Law § 65.10, requiring defendant, who was convicted of aggravated driving while intoxicated, to consent to searches of her person, vehicle, and place of abode. (Assigned counsel: Twyla Carter, Esq., Legal Aid Society, 199 Water Street, New York, NY 10038.)

People v. Stephen Mears - APL-2025-00147

AD2 order dated February 13, 2025 affirming judgment. Decision below: 235 A.D.3d 779. Halligan, J., granted leave on July 29, 2025.

ISSUE PRESENTED: Whether the defense of justification applies to the crime of endangering the welfare of a child and, if so, whether there was any reasonable view of the evidence that defendant's conduct was justified such that a justification charge should have been given to the jury regarding that count. (Counsel: Matthew W. Brissenden, P.C., 666 Old Country Road, Suite 501, Garden City, NY 11530.)

People v. Tonie Coggins - APL-2025-00159

AD1 order dated March 27, 2025. Decision below: 236 A.D.3d 608. Cannataro, J., granted leave on August 11, 2025.

ISSUE PRESENTED: Whether the trial court's admission of testimony regarding the contents of surveillance video footage violated the best evidence rule. (Assigned counsel: Twyla Carter, Esq., Legal Aid Society, 199 Water Street, New York, NY 10038.)

People v. David Ekukpe -APL 2025-00167

AD1 Order dated March 18, 2025 affirming judgment. Decision below: 236 A.D.3d 528. Wilson, C.J., granted leave on September 4, 2025.

ISSUES PRESENTED: (1) Whether CPL 30.30(6), which provides that an order denying a statutory speedy-trial motion "shall be reviewable upon an appeal from an ensuing judgment notwithstanding the fact that such

**COURT OF APPEALS UPDATE -  
Center for Appellate Litigation**

---

judgment is entered upon a plea of guilty” forecloses an appellate court from enforcing an appeal waiver against a statutory speedy trial claim; (2) if not, whether the state constitutional right to due process and the state constitutional right to appeal preclude enforcement of an appeal waiver against a statutory-speedy-trial claim. (Assigned counsel: Matthew Bova and Jenay Nurse Guilford, Center for Appellate Litigation, 120 Wall Street - 28<sup>th</sup> floor, New York, NY 10005.)

Brown v. NYS DOCCS - APL-2025-00141

AD3 order dated June 26, 2025 affirming dismissal of petitioner’s Article 78 seeking review of respondent finding that petitioner was ineligible for executive clemency. Decision below: 239 A.D.3d 1216. *Sua sponte* examination of whether any jurisdictional basis exists for an appeal as of right.

ISSUE PRESENTED: Whether petitioner’s application to review a determination of respondent finding that petitioner was ineligible for executive clemency was properly dismissed.

People v. Ricardo Casiano - APL-2025-00162

AD4 order dated July 25, 2025, modifying judgment by reducing sentence in the interest of justice and affirming as modified. Decision below: 240 A.D.3d 1212. Dissenter (Ogden, J.) granted to appeal on August 19, 2025.

ISSUES PRESENTED: (1) Whether defendant was in custody for *Miranda* purposes when the police approached him in his backyard in response to shots fired; (2) whether defendant’s subsequent statements were tainted by the earlier statements such that suppression was warranted; (3) whether defendant was deprived of his ability to present a defense at trial. (Assigned counsel: Julie A. Cianca, Esq., Monroe County Public Defender, 10 North Fitzhugh Street, Rochester, NY 14614.)

People v. Darnell M. Martin - APL-2025-00161 (People’s appeal)

AD3 order dated June 26, 2025, reversing judgment. Decision below: 242 A.D.3d 18. Dissenter (Mackey, J.) granted leave to appeal on August 18, 2025.

ISSUE PRESENTED: Whether Penal Law § 222.05 (3) (a), enacted as part of the Marihuana Regulation and Taxation Act, applies to a post-enactment suppression hearing concerning a pre-enactment search. (Assigned counsel:

**COURT OF APPEALS UPDATE -  
Center for Appellate Litigation**

---

Adam Parisi, Esq., 650 Franklin Ave., Suite 502, Schenectady, NY 12305.)

People by James v. Trump - APL-2025-00171

AD1 order dated August 21, 2025, modifying judgment. Decision below: 237 N.Y.S.3d 443. *Sua sponte* examination of whether the appeals and cross-appeal lie as of right under CPLR 5601(a) or 5601(b)(1).

ISSUES PRESENTED: (1) Whether the judgment was properly affirmed as modified; (2) whether the disgorgement awards were properly vacated; (3) whether the Attorney General had the power to bring this action under Executive Law § 63(12); (3) whether Executive Law § 63(12) is unconstitutional as applied. (Counsel for Trump: Sullivan & Cromwell LLP, 125 Broad Street, New York, NY 10004.)

State of NY ex rel. Louis M. v. Popiel - APL-2025-00176

AD1 order dated January 1, 2025, affirming denial of writ and dismissal of proceeding. Decision below: 234 A.D.3d 462. Leave to appeal granted by the Court of Appeals on September 18, 2025 following *sua sponte* examination of whether a substantial constitutional question was directly involved where petitioner challenged only conditions of confinement and did not seek immediate release.

ISSUE PRESENTED: Whether the writ of habeas corpus lies to challenge the use of restraints on an arrestee during a psychiatric hospitalization. (Assigned counsel: Mental Hygiene Legal Service, 41 Madison Avenue, 26<sup>th</sup> Floor, New York, NY 10010.)

People v. Terry Everson - APL-2025-00168

AD4 order dated July 25, 2025, affirming judgment. Decision below: 240 A.D.3d 1343. Dissenter below (Ogden, J.) granted leave to appeal on August 8, 2025.

ISSUE PRESENTED: Whether the trial court's denial of defendant's request for an adjournment violated CPL 245.80(1)(a) where the People failed to disclose certain documents used in a fingerprint analysis. (Counsel: Banasiak Law Office, PLLC, 120 E. Washington St., Ste 815, Syracuse, NY 13202-4095.)

People v. Anton Kelley - APL-2025-00179

**COURT OF APPEALS UPDATE -  
Center for Appellate Litigation**

---

AD4 order dated June 6, 2025, affirming judgment. Decision below: 239 A.D.3d 1269. Wilson, C.J., granted leave on September 23, 2025.

ISSUES PRESENTED: Whether defendant abandoned his request for substitution of counsel by pleading guilty while still represented by the same attorney. (Assigned counsel: Philip Rothschild, Esq., Hiscock Legal Aid Society, 351 South Warren Street, Syracuse, NY 13202-2057.)

People v. Hannah T. - APL-2025-00185 (People's appeal)

AD4 order dated July 25, 2025, modifying judgment as a matter of discretion in the interest of justice by reducing the sentence of imprisonment imposed and, as modified, affirmed. Decision below: 240 A.D.3d 1260. Dissenter (Curran J.) granted leave to appeal on September 29, 2025.

ISSUE PRESENTED: Whether the Appellate Division was barred from sua sponte reducing defendant's sentence in the interest of justice where defendant validly waived the right to appeal and did not request such relief from the Appellate Division. (Assigned counsel: Danielle C. Wild, Esq., P.O. Box 25646, Rochester, NY 14625.)

**IV. New Leave Grants**

People v. Kyle D. Ernst- APL-2025-00180 (People's appeal)

AD4 order dated July 25, 2025, affirming judgment. Decision below: 240 A.D.3d 1252. Dissenter (Curran, J.) granted leave to appeal on September 18, 2025.

ISSUES PRESENTED: (1) Whether the People failed to exercise due diligence in disclosing certain discovery materials; (2) whether defendant's omnibus motion was still pending before Supreme Court such that the relevant time was not chargeable to the People under CPL 30.30(4)(a). (Counsel: Texido Law, 69 Delaware Ave., Room 1100, Buffalo, NY 14202.)

People v. Jorge P.- APL-2025-00189

AD1 order dated January 14, 2025, affirming judgment. Decision below: 234 A.D.3d 530. Court of Appeals granted leave on October 21, 2025.

ISSUE PRESENTED: Whether the Appellate Division erred in holding that residency restrictions under the Sexual Assault Reform Act could not qualify as a mitigating factor for purposes of a Sex Offender Registration Act

**COURT OF APPEALS UPDATE -  
Center for Appellate Litigation**

---

downward departure. (Assigned counsel: Twyla Carter, Esq., Legal Aid Society, 199 Water Street, New York, NY 10038.)

People v. Jonathan Spinks- APL-2025-00177

AD4 order dated July 25, 2025, affirming judgment. Decision below:

Dissenter (Whalen, J.) granted leave on September 11, 2025.

ISSUE PRESENTED: (1) Whether Supreme Court properly consolidated the indictments; (2) whether defendant was deprived of a fair trial. (Counsel: Keem Appeals, PLLC, 333 East Onondaga Street, Suite 301, Syracuse, NY 13202-2056.)

People v. Tammy Nantan- APL-2025-00191

AT1 order dated May 12, 2025, affirming judgment. Decision below: 85 Misc.3d 142(A). Wilson, C.J., granted leave on October 27, 2025.

ISSUE PRESENTED: Whether CPL 30.30(6), which provides that an order finally denying a motion to dismiss pursuant to CPL 30.30(1) shall be reviewable on an appeal from a judgment of conviction notwithstanding a plea of guilty, applies where the plea was entered prior to January 1, 2020 and a direct appeal was pending when CPL 30.30 (6) was enacted. (Assigned counsel: Twyla Carter, Esq., Legal Aid Society, 199 Water Street, New York, NY 10038.)

People v. Tyshawn Morris- APL-2025-00202

AD1 order dated May 29, 2025, affirming judgment. Decision below: 238 A.D.3d 680. Halligan, J., granted leave on November 14, 2025.

ISSUES PRESENTED: (1) Whether execution of the search warrant for defendant's cell phone was untimely under CPL 690.30(1) and defendant's motion to controvert the warrant should have been granted where the warrant provided that it shall be deemed executed upon delivery of the cell phone to a forensic facility for analysis; (2) whether the search warrant's authorization to review all contents on defendant's cell phone was overly broad or insufficiently particular; (3) whether defendant's 30.30 motion was properly denied. (Assigned counsel: Caprice R. Jenerson, Esq., Office of the Appellate Defender, 11 Park Place, Suite 1601, New York, NY 10007.)

People v. Antrell Davis - APL-2025-00210

AD4 order dated January 31, 2025, affirming judgment. Decision below:

**COURT OF APPEALS UPDATE -  
Center for Appellate Litigation**

---

234 A.D.3d 1356. Garcia, J., granted leave on December 4, 2025.

ISSUE PRESENTED: Whether Penal Law § 265.03(3) is facially unconstitutional in light of *NYSRPA v. Bruen* (597 US 1 [2022]) because the statute does not define the lack of licensure or other disqualifying factors as essential elements of the crime. (Assigned counsel: Julie A. Cianca, Esq., Monroe County Public Defender, 10 North Fitzhugh Street, Rochester, NY 14614.)

People v. Timothy Smith- APL-2025-00194

AD4 order dated July 25, 2025, affirming judgment. Decision below. 240 A.D.3d 1218. Dissenter (Ogden, J.) granted leave on October 27, 2025.

ISSUES PRESENTED: (1) Whether the police officers' request to frisk and pursuit of defendant were lawful; (2) whether defendant was deprived of the effective assistance of counsel. (Assigned counsel: Philip Rothschild, Esq., Hiscock Legal Aid Society, 351 South Warren Street, Syracuse, NY 13202-2057.)

People v. Joshua Cheristin - APL-2025-00212

AD2 order dated June 4, 2025, affirming judgment. Decision below: 239 A.D.3d 670. Rivera, J., granted leave on December 8, 2025.

ISSUES PRESENTED: (1) Whether an appeal waiver is valid when the plea court informs defendant that the appeal waiver is a condition of the plea prior to the defendant's factual allocution but the full appeal waiver colloquy occurs after the factual allocution; (2) whether Penal Law § 222.05(3)(a), enacted as part of the Marihuana Regulation and Taxation Act, applies to a post-enactment suppression hearing concerning a pre-enactment search. (Assigned counsel: Patricia Pazner, Appellate Advocates, 111 John St., 9<sup>th</sup> Floor, NYC 10038.)

People v. Tyrell Gaddy - APL 2025-00214

AD2 order dated August 6, 2025, affirming judgment. Decision below: 241 A.D.3d 578. Rivera, J., granted leave on December 8, 2025.

ISSUE PRESENTED: Whether there is record support for the Appellate Division's determination that the police officer's inquiry whether defendant possessed any weapons was justified by a founded suspicion of criminal activity. (Counsel: Matthew W. Brissenden, P.C., 666 Old Country Road,

**COURT OF APPEALS UPDATE -  
Center for Appellate Litigation**

---

Suite 501, Garden City, NY 11530.)

People v. Rahmel Howard - APL-2025-00213

AD2 order dated July 2, 2025, affirming judgment. Decision below: 240 A.D.3d 513. Rivera, J., granted leave on December 8, 2025.

ISSUE PRESENTED: (1) Whether an appeal waiver is valid when the plea court informs defendant that the appeal waiver is a condition of the plea prior to the defendant's factual allocution but the full appeal waiver colloquy occurs after the factual allocution. (Assigned counsel: Patricia Pazner, Appellate Advocates, 111 John St., 9<sup>th</sup> Floor, NYC 10038.)

People v. Jaleel S.- APL-2025-00217 (People's appeal)

AD2 order dated July 30, 2025, reversing hearing court's summary denial of defendant's 440.20 motion. Decision below: 240 N.Y.S.3d 432. Halligan, J., granted leave on December 12, 2025.

ISSUE PRESENTED: Whether a defendant may seek to set aside a sentence under CPL 440.20 on the ground that the sentencing court failed to make a youthful offender determination. (Counsel: Eric Nelson, Esq., 54 Florence Street, Staten Island, NY 10308).