

CENTER FOR APPELLATE LITIGATION

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MEMORANDUM

To: Chief Defenders & Colleagues
From: Barbara Zolot
Date: May 16, 2025
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).

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. Hu Sin

AD4 order dated June 9, 2023 affirming judgment of conviction. Decision below: 217 A.D. 3d 1439, 190 N.Y.S.3d 777. Dissenter below (Ogden, J.) granted leave on August 1, 2023. Argued March 13 at the Broome County Courthouse at 9:30 a.m.

ISSUE PRESENTED: Whether defendant was deprived of a fair trial by County Court’s Molineux ruling, admitting testimony about defendant’s prior uncharged acts of abuse against two of the victim’s other family members. (Counsel: Thomas J. Eoannou, Esq., 484 Delaware Ave., Buffalo, NY 14202-1304.)

People v. T.P.

AD4 order reducing sentence under DVSJA and otherwise affirming. Decision below: 216 A.D.3d 1469, 188 N.Y.S.3d 842. Cannataro, J., granted leave on May 29, 2024. Argued April 8, 2025.

ISSUES PRESENTED: (1) Whether defense counsel was ineffective for failing to request that the court include in its justification charge the “reputation evidence” addendum to the New York Model Criminal Jury Instruction, which would have permitted the jury to take into account the victim’s prior violent acts; (2) whether counsel was ineffective in failing to object to statements made by prosecutor during summation. (Counsel: Davis Polk & Wardwell, 450 Lexington Ave., New York, NY 10017.)

People v. Laquan Lewis

AD2 order dated July 5, 2023, affirming judgment of conviction. Decision below: 218 A.D.3d 493, 194 N.Y.S.3d 227. Wilson, C.J., granted leave on December 7, 2023. Argued April 9, 2025.

ISSUE PRESENTED: Whether defendant’s requests to proceed pro se were unequivocal. (Assigned counsel: Patricia Pazner, Appellate Advocates, 111 John St., 9th Floor, NYC 10038.)

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

People v. Brenda WW.

AD3 order dated December 21, 2023, modifying sentences imposed. Decision below: 222 A.D.3d 1188, 203 N.Y.S.3d 211. Dissenter below (Pritzker, J.) granted leave on February 20, 2024. Argued April 9, 2025.

ISSUE PRESENTED: Whether defendant established entitlement to resentencing under the Domestic Violence Survivors Justice Act? (Counsel: Law Office of Veronica Reed, Veronica Reed, Esq., 2320 Nott Street No. 9591, Schenectady, NY 12309).

People v. Angela VV

AD3 order denying DVSJA motion. Decision below: 229 A.D.3d 955, 215 N.Y.S.3d 594. Dissenter below (Fisher, J.) granted leave on August 23, 2024. Argued April 9, 2025.

ISSUE PRESENTED: Whether defendant established entitlement to resentencing under the Domestic Violence Survivors Justice Act (See CPL 440.47; Penal Law § 60.12). (Assigned counsel: Mitch Kessler, 63 Pike Creek Drive, Cohoes, NY 12110.)

People ex rel. Barta v. Molina

AD2 order dated October 24, 2023, dismissing the writ of habeas corpus. Decision below: 220 A.D.3d 953, 196 N.Y.S.3d 801. Leave to appeal granted by the Court of Appeals on May 21, 2024. Argued May 14, 2025.

ISSUES PRESENTED: (1) Whether a criminal defendant ordered released under CPL 30.30(2)(a) can be subjected to electronic monitoring in the face of CPL 510.40(d)'s characterization of such monitoring as confinement in custody; (2) whether the Appellate Division erred in holding that the exception to the mootness doctrine was inapplicable to the question whether defendant would be incarcerated awaiting the imposition of electronic monitoring following that trial court's order that he be released under CPL 30.30(2)(a). (Assigned counsel: Peter A. Barta, Esq., Queens Defenders, 118-21 Queens Boulevard, 2nd Floor, Forest Hills, NY 11375.)

People ex rel. Welch v. Maginley-Liddie

AD2 order dated March 11, 2024 dismissing writ of habeas corpus. Decision

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

below: 225 A.D.3d 644, 207 N.Y.S.3d 534. Court of Appeals granted leave on June 18, 2024. Argued May 14, 2025.

ISSUE PRESENTED: (1) Whether the Appellate Division erred by holding that CPL 510.10(4)(f) applies when a defendant has had bail fixed on the underlying case; (2) whether the Appellate Division erred by holding that the prongs of CPL 510.10(4)(f) were met when the People failed to provide any information about the allegations in the underlying case, purporting to rely on the existence of an out-of-county indictment appearing on a RAP sheet to meet the burden of showing reasonable cause to believe that the defendant committed an offense causing harm to a specific individual or group of individuals. (Assigned counsel: Twyla Carter, Esq., Legal Aid Society, 120-46 Queens Boulevard, Kew Gardens, NY 11415.)

People ex rel. Ellis v. Imperati (People’s appeal)

AD2 order sustaining writ and ordering defendant’s release upon his own recognizance with conditions. Decision below 226 A.D.3d 1069, 211 N.Y.S.3d 126. Court of Appeals granted leave to appeal on October 17, 2024. Argued May 14, 2025.

ISSUE PRESENTED: Whether the crime of making a terroristic threat (see Penal Law § 490.20) is a bail qualifying offense under CPLR 510.10(4). (Assigned counsel: Dutchess County Public Defender’s Office, 45 Market Street, Poughkeepsie, NY 12601.)

People v. Christopher Baldner

AD3 order reversing dismissal and reinstating indictment. Decision below: 230 A.D.3d 1434, 218 N.Y.S.3d 832. Dissenter below (Egan, Jr., J.P.) granted leave to appeal November 14, 2024. Argued May 14, 2025.

ISSUES PRESENTED: (1) Whether the Appellate Division erred by reinstating dismissed depraved indifference murder and reckless endangerment counts of the indictment; (2) whether the Appellate Division improperly applied the “depraved indifference” mens rea to a law enforcement officer acting in the course of employment in a highway patrol car that effectuated a lawful stop and who was drawn into a high speed chase initiated by a non-compliant motorist. (Counsel: Larkin Ingrassia PLLC, 356 Meadow Ave., Newburgh, New York 12550.)

People v. Christopher Salas

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

AD1 order dated October 19, 2023, modifying sentence and otherwise affirming. Decision below: 220 A.D.3d 545, 196 N.Y.S.3d 455. Wilson, C.J., granted leave on May 22, 2024. Argued May 15, 2025.

ISSUES PRESENTED: (1) Whether Supreme Court erred in denying defendant a reconstruction hearing based on an alleged violation of People v. O’Rama (78 N.Y.2d 270 [1991]); (2) whether counsel was ineffective for failing to pursue a Wade/Rodriguez hearing. (Assigned counsel: (Assigned counsel: Caprice R. Jenerson, Office of the Appellate Defender, 11 Park Place, New York, NY 10007.)

People v. Zavearr Bacon

AD1 order dated October 5, 2023, affirming judgment of conviction. Decision below: 220 A.D.3d 450, 197 N.Y.S.3d 187. Rivera, J., granted leave on June 6, 2024. Argued May 15, 2025.

ISSUES PRESENTED: (1) Whether defendant’s Confrontation Clause challenge was adequately preserved; (2) whether statements made to police at scene of crime for purpose of compiling complaint report qualify as nontestimonial under ongoing emergency exception to the Confrontation Clause. (Assigned counsel: Jenay Nurse Guilford, Center for Appellate Litigation, 120 Wall Street- 28th floor, New York, NY 10005; Pro bono counsel: Latham & Watkins, LLP, 1271 Avenue of the Americas, New York, NY 10020.)

II. Cases Scheduled for Argument

[September calendar not yet released]

III. Cases Waiting to be Scheduled

People v. Jason Wright

AD1 order dated April 27, 2023, affirming judgment of conviction. Decision below: 215 A.D.3d 601, 186 N.Y.S.3d 648. Troutman, J., granted leave on April 12, 2024.

ISSUES PRESENTED: (1) Whether witness had independent source for in-court identification where witness failed to identify defendant in pretrial identification procedure; (2) whether the decision to challenge allegations in a predicate felony statement is that of defendant personally or defendant’s

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

attorney. (Assigned counsel: Matthew Bova and Jenay Nurse Guilford, Center for Appellate Litigation, 120 Wall St., 28th Floor, NYC 10005.)

People v. Henry Fuentes

AT2 order dated December 14, 2023, reversing lower court order granting motion to find initial and supplemental CoCs invalid and dismissing pursuant to 30.30 and reinstating accusatory instruments. Decision below: 81 Misc.3d 136(A), 200 N.Y.S.3d 876. Singas, J., granted leave on April 30, 2024.

ISSUE PRESENTED: Whether the defendant’s statutory right to a speedy trial was violated where People filed initial and supplemental certificates of compliance and statements of readiness before disclosing contents of Internal Affairs Bureau files for law enforcement officer who the People intended to call as a trial witness (see CPL 245.20[1][k][iv]). (Assigned counsel: Laurette D. Mulry, Legal Aid Society of Suffolk County, Inc., P.O. Box 1697, Riverhead, NY 11901.)

People v. Richecarde Licius

AT2 order dated December 22, 2023, reversing lower court order granting 30.30 motion and reinstating accusatory instrument. Decision below: 82 Misc. 3d 18, 204 N.Y.S.3d 707. Rivera, J., granted leave on April 24, 2024.

ISSUES PRESENTED: (1) Whether the People’s statement of readiness was untimely because, although the People transmitted it to the Unified Court System’s Electronic Document System on the last day of the CPL 30.30(1)(b) period, the New York Criminal Court clerk’s office did not “review[]” the transmitted document until the next day (22 NYCRR 202.5-c(c)(3)); (2) whether the People were not in fact ready to proceed to trial when the People transmitted the statement of readiness because, among other things, the transmission occurred after the 5:00 PM close of the New York City Criminal court’s business hours on the last day of the CPL 30.30 period, at which time a trial could not be commenced. (Assigned counsel: Twyla Carter, Esq., Legal Aid Society, 199 Water Street, New York, NY 10038.)

People v. Savion Robinson

AD1 order dated November 9, 2023 affirming judgment of conviction.

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

Decision below: 221 A.D.3d 435, 199 N.Y.S.3d 469. Troutman, J., granted leave on June 6, 2024.

ISSUE PRESENTED: Whether the courts below erred in holding that an “investigatory questioning” exception to *Miranda v. Arizona* authorized the police to question appellant for 30 minutes while he was handcuffed. (Assigned counsel: Carola M. Beeney and Jenay Nurse Guilford, Center for Appellate Litigation, 120 Wall Street, 28th Floor, New York, NY 10005.)

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.

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. Leighton R.

AD1 order dated January 25, 2024 affirming judgment of conviction. Decision below: 223 A.D.3d 597, 202 N.Y.S.3d 128. Troutman, J., granted leave on July 3, 2024.

ISSUE PRESENTED: Whether anonymous tip was sufficiently corroborated to provide police with reasonable suspicion to stop defendant’s vehicle. (Assigned counsel: Twyla Carter, Esq., Legal Aid Society, 199 Water Street, New York, NY 10038.)

People v. Locksley Williams

AT2 order dated February 9, 2024 affirming judgment of conviction. Decision below: 83 Misc.3d 21, 207 N.Y.S.3d 332. Wilson, C.J., granted leave to appeal on August 1, 2024.

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

ISSUE PRESENTED: Whether an inaccurate CPL 30.30(5-a) certification renders the People’s statement of readiness illusory. (Assigned counsel: Patricia Pazner, Appellate Advocates, 111 John St., 9th Floor, NYC 10038.)

People v. Omar Johnson

AD1 order dated March 12, 2024 affirming judgment of conviction.
Decision below: 224 A.D.3d 453, 206 N.Y.S.3d 584. Troutman, J., granted leave to appeal on August 12, 2024.

ISSUES PRESENTED: (1) Whether defendant’s waiver of his right to appeal forecloses review of his claim that his weapon possession conviction is unconstitutional under NYSRPA. v. Bruen (597 US 1 [2021]); (2) whether defendant has standing to challenge the constitutionality of the New York weapon licensing provision underlying his conviction even though he did not apply for a license to possess the weapon; (3) whether the trial court erred in rejecting defendant’s Second Amendment right to carry a firearm in public by requiring him to obtain a license under an unconstitutional licensing scheme. (Assigned counsel: Benjamin Rutkin-Becker and Jenay Nurse Guilford, Center for Appellate Litigation, 120 Wall Street - 28th floor, New York, NY 10005.)

People v. Rosemary Hernandez

AD1 order dated February 1, 2024, affirming judgment of conviction.
Decision below: 224 A.D.3d 415, 202 N.Y.S.3d 341. Cannataro, J., granted leave to appeal on August 20, 2024.

ISSUE PRESENTED: Whether imposition of a term of post-release supervision was illegal because Penal Law § 60.12 provides that “notwithstanding any other provision of law,” sentences imposed upon a domestic violence survivor, as defined in that section, who has been convicted of a class A felony, must be at least five years and not to exceed fifteen years, with no provision for a term of post-release supervision. (Assigned counsel: Allison Haupt and Jenay Nurse Guilford, Center for Appellate Litigation, 120 Wall Street - 28th floor, New York, NY 10005.)

People v. Arthur H. Morgan, Jr.

AD3 order dated August 8, 2024, affirming judgment of conviction.
Decision below: 230 A.D.3d 864, 217 N.Y.S.3d 701. Dissenter below (Powers, J.) granted leave to appeal on September 11, 2024.

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

ISSUES PRESENTED: (1) Whether the evidence was legally sufficient to support the conviction of manslaughter in the first degree; (2) whether grand jury proceedings were impaired by forensic pathologist's testimony as to the victim's manner of death; (3) whether County Court erred in finding reconsideration of defendant's suppression motion to be barred by law of the case; (4) whether County Court erred in allowing witness to testify about domestic violence between the defendant and deceased; (5) whether County Court's admission of testimony from prior trial into evidence violated defendant's right of confrontation; (6) whether County Court erred in rejecting defendant's Batson challenges; (7) whether County Court erred in instructing the jury on the lesser included offense of manslaughter in the first degree. (Counsel: Steven M. Sharp, Esq., P.O. Box 1004, Albany, NY 12201.)

People v. Roderick Collier

AD1 order dated January 18, 2024, affirming SORA adjudication. Decision below: 223 A.D.3d 539, 203 N.Y.S.3d 580. Leave granted by Court of Appeals as of right.

ISSUE PRESENTED: Whether the nearly six-year delay between defendant's release and his Sex Offender Registration Act hearing violated due process. (Assigned counsel: Twyla Carter, Esq., Legal Aid Society, 199 Water Street, New York, NY 10038.)

People v. Stefan D. Nichols

AD4 order dated May 3, 2024, affirming level 3 SORA adjudication. Decision below: 227 A.D.3d 1443, 208 N.Y.S.3d 795. Court of Appeals granted leave to appeal September 17, 2024.

ISSUE PRESENTED: Whether remittal under Corr. Law § 168-n(3) was required where County Court failed to set forth findings of fact and conclusions of law in denying defendant's request for a downward departure. (Assigned counsel: Julia A. Cianca, Esq., Monroe County Public Defender, 10 North Fitzhugh Street, Rochester, NY 14614.)

People v. James Everson

AD4 order dated July 26, 2024, affirming judgment. Decision below: 229 A.D.3d 1349, 215 N.Y.S.3d 819. Dissenter below (Hannah, J.) granted leave to appeal on October 3, 2024.

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

ISSUES PRESENTED: (1) Whether the trial court erred in refusing to sever defendant's trial from that of his codefendant; (2) whether defendant acted with the intent to cause death of another person when he allegedly fired multiple times into a crowd of twenty people at a park. (Counsel: Keem Appeals, PLLC, 333 East Onondaga Street, Suite 301, Syracuse, NY 13202-2056).

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.

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.

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. Dino J. Callara (People's appeal)

AD4 order dated July 26, 2024, reversing the judgment. Decision below: 229 A.D.3d 147. Cannataro, J., granted leave to the People on October 30, 2024.

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

ISSUES PRESENTED: (1) Whether the indictment was properly dismissed on the ground that the special district attorney lacked jurisdiction because the court exceeded its authority under County Law 701 by appointing an attorney who did not live or maintain a law office in Orleans County or an adjacent county; (2) whether the separation of powers is implicated when the district attorney did not challenge the appointment; (3) whether, under the circumstances of this case, the Court should conclude that the residency requirement is not jurisdictional in nature under Haggerty v Himelein (89 NY2d 431 [1997]); (4) whether under the circumstances of this case, the Court should carve out an exception under Matter of Working Families Party v. Fisher (23 NY3d 539) when a third party seeks disqualification as opposed to the district attorney. (Counsel: Rupp Pfalzgraf LLC, 424 Main Street, 1600 Liberty Building, Buffalo, NY 14202.)

People v. Derek Sargeant

AD2 order dated September 25, 2024, affirming judgment. Decision below: 230 A.D.3d 1341. Dissenter below (Ford, J.) granted leave to appeal on November 22, 2024.

ISSUE PRESENTED: Whether defendant's conviction by an 11-member jury violated his constitutional right to a jury of 12 after the trial court concluded that defendant "forfeited" his right by engaging in misconduct. (Assigned counsel: Patricia Pazner, Appellate Advocates, 111 John St., 9th Floor, NYC 10038.)

People v. Jaylin Wiggins

AD4 order dated March 22, 2024, affirming judgment. Decision below: 225 A.d.3d 1305. Dissenter below (Ogden, J.) granted leave to appeal on May 14, 2024.

ISSUES PRESENTED: (1) Whether guilty verdict was against the weight of the evidence; (2) whether County Court erred in denying defendant's request to discharge juror as grossly unqualified; (3) whether County Court abused its discretion in denying motion for mistrial based on the ground that the jury was tainted by racial bias; (4) whether County Court's handling of jury note violated People v O'Rama, 78 NY2d 270 [1991]). (Counsel: Metcalf & Metcalf, P.C., 99 Park Avenue, Suite 810, New York, NY 10016.)

People v. Amado Zubidi

AD1 order dated October 3, 2024, affirming judgment. Decision below: 219

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

N.Y.S.3d 297. Dissenter below (Rodriguez III, J.) granted leave to appeal on November 7, 2024.

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 - 28th floor, New York, NY 10005.)

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.

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. Felix Tapia

AD1 order dated September 19, 2024, affirming judgment. Decision below: 230 A.D.3d 1009. Dissenter below (Mendez, J.) granted leave to appeal on December 2, 2024.

ISSUE PRESENTED: Whether police had probable cause to arrest defendant. (Assigned counsel: Twyla Carter, Esq., Legal Aid Society, 199 Water Street, New York, NY 10038.)

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.

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

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

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 - 28th floor, New York, NY 10005.)

People v. Mark A. Smith

AD4 order dated June 14, 2024, affirming judgment. Decision below: 228 A.D.3d 1324. Singas, J., granted leave to appeal on December 30, 2024.

ISSUE PRESENTED: (1) Whether a defendant charged with first-degree robbery under Penal Law § 160.15(4) is entitled to a statutory affirmative defense instruction when there is evidence that the defendant used a BB gun to commit the robbery; (2) whether admitting evidence of a second planned robbery erroneously under *Molineux* was harmless error. (Assigned counsel: Sarah Holt, Esq., Monroe County Conflict Defender, 16 East Street, Suite 600, Rochester, NY 14614.)

People v. David Ehinmiakhena

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.

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.)

Matter of Nicole Hudson

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.

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.)

People v. Naim Roper

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.

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

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.)

People ex. rel. Louis M. v. Popiel

AD1 order dated January 1, 2025, affirming denial of writ and dismissal of proceeding. Decision below: 234 A.D.3d 462. Sua sponte examination by Court of whether a substantial constitutional question is directly involved in the Appellate Division order:

ISSUE PRESENTED: Whether *habeas* properly denied where petitioner challenged only conditions of confinement and did not seek immediate release. (Assigned counsel: Mental Hygiene Legal Service, 41 Madison Avenue, 26th Floor, New York, NY 10010.)

People v. Jaquan Moore

AD4 order dated July 26, 2024, reversing judgment and granting a new trial on three counts. Decision below: 229 A.D.3d 1193. Wilson, C.J., granted leave to appeal on January 29, 2025.

ISSUES PRESENTED: (1) Whether CPL 450.90(1) permits a defendant to appeal to the Court of Appeals from an Appellate Division order reversing the judgment of conviction and remitting for a new trial; (2) whether an order denying suppression should be considered "an order appealed from" under CPL 450.90(1); (3) whether a warrantless arrest is unreasonable when one law enforcement agency misleads another into believing that there is an arrest warrant when requesting that the other agency conduct an arrest on its behalf. (Assigned counsel: Julie A. Cianca, Esq., Monroe County Public Defender, 10 North Fitzhugh Street, Rochester, NY 14614.)

People v. Travis Woods

AD1 order dated April 25, 2024, affirming judgment. Decision below: 226

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

A.D.3d 597. Wilson, C.J., granted leave to appeal on January 29, 2025.

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., 28th Floor, NYC 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.

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.)

IV. New Leave Grants

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.

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 § 265.03(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 OF APPEALS UPDATE -
Center for Appellate Litigation**

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., 28th Floor, NYC 10005.)

People v. Randy Paulino (SSM)

AD1 order dated September 26, 2024 affirming judgment. Decision below: 233 A.D.3d 6. Dissenter (Rodriguez III, J.) granted leave on February 4, 2025.

ISSUE PRESENTED: Whether, in light of this Court’s decision in *People v. Brisman*, __ N.Y.3d __, 2025 NY Slip Op. 00123 (2025), the Appellate Division applied an erroneous standard of review to defendant’s excessive argument. (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.

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. 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.

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. Jason J. Ambrosio

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

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

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. Decision below: 235 A.D.3d 1276. Dissenter (Montour, J.) granted leave on April 1, 2025.

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.)