

# CENTER FOR APPELLATE LITIGATION

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## MEMORANDUM

**To:** Chief Defenders & Colleagues

**From:** Barbara Zolot

**Date:** January 15, 2025

**Subject:** Attached

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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.

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CRIMINAL CASES CURRENTLY PENDING IN  
THE NEW YORK COURT OF APPEALS

**I. Cases Awaiting Decision**

People v. Charles Howard

AD2 order dated June 28, 2023, affirming judgment of conviction. Decision below: 217 A.D.3d 966, 192 N.Y.S.3d 176. Leave granted by Halligan, J., on February 22, 2024. Argued January 7, 2025 at 2 pm.

ISSUES PRESENTED: (1) Whether the evidence was legally insufficient to prove defendant's guilt of robbery beyond a reasonable doubt when the sole evidence that defendant committed robbery, rather than larceny, was the trial testimony of the complainant, which was contradicted by the statement the complainant gave to the police the day of the crime; (2) whether the People proved beyond a reasonable doubt that defendant intentionally threatened the use of force to compel complainant to deliver up his property. (Assigned counsel: Patricia Pazner, Appellate Advocates, 111 John St., 9<sup>th</sup> Floor, NYC 10038.)

People v. Divine Fredericks

AD1 order dated June 22, 2023, affirming judgment of conviction. Decision below: 217 A.D.3d 582, 191 N.Y.S.3d 630. Rivera, J., granted leave on November 29, 2023. Argued January 8.

ISSUES PRESENTED: (1) Whether the trial court properly denied defendant's request for new counsel; (2) whether the trial court was required to inquire further concerning defendant's request; (3) whether counsel improperly took a position adverse to his client in opposing defendant's request; (4) whether defendant's CPL 440.10 motion was properly denied without a hearing; (5) whether defendant received effective assistance of counsel. (Assigned counsel: V. Marika Meis and Jenay Nurse Guilford, Center for Appellate Litigation, 120 Wall Street, 28<sup>th</sup> Floor, NYC 10005.)

People v. Raymond Williams (taken off SSM)

AD1 order dated May 9, 2023, affirming judgment. Decision below: 216 AD3d 466, 187 NYS3d 649. Leave granted by dissenting judge (Mendez, J.) on July 6, 2023. Argued January 8.

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ISSUE PRESENTED: Whether the evidence was legally sufficient to establish that defendant committed third-degree burglary. (Assigned counsel: Caprice R. Jenerson, Office of the Appellate Defender, 11 Park Place, New York, NY 10007; Clearly Gottlieb Steen & Hamilton, LLP, One Liberty Plaza, New York, NY 10006-1404.)

People v. Mitchell Hernandez

AD1 order dated February 2, 2023, affirming judgment. Decision below: 213 AD3d 425, 182 NYS3d 119. Wilson, C.J., granted leave on July 25, 2023. Argued January 8.

ISSUE PRESENTED: Whether the courts below correctly adjudicated defendant a persistent violent felony offender under Penal Law 70.04(1)(b)(iv)-(v) when more than ten years without incarceration elapsed between his sentencing on the first predicate felony conviction and the incident underlying this case but the period of pre-sentencing incarceration on the predicate felony was subtracted from that ten-year period. (Assigned counsel: Caprice R. Jenerson, Office of the Appellate Defender, 11 Park Place, New York, NY 10007, *amicus* briefs filed by The Bronx Defenders; Ethan J. Lieb/Lincoln Square Legal Services; Prisoners' Legal Services of New York.)

People v. Juan M. Silva Santos

AD1 order dated October 19, 2023, affirming judgment of conviction. Decision below: 220 A.D.3d 547, 197 N.Y.S.3d 50. Wilson, C.J., granted leave on February 21, 2024. Argued January 9.

ISSUE PRESENTED: Are litigants permitted to bargain away the Department of Correction and Community Supervision (DOCCS)'s Shock program in contravention of the statutory authority, *see* Corrections Law § 867, the separation of powers doctrine, and public policy? (Assigned counsel: Elizabeth Vasily and Jenay Nurse Guilford, Center for Appellate Litigation, 120 Wall St., 28<sup>th</sup> Floor, NYC 10005.)

Matter of NYCLU v. Rochester

AD4 order dated November 10, 2022 modifying lower court's order denying Article 78 seeking disclosure of certain law enforcement disciplinary records. Decision below: 210 AD3d 1400. Court of Appeals granted leave to Rochester Corporation Counsel on June 13, 2023. Argued January 9.

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ISSUE PRESENTED: Whether law enforcement disciplinary records containing unsubstantiated claims or complaints must be disclosed following the revocation of former Civil Rights Law § 50-a or are exempt from disclosure by Public Officer's Law §87(b)(2). (Counsel: New York Civil Liberties Union Foundation, New York City, and Shearman & Sterling LLP, Washington, DC).

**II. Cases Scheduled for Argument**

People v. Juan Padilla-Zuniga (taken off SSM)

AD2 order dated October 12, 2022, affirming judgment of conviction. Decision below: 208 AD3d 770. Cannataro, ACJ, granted leave on February 10, 2023. Scheduled for argument February 11, 2025 at 2 pm.

ISSUE PRESENTED: (1) Whether defendant entered a knowing, voluntary, and intelligent plea; (2) Whether defendant knowingly, voluntarily, and intelligently waived his right to appeal. (Assigned counsel: N. Scott Banks, Legal Aid Society of Nassau County, 40 Main Street, 3<sup>rd</sup> Floor, Hempstead, NY 11550.)

People v. Marquese Scott

AD4 order dated February 2, 2024 modifying sentence and otherwise affirming. Decision below: 224 A.D.3d 1238, 205 N.Y.S.3d 510. Wilson, C.J., granted leave on July 8, 2024. Scheduled for argument February 11.

ISSUE PRESENTED: Whether defendant was required to preserve his claim that his guilty plea was involuntary because defendant was misinformed with respect to his maximum sentencing exposure. (Assigned counsel: David C. Schopp, Esq., Legal Aid Bureau of Buffalo, Inc., 290 Main Street, Suite 350, Buffalo, NY 14202.)

People v. Dwight Moss

AD4 order dated December 22, 2023, affirming order. Decision below: 107 A.D.3d 1574, 966 N.Y.S.2d 711. Leave to appeal granted by the Court of Appeals on May 23, 2024. Scheduled for argument February 11.

ISSUE PRESENTED: Where prior conviction for felony sex offense has been deemed unconstitutional for predicate sentencing purposes, whether that prior felony sex conviction can support application of an automatic override

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in a sex offender risk level adjudication proceeding. (Assigned counsel: Julia A. Cianca, Esq., Monroe County Public Defender, 10 North Fitzhugh Street, Rochester, NY 14614.)

People v. McKenzie Willis

AT1 order dated June 26, 2023, affirming judgment of conviction. Decision below: 79 Misc.3d 127(A), 190 N.Y.S.3d 572. Wilson, C.J., granted leave on March 18, 2024. Scheduled for argument February 12. (Boxed with People v. Edward Martinez-Fernandez)

ISSUE PRESENTED: Whether the accusatory instrument charging aggravated unlicensed operation was jurisdictionally defective because it failed to provide reasonable cause to believe that defendant knew, or had reason to know, that his license was suspended; misdemeanor complaint alleged that defendant failed to answer a New York traffic summons but did not allege that defendant received the summons or was provided notice of license suspension. (Assigned counsel: Twyla Carter, Esq., Legal Aid Society, 199 Water Street, New York, NY 10038.)

People v. Edward Martinez-Fernandez

AT1 order dated June 26, 2023, affirming judgment of conviction. Decision below: 79 Misc.3d 127(A), 190 N.Y.S.3d 230. Halligan, J., granted leave on April 4, 2024. Scheduled for argument February 12.

ISSUE PRESENTED: (1) Whether the accusatory instrument charging aggravated unlicensed operation of a motor vehicle was jurisdictionally defective because it failed to provide reasonable cause to believe that defendant knew, or had reason to know, that his license was suspended; (2) whether accusatory instrument was facially insufficient as to charge of reckless driving. (Assigned counsel: Twyla Carter, Esq., Legal Aid Society, 199 Water Street, New York, NY 10038.)

**March Term arguments will begin at 9:30 a.m. at the Broome County Courthouse,  
92 Court Street, Binghamton, NY 13901**

People v. Kevin Cleveland (taken off SSM)

AD4 order dated June 30, 2023 affirming judgment of conviction. Decision below: 217 A.D.3d 1515, 193 N.Y.S.3d 476. Dissenter below (Ogden, J.) granted leave on August 14, 2023. Scheduled for argument March 12 at the

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Broome County Courthouse at 9:30 a.m.

ISSUE PRESENTED: Whether the police pursuit of defendant was supported by a reasonable suspicion of criminality. (Assigned counsel: Julie A. Cinca, Esq., Monroe County Public Defender, 10 N. Fitzhugh Street, Rochester, NY 14614.)

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. Scheduled for argument 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.)

**III. Cases Waiting to be Scheduled**

People v. Kevin Sullivan

Erie County Court order dated February 6, 2023, reversing dismissal of charges on 30.30 grounds and reinstating charges. Decision below: not officially reported. Troutman, J., granted leave on July 5, 2023.

ISSUE PRESENTED: Whether People's certificate of compliance was invalid under CPL 30.30(1) because it was filed before disclosure of all the discovery required under CPL 245.50 (Counsel: Shawn P. Hennessy, Esq., P.O. Box 128, East Amherst, NY 14051.)

People v. Christopher Farrell

Ulster County Court order dated November 17, 2022 reversing dismissal of accusatory instrument and reinstating. Cannataro, J. granted leave on August 24, 2023.

ISSUE PRESENTED: Whether Agriculture and Markets Law § 353 is void for vagueness as applied to veterinary neglect. (Counsel: Mitchell H. Spinac, Esq., 325 Wall Street, P.O. Box 3748, Kingston, NY 12401.)

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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.

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

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.

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. 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 attorney. (Assigned counsel: Matthew Bova and Jenay Nurse Guilford, Center for Appellate Litigation, 120 Wall St., 28<sup>th</sup> 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

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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. Donkavius D. Howard (SSM)

AD4 order dated February 9, 2024, affirming judgment of conviction. Decision below: 224 A.D.3d 1359, 204 N.Y.S.3d 847. Dissenter below (Ogden, J.) granted leave on March 21, 2024.

ISSUES PRESENTED: (1) Whether defendant was denied the effective assistance of counsel; (2) whether a defendant's claim that he received ineffective assistance of counsel under the Sixth Amendment can be resolved by application of the "meaningful representation" standard of review for claims of ineffective assistance under the New York State Constitution. (Assigned counsel: Julia A. Cianca, Esq., Monroe County Public Defender, 10 North Fitzhugh Street, Rochester, NY 14614.)

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 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.

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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, 2<sup>nd</sup> Floor, Forest Hills, NY 11375.)

People v. Christopher Salas

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.

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.

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- 28<sup>th</sup> floor, New York, NY 10005; Pro bono counsel: Latham & Watkins, LLP, 1271 Avenue of the Americas, New York, NY 10020.)

People v. Savion Robinson

AD1 order dated November 9, 2023 affirming judgment of conviction. Decision below: 221 A.D.3d 435, 199 N.Y.S.3d 469. Troutman, J., granted

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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, 28<sup>th</sup> Floor, New York, NY 10005.)

People ex rel. Welch v. Maginley-Liddie

AD2 order dated March 11, 2024 dismissing writ of habeas corpus. Decision below: 225 A.D.3d 644, 207 N.Y.S.3d 534. Court of Appeals granted leave on June 18, 2024.

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 v. Daniel Sherlock

AD2 order dated February 7, 2024 affirming judgment of conviction. Decision below: 224 A.D.3d 709, 205 N.Y.S.3d 430. Court of Appeals granted leave on June 18, 2024.

ISSUE PRESENTED: (1) Whether defendant was properly designated a sexually violent offender pursuant to Correction Law § 168-a(3)(b); (2) whether the assessment of points under risk factors 3 and 5 was error; (3) whether the SORA court abused its discretion in denying defendant’s application for a downward departure. (Assigned counsel: Laurette D. Mulry, Legal Aid Society of Suffolk County, Inc., Arthur Mr. Cromarty Court Complex, 300 Center Drive, P.O. Box 1697, Riverhead, NY 11901.)

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.,

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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. Carissa Hemingway

AD3 order dated February 29, 2024 affirming judgment. Decision below: 224 A.D.3d 1157, 206 N.Y.S.3d 423. Halligan, J., granted leave on July 31, 2024.

ISSUE PRESENTED: Whether the trial court’s statutory authority to order amendments to indictment under CPL 200.70 encompasses an amendment to an alleged underlying offense that is an element of a felony charge. (Counsel: Mark Schneider, Esq., 57 Court Street, Plattsburgh, NY 12901.)

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.

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., 9<sup>th</sup> Floor, NYC 10038.)

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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 - 28<sup>th</sup> 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 - 28<sup>th</sup> 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.

ISSUES PRESENTED: (1) Whether the evidence was legally sufficient to support the conviction of manslaughter in the first degree; (2) whether grand

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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.

ISSUES PRESENTED: (1) Whether the trial court erred in refusing to sever defendant's trial from that of his codefendant; (2) whether defendant acted

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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. Cadarrell D. Clark (SSM)

AD4 order dated July 3, 2024, affirming judgment. Decision below: 230 A.D.3d 153, 214 N.Y.S.3d 568. Dissenter below (Nowack, J.) granted leave to appeal on September 17, 2024.

ISSUE PRESENTED: Whether conviction for robbery was against the weight of the evidence. (Counsel: Mary M. Whiteside, 11045 Camarillo St, Unit 110, North Hollywood, CA 91602.)

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.

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. 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

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County Public Defender, 10 North Fitzhugh Street, Rochester, NY 14614.)

**IV. New Leave Grants**

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.

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.

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(Assigned counsel: Patricia Pazner, Appellate Advocates, 111 John St., 9<sup>th</sup> 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 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 - 28<sup>th</sup> 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

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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.)