

# 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:** September 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](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. 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. Argued September 8, 2025.

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; *amicus curiae*: The Innocence Project, by Steptoe LLC; American Psychological Association by Wilmer Cutler Pickering Hale & Dorr LLP.)

Matter of NYCLU v. New York State Office of Court Administration

AD1 order, dated February 8, 2024, reversing Supreme Court's order compelling OCA to disclose records requested NYCLU requested pursuant to FOIL, including documents directed to judges and their staff interpreting federal and state law. Decision below: 231 A.D.3d 549. Court of Appeals granted motion for leave to appeal on October 22, 2024. (Counsel: New York Civil Liberties Union; *amicus curiae*: Reporters Committee for Freedom of the Press; The Legal Aid Society; and Cynthia Godsoe, Wilmer Cutler Pickering Hale and Dorr LLP). Argued September 9, 2025.

ISSUE PRESENTED: Whether the Appellate Division erred in concluding that petitioner failed to reasonably describe the records sought and that the records sought were exempt under the attorney-client or attorney work product privilege.

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. Argued September 9, 2025.

**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 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 September 10, 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, 2<sup>nd</sup> Floor, Forest Hills, NY 11375; *amicus curiae*: The Legal Aid Society)

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. Argued September 10, 2025.

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

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

---

to the district attorney. (Counsel: Rupp Pfalzgraf LLC, 424 Main Street, 1600 Liberty Building, Buffalo, NY 14202; *amicus curiae* on the appeal: District Attorneys Association of the State of New York)

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 leave on June 6, 2024. Argued September 10, 2025.

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; *amicus curiae*: National Association of Criminal Defense Lawyers, by Law Offices of Joel B. Rudin, P.C.)

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. Argued September 11, 2025.

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; *amicus curiae*: District Attorneys Association of the State of New York; Scott E. Lockwood, Esq; The Legal Aid Society.)

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. Argued September 11, 2025.

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

---

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. 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. Argued September 11, 2025.

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. Argued September 11, 2025.

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

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

---

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.)

**II. Cases Scheduled for Argument**

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. Scheduled for argument October 14, 2025.

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; NYAG intervenor on 2d Amendment.)

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. Scheduled for argument October 14, 2025

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. 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. Scheduled for argument October 15, 2025.

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

---

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., 9<sup>th</sup> Floor, NYC 10038; *amicus curiae*: District Attorneys Association of the State of New York.)

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. Scheduled for argument October 15, 2025.

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.)

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. Scheduled for argument October 16, 2025.

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. 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. Scheduled for argument November 19, 2025.

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

---

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. Jaquan Moore

AD4 order dated July 26, 2024, reversing judgment and granting a new trial on three counts; affirming order denying suppression. Decision below: 229 A.D.3d 1193. Wilson, C.J., granted leave to appeal on January 29, 2025. Scheduled for argument November 19, 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. 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. Scheduled for argument November 20, 2025.

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. Roderick C.

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



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

---

Appeals as of right. Scheduled for argument November 20, 2025.

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.)

**III. Cases Waiting to be Scheduled**

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. 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. 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.

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

---

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

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 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

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

---

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

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.

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 APPEALS UPDATE -  
Center for Appellate Litigation**

---

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, 26<sup>th</sup> Floor, New York, NY 10010.)

People v. Travis Woods

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.

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. 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 and element of the offense. (Assigned counsel: Sarah Holt, Esq., Monroe County Conflict Defender, 16 East Street, Suite 600, Rochester, NY 14614.)

People v. Jarvis Lewis

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

---

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 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. 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

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

---

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

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, affirming judgment. 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.)

People v. Luke J. Gafney - 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.

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.)

People v. Donald Bender - APL-2025-00087

AD3 order dated March 20, 2025, affirming judgment. Decision below:

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

---

236 A.D.3d 1184. Dissenter (Clark, J.) granted leave on April 30, 2025.

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. 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.

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.)

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.

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. 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.

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

---

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.)

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, Kingston NY 12402-1800.)

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.

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. 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.

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



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

---

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. 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.

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. 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.)

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

---

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.

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

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

---

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 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. Erundu and Jenay Nurse Guilford, Center for Appellate Litigation, 120 Wall Street, 28<sup>th</sup> Floor, New

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

---

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.)

**IV. New Leave Grants**

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.

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. Andre Fernandez - APL-2025-00133

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.)

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

---

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 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.

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

---

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 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

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 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.)

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

---