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Weekly Reversal Report March 3 – 7, 2025

An Organized Compilation of Summaries of Selected Decisions, Mostly Reversals, Released by Our New York State Appellate Courts March 3 – 7, 2025, and Posted on the New York Appellate Digest Website on Monday, March 10, 2025. The Entries in the Table of Contents Link to the Summaries Which Link to the Full Decisions on the Official New York Courts Website. Click on “Table of Contents” in the Header on Any Page to Return There. Right Click on the Citations to Keep Your Place in the Reversal Report.

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CONTRACT LAW, EVIDENCE.

ABSENT AMBIGUITY A COURT CAN NOT CONSIDER EXTRINSIC EVIDENCE TO INTERPRET A CONTRACT; HERE PLAINTIFF HAD BROUGHT TWO ACTIONS AGAINST THE CITY CHALLENGING TWO SEPARATE ARRESTS; THERE WAS NO INDICATION THE RELEASE ONLY APPLIED TO THE ACTION DESCRIBED IN THE CAPTION OF THE RELEASE; THE SPACE FOR DESCRIBING ANY ACTION TO BE EXCLUDED FROM THE RELEASE WAS LEFT BLANK; THEREFORE THE RELEASE APPLIED TO BOTH ACTIONS; THERE WAS A DISSENT (FIRST DEPT).

The First Department, reversing Supreme Court, over a dissent, determined the release signed by plaintiff applied to both actions plaintiff had brought against the city, not just the action identified in the caption of the release. Plaintiff brought two separate actions challenging two arrests occurring 14 days apart. The release identified the action stemming from the second arrest and left a blank space to describe anything to be excluded from the release. That space was left blank. Supreme Court and the dissent determined that the plaintiff intended to exclude the first action from the release but plaintiff's attorney inadvertently left the space for the exclusion blank:

Like any contract, a release must be "read as a whole to determine its purpose and intent," and extrinsic evidence of the parties' intent may be considered only if the agreement is ambiguous … . "A contract is unambiguous if the language it uses has

a definite and precise meaning, unattended by danger of misconception in the purport of the [agreement] itself, and concerning which there is no reasonable basis for a difference of opinion" … . "More to the point, an ambiguity never arises out of what is not written at all, but only out of what was written so blindly and imperfectly that its meaning is doubtful" … .

Here, there was nothing surreptitious about the City sensibly filling in plaintiff's name as the releasor, the case name and the index number referrable to Action 2, in the general release to identify the specific matter being settled. What followed are standard, boiler-plate operative terms of this general release, namely, a broadly worded waiver provision and a claim exclusion clause, both of which are clear and unambiguous. Thus, there was no legal basis for the motion court to use any extrinsic evidence, discern an unfounded ambiguity therefrom and ultimately surmise the parties' intent to limit the scope of the general release to Action 2 … . Smith v City of New York, 2025 NY Slip Op 01198, First Dept 3-4-25

Practice Point: Here Supreme Court considered extrinsic evidence indicating that the release was meant to apply to only one of two actions plaintiff brought against the city. The First Department held that, because the release was not ambiguous, the court cannot consider extrinsic evidence. Therefore the release, by its terms, applied to both actions.

March 4, 2025

CRIMINAL LAW, ATTORNEYS, JUDGES.

ALTHOUGH THE JUDGE APPOINTED STANDBY COUNSEL AS DEFENDANT REQUESTED, THE JUDGE DID NOT CONDUCT AN ADEQUATE INQUIRY TO ENSURE DEFENDANT UNDERSTOOD THE RISKS OF REPRESENTING HIMSELF; GUILTY PLEA VACATED (THIRD DEPT).

The Third Department, vacating defendant guilty plea, determined the judge did not conduct an adequate inquiry before granting defendant's request to represent

himself. The appointment of standby counsel is not a substitute for an inquiry to make sure a defendant understands the risks:

… [D]efendant repeatedly conditioned his request on proceeding pro se "with standby [counsel]." In response to defendant's request, County Court inquired as to whether defendant knew the rule regarding standby counsel. Although defendant replied in the negative, the court provided no further explanation and, instead, proceeded to question defendant about his knowledge of the law. Following a week-long adjournment for defendant to confer with counsel regarding his request to proceed pro se, at the next court appearance, defendant reaffirmed his desire to proceed pro se with standby counsel. Although the court informed defendant that he did not qualify for standby counsel because he seemed to be familiar with some legal terms, defendant responded that he was requesting standby counsel because he does not know everything in the law. The record does not otherwise reflect that defendant was informed of or understood that, despite being permitted to proceed with standby counsel, there were risks inherent in proceeding pro se. Upon this record, we conclude that County Court's inquiry was insufficient to establish that defendant's waiver of the right to counsel was knowing and voluntary and, accordingly, the plea must be vacated … . People v Gray, 2025 NY Slip Op 01259, Third Dept 3-6-25

Practice Point: The appointment of standby counsel is not a substitute for a judge's responsibility to make an inquiry to ensure the defendant is aware of the risks of representing himself.

March 6, 2025

CRIMINAL LAW, EVIDENCE, APPEALS.

THE ONLY EVIDENCE OF DEFENDANT'S PARTICIPATION IN THE SHOOTING WAS DNA ON A HANDGUN; THE EVIDENCE OF MURDER AND POSSESSION OF A WEAPON WAS LEGALLY INSUFFICIENT; THE VERDICT WAS AGAINST THE WEIGHT OF THE EVIDENCE; INDICTMENT DISMISSED (FIRST DEPT).

The First Department, vacating defendant's murder conviction and dismissing the indictment, determined the circumstantial evidence was legally insufficient and the verdict was against the weight of the evidence. The only evidence against the defendant was DNA on a handgun. No evidence placed defendant at the scene of the shooting or in the vehicle apparently used by persons (Jenkins and Brown) involved in the shooting:

… [T]here no evidence from which to infer that defendant had the intent to commit, or aid Jenkins or Brown in furtherance of, the shooting. The People's case depends almost entirely upon the DNA evidence, from which the People infer that defendant racked the Glock used to kill Ms. Jacobs. The DNA evidence, however, is highly equivocal and does not reasonably permit such an inference. … Critically, the OCME [Office of the Chief Medical Examiner] criminalist Hardy testified that it was impossible to determine when each contributor left DNA on the gun; how defendant's DNA was transferred to the gun; or, more importantly, whether defendant even touched the gun. Without additional evidence that defendant possessed the gun during or took any actions to aid Jenkins or Brown in the shooting, any conclusion that defendant possessed the gun or committed or aided in the shooting is based entirely on conjecture.

There is no such corroborating evidence. This case contains no physical, video, or testimonial proof regarding any act defendant took in furtherance of possessing the gun or shooting Ms. Jacobs. Even assuming arguendo defendant's presence with Jenkins and Brown nearly two hours before the shooting, such does not lead to a permissible inference that he shot Ms. Jacobs or possessed the gun in furtherance of the crime that evening. * * *

Further, there is no legally sufficient evidence proving that defendant was present at the crime scene. Again, assuming that defendant was with Jenkins and Brown hours prior to the shooting does not permit any reasonable inference that he was with them at the crime scene. There is no evidence that defendant ever entered the Nissan. Nor was there evidence that he was present in the Nissan at the time of the chase. While police recovered from the Nissan fingerprints of Jenkins, Brown, and that of a third unidentified back seat passenger, they did not recover defendant's prints. Additionally, the liquor bottles with which the People attempt to tie defendant to the car do not match those defendant purchased at the liquor store, and the bottles were never tested for defendant's fingerprints or DNA. People v Coke, 2025 NY Slip Op 01297, First Dept 3-6-25

Practice Point: Consult this opinion for discussions of convictions based entirely on circumstantial evidence. the criteria for finding evidence legally insufficient. and the criteria for finding a verdict is against the weight of the evidence.

March 6, 2025

CRIMINAL LAW, EVIDENCE, JUDGES.

DEFENDANT'S MOTION TO VACATE THE 1994 ATTEMPTED MURDER CONVICTION ON "ACTUAL INNOCENCE" GROUNDS SHOULD NOT HAVE BEEN SUMMARILY DENIED; DEFENDANT SUBMITTED SUFFICIENT EVIDENCE TO WARRANT A HEARING, I.E., EVIDENCE A DECEASED COOPERATING WITNESS HAD CONFESSED TO BEING THE SHOOTER (FIRST DEPT).

The First Department determined the evidence of "actual innocence" submitted in defendant's motion to vacate the 1994 attempted murder conviction warranted a hearing:

The court … should have ordered a hearing on defendant's actual innocence claim … . Defendant presented evidence, supported by the statements of the Assistant United States Attorneys who handled the cooperator, that, in 1998, after defendant's trial, the cooperator credibly exonerated defendant by admitting to the

shooting. Although the cooperator has died, his confession would be admissible as a statement against penal interest … . Accordingly, the court lacked grounds for a summary denial under CPL 440.30(4)(b). People v Davila, 2025 NY Slip Op 01300, First Dept 3-6-25

Practice Point: If a motion to vacate a conviction is supported by credible evidence of "actual innocence," a hearing is necessary before ruling on the motion.

March 6, 2025

CRIMINAL LAW, EVIDENCE.

OBSERVING THE DEFENDANT CARRYING CAPPED BOTTLES OF ALCOHOL AND HAVING A HEAVY OBJECT IN A JACKET POCKET WAS NOT SUFFICIENT TO JUSTIFY DETAINING DEFENDANT; DEFENDANT'S FLIGHT WHEN AN OFFICER SAID "COME OVER HERE" IS OF NO CONSEQUENCE; THE SEIZED HANDGUN SHOULD HAVE BEEN SUPPRESSED (FIRST DEPT).

The First Department, in a full-fledged opinion by Justice Mendez, reversing Supreme Court, determined defendant's motion to suppress the handgun seized in a street stop should have been suppressed. Two police officers in a vehicle observed the defendant crossing the street. The defendant was carrying haff-full bottles of alcohol, but the bottles were not open. When one of the officers got out of the police vehicle and shone a flashlight on the defendant he noticed there appeared to be a heavy object in the defendant's jacket pocket. The officer told the defendant to "come over here." The defendant ran, was tackled, and the handgun was seized:

Transporting closed bottles is a legal activity which, without more, does not give rise to a presumption of intent to consume, or a founded suspicion of criminal activity under DeBour. Moreover, the fact that it was raining makes it less likely that the defendant intended to congregate outside and remain exposed to the elements while consuming alcohol. Critically, the officers never saw defendant drink from any of the bottles. Therefore, these facts did not give rise to a presumption that defendant intended to consume alcohol in public in violation of

the statute, and Officer Delia, at most, acquired the right to approach defendant to request information.

The heavy-weighted object in defendant's right jacket pocket could not have justified defendant's stop and detention because, "absent other circumstances evoking suspicion, indicative of or referable to the possession of a handgun, the observation of a mere bulge or heavy object in a pocket does not imply a reasonable conclusion that the person is armed" … . "A police officer must show that the object or appearance thereof which is the focus of his attention resembled a gun" … . Thus, absent a showing of anything other than a mere bulge or heavy object in defendant's pocket, Officer Delia could not have acquired a level of suspicion sufficient to detain the defendant … . People v Walker, 2025 NY Slip Op 01194, First Dept 3-4-25

Practice Point: If what the police observe is not enough to justify a street stop, the defendant's flight when the police approach is irrelevant.

March 4, 2025

CRIMINAL LAW, JUDGES.

DEFENDANT'S FOR-CAUSE CHALLENGE TO A JUROR SHOULD HAVE BEEN GRANTED; NEW TRIAL ORDERED (SECOND DEPT).

The Second Department, reversing defendant's conviction and ordering a new trial, determined defendant's for-cause challenge to a prospective juror should have been granted:

… Supreme Court should have granted the defendant's for-cause challenge to a prospective juror who evinced a state of mind that was likely to preclude the prospective juror from rendering an impartial verdict based on the evidence … . "[A] prospective juror whose statements raise a serious doubt regarding the ability to be impartial must be excused unless the juror states unequivocally on the record that he or she can be fair and impartial" … . Here, during voir dire, the prospective juror stated that his mother-in-law was a victim of sexual assault and raised his hand when defense counsel asked if any potential jurors felt that this was not the "right case" for them since the sexual assault allegations in this case might make

them "too emotional" and might be something they "c[ould not] handle." Under the circumstances, the prospective juror's statements raised a serious doubt regarding his ability to be impartial, and the court failed to elicit an unequivocal assurance on the record that the prospective juror could render a fair and impartial verdict based on the evidence … . Since the defendant exhausted his peremptory challenges, the denial of his for-cause challenge constitutes reversible error … . People v Faustin, 2025 NY Slip Op 01231, Second Dept 3-5-25

Practice Point: The prospective juror's statements raised serious doubts about his ability to be impartial in this sexual-offense case. Defendant's for-cause challenge to the prospective juror should have been granted.

March 5, 2025

NEGLIGENCE, EVIDENCE.

THERE WERE QUESTIONS OF FACT OF WHETHER THE FOUR-YEAR-OLD PLAINTIFF UNDERSTOOD AND ASSUMED THE RISKS OF PARTICIPATING IN A YOUTH HOCKEY CLINIC; THE COACH, WHILE SKATING BACKWARDS, FELL ON THE CHILD; DEFENDANT'S CROSS-MOTION FOR SUMMARY JUDGMENT SHOULD NOT HAVE BEEN GRANTED (SECOND DEPT).

The Second Department, reversing Supreme Court, determined defendant town (Oyster Bay), which offered a youth hockey clinic, was not entitled to summary judgment on the ground the four-year-old plaintiff assumed the risk of injury. Defendant coach (Marlow) was skating backwards when he fell on the four-year-old plaintiff:

The [assumption of the risk] "doctrine applies where a consenting participant in sporting and amusement activities 'is aware of the risks; has an appreciation of the nature of the risks; and voluntarily assumes the risks'" … . "If the risks of the activity are fully comprehended or perfectly obvious, plaintiff has consented to them and defendant has performed its duty" … . Risks that are "commonly encountered" or "inherent" in a sport, as well as risks "involving less than optimal

conditions," are risks tha participants have accepted and are encompassed by the assumption of risk doctrine … . "It is not necessary . . . that the injured plaintiff have foreseen the exact manner in which his or her injury occurred, so long as he or she is aware of the potential for injury of the mechanism from which the injury results" … . Awareness of risk is to be assessed against the background of the skill and experience of the particular plaintiff … .

Given the evidence submitted in support of the Town defendants' cross-motion, including the infant plaintiff's age and scant information concerning the infant plaintiff's skill and experience level with ice hockey, there were triable issues of fact as to whether the infant plaintiff fully appreciated the risks involved in terms of the activity he was engaged in so as to find he assumed the risk of his injuries under the facts of this case … . H.B. v Town of Oyster Bay, 2025 NY Slip Op 01203, Second Dept 3-5-25

Practice Point: Sometimes the application of a legal doctrine seems absurd. Can a four-year-old participant in a hockey clinic appreciate the risk of being injured by a coach who skates backwards and falls on him?

March 5, 2025