NEW YORK APPELLATE DIGEST, INC.

Weekly Reversal Report
March 24 – 28, 2025

An Organized Compilation of Summaries of Selected Decisions, Mostly Reversals, Released by Our New York State Appellate Courts March 24 – 28, 2025, and Posted on the New York Appellate Digest Website on Monday, March 31, 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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ADMINISTRATIVE LAW, MUNICIPAL LAW, CRIMINAL LAW.

THE NEW YORK CITY CIVILIAN COMPLAINT REVIEW BOARD (CCRB) IS NOT ENTITLED TO UNSEAL THE RECORD OF THE CRIMINAL PROSECUTION AND TRIAL OF AN OFF-DUTY POLICE OFFICER WHO SHOT A MAN IN A ROAD RAGE INCIDENT (SECOND DEPT).

The Second Department, reversing Supreme Court, in a full-fledged opinion by Justice McCormick, determined the NYC Civilian Complaint Review Board (CCRB) was not entitled to unseal the record of a criminal action which had resulted in the acquittal of an off-duty police officer (the defendant) who shot and killed a man during a road rage incident:

At his criminal trial, the defendant presented a justification defense … [and] the jury acquitted him of all charges. As a result, the records pertaining to the defendant's arrest and criminal prosecution were sealed (see CPL 160.50). * * *

The CCRB charged the defendant with three counts of intentionally using force without police necessity, rising to the level of assault in the second degree, in violation of the NYPD's Patrol Guide. * * *

… [T]he CCRB moved herein to unseal the record of this criminal action … in order to conduct its disciplinary trial … . * * *

Although the New York City Charter authorizes the CCRB to compel the attendance of witnesses and to require the production of such records and other materials as are necessary for its investigations of police misconduct, and further requires the NYPD, inter alia, to provide records and other materials that are necessary for the CCRB's investigations, the Charter specifically exempts from such disclosure "such records or materials that cannot be disclosed by law" (NY City Charter § 440[d][1]). As such, it cannot be said that the CCRB has been given a specific grant of power that would allow it to access the sealed records … . People v Isaacs, 2025 NY Slip Op 01818, Second Dept 3-26-25

Practice Point: The NYC Civilian Complaint Review Board cannon unseal the record of the criminal prosecution of a police officer which resulted in an acquittal.

March 26, 2025

CRIMINAL LAW, EVIDENCE.

PROOF THAT THE WEAPON WAS LOADED WHEN IT WAS FOUND THE DAY AFTER DEFENDANT POSSESSED IT WAS NOT SUFFICIENT TO SUPPORT THE CRIMINAL-POSSESSION-OF-A-WEAPON-SECOND-DEGREE COUNT (SECOND DEPT).

The Second Department, reversing defendant's conviction on a count charging criminal possession of a weapon second degree, determined the People did not prove the firearm was loaded at the time defendant possessed it:

… [W]e find that [the evidence] was legally insufficient to establish, beyond a reasonable doubt, the defendant's guilt of criminal possession of a weapon in the second degree as charged under count 9 of the indictment, which pertained to the Intratec firearm. A person is guilty of criminal possession of a weapon in the

second degree when, inter alia, with intent to use the same unlawfully against another, such person possesses a loaded firearm (see Penal Law § 265.03[1][b]). Here, the evidence presented by the People …. was legally sufficient to establish that the defendant possessed the Intratec firearm in Queens on July 8, 2007. However, the People did not present any evidence that the Intratec firearm was loaded at the time that it was in the defendant's possession in Queens on July 8, 2007, as charged under count 9 of the indictment … . Rather, the People merely presented evidence that the Intratec firearm was loaded at the time that it was found by the police in a garage in Brooklyn approximately one day later on July 9, 2007. Under these circumstances, the evidence was legally insufficient to establish, beyond a reasonable doubt, the defendant's guilt of criminal possession of a weapon in the second degree as charged under count 9 of the indictment … . People v Bostic, 2025 NY Slip Op 01816, Second Dept 3-26-25

Practice Point: Proof that a firearm was loaded on July 9 does not prove the firearm was loaded when defendant possessed it on July 8.

March 26, 2025

CRIMINAL LAW, JUDGES, APPEALS.

THE RESTITUTION ORDERED AS PART OF DEFENDANT'S SENTENCE AFTER THE SECOND TRIAL RAISED A PRESUMPTION OF VINDICTIVENESS; DEFENDANT ARGUED THE RESTITUTION WAS PUNISHMENT FOR WINNING THE APPEAL OF THE FIRST TRIAL; THE THIRD DEPARTMENT VACATED THE RESTITUTION; ALSO, THE MURDER SECOND DEGREE COUNTS WERE DISMISSED AS INCLUSORY CONCURRENT COUNTS OF MURDER FIRST DEGREE (THIRD DEPT).

The Third Department, vacating the restitution portion of the sentence, determined the presumption of vindictiveness had not been overcome. The defendant had won an appeal requiring a second trial. Defendant argued that the restitution in the amount of $139,231.87 ordered after the second trial was punishment for the

successful appeal. The Third Department also dismissed the murder second degree counts a inclusory concurrent courts of murder first degree:

"[T]o insure that trial courts do not impose longer sentences to punish defendants for taking an appeal, a presumption of vindictiveness generally arises when defendants who have won appellate reversals are given greater sentences after their retrials than were imposed after their initial convictions" … . * * *

… [T]he imposition of restitution after retrial did result in an enhanced sentence following defendant's successful appeal, and, as a result, the presumption of vindictiveness arose … . However, the court failed to engage in any on-the-record examination of the objective reasons why an enhanced sentence must be imposed, other than finding that it was not vindictive to order defendant "to make financially whole the representatives of his victims," facts that indisputably existed at the time of the initial sentencing … . * * *

While we observe that County Court may have not actually been seeking to punish defendant for exercising his right to appeal when it imposed restitution, it was nevertheless the court's obligation to overcome the presumption of vindictiveness by placing the reasons for the enhanced sentence on the record, and, based upon its failure to do so, we are constrained to vacate this portion of defendant's sentence … . People v Powell, 2025 NY Slip Op 01839, Second Dept 3-27-25

Practice Point: Here ordering restitution as part of the sentence after the second trial raised a presumption that the restitution constituted "punishment" for defendant's winning the appeal of the first trial. The sentencing court put nothing on the record to rebut the presumption of vindictiveness, so the restitution was vacated.

Practice Point: Here the murder second degree counts were dismissed as concurrent inclusory counts of murder first.

March 27, 2025

CRIMINAL LAW, JUDGES.

THE JUDGE, IN RENDERING THE VERDICT, STATED THE DEFENDANT HAD NOT PROVEN HE WAS FRAMED AND THEREFORE WAS GUILTY; THAT SHIFTED THE BURDEN OF PROOF TO THE DEFENDANT, REQUIRING A NEW TRIAL (SECOND DEPT).

The Second Department, reversing defendant's conviction and ordering a new trial, determined the court, in rendering its verdict, shifted the burden of proof to the defendant:

… Supreme Court, in rendering its verdict, impermissibly shifted the burden of proof to the defendant. The defendant asserted at trial that he had been framed by the police. In delivering its verdict, the court ruled that "the credible testimony before me does not persuade this Court beyond a reasonable doubt that [the] defendant was in fact framed. And that being so . . . I find [the] defendant guilty." The court's finding "reverses the constitutionally required principles that the defense bears no burden and that it is the prosecution that must introduce evidence sufficient to persuade the fact finder, beyond a reasonable doubt, of the defendant's guilt" … . People v Steward, 2025 NY Slip Op 01825, Second Dept 3-26-25

Practice Point: Here the judge, in rendering the verdict, stated the defendant was found guilty because the defendant had not proven he was framed. Shifting the burden of proof to the defendant required reversal and a new trial.

March 26, 2025

CRIMINAL LAW, JUDGES.

THE JUDGE DID NOT HOLD A COMPETENCY HEARING IN VIOLATION OF THE MANDATED PROCEDURES IN CRIMINAL PROCEDURE LAW ARTICLE 730; MATTER REMITTED FOR A RECONSTRUCTION HEARING (SECOND DEPT).

The Second Department, ordering a reconstruction hearing on the defendant's competence to stand trial, determined that the judge had not followed the procedures mandated by Criminal Procedure Law article 730:

"Article 730 of the Criminal Procedure Law sets out the procedures courts of this State must follow in order to prevent the criminal trial of [an incompetent] defendant" … . The CPL expressly provides that "[w]hen the examination reports submitted to the court show that the psychiatric examiners are not unanimous in their opinion as to whether the defendant is or is not an incapacitated person . . . the court must conduct a hearing to determine the issue of capacity" (CPL 730.30[4] …).. "That section is mandatory and not discretionary" … .

Here, once the Supreme Court made a threshold determination that the defendant's conduct warranted an examination, it should have followed the procedures mandated by CPL article 730. The failure to comply with the statute deprived the defendant of the right to a full and fair determination of his mental capacity to stand trial … . We find, however, that the requirements of CPL article 730 can be satisfied by a reconstruction hearing … . People v Petty, 2025 NY Slip Op 01824, Second Dept 3-26-25

Practice Point: If the court orders a psychiatric examination to determine whether defendant is an incapacitated person and the psychiatric examiners are not unanimous, the court must conduct a hearing on the issue of capacity.

March 26, 2025

FAMILY LAW, CIVIL PROCEDURE, JUDGES.

FAMILY COURT LOST SUBJECT MATTER JURISDICTION AFTER THE NEGLECT PETITION WAS DISMISSED; THEREFORE THE COURT SHOULD NOT HAVE CONTINUED THE CHILD'S PLACEMENT IN FOSTER CARE (FIRST DEPT).

The First Department, reversing Family Court, in a full-fledged opinion by Justice Gesmer, determined Family Court lost subject matter jurisdiction after the neglect petition against mother was dismissed. Therefore the child's placement in foster should not have been continued by the court. The First Department also noted that mother's mental-health records from the period after the filing and after the dismissal of the neglect petition were improperly admitted:

We … find that Family Court lacked subject matter jurisdiction to continue R.C.'s foster care placement for the reasons articulated in Matter of Jamie J. (Michelle E.C.) (30 NY3d 275 [2017]), in which the Court of Appeals held that "Family Court's jurisdiction terminates upon dismissal of the original neglect or abuse petition" … .

The "court's lack of subject matter jurisdiction is not waivable, but may be raised at any stage of the action, and the court may . . . on its own motion . . . at any time, when its attention is called to the facts, refuse to proceed further and dismiss the action" … .

Here, once the neglect petition against the mother was dismissed, Family Court lacked subject matter jurisdiction to continue the child's temporary removal from the mother's care and placement in foster care … . Accordingly, it should have immediately returned the child to the mother's care and terminated the child's foster care placement. It erred when it determined that it could hold permanency hearings based on the pending neglect petition against the putative father, since the child was not removed from his care, but from the mother's. … Indeed, there is no evidence in the record that the child ever resided with the putative father and no indication that he ever sought custody of the child.

Furthermore, we find that the failure of Family Court to immediately return the child to the care of the mother after the dismissal of the neglect petition against

her—as well as the subsequent protracted proceedings, including the dispositional hearing, which lasted nearly a year and a half—violated her due process rights … . Matter of R.C. (D.C.–R.R.), 2025 NY Slip Op 01859, First Dept 3-27-25

Practice Point: Here Family Court lost subject matter jurisdiction after the neglect petition against mother was dismissed and did not have the authority to continue the child's placement in foster care.

Practice Point: The protracted proceedings after the dismissal of the neglect petition, during which the child remained in foster care, violated mother's right to due process.

March 27, 2025

FAMILY LAW, JUDGES, ATTORNEYS, CONSTITUTIONAL LAW, EVIDENCE.

MOTHER, WHO WAS REPRESENTING HERSELF IN THIS TERMINATION-OF-PARENTAL-RIGHTS PROCEEDING, WAS DENIED DUE PROCESS BY THE JUDGE'S (1) COMMENCING THE HEARING WITHOUT HER, (2) SUBSEQUENTLY EXCLUDING HER FROM THE COURTROOM, (3) DENYING HER REQUEST FOR DOCUMENTS WHICH WERE IN EVIDENCE, (4) AND DENYING HER REQUEST FOR AN ADJOURNMENT TO CONSULT WITH HER LEGAL ADVISOR (SECOND DEPT).

The Second Department, reversing Family Court, determined mother, who was representing herself, was deprived of her right to due process in this termination of parental rights proceeding by "a confluence of factors:"

"A parent has a due process right to be present during proceedings to terminate parental rights". Nonetheless, "[a] parent's right to be present for fact-finding and dispositional hearings in proceedings to terminate parental rights is not absolute" … . "The child whose guardianship and custody is at stake also has a fundamental right to a prompt and permanent adjudication" … . "Thus, when faced with the

unavoidable absence of a parent, a court must balance the respective rights and interests of both the parent and the child in determining whether to proceed" … .

Here … the mother was deprived of her due process right to be present in the proceedings seeking to terminate her parental rights. First, the Family Court determined to commence the hearing in the mother's absence, even though she was proceeding pro se and had made representations to the court through her legal advisor that she had been directed to quarantine by her medical provider and was requesting an adjournment … . Notably, the record does not indicate that the mother had a history of failing to appear, nor did the court apparently rely on that factor in deciding to commence the hearing in the mother's absence … .

Furthermore, when the hearing continued one week later, the Family Court improvidently exercised its discretion in denying the mother's requests, among other things, for a copy of her own court-ordered psychiatric evaluation, which, at that point, was in evidence, and for additional time to obtain a court transcript and to consult with her legal advisor. Perhaps most significantly, the court abused its discretion in excluding the mother from the courtroom for the remainder of the hearing, without the issuance of a warning and with knowledge of the mother's diagnoses contained in the psychiatric evaluation … . Thus, on both dates of the hearing, the mother was left without an advocate … . Matter of Justina C. M. J. (Chantilly J.), 2025 NY Slip Op 01805, Second Dept 3-26-25

Practice Point: Here mother was denied the right to be present in the termination-of-parental-rights proceeding, was denied access to evidence and her request for an adjournment to consult with her legal advisor was denied. Cumulatively mother was denied her right to due process.

March 26, 2025

FREEDOM OF INFORMATION LAW (FOIL).

FOIL REQUESTS FOR DOCUMENTS POSSESSED BY ANOTHER AGENCY AND FOIL REQUESTS WHICH REQUIRED THE CREATION OF A NEW DOCUMENT SHOULD NOT HAVE BEEN GRANTED (FIRST DEPT).

The First Department, reversing (modifying) Supreme Court, determined FOIL requests for documents in the possession of another agency and FOIL requests which require the creation of a new document should not have been granted:

The court improperly ordered DCAS [Department of Citywide Administrative Services] to produce information possessed by another agency, the Financial Information Systems Agency (FISA). FOIL does not require an agency "to prepare any record not possessed or maintained by" that agency (Public Officers Law § 89[3][a]). DCAS's witness gave unrebutted testimony that several of the eight categories of requested information are maintained in a separate database by FISA, not DCAS. Accordingly, DCAS is "under no obligation to provide" that information … .

The court also improperly required DCAS to undergo a process that would constitute the creation of a new record … . DCAS's witness provided testimony that compliance with the request would require a multi-step process involving writing requirements for searches and for extracting data from three databases, reviewing the data for accuracy and completeness, developing code to "convert" the raw "transactional" data into "time series" or "status" data, and then aggregating and otherwise cleaning up the information into a report. Her testimony was consistent with her affidavit describing the process and estimating that, while the discrete step of extracting the raw data from DCAS's database would take only four hours, "the staff time required for the production of the requested reports" as a whole "is not less than 150 to 158 hours."

This Court has held that a similar "transformation process" necessary to compile an analogous list of City employee information "would entail much more than a 'simple manipulation of the computer . . . to transfer existing records'" and would therefore constitute the creation of a new record … . "[T]here is no fair interpretation of the [testimony] that can support" the court's findings that the total process would take only four hours or that this case is distinguishable from our

previous holding … . Matter of FDNY Local 2507, DC-37, AFSCME v City of New York, 2025 NY Slip Op 01867, First Dept 3-27-25

Practice Point: A FOIL request for a document which is in the possession of another agency need not be granted.

Practice Point: A FOIL request which requires an agency to create a new document is improper.

March 27, 2025

LIMITED LIABILITY COMPANY LAW, CORPORATION LAW, CIVIL PROCEDURE, FRAUD.

THE COMPLAINT SUFFICIENTLY ALLEGED FACTS THAT WOULD SUPPORT PIERCING THE CORPORATE VEIL (SECOND DEPT).

The Second Department, reversing (modifying) Supreme Court, determined the cause of action alleging that the corporate veil should be pierced should not have been dismissed. The complaint alleged failure to adhere to LLC formalities, inadequate capitalization, commingling of assets, and the personal use of LLC funds:

"To survive a motion to dismiss the complaint, a party seeking to pierce the corporate veil must allege facts that, if proved, establish that the party against whom the doctrine is asserted (1) exercised complete domination over the corporation with respect to the transaction at issue, and (2) through such domination, abused the privilege of doing business in the corporate form to perpetrate a wrong or injustice against the plaintiff such that a court in equity will intervene" … . "Factors to be considered in determining whether an individual has abused the privilege of doing business in the corporate or LLC form include the failure to adhere to LLC formalities, inadequate capitalization, commingling of assets, and the personal use of LLC funds" … . "Additionally, the corporate veil will be pierced to achieve equity, even absent fraud, when a corporation has been so dominated by an individual or another corporation and its separate entity so ignored that it primarily transacts the dominator's business instead of its own and

can be called the other's alter ego" … . "[A] fact-laden claim to pierce the corporate veil is unsuited for resolution on a pre-answer, pre-discovery motion to dismiss" … . Goldberg v KOSL Bldg. Group, LLC, 2025 NY Slip Op 01790, Second Dept 3-26-25

Practice Point: Here the allegations in the complaint that defendant failed to adhere to LLC formalities, inadequately capitalized the corporate entities, commingled assets, and personally used LLC funds sufficiently supported plaintiff's seeking to pierce the corporate veil.

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