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Weekly Reversal Report
December 29 – 31, 2025

An Organized Compilation of Summaries of Selected Decisions, Mostly Reversals, Released December 29 – 31, 2025, and Posted on the New York Appellate Digest Website on Monday, January 5, 2026. 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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The Second Department, reversing the judgment of foreclosure and ordering a new trial, determined defendant was prejudiced by her non-attorney husband's representation of her in the trial. Although the husband, John Chae, had a power of attorney authorizing him to act on his wife's behalf, the power of attorney did not authorize him to practice law. In addition, Supreme Court erred by not allowing the husband to testify:

"'New York law prohibits the practice of law in this State on behalf of anyone other than himself or herself by a person who is not an admitted member of the Bar, regardless of the authority purportedly conferred by execution of a power of attorney'" … . "The designation as an attorney-in-fact under General Obligations Law §§ 5-1502A-N does not confer upon a designated agent the right to provide representation as an attorney-at-law, and 'cannot be read to displace the provisions of Judiciary Law § 478'" … .

In this case, none of the exceptions to Judiciary Law § 478 apply. Moreover, John Chae's marriage to the defendant did not permit him to appear pro se on her behalf … . "As a general rule, the fact that a party has been represented by a person who was not authorized or admitted to practice law under the Judiciary Law—whether a disbarred attorney or a person practicing law without a license—does not create a 'nullity' or render all prior proceedings void per se" … . Here, however, the record

demonstrates that the defendant was prejudiced as a result of being represented by an unauthorized attorney at the trial … . Further, the Supreme Court erred in precluding the defendant from testifying at the trial (see CPLR 321[a]). Ventus Props., LLC v Mo Chae, 2025 NY Slip Op 07429, Second Dept 12-31-25

December 31, 2025

CRIMINAL LAW, APPEALS, EVIDENCE, JUDGES.

THE PEOPLE AGREED DEFENDANT'S ALLEGATIONS IN THE OMNIBUS MOTION WARRANTED A SUPPRESSION HEARING BUT ARGUED THE ISSUE WAS NOT PRESERVED BECAUSE THE ORDER DENYING A SUPPRESSION HEARING INCLUDED THE PHRASE "WITH LEAVE TO RENEW UPON A SHOWING OF SUFFICIENT FACTUAL ALLEGATIONS" RENDERING THE ORDER NONFINAL AND UNAPPEALABLE; THE FIRST DEPARTMENT NOTED THAT NO OTHER EVIDENCE CAME TO LIGHT WHICH COULD HAVE SUPPORTED A RENEWAL MOTION; THE ORDER WAS THEREFORE DEEMED FINAL AND APPEALABLE (FIRST DEPT).

The First Department, holding defendant's plea and sentencing in abeyance, remitted the matter for a Mapp/Dunaway hearing to determine whether the seizure of a gun dropped by the defendant was facilitated by unlawful police conduct. In the omnibus motions defendant argued that he dropped the gun as a spontaneous response to the police officers' approaching and then chasing him without reasonable suspicion. On appeal, the People agreed defendant was entitled to a hearing. The contested issue on appeal was whether the order denying the suppression motion "with leave to renew upon a showing of sufficient factual allegations" rendered the order nonfinal and therefore unappealable. The First Department determined the order was final:

The issue in contention on this appeal is whether the court's summary denial of defendant's suppression motion — which ended with the statement that the motion "is denied, with leave to renew upon a showing of sufficient factual allegations" — qualifies as an "order finally denying a motion to suppress evidence" which would

preserve the suppression issue for appeal under CPL 710.70(2). While phrases like "leave to renew" or "leave to submit" may be some indicia of a lack of finality under CPL 710.70(2), they do not, standing alone, render a court's ruling nonfinal.
* * *

… [T]he court incorrectly rejected the defendant's detailed recitation of his suppression theory and there was no further evidence produced by the People that could bolster defendant's theory on renewal.

Accordingly, we remit to Supreme Court to hold a Mapp/Dunaway hearing. People v Diaby, 2025 NY Slip Op 07343, First Dept 12-30-25

Practice Point: Here the People argued that the order denying a suppression hearing was nonfinal and therefore unappealable because it included the phrase "with leave to renew upon a showing of sufficient factual allegations." The First Department noted that this was not a case where additional evidence came to light which would have supported renewal and the defendant failed to make a renewal motion. Here no new evidence came to light. The denial of the suppression motion was therefore deemed a final, appealable order.

December 30, 2025

CRIMINAL LAW, ATTORNEYS, EVIDENCE.

THE PROSECUTOR'S FAILURE TO INSTRUCT THE GRAND JURY ON THE JUSTIFICATION DEFENSE REQUIRED REVERSAL AFTER TRIAL AND DISMISSAL OF THE INDICTMENT (WITHOUT PREJUDICE) (SECOND DEPT).

The Second Department, reversing defendant's conviction and dismissing the indictment (without prejudice), determined the prosecutor erroneously failed to explain the justification defense to the grand jury. Although defendant had a knife, there was evidence the victim had a gun and was the initial aggressor:

If the District Attorney fails to instruct the grand jury on a defense that would eliminate a needless or unfounded prosecution, the proceeding is defective, mandating dismissal of the indictment (see id. § 210.35[5] …). "'[A] prosecutor

should instruct the [g]rand [j]ury on any complete defense supported by the evidence which has the potential for eliminating a needless or unfounded prosecution'" … . "Where the evidence before the grand jury supports it, the charge on justification must be given" … .

"In determining whether the evidence supports a justification defense, the record must be viewed in the light most favorable to the defendant" … . Here, a surveillance video shown to the grand jury indicated that the defendant approached Graves inside a store while holding a knife. Nevertheless, when viewing the evidence in the light most favorable to the defendant, there is a reasonable view of the evidence that the defendant was not the initial aggressor, Graves pointed a gun at the defendant, the defendant stabbed Graves to defend himself from the imminent use of deadly physical force against him, and the defendant could not safely retreat (see Penal Law § 35.15[2][a] …). People v Mead, 2025 NY Slip Op 07412, Second Dept 12-31-25

Practice Point: Where the evidence viewed in the light most favorable to the defendant satisfies the criteria for a defense to the offense, the prosecutor must so instruct the grand jury. Failure to do so renders the grand jury proceeding defective and the indictment must be dismissed, even after a conviction at trial.

December 31, 2025

CRIMINAL LAW, EVIDENCE, JUDGES.

THE JUDGE'S RESTRICTIONS ON THE TESTIMONY OF THE DEFENSE "FALSE CONFESSION" EXPERT, AND THE DENIAL OF DEFENDANT'S REQUEST FOR A "PROMISE BY POLICE" JURY INSTRUCTION REQUIRED A NEW TRIAL (SECOND DEPT).

The Second Department, reversing defendant's murder conviction and ordering a new trial, determined the judge erroneously restricted the defense false-confession-expert's testimony and erroneously denied defendant's request for a "Promise by Police" jury instruction (defendant testified the police made promises to him during the 12-hour interrogation):

… [T]he court limited the scope of the defendant's expert's testimony by precluding the mention of a study by the Innocence Project, which found that of the more than 300 people who had been, at the time, exonerated by DNA, approximately 25% of those people had confessed, and a study conducted at the University of Michigan Law School, where researchers found that of the 1,405 exonerations that took place between 1989 and 2012, 10% of the people had falsely confessed, and people with mental illness or intellectual disability were overrepresented in those who had done so. Here, the court improperly concluded that those studies were not relevant … .

…[T]he studies were relevant to illustrate the risk of false confessions, and specifically, a study related to mental disability is proper in this case where the defendant was found to have an IQ lower then 93% of individuals in his age group. … [T]he court limited the scope of the expert's testimony as to existing research on false confessions … . The court further compounded this error by denying admission of a portion of the defendant's expert's curriculum vitae, ruling, without basis, that the titles of certain articles listed therein would be inappropriate for a jury to see, thereby depriving the jury of information relevant to the credibility and weight of the expert's testimony … . Moreover, these errors allowed the People's expert to testify that research in the area of false confessions is scant and that the study of false confessions and the evaluation of psychological vulnerabilities was a "primitive subdiscipline." … [T]he court also scheduled the trial on a date that the defendant's expert was not available. Although the use of video recorded testimony is not error, "[l]ive televised testimony is certainly not the equivalent of in-person testimony" … . As such, the jury was able to observe the in-court testimony of the People's expert, but was only able to observe the defendant's expert on a television screen, and even that testimony was edited to exclude the aforementioned studies. People v Grigoroff, 2025 NY Slip Op 07400, Second Dept 12-31-25

Practice Point: Consult this decision for insight into how restrictions placed on an expert's testimony can create the impression there is little or no support for the expert's conclusions in the relevant literature. Here, because the defense expert was not allowed to discuss the studies upon which his "false confession" conclusions were based, the People's expert was able to tell the jury "false confession" research is "scant" and is a "primitive subdiscipline." In addition, the trial was scheduled

when the People's expert could attend, but the defense expert could not, forcing the defense expert to submit videotaped testimony.

December 31, 2025

CRIMINAL LAW, EVIDENCE, SEX OFFENDER REGISTRATION ACT (SORA).

THERE WAS NO EVIDENCE DEFENDANT USED DRUGS TO EXCESS AT THE TIME OF THE OFFENSE OR IN THE PAST; THE 15 POINT ASSESSMENT UNDER RISK FACTOR 11 WAS THEREFORE ELIMINATED, REDUCING THE RISK LEVEL FROM THREE TO TWO (SECOND DEPT).

The Second Department, reducing the SORA risk assessment from level three to level two, determined the evidence did not support assessing 15 points for using drugs to excess:

"In order to support the assessment of points under risk factor 11, . . . the People must show by clear and convincing evidence that the offender used drugs or alcohol in excess either at the time of the crime or repeatedly in the past" … . Here, the People failed to present clear and convincing evidence that the defendant's marijuana use on the date of the offense was excessive or "causally linked to the sexual assault" … . The People's evidence was also insufficient to establish that the defendant used marijuana or other substances in excess repeatedly in the past … . Without the assessment of points under risk factor 11, the defendant's point total was 100, which is within the range for a presumptive level two designation. People v Gregory, 2025 NY Slip Op 07420, Second Dept 12-31-25

December 31, 2025

FALSE IMPRISONMENT, CIVIL PROCEDURE, EVIDENCE.

HOSPITAL SECURITY PERSONNEL WENT TO PLAINTIFF'S APARTMENT AND ESCORTED HER TO DEFENDANT HOSPITAL (THE UNDERLYING CIRCUMSTANCES WERE NOT DESCRIBED); PLAINTIFF WON A "FALSE IMPRISONMENT" SUIT AND WAS AWARDED $3.5 MILLION; THE MOTION TO SET ASIDE THE VERDICT SHOULD HAVE BEEN GRANTED; PLAINTIFF'S SUBJECTIVE BELIEF SHE COULD NOT LEAVE THE APARTMENT OR THE VEHICLE TRANSPORTING HER TO THE HOSPITAL WAS INSUFFICIENT (SECOND DEPT).

The Second Department, setting aside the $3.5 million verdict, determined the evidence did not support the "false imprisonment" theory of liability. Plaintiff was escorted from her apartment to defendant hospital by hospital security personnel (the underlying circumstances are not explained in the decision). Plaintiff alleged she was confined in her apartment and in the vehicle in which she was taken to the hospital:

"'A motion pursuant to CPLR 4404(a) to set aside a jury verdict and for judgment as a matter of law will be granted where there is simply no valid line of reasoning and permissible inferences which could possibly lead rational [persons] to the conclusion reached by the jury on the basis of the evidence presented at trial'" … . "[T]he question of whether a verdict was utterly irrational, entitling a movant to a directed verdict, involves a pure question of law" … . "'In considering such a motion, the facts must be considered in a light most favorable to the nonmovant'" … .

"To prevail on a cause of action to recover damages for false arrest or false imprisonment, the plaintiff must demonstrate that the defendant intended to confine the plaintiff, that the plaintiff was conscious of the confinement, that the plaintiff did not consent to the confinement, and that the confinement was not privileged" … . * * *

The decedent's subjective belief that she was confined in her apartment and that the security officers would not leave if asked is insufficient, without more, to establish an intent to confine … . Moreover, a threat to call the police does not

constitute "detaining force necessary to establish the tort of false imprisonment" … . In addition, the fact that the decedent testified that the security officers parked their vehicle so as to block the decedent's driveway is insufficient to establish confinement, absent other evidence that the decedent was incapable of departing by foot … .

… The decedent's testimony as to her own subjective belief that, once she was in the vehicle, she felt that she "no longer had any rights and that [she] was in custody and . . . imagined what would happen if [she] tried to get out of the car," is insufficient, without more, to establish an intent to confine … . Dender v North Shore Manhasset Hosp., 2025 NY Slip Op 07378, Second Dept 12-31-25

Practice Point: Consult this decision for an explanation of the criteria for setting aside a verdict awarding damages.

Practice Point: Consult this decision for insight into the proof required to support an allegation of "false imprisonment."

December 31, 2025

FAMILY LAW, CIVIL PROCEDURE, CRIMINAL LAW, EVIDENCE, JUDGES.

WHETHER FAMILY COURT HAD JURISDICTION OVER THIS FAMILY OFFENSE PROCEEDING DEPENDED ON WHETHER THERE WAS AN "INTIMATE RELATIONSHIP" BETWEEN PETITIONER AND RESPONDENT; THE EXISTENCE OF AN "INTIMATE RELATIONSHIP" IS A FACT-INTENSIVE INQUIRY WHICH, WHEN IN DISPUTE, REQUIRES A HEARING; MATTER REMITTED FOR THE HEARING (THIRD DEPT).

The Third Department, reversing Family Court, determined the judge should have ordered a hearing to determine whether the respondent had an "intimate relationship" with the petitioner such that a family offense proceeding alleging identify theft could be brought by the petitioner against the respondent. Whether an "intimate relationship" exist is a fact-intensive inquiry and when it is in dispute a hearing should be held:

Family Court's jurisdiction in family offense proceedings, as defined by Family Ct Act § 812 (1), extends to enumerated offenses occurring between members of the same family or household, including those "persons who are not related by consanguinity or affinity and who are or have been in an intimate relationship regardless of whether such persons have lived together at any time" … . While the statute does not define "intimate relationship," it expressly excludes casual acquaintances and ordinary social or business associations … . In determining whether an intimate relationship exists, courts consider, among other things, "the nature or type of relationship, regardless of whether the relationship is sexual in nature; the frequency of interaction between the persons; and the duration of the relationship" … . Additionally, "the relationship should be direct [and] not one based upon a connection with a third party" … . Whether an intimate relationship exists is a fact-intensive inquiry to be resolved on a case-by-case basis … . When the existence of an intimate relationship is in dispute, or the record is insufficient to permit determination as a matter of law, Family Court should conduct a hearing before dismissing the petition for lack of jurisdiction … . Matter of McCarra v Chiaramonte, 2025 NY Slip Op 07352, Third Dept 12-31-25

Practice Point: Family Court has jurisdiction over family offense proceedings involving unrelated parties if there exists an "intimate relationship" between the parties. Determining whether there is an "intimate relationship" is a fact-intensive inquiry usually requires a hearing.

December 31, 2025

IMMUNITY, NEGLIGENCE, PUBLIC HEALTH LAW.

DEFENDANT REHABILITATION FACILITY WAS IMMUNE FROM SUIT PURSUANT TO THE EMERGENCY OR DISASTER TREATMENT PROTECTION ACT (EDTPA) RE: PLAINTIFF'S DECEDENT'S COVID-RELATED INFECTION AND DEATH (SECOND DEPT).

The Second Department, reversing Supreme Court, determined the suit against defendant rehabilitation facility alleging plaintiff's decedent was infected with COVID at the facility, causing her death, should have been dismissed. The

defendant facility was immune from suit pursuant to the Emergency or Disaster Treatment Protection Act (EDTPA):

… [T]he EDTPA initially provided, with certain exceptions, that a health care facility shall have immunity from any liability, civil or criminal, for any harm or damages alleged to have been sustained as a result of an act or omission in the course of arranging for or providing health care services as long as three conditions were met: [1] the services were arranged for or provided pursuant to a COVID-19 emergency rule or otherwise in accordance with applicable law; [2] the act or omission was impacted by decisions or activities that were in response to or as a result of the COVID-19 outbreak and in support of the State's directives; and [3] the services were arranged or provided in good faith" … . * * *

The defendant's submissions, including, inter alia, its various COVID-19 pandemic-related policies and protocols, the directives issued by the New York State Department of Health and the New York State Department of Health and Human Services, and the decedent's medical records, conclusively established that the defendant was entitled to immunity as the three requirements for immunity under the EDTPA were satisfied (see Public Health Law former § 3082[1] …). Costiera v MMR Care Corp., 2025 NY Slip Op 07373, Second Dept 12-31-25

Practice Point: Consult this decision for an explanation of the criteria for the COVID-related immunity afforded health care facilities pursuant to the EDTPA.

Similar issues and result in Byington v North Sea Assoc., LLC, 2025 NY Slip Op 07372, Second Dept 12-31-25

December 31, 2025

NEGLIGENCE, EVIDENCE, LANDLORD-TENANT.

DEFENDANT LANDLORD'S SUMMARY JUDGMENT MOTION IN THIS SIDEWALK SLIP AND FALL CASE RAISED QUESTIONS OF FACT ABOUT WHETHER DEFENDANT HAD TRANSFERRED RESPONSIBILITY FOR SNOW AND ICE REMOVAL IN THE AREA OF THE FALL TO PLAINTIFF TENANT AND WHETHER DEFENDANT HAD ACTUAL KNOWLEDGE OF THE RECURRING COLLECTION OF WATER AND ICE IN THE AREA OF THE FALL (SECOND DEPT).

The Second Department, reversing Supreme Court, determined the evidence submitted by defendant landlord in this icy-sidewalk slip and fall case failed to eliminate questions of fact about whether defendant had completely relinquished to the plaintiff responsibility for snow and ice removal in the area of the fall and whether defendant had actual knowledge of the depression in the sidewalk and the formation of ice in the area of the fall:

Here, the evidence submitted by the defendant demonstrated that the defendant lived at the property where the plaintiff's accident occurred. Additionally, at his deposition, the defendant testified that the garbage cans for both sides of the property, which he maintained, were located on the plaintiff's side of the property and that he approached the garbage cans several times per week both to place trash in the garbage cans and to bring the garbage cans to the street for collection. Moreover, photographs submitted by the defendant depicting the area where the plaintiff fell demonstrated that the garbage cans were stored within a few feet of that area. Although the lease stated that the plaintiff was responsible for cleaning any accumulated snow from the entryway outside his private entrance, the lease also stated that the defendant was required to provide the plaintiff with a shovel and salt to complete this task. Finally, although the plaintiff testified at his deposition that he took care of snow removal for the area where he fell, his son testified at his deposition that in December 2018, approximately one month before the plaintiff's accident, the defendant had, on a few occasions, placed salt on ice in that area.

… Although the defendant denied knowing about the condition or having any conversations with the plaintiff about this condition, at his deposition, the plaintiff testified that prior to the accident, he had told the defendant "[f]our to five times" about the allegedly defective section of the side yard walkway, including that ice and snow would accumulate there in the winter. Moreover, several of the photographs submitted by the defendant depicted an accumulation of ice and snow in the allegedly defective area where the plaintiff fell. Yongxi Li v Pei Xing Huang, 2025 NY Slip Op 07432, Second Dept 12-31-25

Practice Point: Consult this slip-and-fall decision for succinct explanations of the law concerning the responsibility for snow and ice removal as between a resident landlord and a tenant, as well as a landlord's actual knowledge of a recurring dangerous condition.

December 31, 2025

PRIVATE NUISANCE, PUBLIC NUISANCE, NEGLIGENCE.

NOXIOUS ODORS FROM A PLASTIC-MANUFACTURING FACILITY CANNOT BE THE BASIS OF A NEGLIGENCE CAUSE OF ACTION BECAUSE THE ODORS HAVE NOT CAUSED PHYSICAL INJURY OR PROPERTY DAMAGE (ECONOMIC LOSS IS NOT SUFFICIENT); THE NOXIOUS ODORS DO SUPPORT A PRIVATE NUISANCE CAUSE OF ACTION EVEN THOUGH A LARGE NUMBER OF PRIVATE CITIZENS IN THIS CLASS ACTION LAWSUIT ARE AFFECTED (SECOND DEPT).

The Second Department, reversing (modifying) Supreme Court in this class action lawsuit, in a full-fledged opinion by Justice Voutsinas, over a concurrence and partial dissent, determined (1) noxious odors emanating from defendant's plastic-manufacturing facility are properly the subject of a private nuisance cause of action on behalf of a collective of individuals, and (2) the noxious odors are not a proper subject for a negligence cause of action because no tangible physical harm or property damage was alleged (diminution in property value is not enough):

"'To recover in negligence [or gross negligence], a plaintiff must sustain either physical injury or property damage resulting from the defendant's alleged negligent conduct . . . This limitation serves a number of important purposes: it defines the class of persons who actually possess a cause of action, provides a basis for the factfinder to determine whether a litigant actually possesses a claim, and protects court dockets from being clogged with frivolous and unfounded claims'" … .

"Although [the] defendant undoubtedly owes surrounding property owners a duty of care to avoid injuring them . . . , the question is whether [the] plaintiff[s] sustained the required injury" … . "'[T]he economic loss resulting from the diminution of [the] plaintiff[s'] property values is not, standing alone, sufficient to sustain a negligence claim under New York law'" … . * * *

"'The elements of a private nuisance cause of action are: (1) an interference substantial in nature, (2) intentional in origin, (3) unreasonable in character, (4) with a person's property right to use and enjoy land, (5) caused by another's conduct in acting or failing to act'" … . …

A private nuisance cause of action is one where "[t]he rights invaded . . . are not suffered by the [plaintiffs] in their status as citizens or part of the public" … . Rather, the harm is suffered by the plaintiffs "in their private capacity in respect of an interference with the comfortable enjoyment of their homes," which does not become a public nuisance "merely because a considerable number are injured" … . Dudley v API Indus., Inc., 2025 NY Slip Op 07379, Second Dept 12-31-25

Practice Point: Noxious odors do not support a negligence cause of action because there is no physical injury of property damage (diminished property value is not enough).

Practice Point: Noxious odors support a private nuisance cause of action, even where a large number of private citizens are affected.

December 31, 2025