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Weekly Reversal Report
February 9 – 13, 2026

An Organized Compilation of Summaries of Selected Decisions, Mostly Reversals, Released by Our New York State Appellate Courts February 9 – 13, 2026, and Posted on the New York Appellate Digest Website Monday, February 16, 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.

Table of Contents

Contents

Table of Contents

ANIMAL LAW, CRIMINAL LAW, EVIDENCE, JUDGES.

THE JUDGE IN THIS AGGRAVATED CRUELTY TO ANIMALS CASE SHOULD NOT HAVE REDUCED THE COUNTS IN THE INDICTMENT ABSENT A WRITTEN MOTION OR A WAIVER BY THE PEOPLE; THE EVIDENCE WAS LEGALLY SUFFICIENT TO SUPPORT THE INDICTMENT; THE JUDGE SHOULD NOT HAVE DETERMINED DEFENDANT COULD NOT HAVE FORMED THE REQUISITE INTENT DUE TO MENTAL DISEASE OR DEFECT; ONLY A JURY CAN MAKE THAT DETERMINATION (FOURTH DEPT).

The Fourth Department, reversing County Court in this aggravated cruelty to animals case, determined (1) the judge should not have reduced the counts in the indictment absent a written motion and (2) the evidence presented to the grand jury was legally sufficient to support the indictment. Defendant put three kittens in a knotted pillowcase left them on a balcony during a snow storm. They were discovered under several feet of snow. Two of the kittens died. The judge apparently concluded the defendant, due to mental disease of defect, was not capable of forming the intent to commit the offense. The Fourth Department noted that only a jury can make that determination:

… County Court erred in reducing the counts without a written motion requesting such relief. "A motion to dismiss an indictment pursuant to [CPL] 210.20 must be made in writing and upon reasonable notice to the people" (CPL 210.45 [1] …). "The procedural requirements of CPL 210.45 must be adhered to even when consideration of the dismissal is upon the court's own motion" … . Unless those requirements have been waived by the People, "[t]he failure . . . to comply with the statutory mandates requires a reversal" … . * * *

We conclude that the evidence before the grand jury was legally sufficient to establish that defendant, with no justifiable purpose, intentionally killed the kittens and that defendant did so with aggravated cruelty inasmuch as defendant killed the

kittens in a manner that inflicted extreme pain on the dying animals … or did so in a manner likely to prolong the animals' suffering … .

To the extent that the court reduced the counts on its own finding that defendant could not form the requisite intent, that was improper weighing of the evidence inasmuch as "consideration of a potential defense of mental disease or defect should rest exclusively with the petit jury" … . People v Taylor, 2026 NY Slip Op 00738, Fourth Dept 2-11-25

Practice Point: A judge cannot on the court's own motion reduce counts of an indictment. There must be a written motion absent a waiver by the People.

Practice Point: A judge cannot, sua sponte, find that defendant could not form the required intent to commit the charged offense due to mental disease or defect. Only a jury can make that determination.

February 11, 2026

CRIMINAL LAW, APPEALS, EVIDENCE.

DISAGREEING WITH THE THIRD DEPARTMENT, THE SECOND DEPARTMENT HELD THAT A PREHEARING DENIAL OF AN APPLICATION FOR RESENTENCING UNDER THE DOMESTIC VIOLENCE SURVIVORS JUSTICE ACT (DVSJA) IS APPEALABLE; HERE DEFENDANT DID NOT DEMONSTRATE A SUFFICIENT NEXUS BETWEEN THE ABUSE HE SUFFERED WHILE LIVING WITH HIS FAMILY AND THE STABBING OF A STRANGER AFTER HE HAD LEFT HOME (FIRST DEPT).

The First Department, in a full-fledged opinion by Justice Kapnick, determined (1) (disagreeing with the Third Department) defendant has the right to appeal from a prehearing dismissal of an application for resentencing under the Domestic Violence Survivors Justice Act (DVSJA), and (2) the dismissal of defendant's application was appropriate because defendant did not meet his evidentiary burden. Defendant stabbed and killed a stranger during an argument when he was 20 years old. He pled guilty to manslaughter. He applied for resentencing under the DVSJA

based upon alleged abuse by family members. The application was denied, in part, because the abuse was not alleged to have been ongoing at the time of the offense:

… [T]he Third Department dismissed an appeal from a prehearing order denying a DVSJA resentencing application. The Third Department reasoned that "in enacting the DVSJA, the Legislature expressly authorized appeals as of right to an intermediate appellate court from orders denying resentencing or granting resentencing and imposing a new sentence," but provided no such express statutory right to appeal "from an order dismissing an application for resentencing prior to a hearing" … . However, … CPL 440.47(3) specifically provides that an appeal may be taken as of right from "an order denying resentencing;" there is no language limiting that appellate right only to orders issued after a hearing is held.

… [T]he First and Second Departments have repeatedly reviewed orders denying a DVSJA resentencing application without a hearing due to a defendant's failure to satisfy CPL 440.47(2)'s evidentiary requirements … . * * *

Cognizant of the horrific abuse that defendant suffered throughout his life, we nonetheless note that defendant had by his own admission left his adoptive parents' home almost three years before the underlying crime. People v Croney, 2026 NY Slip Op 00630, First Dept 2-10-26

Practice Point: In the Third Department the prehearing denial of an application for resentencing under the DVSJA is not appealable. In the First and Second Departments, a prehearing denial is appealable.

Practice Point: Here there was no question defendant had suffered horrific abuse when living with his family. But the offense was committed after defendant had left home. The DVSJA was deemed not to apply under the facts.

February 10, 2026

Table of Contents

CRIMINAL LAW, ATTORNEYS, EVIDENCE.

DEFENSE COUNSEL WAS INEFFECTIVE IN FAILING TO CHALLENGE THE INITIAL POLICE CONTACT WITH THE DEFENDANT AS UNJUSTIFIED; THE MATTER WAS REMITTED FOR A SUPPRESSION HEARING (FOURTH DEPT).

The Fourth Department, ordering a suppression hearing, determined defense counsel was ineffective in failing to challenge whether the police were justified in initiating the encounter with the defendant based upon a vague and ambiguous 911 call:

We conclude that the record establishes that defense counsel could have presented a colorable argument that the police officer's actions were either not justified at the inception of the encounter or otherwise not reasonably related in scope to the circumstances presented (see De Bour, 40 NY2d at 215). Here, the officer's encounter with defendant was based on a 911 call from a security guard at a nearby restaurant who said that he observed a man who had what "looks like a black phone, but then again . . . looks like a gun." The security guard provided a description of the individual, and the guard said that he could not be sure, but that he thought the man might have been part of a dispute that had taken place at the restaurant earlier in the day. Notably, County Court held a Huntley hearing at which the arresting officer testified, but the testimony of the officer as well as his body cam footage, which was admitted at the hearing, presented a " 'close [question] under [the] complex De Bour jurisprudence' " regarding the legality of the police encounter … . People v Wyatt, 2026 NY Slip Op 00720, Fourth Dept 2-11-26

Practice Point: Defense counsel was deemed ineffective for failing to challenge the initial encounter between the defendant and the police. The remedy was remittal for a suppression hearing.

February 11, 2026

Table of Contents

CRIMINAL LAW, EVIDENCE, FAMILY LAW, JUDGES.

SORA RISK-LEVEL POINTS SHOULD NOT HAVE BEEN ASSESSED BASED UPON A JUVENILE DELINQUENCY ADJUDICATION; THE EVIDENCE DID NOT SUPPORT AN AUTOMATIC OVERRIDE FOR AN "ABNORMALITY THAT DECREASES THE ABILITY TO CONTROL IMPULSIVE SEXUAL BEHAVIOR" (FOURTH DEPT).

The Fourth Department, reducing defendant's risk level assessment from three to two determined (1) the court should not have based a 10-point assessment on a juvenile delinquency adjudication and (2) the evidence did not demonstrate defendant suffered from an abnormality that decreased his ability to control impulsive sexual behavior:

Defendant was assessed 10 points under risk factor 8 for his age at the time of his first sex crime based on a juvenile delinquency adjudication when he was 15 years old, and the court rejected defendant's challenge to the assessment of points under that risk factor. We have repeatedly held, however, that a juvenile delinquency adjudication may not be considered a crime for purposes of assessing points in a SORA determination … . * * *

Defendant also contends that the court erred when it,… adjudicated him a level three risk through application of an automatic override based on "a clinical assessment that the offender has a psychological, physical, or organic abnormality that decreases his ability to control impulsive sexual behavior" … . We agree. It is well settled that "[t]he People bear the burden of proving the applicability of a particular override by clear and convincing evidence" … . … While the record supports the conclusion that defendant suffered from mental illness and that he exhibited impulsive behavior, there was no clinical assessment in the record establishing that his mental illness decreased his ability to control his behavior. Of note, neither the People nor the Board of Examiners of Sex Offenders requested that the court apply the automatic override here and, further, defendant never had the opportunity to oppose use of the override before the court decided to apply it. People v Singleton, 2026 NY Slip Op 00756, Fourth Dept 2-11-26

Practice Point: A court cannot assess SORA risk-level points based on a juvenile delinquency adjudication.

Practice Point: Consult this decision for insight into the evidence required to apply an automatic override in a SORA risk-assessment proceeding based on "a clinical assessment that the offender has a psychological, physical, or organic abnormality that decreases his ability to control impulsive sexual behavior" … .

February 11, 2026

FAMILY LAW, JUDGES, EVIDENCE.

GRANDMOTHER DEMONSTRATED "EXTRAORDINARY CIRCUMSTANCES" SUCH THAT SHE HAD STANDING TO SEEK CUSTODY OF THE CHILDREN (FOURTH DEPT).

The Fourth Department, reversing Family Court and remitting the matter, determined that grandmother had demonstrated "extraordinary circumstances" and she therefore had standing to bring a custody petition:

The evidence here established that, in 2018, the father was arrested and incarcerated until 2022. During that time, the children resided with the mother in the grandmother's home until October 2021, when the grandmother moved out. The father never saw the children while he was incarcerated, rarely spoke with them, and never sent them cards, letters, or gifts. When the father was released from incarceration, the mother asked him to take custody of the children, which he did starting in July or August 2022; the grandmother visited with the children on the weekends. The mother died less than a year later, and the children lived with the grandmother during the summer of 2023. In September 2023, the parties filed petitions seeking custody of the children, and the court granted the grandmother temporary custody of the children, with the father having visitation. From that time until the conclusion of the hearing in July 2024, the father did not visit with the children and rarely communicated with them.

We conclude that the cumulative effect of the father's extended incarceration, his failure to maintain contact with the children during that time, the children's

resulting bond with the grandmother, and the father's failure to maintain contact with the children during the pendency of the hearing, is sufficient to establish extraordinary circumstances … . Matter of Craig v Thomas, 2026 NY Slip Op 00751, Fourth Dept 2-11-26

Practice Point: Consult this decision for insight into the nature of "extraordinary circumstances" which will confer standing upon a grandparent to seek custody of the grandchildren.

February 11, 2026

INSURANCE LAW, CIVIL PROCEDURE, CONTRACT LAW, EVIDENCE.

PLAINTIFF ALLEGED SHE WAS COVERED AS AN ADDITIONAL INSURED UNDER THE POLICY AND ATTACHED A CERTIFICATE OF INSURANCE TO HER COMPLAINT; A CERTIFICATE OF INSURANCE IS NOT SUFFICIENT PROOF OF THE EXISTENCE OF AN INSURANCE CONTRACT; PLAINTIFF'S COMPLAINT SHOULD HAVE BEEN DISMISSED (FIRST DEPT).

The First Department, reversing Supreme Court, determined the complaint alleging plaintiff was an additional insured based upon the certificate of insurance should have been dismissed. A certificate of insurance does not prove the existence of an insurance contract:

Only those named as an insured or additional insured on an insurance policy are entitled to coverage … . As the party claiming coverage, plaintiff bears the burden of showing that the policy covers her … .

Supreme Court should have granted [the insurer's] motion to dismiss the complaint because plaintiff failed to plead facts showing that she was covered under the policy. The certificate of liability insurance is insufficient to prove that plaintiff was an additional insured because "[a] certificate of insurance is only evidence of a carrier's intent to provide coverage but is not a contract to insure the designated party nor is it conclusive proof, standing alone, that such a contract exists" … .

Furthermore, the certificate contains a disclaimer stating that it was "issued as a matter of information only and confers no rights upon the certificate holder" … . Itzhak v Briarwood Ins. Servs. Inc., 2026 NY Slip Op 00616, First Dept 2-10-26

Practice Point: A certificate of insurance is not proof of the existence of an underlying insurance contract. Here plaintiff relied solely on a certificate of insurance to allege she was covered under the policy as an additional insured. That was not enough to state a cause of action.

February 10, 2026

INSURANCE LAW, CONTRACT LAW.

THE RESTAURANT'S INSURANCE POLICY COVERED INJURY INCURRED IN THE OPERATION OF THE "PREMISES" AND THEREFORE DID NOT COVER INJURY CAUSED BY A RESTAURANT EMPLOYEE WHO WAS DELIVERING FOOD BY BICYCLE; IF THE POLICY HAD USED THE WORD "BUSINESS" RATHER THAN "PREMISES," THE OFF-PREMISES INJURY WOULD HAVE BEEN COVERED (SECOND DEPT).

The Second Department, reversing Supreme Court, in a full-fledged opinion by Justice Landicino, determined the restaurant's insurance policy did not cover an injury cause by a restaurant employee a block away from the restaurant. Plaintiff was struck by a restaurant employee who was on a bicycle returning from a food delivery. The policy limited coverage to injury arising out of use of the restaurant "premises … and operations necessary or incidental to those premises." The Second Department focused on the word "premises" and concluded an accident a block away from the "premises" was not covered. The court noted that had the coverage limitation used the word "business," as opposed to "premises," the injury would have been covered:

There is … a glaring difference between an insurance policy that insures against losses arising from operations necessary or incidental to a business, which would ostensibly include all claims of bodily injury arising from an employee's negligence while that employee is acting within the scope of his or her

employment for the business, and a policy that insures against losses arising from operations necessary or incidental to a premises, which include claims of bodily injury that must have some premises-based connection to the covered premises. Here, the insurance policy at issue covered only those damages that arose from the operations "necessary or incidental" to the premises, which is a narrower category of coverage. Despite the fact that the alleged incident occurred while the restaurant's employee may have been acting in the scope of his employment, the incident did not occur as a result of any activity that was connected to the operation of the premises. Normile v DB Ins. Co., Ltd., 2026 NY Slip Op 00788, Second Dept 2-11-26

Practice Point: Consult this opinion for insight into how a court will interpret a limitation of coverage in an insurance policy.

February 11, 2026

LABOR LAW-CONSTRUCTION LAW, EVIDENCE.

PLAINTIFF WAS HIT BY A FALLING CHISEL WHILE SITTING UNDER A SIDEWALK BRIDGE AT THE WORKSITE TAKING A BREAK; THE CHISEL SHOULD HAVE BEEN SECURED AND THE SCAFFOLDING ABOVE PLAINTIFF WAS INADEQUATE TO PROTECT HIM FROM A FALLING OBJECT; PLAINTIFF WAS ENTITLED TO SUMMARY JUDGMENT ON THE LABOR LAW 240(1) CAUSE OF ACTION (FIRST DEPT).

The First Department, reversing Supreme Court, determined plaintiff in this falling-object case was entitled to summary judgment on his Labor Law 240(1) cause of action. Plaintiff was sitting underneath a sidewalk bridge on the jobsite, taking a break, when he was struck by a chisel. The chisel should have been secured and the scaffolding above plaintiff had gaps and therefore failed to provide adequate protection. Plaintiff did not have to prove where the chisel came from:

… "[I]njuries sustained while a worker was on site, although . . . on a break, come within the protections of Labor Law § 240(1)" … .

Plaintiff established that the chisel "required securing for the purposes of the undertaking" and that the scaffolding "proved inadequate" to protect him … . It is irrelevant that plaintiff did not know where the chisel fell from, or what caused it to fall, or hear anything fall, as "plaintiff is not required to show exactly how the [object] fell" … . Any alleged inconsistency concerning the location of the accident is immaterial … . Similarly, it does not matter where the chisel struck plaintiff's body, as it is undisputed that it struck him. … [P]laintiff alleges without contradiction that the scaffolding was defective … , including the existence of gaps between the scaffolding planks. Contreras v City of New York, 2026 NY Slip Op 00612, First Dept 2-10-26

Practice Point: In a Labor Law 240(1) falling-object case, a plaintiff need not prove where the object came from.

February 10, 2026

LANDLORD-TENANT, TAX LAW, MUNICIPAL LAW, EVIDENCE, FRAUD.

THE FIRST DEPARTMENT RULED THAT PLAINTIFF-TENANTS DID NOT DEMONSTRATE, AS A MATTER OF LAW, THAT DEFENDANTS ENGAGED IN A FRAUDULENT SCHEME TO DEREGULATE APARTMENTS WHILE RECEIVING J51 TAX BENEFITS; THE COURT OF APPEALS REVERSED (CT APP).

The First Department, in a full-fledged opinion by Justice Kennedy, over a comprehensive, two-justice dissenting opinion, determined plaintiff-tenants did not demonstrate, as a matter of law, a fraudulent scheme on the part of the defendants re: deregulation of apartments while receiving J51 tax benefits. The Court of Appeal reversed and remitted:

From the First Department decision:

The issues presented on this appeal are (1) what is the appropriate base date rent for calculating damages and (2) whether the record before us sets forth evidence of a fraudulent scheme to deregulate the subject apartments to permit use of the

default formula pursuant to Rent Stabilization Code (RSC) (9 NYCRR) § 2526.1(g). * * *

… [W]e conclude that the record before us did not establish evidence of a fraudulent scheme to deregulate the subject apartments as a matter of law, and that it was improper to utilize the default formula to calculate damages … . Aras v B-U Realty Corp., 2023 NY Slip Op 04917, First Dept 10-3-23

Reversed by the Court of Appeals: Aras v B-U Realty Corp., 2026 NY Slip Op 00637. CtApp 2-11-26

February 11, 2026

REAL PROPERTY TAX LAW, CIVIL PROCEDURE, MUNICIPAL LAW.

IN A SMALL CLAIMS ASSESSMENT REVIEW (SCAR) CHALLENGING A REAL PROPERTY ASSESSMENT FOR TAX PURPOSES, HOMEOWNERS HAVE STANDING TO CHALLENGE THE RESIDENTIAL ASSESSMENT RATIO (RAR) WHICH IS SET BY THE NYS OFFICE OF REAL PROPERTY TAX SERVICES (ORPTS) (SECOND DEPT).

The Second Department, in a full-fledged opinion by Justice Genovesi, determined that a residential assessment ratio (RAR) can be challenged by a residential property owner in a small claims assessment review (SCAR). In a SCAR a property owner can challenge the assessed value of the property as an "excessive assessment" and/or as an "unequal assessment:"

A class ratio refers to an assessment ratio that can apply to various types of properties. The residential assessment ratio (hereinafter RAR) is a specific class ratio used to determine the level of assessment for residential properties. It is a measurement of the overall ratio of the total assessed value of residential property in the municipality compared to the full market value … . * * *

It is the opinion of this Court that to conduct the proceedings in a manner that does substantial justice between the parties, RPTL article 7, title 1-A must be interpreted as conferring homeowners with standing to challenge the RAR … or to mount a

"collateral attack" on the RAR by providing their own ratio study with an alternative ratio, within the limited context of that SCAR proceeding. To hold otherwise would frustrate the purpose of the statute, which is to provide property owners with an efficient, inexpensive, and simple alternative to the complex and formal tax certiorari proceeding. Matter of Yeung v Assessor of the Vil. of Great Neck Estates, 2026 NY Slip Op 00784, Second Dept 2-11-26

Practice Point: In a small claims assessment review (SCAR) a homeowner can challenge the tax assessment of the property. The question in this case was whether, at a SCAR, the homeowner can challenge the residential assessment ratio (RAR) which is set by New York State. The Second Department held that a homeowner can challenge the RAR in a SCAR.

February 11, 2026

ZONING, MUNICIPAL LAW, TOWN LAW.

THE DENIAL OF AN AREA VARIANCE FOR A GARAGE WHICH WAS BELOW THE MAXIMUM HEIGHT BUT WAS FOUR FEET HIGHER THAN THE RESIDENCE WAS NOT "IRRATIONAL;" THIRD DEPARTMENT REVERSED BY THE COURT OF APPEALS (CT APP).

The Third Department, reversing Supreme Court, over a two-justice dissent, determined the denial of petitioner's request for an area variance for a garage which was four feet higher than the residence was irrational. The Court of Appeals reversed:

From the Third Department decision:

The relevant question presented by petitioner's application was whether a four-foot area variance would be out of character with the surrounding neighborhood in an instance, as here, where both structures are under the maximum height limit for an accessory structure and the residence is far below the height limit for a dwelling. … Respondent did not explain why this height differential, in context, would prove detrimental to the neighboring community. * * *

As to “feasible” alternatives, the difficulty here is that the garage had already been constructed before petitioner consolidated the lots and applied for the variance. While this situation may fairly be characterized as self-created, * * * neither respondent nor Supreme Court accounted for the statutory qualifier that a self-created problem, while relevant, “shall not necessarily preclude the granting of the area variance” (Town Law § 267-b [3] [b] [5]). Nor did respondent or Supreme Court address the clear benefit to petitioner of maintaining her garage, as compared to the prospect of having to remove the structure and the attendant financial loss … . Matter of Williams v Town of Lake Luzerne Zoning Bd. of Appeals, 2025 NY Slip Op 04509, Third Dept 7-31-25

Reversed by the Court of Appeals: Matter of Williams v Town of Lake Luzerne Zoning Bd. of Appeals, 2026 NY Slip Op 00639, CtApp 2-11-26

February 11, 2026