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Weekly Reversal
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DEFENDANT FAILED TO DEMONSTRATE PLAINTIFF RECEIVED AND REVIEWED THE “TERMS AND CONDITIONS” ADDENDUM TO THE CONTRACT WHICH INCLUDED THE ARBITRATION CLAUSE; DEFENDANT’S EFFORT TO COMPEL ARBITRATION DENIED (FIRST DEPT).

The First Department, in a full-fledged opinion by Justice Higgitt, determined the defendant energy company did not demonstrate plaintiff agreed to an arbitration

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clause which defendant claimed was included in a four-page “Terms and Conditions” addendum to the contract. Essentially plaintiffs argued they were never provided with the four-page “Terms and Conditions.” Defendant relied on weak and contradictory evidence to the contrary, some of which was provided for the first time in a reply document (generally not considered by a motion court):

As a procedural matter, defendant could not employ its reply to remedy a basic deficiency in its prima facie showing After all, defendant’s theory of actual notice rested on its sales representative’s adherence to a business practice and defendant was unable to establish, in its underlying submission, the actual relevant practice (if any) that [the sales representative] used.

As a substantive matter, the inconsistent factual presentation between defendant’s underlying submission and its reply submission leaves a void on the critical question of what documents were reviewed with [plaintiff], undermining defendant’s contention that a particular business practice was employed and followed such that [plaintiff] received actual notice of the arbitration provision. [Knight v Family Energy Inc., 2026 NY Slip Op 01599, First Dept 3-17-26](#)

March 17, 2026

ATTORNEYS, NEGLIGENCE.

THE ATTORNEY REPRESENTED PLAINTIFF DRIVER AND PLAINTIFF PASSENGERS IN THIS REAR-END COLLISION CASE; THE COUNTERCLAIM FOR INDEMNIFICATION AGAINST PLAINTIFF DRIVER CREATED A “PECUNIARY” CONFLICT OF INTEREST BETWEEN PLAINTIFF DRIVER AND PLAINTIFF PASSENGERS; THE ATTORNEY WAS DISQUALIFIED FROM REPRESENTING ALL THE PLAINTIFFS (FIRST DEPT).

The Second Department, reversing Supreme Court, determined the attorney, Gambone, should have been disqualified from representing the plaintiff driver and

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the plaintiff-passengers in this rear-end collision case. The defendant asserted a counterclaim for indemnification against plaintiff driver, which created a “pecuniary” conflict of interest between the driver and the passengers. It is not clear from the decision why Gambone was precluded from representing the passengers and well as the driver:

... [T]he defendants demonstrated that Gambone’s representation of both the plaintiff driver and the passengers created a conflict of interest Although the passengers contend that there was no conflict of interest because the plaintiff driver, whose vehicle allegedly was struck in the rear while he was stopped at a red traffic signal, was not at fault in the happening of the accident, the pecuniary interests of the plaintiff driver conflicted with those of the passengers once the defendants asserted the counterclaim against the plaintiff driver Moreover, under the circumstances of this case, the defendants sufficiently demonstrated that Gambone should be disqualified from continuing to represent any plaintiffs in this action [Diaz v Gomez, 2026 NY Slip Op 01487, First Dept 3-18-26](#)

Practice Point: Even though this was a rear-end collision case and it is not clear that plaintiff driver was negligent, the defendant’s counterclaim against plaintiff driver for indemnification created a “pecuniary” conflict of interest between plaintiff driver and plaintiff passengers. Therefore the attorney was disqualified from representing both plaintiff driver and plaintiff passengers. For reasons which are not provided in the decision, the attorney was disqualified from representing all of the plaintiffs.

March 18, 2026

CIVIL PROCEDURE, CONTRACT LAW, FORECLOSURE.

A STIPULATION TOLLING THE STATUTE OF LIMITATIONS IS ENFORCEABLE, DESPITE THE RETROACTIVE APPLICATION OF THE FORECLOSURE ABUSE PREVENTION ACT (FAPA) (FIRST DEPT).

The First Department, in a full-fledged opinion by Justice Michael, reversing Supreme Court, determined that, although the foreclosure action would have been

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untimely pursuant to the Foreclosure Abuse Protection Act (FAPA) because the plaintiff's voluntary discontinuance no longer can stop the running of the statute of limitations, here the parties had entered a stipulation tolling the statute of limitations. Supreme Court erred by finding the stipulation unenforceable:

Plaintiff's prior mortgage foreclosure action against defendant was commenced on July 25, 2008, which indisputably accelerated the entire loan. On May 4, 2011, the parties agreed to discontinue the foreclosure action without prejudice via written stipulation. They also agreed that "the statute of limitations for any claims of plaintiff or defendant against the other is hereby tolled from July 22, 2008 . . . until June 1, 2013." The stipulation was executed by the parties' respective counsel and filed with the court. Plaintiff subsequently commenced this foreclosure action on February 16, 2018 and moved for summary judgment. Defendant cross-moved to dismiss the complaint, arguing that plaintiff's action was time-barred under FAPA.

* * *

Simply put, despite FAPA's retroactive application, the parties' 2011 stipulation in which they expressly agreed to toll the limitations period to June 1, 2013 effectively tolled the limitations period to that date. Plaintiff's commencement of this action on February 16, 2018, less than six years later, was thus timely. [HSBC Bank USA, N.A. v Nicholas, 2026 NY Slip Op 01461, First Dept 3-27-26](#)

Practice Point: A valid stipulation tolling the statute of limitations will be enforced even where, pursuant to FAPA, the revived foreclosure action would otherwise have been untimely.

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CIVIL PROCEDURE, NEGLIGENCE, TRUSTS AND ESTATES, ATTORNEYS. HERE IN THIS TRAFFIC ACCIDENT CASE THE DRIVER OF THE VEHICLE IN WHICH PLAINTIFF WAS A PASSENGER DIED DURING THE PENDENCY OF THE ACTION; PLAINTIFF PASSENGER HAD SUED DECEDENT DRIVER AND THE DEFENDANT TRUCKING COMPANY; THE ATTORNEYS FOR THE DECEDENT DRIVER DID NOT HAVE THE AUTHORITY TO MOVE TO DISMISS THE COMPLAINT AGAINST THE DECEDENT DRIVER; THE DEFENDANT TRUCKING COMPANY DID NOT GIVE THE INTERESTED PARTIES THE REQUIRED NOTICE OF ITS MOTION TO DISMISS BASED UPON THE DRIVER'S DEATH; AND PLAINTIFF PASSENGER DID NOT COMPLY WITH THE PROCEDURES FOR THE APPOINTMENT OF THE PUBLIC ADMINISTRATOR TO REPRESENT THE DECEDENT DRIVER (SECOND DEPT).

The Second Department, reversing Supreme Court, determined (1) the attorneys for the decedent driver did not have the authority to move to dismiss plaintiff-passenger's action against the decedent because the decedent's death during the pendency of the action divested the court of jurisdiction, (2) the defendant's motion to dismiss based upon the driver's death should not have been granted because defendant did not notify the parties with an interest in decedent's estate of the motion, and (3) plaintiff-passenger's cross-motion to appoint the Public Administrator to represent the driver's estate should not have been granted because plaintiff did not notify parties interested in the estate of the cross-motion and did not otherwise follow the procedures for such an appointment:

“The death of a party divests the court of jurisdiction and stays the proceedings until a proper substitution has been made pursuant to CPLR 1015(a). Moreover, any determination rendered without such substitution will generally be deemed a nullity” The death of a party terminates his or her attorney's authority to act on behalf of the deceased party * * *

“CPLR 1021 defines the procedural mechanisms for seeking a substitution of successor or representative parties, and for the dismissal of actions where

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substitutions are not timely sought” CPLR 1021 provides, in pertinent part, that “[i]f the event requiring substitution occurs before final judgment and substitution is not made within a reasonable time, the action may be dismissed as to the party for whom substitution should have been made.” Further, “a motion to dismiss pursuant to CPLR 1021 requires that notice be provided to persons interested in the decedent’s estate” * * *

... [T]he plaintiff failed to sufficiently demonstrate that she provided notice of her cross-motions to persons interested in [the] estate Moreover, the plaintiff “failed to demonstrate the steps [she] had taken to secure the appointment of a personal representative in the appropriate Surrogate’s Court or that resort to the appropriate Surrogate’s Court was otherwise unfeasible . . . and otherwise failed to adequately demonstrate why the appointment of a temporary administrator was needed to avoid undue delay and prejudice” [Ford v Luckain, 2026 NY Slip Op 01493, Second Dept 3-18-26](#)

Practice Point: Consult this decision for insight into the procedures which must be followed when a party in a pending traffic-accident case dies, divesting the court of jurisdiction and curtailing the authority of the decedent’s attorneys to act on decedent’s behalf.

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CONSTITUTIONAL LAW, LABOR LAW-CONSTRUCTION
LAW, NEGLIGENCE.

PLAINTIFF WAS A CO-PILOT OF A HELICOPTER USED TO PROVIDE AN AERIAL PLATFORM FOR WORK ON POWER LINES; THE HELICOPTER STRUCK A POWER LINE AND PLAINTIFF JUMPED FROM THE HELICOPTER FROM A HEIGHT OF 75 FEET; THE LABOR LAW 240(1) AND 241(6) STRICT LIABILITY CAUSES OF ACTION WERE PREEMPTED BY THE FEDERAL AVIATION ACT (FAA); THE LABOR LAW 200 AND NEGLIGENCE CAUSES OF ACTION SHOULD NOT HAVE BEEN DISMISSED; RATHER THE FEDERAL STANDARD OF CARE SHOULD BE APPLIED TO THOSE CAUSES OF ACTION (SECOND DEPT).

The Second Department, reversing (modifying) Supreme Court, in a full-fledged opinion by Justice Ford, determined the Labor Law 240(1) and 241(6) six causes of action were preempted by the Federal Aviation Act (FAA) but the negligence and Labor Law 200 causes of action should not have been dismissed because the federal standard of care can be applied to them. Plaintiff was the co-pilot of a helicopter which was being used to provide an aerial platform for work on power lines. The helicopter struck a power line and plaintiff jumped out of the helicopter from a height of 75 feet:

Under the federal rules, “[t]he pilot in command of an aircraft is directly responsible for, and is the final authority as to, the operation of that aircraft” (14 CFR 91.3[a] ...). Various federal courts have held that the pilot thereby has the “sole responsibility to determine whether it is safe or unsafe to undertake the proposed flight” * * *

Additionally, under the federal rules, “[n]o person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another” (14 CFR 91.13[a]). This rule is “[c]entral” to the FAA’s overarching standard of care Common-law negligence cases require a more stringent standard of care, “that of a reasonable person under the same or similar circumstances” Labor Law § 200 codifies the common-law negligence standard ... , while Labor Law §§ 240(1)

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and 241(6) “subject contractors and owners to absolute strict liability” The standards of care underlying the four sources of liability alleged by the plaintiff— i.e., liability for common-law negligence and under Labor Law §§ 200, 240(1), and 241(6)—thereby conflict with, and are preempted by, the federal recklessness standard. . . .

Where applicable, the effect of preemption of a state standard of care is not to preclude recovery or “to deprive Plaintiffs of their state remedies, but rather, to substitute a federal standard of care for New York’s reasonably-prudent-person standard” [Fabia v Power Auth. of the State of N.Y., 2026 NY Slip Op 01489, Second Dept 3-18-26](#)

Practice Point: Here, although the Federal Aviation Act (FAA) preempted the strict liability Labor Law 240(1) and 241(6) causes of action in this helicopter-accident case, the negligence and Labor Law 200 causes of action should not have been dismissed because the federal standard of care can be applied to them.

Practice Point: Consult this opinion for an in-depth analysis of the issues raised by preemption of state Labor Law and negligence claims stemming from a helicopter accident by the Federal Aviation Act (FAA).

March 18, 2026

CONSTITUTIONAL LAW.

NEW YORK’S MARIHUANA REGULATION AND TAXATION ACT (MRTA) IS NOT PREEMPTED BY THE FEDERAL CONTROLLED SUBSTANCES ACT (CSA) (THIRD DEPT).

The Third Department, in a full-fledged opinion by Justice Fisher, determined New York’s Marihuana Regulation and Taxation Act (MRTA) which allows the sale and use of marihuana, is not preempted by the federal Controlled Substance Act, which does not allow the sale and use of marihuana:

... [W]e turn to petitioners’ contention that the challenged regulations promulgated under MRTA — which authorizes the sale, use and distribution of marihuana —

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create a positive conflict with the CSA prohibiting these exact actions. We find that no such conflict exists. Consistent with the main objectives of the CSA, the legislative intent behind MRTA was to, among other things, “regulate, control, . . . reduce the illegal drug market and reduce violent crime, reduce participation of otherwise law-abiding citizens in the illicit market . . . [and] protect the public health, safety and welfare of the people of the state” In doing so, the Legislature specifically provided that nothing in MRTA was “to require any individual to engage in any conduct that violates federal law or to exempt anyone from any requirement of federal law or pose any obstacle to the federal enforcement of federal law” Each of the challenged parts 113, 128 and 129 within title 9 of the NYCRR further these principles by regulating the legitimate and illegitimate handling of marihuana by setting specific restrictions on prescribers, manufacturers and retailers — including, as specifically challenged by petitioners, how medical and adult-use marihuana could be labeled, advertised and marketed When considered through the lens of a conflict preemption analysis, although petitioners present several instances where they claim there is an impossibility between federal and state law, these are merely hypothetical or potential conflicts, as neither MRTA nor the challenged regulations pose any requirements on an individual or entity to manufacture, distribute or possess marihuana [Matter of Cannabis Impact Prevention Coalition, LLC v Hochul, 2026 NY Slip Op 01573, Third Dept 3-19-26](#)

Practice Point: Consult this opinion for a cogent summary of the criteria for federal preemption of a state law.

March 19, 2026

CRIMINAL LAW, ATTORNEYS, CONSTITUTIONAL LAW, JUDGES.

DEFENDANT, BY FIRING HIS ATTORNEY AND REFUSING TO BE PRESENT AT TRIAL, WAIVED HIS RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL AND HIS RIGHT TO BE PRESENT AT HIS TRIAL (CT APP).

The Court of Appeals, in a full-fledged opinion by Judge Singas, over a concurrence and an extensive dissent, determined defendant, by firing his attorney

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and refusing to be present during the trial, waived his right to effective assistance of counsel and his right to be present at his trial. The court further determined that the consecutive sentences for two counts of criminal possession of a weapon were improper because both offenses arose from the same act of possession:

“Waiver is a knowing, intelligent, and voluntary relinquishment of a known right” Like other fundamental rights, a defendant’s right to effective assistance of counsel may be waived We have explained that “[a]n accused awaiting trial . . . has only two choices regarding legal representation—proceed with counsel or waive the protection of the Sixth Amendment and proceed pro se” Accordingly, when a defendant “refuse[s] self-representation and restrict[s] the participation of counsel . . . [they] hav[e] voluntarily waived the right to the effective assistance of counsel”

Whether the waiver of a fundamental right is valid “depend[s], in each case, upon the particular facts and circumstances surrounding that case, including the background, experience, and conduct of the accused” “In many instances, the requisite affirmative showing that . . . [a] right[] ha[s] been knowingly, voluntarily, and intelligently waived will include a direct colloquy between the court and the defendant” We have also long held that a defendant may waive certain fundamental rights by their conduct, most notably in the context of the right to be present In determining whether such a waiver occurred, relevant circumstances include the warnings provided by the trial court, the defendant’s actions in response, and whether, in light of the defendant’s conduct, the trial court could practicably have administered additional warnings or attempted to secure an oral waiver. * * *

In light of the trial court’s many warnings to defendant and defendant’s obstructive behavior in response, there is record support for the conclusion that, by his conduct, defendant waived the right to effective assistance of counsel. A trial court must be cautious not to conflate waiver of the right to be present at trial with waiver of the right to effective assistance of counsel. These rights are separate, and a trial court has distinct duties to ensure the validity of a defendant’s waiver of each. However, in certain circumstances, as in this case, the same conduct may amount to a waiver of both rights. [People v Lewis, 2026 NY Slip Op 01588, CtApp 3-19-26](#)

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Practice Point: A defendant by his behavior (here firing his attorney and walking out of the trial), in the face of sufficient warnings by the judge, may waive both the right to effective assistance of counsel and the right to be present at the trial.

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CRIMINAL LAW, ATTORNEYS.

DEFENSE COUNSEL MAY HAVE HAD LEGITIMATE STRATEGIC REASONS FOR FAILING TO OBJECT TO A REPUGNANT VERDICT, INCLUDING THE AVOIDANCE OF THE RISK OF RE-EXPOSING DEFENDANT TO AN ATTEMPTED SECOND-DEGREE MURDER CONVICTION; DEFENDANT DID NOT DEMONSTRATE INEFFECTIVE ASSISTANCE (CT APP).

The Court of Appeals determined defendant did not demonstrate his attorney's failure to object to a repugnant verdict constituted ineffective assistance:

Defendant has not demonstrated a lack of strategic or other legitimate explanation for his attorney's failure to object to the jury verdict as repugnant (see *People v Benevento*, 91 NY2d 708, 712 [1998]). Counsel could have declined to object to avoid the possibility that, to remedy the verdict's repugnancy, the court might resubmit all charges to the jury, reexposing defendant to an attempted second-degree murder conviction (see CPL 310.50 [2]; *People v Salemmo*, 38 NY2d 357, 360-362 [1976]) That this additional conviction would not have increased defendant's maximum sentencing exposure does not change this analysis.

Sentencing exposure is not dispositive of the sentence a court ultimately imposes. Moreover, an additional felony conviction may have adverse collateral consequences and added societal stigma (see *Ball v United States*, 470 US 856, 865 [1985]; [People v Greene](#), 41 NY3d 950, 951 [2024]), particularly a conviction for attempting to murder a police officer. [People v Gaffney](#), 2026 NY Slip Op 01445, CtApp 3-17-26

Practice Point: Consult this decision for insight into when defense counsel's failure to object to a repugnant verdict may be supported by legitimate strategic

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concerns—the avoidance of re-exposing defendant to charges of which he was acquitted, for example.

March 17, 2026

CRIMINAL LAW, CONSTITUTIONAL LAW.

THE FOURTEEN-MONTH PRE-INDICTMENT DELAY DID NOT VIOLATE DEFENDANT’S RIGHT TO A SPEEDY TRIAL (CT APP).

The Court of Appeals, reversing the Appellate Division, in a full-fledged opinion by Judge Cannataro, determined the 14-month pre-indictment delay did not deprive defendant of his constitutional right to a speedy trial. Defendant was incarcerated when he threw urine on a corrections officer. The court analyzed the facts under the “Taranovich” criteria (37 NY2d 442):

This Court analyzes due process claims predicated on a pre-indictment delay by weighing the five factors set forth in *People v Taranovich*: “(1) the extent of the delay; (2) the reason for the delay; (3) the nature of the underlying charge; (4) whether or not there has been an extended period of pretrial incarceration; and (5) whether or not there is any indication that the defense has been impaired by reason of the delay” “The Taranovich framework is a holistic one—that is, ‘no one factor or combination of the factors . . . is necessarily decisive or determinative of the speedy trial claim’” [People v Tyson, 2026 NY Slip Op 01446, CtApp 3-17-26](#)

Practice Point: Consult this decision for insight into how the Taranovich factors are applied to determine whether a pre-indictment delay violates the constitutional right to a speedy trial.

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CRIMINAL LAW, APPEALS, EVIDENCE, JUDGES.

TWO PEOPLE WERE SHOT IN A DRIVE-BY SHOOTING; DEFENDANT, IN THE PLEA ALLOCUTIONS, DID NOT ADMIT TO FIRING SEPARATELY AT EACH VICTIM; THEREFORE THE PEOPLE DID NOT MEET THEIR BURDEN TO SHOW THE COMMISSION OF TWO DISTINCT CRIMES; CONSECUTIVE SENTENCES COULD NOT BE IMPOSED (CT APP).

The Court of Appeals, affirming the Appellate Division, in a full-fledged opinion by Judge Rivera, over a two-judge dissent, determined the prosecutor did not demonstrate that the two victims of this drive-by shooting were struck by different bullets fired separately at each, causing separate injuries to each. Therefore the judge could not impose consecutive sentences. The court noted that this issue need be preserved for appeal:

... [T]he prosecutor should have been aware at the time of the plea, based on our unambiguous caselaw, that they had the burden of ensuring defendant allocuted to sufficient facts to establish that he separately shot at the two victims or that the victims were injured by separate bullets, in order for consecutive sentencing to be legally authorized. But because the prosecutor failed to satisfy their burden and place on the record the alleged “separate and distinct” acts underlying the two crimes ... , the trial court had no legal authority to impose consecutive sentences in this case. [People v Sabb, 2026 NY Slip Op 01590, CtApp 3-19-26](#)

Practice Point: Here the defendant was never asked during the plea allocutions whether he fired two shots separately injuring the two victims. Therefore the People did not meet their burden to prove the commission of two separate crimes and consecutive sentences could not be imposed.

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CRIMINAL LAW, EVIDENCE, APPEALS.

THE JURY’S CONCLUSION THAT THE BURGLARY VICTIM SUFFERED “PHYSICAL INJURY” WAS AGAINST THE WEIGHT OF THE EVIDENCE; THE ONLY EVIDENCE WAS THE VICTIM’S TESTIMONY HE SUFFERED PAIN AT 6 ON A SCALE OF 1 TO 10 (SECOND DEPT).

The Second Department, vacating defendant’s burglary convictions, applying a weight-of-the-evidence analysis, determined the proof the victim suffered “physical injury,” an element of the offenses, was insufficient:

The evidence, properly weighed, does not prove beyond a reasonable doubt that the victim sustained a physical injury Although the victim testified that he suffered pain as high as 6 on a scale of 1 to 10, he also testified that he was “in a little pain. Wasn’t much pain, but [he] was in pain.” There were no photographs of the victim’s injury and the victim testified that he never requested medical attention. Therefore, under the circumstances of this case, the verdict finding the defendant guilty of burglary in the first degree under Penal Law § 140.30 and burglary in the second degree under Penal Law § 140.25(1)(b), based solely upon the victim’s subjective testimony, was against the weight of the credible evidence [People v Carroll, 2026 NY Slip Op 01528, Second Dept 3-18-26](#)

Practice Point: A burglary victim’s testimony that he suffered pain at 6 on a scale of 1 to 10 did not support the jury’s finding that the victim suffered “physical injury” under a weight-of-the-evidence analysis by the appellate court.

March 18, 2026

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CRIMINAL LAW, EVIDENCE, JUDGES.

THE ACT OF SIMPLE POSSESSSION OF A WEAPON WAS COMPLETE BEFORE THE WEAPON WAS USED TO SHOOT THE VICTIM DURING A ROBBERY; THEREFORE, DESPITE THE OVERLAP OF THE ELEMENTS OF SIMPLE POSSESSION OF A WEAPON AND THE ELEMENTS OF FELONY MURDER AND ROBBERY, CONSECUTIVE SENTENCES WERE PROPERLY IMPOSED (CT APP).

The Court of Appeals, in a full-fledged opinion by Judge Garcia, affirming the Appellate Division, determined the sentence for simple possession of a weapon was properly imposed to run consecutively to the concurrent sentences for felony murder and robbery:

Penal Law § 70.25 (2) governs consecutive sentencing, providing that “[w]hen more than one sentence of imprisonment is imposed on a person for two or more offenses committed through a single act or omission, or through an act or omission which in itself constituted one of the offenses and also was a material element of the other, the sentences . . . must run concurrently.” Otherwise, the decision to impose consecutive sentences is a matter of discretion; the statute provides that “when multiple sentences of imprisonment are imposed on a person at the same time . . . the sentence or sentences imposed by the court shall run either concurrently or consecutively . . . in such manner as the court directs at the time of sentence”

To determine whether consecutive sentences are permitted, a sentencing court must first examine the statutory elements of the crimes and determine whether those elements overlap “under either prong” of Penal Law § 70.25 (2) and, if they do, “the People may yet establish the legality of consecutive sentencing by showing that the ‘acts or omissions’ committed by defendant were separate and distinct acts” That is, where sufficient evidence of separate and distinct acts is presented by the People, “consecutive sentences are possible regardless of whether the statutory elements of the offenses overlap”

... [T]he convictions at issue here have overlapping material elements. * * *
Whatever the overlap, however, we conclude that the People met their burden of

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establishing that the defendant's acts here were separate and distinct and therefore the consecutive sentences imposed were legal.

The People demonstrated that defendant's possession of the gun in violation of Penal Law § 265.03 (3) was an act distinct from the commission of the robbery. Defendant obtained the gun, at minimum, more than one hour before the robbery, carried it across approximately 15 city blocks, and placed it under a bed in a co-conspirator's home for "a little while" before eventually retrieving the gun and walking over to the intended victim's building. Evidence that defendant obtained the gun and then used it to commit the substantive crime provided a sufficient basis for the sentencing judge to impose consecutive sentences. ... "[t]he evidence clearly established that defendant was carrying the weapon at the time he encountered and shot the victim," and therefore "the act of possession was complete before the shooting, and consecutive sentences were authorized by" the statute [People v Billups, 2026 NY Slip Op 01589, CtApp 3-19-26](#)

Practice Point: Consult this opinion for insight into when a judge may impose consecutive sentences despite an overlap of the elements of the crimes.

March 19, 2026

CRIMINAL LAW, EVIDENCE.

THE ADMISSION OF EVIDENCE OF DEFENDANT'S PRIOR POSSESSION OF DRUGS TO PROVE CONSTRUCTIVE POSSESSION OF DRUGS FOUND IN A SHARED APARTMENT WAS REVERSIBLE ERROR; THE PRIOR POSSESSION CONVICTION STEMMED FROM DRUGS FOUND IN DEFENDANT'S VEHICLE, TWO YEARS BEFORE; THEREFORE THE PRIOR CRIME WAS NOT LOGICALLY CONNECTED TO ANY ISSUE IN THE CASE; THE EVIDENCE WAS ERRONEOUSLY ADMITTED SOLELY TO PROVE DEFENDANT'S PROPENSITY TO POSSESS DRUGS (CT APP).

The Court of Appeals, reversing the Appellate Division, in a full-fledged opinion by Judge Troutman, over a three-judge dissent, determined the evidence of

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defendant's prior possession of drugs found in his vehicle two years before was erroneously admitted to prove defendant's constructive possession of drugs found in a shared apartment:

Generally, evidence of a defendant's prior possession of drugs is inadmissible at trial to show their intent to sell drugs or knowing possession of drugs on another occasion This follows from our longstanding Molineux rule, which provides that "evidence of a defendant's uncharged crimes or prior misconduct is not admissible if it cannot logically be connected to some specific material issue in the case, and tends only to demonstrate the defendant's propensity to commit the crime charged" When evidence of prior uncharged crimes or misconduct is logically connected to some specific material issue in the case—such as intent, motive, knowledge, common scheme or plan, or identity of the defendant—the evidence falls under an exception to the Molineux rule, and a court may admit the evidence if its probative value outweighs its potential for prejudice to the defendant

Here, because the People's evidence of a prior incident involving defendant's possession of drugs was not logically connected to any specific material issue in this drug possession case, apart from defendant's propensity for possessing drugs, the trial court erred in admitting that evidence. Inasmuch as this error was not harmless, we reverse and remit for defendant to receive a new trial. * * *

The main issue at trial was whether defendant had constructive or knowing possession of the contraband distributed throughout three rooms in the apartment. We agree with the dissenting Justices below that defendant's possession of cocaine in his car in 2017 was not relevant to that issue. The two incidents involved different locations, different circumstances, different theories of possession, and took place around two years apart. [People v Henderson, 2026 NY Slip Op 01627, CtApp 3-19-26](#)

Practice Point: Here defendant's conviction for possession of drugs found in his vehicle was admitted to prove he had constructive possession of drugs found in a shared apartment two years later. Because the prior crime evidence was not connected to any issue in the case on trial other than defendant's propensity to possess drugs, it was reversible error to admit it.

March 19, 2026

CRIMINAL LAW, EVIDENCE.

THE CIRCUMSTANCES SURROUNDING THE IDENTIFICATION OF DEFENDANT FROM A CELL PHONE PICTURE TAKEN BY A POLICE OFFICER AT THE POLICE STATION WERE UNDULY SUGGESTIVE; THERE WAS NO PROBABLE CAUSE FOR DEFENDANT’S ARREST AND THE EVIDENCE SEIZED SHOULD HAVE BEEN SUPPRESSED (FIRST DEPT).

The First Department, reversing Supreme Court’s finding that there was probable cause to arrest the defendant and suppressing the seized evidence, determined that the circumstances surrounding the identification of the defendant by a robbery victim (the mother) from a cell-phone picture of defendant taken by a police officer were unduly suggestive:

Because, while being escorted to where the officers were holding defendant on a different floor, the mother expressed fear that defendant would “come after” her after he was released from prison, it was decided that instead of requiring her to confront defendant in person, the mother would be shown a picture of defendant that one of the officers took with a cell phone. She was not required to approach defendant after exiting the elevator; however, given the narrow and angular path of the hallway, the agitated defendant was clearly audible to her, and many of the several officers surrounding defendant, at least one of whom was visible in the photo, were immediately apparent to her. She was shown the photo and asked “Is that him?” to which she responded that it “looked like” him, but that he had changed his clothes. Defendant was not arrested at that time, but was arrested approximately 15 minutes later, after the mother was shown the photo several more times and asked whether it depicted the perpetrator. * * *

While the choice to proceed with identification via a showup, even a single-photo showup, is generally disfavored, it may be reasonable in view of its temporal and spatial proximity to the crime Nevertheless, showup identification evidence “must be scrutinized very carefully for unacceptable suggestiveness and unreliability” “When a defendant challenges the suggestiveness of an out-of-

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court viewing of defendant’s likeness, the central issue presented for judicial consideration is whether the pretrial display is conducted under circumstances bearing the earmarks of improper influence and unreliability, which create the risk of mistaken identification and thus infect the truth-seeking process . . . showing one photograph of a defendant — the procedure at issue in defendant’s case — carries the risk of undue suggestiveness” The procedure employed here carried that risk, and because the substances underlying defendant’s conviction were received as a direct result of it, they should have been suppressed. [People v Perry, 2026 NY Slip Op 01617, First Dept 3-19-26](#)

Practice Point: The robbery victim, while in the police station and within earshot of the agitated defendant, was shown a cell phone picture of the defendant taken by an officer at the police station. She said the picture “looked like” the defendant but he had changed his clothes. The identification procedure was deemed unduly suggestive.

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CRIMINAL LAW, EVIDENCE.

THE EVIDENCE OF DEPRAVED INDIFFERENCE TO HUMAN LIFE WAS SUFFICIENT AND EVIDENCE OF DEFENDANT’S BIPOLAR DISORDER WAS PROPERLY PRECLUDED BECAUSE TIMELY NOTICE OF THE DEFENSE WAS NOT PROVIDED TO THE PEOPLE (CT APP).

The Court of Appeals, in a full-fledged opinion by Judge Garcia, affirmed defendant’s conviction of reckless endangerment first degree for a series of deliberate collisions with vehicles which culminated in his deliberately crashing into an occupied house. The evidence of depraved indifference to human life was deemed sufficient and evidence of defendant’s bipolar disorder was deemed properly precluded because timely notice of the defense was not provided:

The People introduced testimony from multiple witnesses who observed defendant driving erratically, “weaving” between lanes in heavy traffic, eyes open, and with a “look of rage on his face.” Over approximately three-tenths of a mile, defendant

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struck three vehicles, drove through a parking lot, and ultimately crashed into a house. Defendant began this course of conduct by making a “sharp right” directly into a tow truck, causing defendant’s vehicle to “lock[]” onto a car being towed and to “hang[]” from the wheel lift of the truck. After defendant’s vehicle “shook loose” from the tow truck, defendant “sped up” and “proceeded to take off” and a short time later he crashed into the rear of a van with such force that the driver hit his head on the roof. The driver felt defendant’s vehicle “pushing” him down the road. Other witnesses provided a similar description of defendant, with his hands on the steering wheel, appearing to intentionally hit the van “again and again and again,” “pushing” it forward. Defendant next crashed into the back of a third vehicle, then side-swiped the driver’s side, causing the vehicle to “hit the curb” and to “flip[] over on its roof.” A fire hydrant pierced the roof of the car one foot from the driver’s head. Defendant “took off [] fast” from this crash, drove over a sidewalk, through a motel parking lot, and crashed directly into a house, causing it to shake upon impact. Two people were inside the house at the time and heard “screeching tires” as the car approached. Crash data from the vehicle’s air bag control module showed that the brakes were not applied in the eight seconds prior to impact with the house. From this course of conduct, and the multiple witnesses who testified about defendant’s actions and demeanor, a rational jury could have concluded that defendant was aware of the risks involved in his behavior and acted without regard for whether the drivers of those vehicles, any pedestrians who might have been in the parking lot, or the people inside the house, lived or died and that, in sum, defendant displayed depraved indifference to human life. [People v Bender, 2026 NY Slip Op 01444, CtApp 3-17-26](#)

Practice Point: Consult this opinion for insight into the evidence required to support a jury’s conclusion that defendant acted with depraved indifference to human life.

Practice Point: A defendant’s failure to give timely notice of a psychiatric defense may result in preclusion of the psychiatric evidence. Here evidence of defendant’s bipolar condition was precluded because the CPL 250.10 notice was untimely.

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CRIMINAL LAW, EVIDENCE.

THE FACT THAT DEFENDANT WAS PARKED IN A HIGH CRIME AREA NEAR AN APARTMENT COMPLEX AND THE FILED “TRESPASS AFFIDAVIT” BY AN APARTMENT PROPERTY MANAGER, REQUESTING THAT ANYONE ON THE PROPERTY WHO WAS NOT A TENANT BE ARRESTED FOR TRESPASS, DID NOT PROVIDE THE POLICE WITH A “PARTICULARIZED” REASON FOR APPROACHING THE DEFENDANT TO REQUEST INFORMATION; THE COCAINE AND HANDGUN SEIZED UPON THE DEFENDANT’S ARREST SHOULD HAVE BEEN SUPPRESSED; THE INDICTMENT WAS DISMISSED (FOURTH DEPT).

The Fourth Department, suppressing evidence seized upon defendant’s arrest and dismissing the indictment, over a two-justice dissent, determined that the police did not have particularized information which justified approaching defendant’s car which was parked near an apartment complex. There was a “trespass affidavit” by an apartment property manager on file with the police department which requested that any person who was not a tenant be arrested for trespass. The police approached defendant, who, it turned out, was a tenant. But based on an officer’s observation of a bag containing a tan substance inside the car, the officers ordered defendant out the car, searched the defendant’s person and car, and seized cocaine and a handgun:

... [T]he officer’s testimony that the apartment complex was in a high-crime area did not justify approaching defendant. The trespass affidavit failed to afford the officers any more particularized reason for approaching defendant. Therein, although the property manager for the apartment complex stated generally that there “was reason to believe that persons are congregating on the . . . property . . . [who] do not reside at said property,” there was no allegation in the trespass affidavit that the property was, for example, “plagued by illegal drug trade” or gang violence Indeed, the property manager did not specify any prior or ongoing incidents of criminal activity on the premises, but instead expressed a general belief that persons might be “congregating on the property,” which is a multi-building residential apartment complex, “without [the property manager’s]

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permission.” The property manager nonetheless also acknowledged in the trespass affidavit that non-residents were often permissibly on the property, such as guests of tenants. Thus, defendant was not “parked at an establishment around which criminal activity was known to occur” Further, the officers observed defendant momentary idling in a vehicle in a publicly accessible parking lot on a summer evening outside a residential apartment complex . . . , not “in a private space restricted by signage and a lock” Thus, nothing in the officers’ observation of defendant’s conduct, even considered in light of the assertions in the trespass affidavit, “provided a particularized reason to request information” [People v Robinson, 2026 NY Slip Op 01693, Fourth Dept 3-20-26](#)

Practice Point: Here the police did not have a “particularized reason” for approaching defendant’s parked car near an apartment complex. The facts that (1) the defendant was parked in a high crime area and (2) an apartment-complex property manager had filed a “trespass affidavit” with the police was not enough to allow the police to approach the defendant to request information.

March 20, 2026

CRIMINAL LAW, EVIDENCE.

THE STREET STOP OF DEFENDANT WAS INVALID UNDER BOTH THE US SUPREME COURT’S “HILL VS CALIFORNIA” “MISTAKEN ARREST” CRITERIA AND THE NYS “DEBOUR” STREET STOP CRITERIA; THE WEAPON DISCARDED BY DEFENDANT AS HE FLED SHOULD HAVE BEEN SUPPRESSED (CT APP).

The Court of Appeals, reversing the Appellate Division, in a full-fledged opinion by Judge Halligan, over a three-judge dissent, determined the parole investigators did not have “reasonable suspicion” that the defendant was in fact the parole absconder for whom they had a warrant when they pulled along side the defendant on the street in an unmarked car. The parole investigators wore civilian clothes. The defendant, who was not the parole absconder, ran and threw away a firearm. He ultimately pled guilty to attempted criminal possession of a firearm. The

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defendant was wearing a ski mask so the investigators could not see his face when they pulled along side of him:

Supreme Court denied suppression, applying a rule for mistaken arrests derived from the U.S. Supreme Court's decision in *Hill v California* (401 US 797 [1971]). The court credited the testimony of the investigator and his partner and held that the defendant's physical similarities with the absconder, coupled with his "immediate" flight upon being approached, supported the officers' reasonable belief that the defendant was the target of their warrant. * * *

The defendant and the People disagree about whether we should evaluate the investigators' pursuit and arrest under *De Bour* or *Hill*. * * *

We need not decide which of the tests should control, because in this scenario we do not perceive a meaningful difference between *Hill*'s requirement of a reasonable mistaken belief and *De Bour*'s level three standard of reasonable suspicion. ... Under *Hill*, the arresting officer must provide "reasonable, articulable grounds to believe that the suspect is the intended arrestee" By the same token, our *De Bour* caselaw specifies that reasonable suspicion requires an officer to point to "specific and articulable facts which, along with any logical deductions, reasonably prompted th[e] intrusion" Thus, when it comes to evaluating this particular scenario, the tests essentially ask the same question: whether the totality of the circumstances, including the defendant's appearance and any additional observations about their behavior, justifies the resulting police-citizen encounter. *

* *

Nothing in the record here demonstrates that the defendant could have known that he was fleeing from law enforcement. [People v Jones, 2026 NY Slip Op 01447, CtApp 3-17-26](#)

Practice Point: Here the US Supreme Court's "mistaken arrest" criteria for a valid street stop and the NYS "Debour" criteria for a valid street stop required the same level of "reasonable suspicion."

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CRIMINAL LAW, JUDGES.

HERE A “CERTIFICATE OF DELINQUENCY” WAS NEVER FILED FOR ANY VIOLATION OF PROBATION BY THE DEFENDANT AND THE PERIOD OF PROBATION EXPIRED WHILE DEFENDANT WAS STILL UNDER THE SUPERVISION OF THE DRUG TREATMENT COURT; WHEN DEFENDANT VIOLATED THE TERMS OF PROBATION AGAIN, PROBATION WAS REVOKED AND DEFENDANT WAS SENTENCED TO INCARCERATION; BECAUSE THE REVOCATION AND SENTENCE TOOK PLACE AFTER THE PERIOD OF PROBATION EXPIRED, THE SENTENCING COURT HAD BEEN STRIPPED OF JURISDICTION (CT APP).

The Court of Appeals, in a full-fledged opinion by Judge Wilson, reversing the Appellate Division, determined that, because no “declaration of delinquency” had ever been filed, defendant’s [Mr. Curry’s] period of probation was never tolled. Therefore the court did not have jurisdiction to revoke his probation and sentence him to incarceration after his probationary period expired:

From 2019 through 2021, Mr. Curry participated in the drug treatment program with mixed results. The DTC [drug treatment court] made efforts to support a positive outcome, permitting Mr. Curry’s continued release after positive drug screens and ensuring he received outpatient treatment. July 5, 2021—the date at which Mr. Curry’s probation was set to expire—passed while Mr. Curry continued to participate in DTC. On December 14, 2021, due to another positive drug screen and missed court dates, the DTC revoked Mr. Curry’s probation and sentenced him to two years of incarceration and three years of post-release supervision. [People v Curry, 2026 NY Slip Op 01448, CtApp 3-17-26](#)

Practice Point: If a defendant violates probation but no certificate of delinquency is filed, the probationary period continues to run is not tolled. Here, despite probation violations by the defendant, no certificate of delinquency was ever filed. The court therefore did not have jurisdiction to revoke defendant’s probation and sentence him to incarceration after the expiration of his probationary period.

March 17, 2026

DEFAMATION, CIVIL PROCEDURE.

THE TWITTER/X POSTS REFERRING TO PLAINTIFF AS A “STALKER” AND STATING “THAT MAN HAS HARMED MULTIPLE WOMEN AND IS ABUSIVE AND MANIPULATIVE ...” WERE DEEMED NONACTIONABLE OPINION AND THE DEFAMATION ACTION WAS DISMISSED (FIRST DEPT).

The First Department, reversing Supreme Court, determined Supreme Court properly found that the anti-SLAPP statute applied to this defamation, but the defamation complaint should have been dismissed because the Twitter/X posts constituted nonactionable opinion:

Plaintiff and defendant were PhD students at Columbia University ... and were enrolled in the same seminar Plaintiff alleges that he was defamed by two Tweets defendant posted on Twitter (now X) In response to seeing a picture of plaintiff with “a prominent scholar, attorney, abolitionist, and author,” defendant retweeted the post with a meme stating, “if I speak, Twitter will suspend me,” followed by a comment “I am triggered.” She then separately tweeted, without naming plaintiff or the other individual in the photograph, “when the abolitionist posts your stalker,” followed later by a comment to her Tweet “that man has harmed multiple women and is abusive and manipulative but congratulations on his dissertation, I guess.” ...

... [Supreme Court] should ... have granted defendant’s motion to dismiss the complaint because plaintiff failed to show ... that his claims had a substantial basis in law (Civil Rights Law §§ 70—a, 76—a; CPLR 3211[g] ...). Defamation requires a false statement of fact and is judged from the perspective of an average, reasonable reader Context is critical for social media statements, where hyperbole and rhetorical exaggeration are common and are less likely to be interpreted literally Read in context, defendant’s tweets were emotionally charged reactions written in Twitter’s vernacular and accompanied by rhetoric,

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signaling that they were nonactionable opinions [Talbert v Tynes, 2026 NY Slip Op 01478, First Dept 3-17-26](#)

Practice Point: Consult this decision for insight into the way courts interpret “hyperbole and rhetorical exaggeration” in the context of a defamation action based upon Twitter/X posts.

March 17, 2026

FAMILY LAW, EVIDENCE.

MOTHER’S MENTAL ILLNESS AND HER REQUEST FOR RESPITE CARE BECAUSE SHE WAS OVERWHELMED DID NOT SUPPORT A NEGLECT FINDING; THERE WAS NO EVIDENCE OF AN IMMEDIATE RISK TO THE CHILDREN (FIRST DEPT).

The First Department, reversing Family Court, determined the evidence of mother’s mental illness did not support the finding that she neglected the children:

The court’s determination that the mother neglected the subject children was not supported by a preponderance of the evidence Neglect occurs when a child’s “physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired” as the result of the parent’s failure to “exercise a minimum degree of care” (Family Ct Act § 1012 [f][i]). “While parental neglect may be based on mental illness, proof of a parent’s mental illness alone will not support a finding of neglect, unless it is shown that the parent’s condition resulted in imminent danger to the child”

Although the mother testified that she was diagnosed with anxiety and depression, the record does not support a finding of “a link or causal connection” between the mother’s diagnoses and any impairment or imminent danger of impairment to the children The sole evidence of actual impairment was a burn on one of the children, and the uncontroverted testimonial and documentary evidence establish that the injury was accidental and that the mother provided care

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Further, petitioner failed to establish how the mother’s mental health diagnoses caused the children to be in imminent danger of being impaired. The mother openly acknowledged her mental health diagnoses and treatment The record demonstrates that the mother was at all relevant times under the care of a psychiatrist and was compliant with the psychiatrist’s prescribed medications.

The mother’s request for respite care was also not a proper basis for finding imminent risk. ... [S]he was feeling overwhelmed with caring for her three children and was unwilling or unable to care for and supervise them any longer. The miscellaneous information section states that the mother said she did not want her children any longer and wanted ACS to take them ... because she was feeling overwhelmed. ... The mother explicitly testified that she was not afraid she would “do something” to hurt her children or herself. [Matter of Ja.W., 2026 NY Slip Op 01623, First Dept 3-19-26](#)

Practice Point: Here there no evidence that mother presented an imminent risk of impairment to her children. Mother’s acknowledged mental illness, for which she was receiving treatment, and her request for respite care because she was feeling overwhelmed did not amount to neglect.

March 19, 2026

IMMIGRATION LAW, FAMILY LAW, CIVIL PROCEDURE.

THE RECORD SUPPORTED AN ORDER MAKING SPECIAL FINDINGS TO ALLOW A JUVENILE TO PETITION FOR SPECIAL IMMIGRANT JUVENILE STATUS (SIJS) TO AVOID DEPORTATION TO GUATEMALA (FOURTH DEPT).

The Fourth Department, reversing Surrogate’s Court, determined the petition for an order making special findings to allow a juvenile to petition for special immigrant juvenile status (SIJS) such that the child can remain in the US and avoid deportation to Guatemala:

The child simultaneously moved for the issuance of an order making special findings that, among other things, the child’s reunification with his parents is not

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viable due to parental neglect, abandonment, or abuse, and it would not be in his best interests to be returned to Guatemala, his previous country of nationality and last habitual residence. Although Surrogate’s Court granted the guardianship petition, following a subsequent hearing, the Surrogate issued the order on appeal denying the child’s motion for an order making the requisite declaration and special findings on the basis that the child presented “no credible testimony . . . of abuse, abandonment or neglect or that reunification with one or both of his parents is not viable.” * * *

... [T]he evidence established that the child is under the age of 21, unmarried, and a resident alien physically present in the United States and, inasmuch as the Surrogate appointed the child’s brother as his guardian, the child has been legally committed to or placed under the custody of an individual appointed by a juvenile court located in the United States within the meaning of 8 USC § 1101 (a) (27) (J) (i)

... [W]e conclude that reunification of the child with his parents is not viable due to parental neglect (see generally Family Ct Act § 1012 [f] [i]). The record demonstrates that the child’s parents did not provide the child with medical care, even after he sustained a serious injury . . . , encouraged the child to drop out of school and work on the family farm at the age of 15 . . . , failed to protect the child from gang violence in Guatemala [I]t would not be in the best interests of the child to return to Guatemala, his previous country of nationality and country of last habitual residence [Matter of Juarez, 2026 NY Slip Op 01686, Fourth Dept 3-20-26](#)

March 20, 2026

LANDLORD-TENANT, NEGLIGENCE.

ONE PLAINTIFF-TENANT TESTIFIED HE MADE SEVERAL COMPLAINTS TO THE LANDLORD DEFENDANTS ABOUT THE TENANT WHO SET FIRE TO THE APARTMENT BUILDING, INFORMING THE DEFENDANTS THAT THE TENANT THREATENED “TO KILL EVERYONE” IN THE BUILDING AND WAS SEEN CARRYING GASOLINE TANKS INTO THE BUILDING; THE DEFENDANT LANDLORDS DID NOT HAVE A DUTY TO PREVENT THE TENANT FROM STARTING THE FIRE (FIRST DEPT).

The First Department, reversing Supreme Court, determined the landlord defendants did not have a duty to investigate, monitor, or control a tenant who set fire to the five-story building injuring the plaintiff-tenants:

One of the plaintiffs testified that he made several complaints to defendants concerning the tenant’s behavior before the incident. Specifically, he reported to defendants that the tenant threatened “to kill everyone” in the building and was seen carrying gasoline tanks into the building. The motion court found that this testimony “raise[d] issues of fact as to whether defendants failed to take minimal measures to investigate the presence of gasoline in the apartment, and to protect the occupants from the risk of fire arising out of the presence of gasoline.”

The motion court erred in applying the “minimal precaution” standard set forth in negligent security cases because the assailant here was not a third-party nontenant Rather, he was a tenant in the building who was lawfully permitted to be there at the time of the fire. The appropriate test is, therefore, whether defendants lacked the “authority, ability, and opportunity to control” the tenant’s actions such that they had a duty to prevent him from starting the fire Applying that standard to the facts here, defendants had no authority or ability to evict the tenant under the lease or New York law prior to the fire Moreover, plaintiffs failed to establish a clear basis under New York law for defendants to investigate, monitor, or control the tenant which could have prevented him from setting the fire Accordingly, defendants established their entitlement to summary judgment on the basis of their inability to prevent the tenant from starting the fire that caused plaintiffs’ injuries. [Molina v Appula Mgt. Corp., 2026 NY Slip Op 01603 First Dept 3-19-26](#)

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Practice Point: The negligent-security-minimal-precaution standard of care for landlords applies only to security re: the actions of non-tenants. Here it was a tenant who set fire to the apartment building and injured other tenants. The appropriate test for the landlord's duty re: a tenant's actions is whether the landlord has the authority, ability, and opportunity to control the tenant's actions under the lease or New York law, which was not the case here.

March 19, 2026

MEDICAL MALPRACTICE, MENTAL HYGIENE LAW, NEGLIGENCE, EVIDENCE.

A HOSPITAL HAS A DUTY TO RETAIN AN INTOXICATED PATIENT WHO HAS BEEN ADMITTED INVOLUNTARILY PURSUANT TO THE MENTAL HYGIENE LAW IF THE PATIENT IS INCAPACITATED TO A DEGREE THERE WAS A LIKELIHOOD OF HARM TO THE PATIENT OR OTHERS (FOURTH DEPT).

The Fourth Department, reversing Supreme Court, determined there was a question of fact whether defendant hospital breached its duty to retain the decedent for emergency treatment because decedent was incapacitated by alcohol to a degree there was a likelihood of harm to decedent or others:

A hospital does not owe an intoxicated patient, who went to the hospital voluntarily, a duty to prevent that patient from leaving the hospital against medical advice even when that patient has been admitted to the hospital for medical treatment By contrast, however, the decedent here was admitted involuntarily (see Mental Hygiene Law former § 22.09 [e]). Defendant therefore had a duty to retain decedent for emergency treatment if decedent was incapacitated by alcohol or substances to such a degree that there was a likelihood to result in harm to decedent or others, as those terms are defined under Mental Hygiene Law former § 22.09

Assuming, arguendo, that defendant met its burden of demonstrating that it did not breach its duty to ensure that decedent was no longer incapacitated to the degree

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that there was a likelihood to result in harm to decedent or others, we conclude that plaintiff raised an issue of fact. Plaintiff’s expert opined that, under the circumstances and “especially in such proximity to the events that occurred in the hospital in the hours prior to discharge,” it was a breach of the standard of care to allow decedent to be discharged [Guadagno v Erie County Med. Ctr. Corp., 2026 NY Slip Op 01698, Fourth Dept 3-20-26](#)

Practice Point: A hospital has a duty to retain an intoxicated patient who has been admitted involuntarily if the patient is incapacitated to a degree there is a likelihood of harm to the patient or others. That duty is not triggered by an intoxicated patient who went to the hospital voluntarily.

March 20, 2026

MEDICAL MALPRACTICE, MUNICIPAL LAW, NEGLIGENCE, EVIDENCE.

THE MEDICAL RECORDS PROVIDED DEFENDANT HOSPITAL WITH TIMELY NOTICE OF THE FACTS UNDERLYING THE MEDICAL MALPRACTICE CAUSE OF ACTION; THEREFORE PLAINTIFF’S APPLICATION FOR LEAVE TO FILE A LATE NOTICE OF CLAIM SHOULD HAVE BEEN GRANTED (SECOND DEPT).

The Second Department, reversing Supreme Court, determined plaintiff’s application for leave to file a late notice of claim in this medical malpractice action should have been granted. The medical records provided the defendant hospital with sufficient timely notice of the cause of action:

“Merely having or creating hospital records, without more, does not establish actual knowledge of a potential injury where the records do not evince that the medical staff, by its acts or omissions, inflicted any injury” “Where the alleged malpractice is apparent from an independent review of the medical records, those records constitute ‘actual knowledge of the facts constituting the claim’”

Here, in support of his motion, the plaintiff submitted, inter alia, medical records and an affidavit of a physician who reviewed the records and concluded that there

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had been a departure from accepted medical practice Inasmuch as the medical records, upon independent review, suggested injury attributable to medical malpractice, the medical records provided the defendant with actual knowledge of the essential facts constituting the claim [Kazeem v New York City Health & Hosps. Corp. \(Queens Hosp. Center\), 2026 NY Slip Op 01497, Second Dept 3-18-26](#)

Practice Point: The medical records themselves can be deemed to have provided a defendant hospital with timely notice of the facts underlying a medical malpractice action such that an application for leave to file a late notice of claim should be granted.

March 18, 2026

NEGLIGENCE, MUNICIPAL LAW, VEHICLE AND TRAFFIC LAW.

ALTHOUGH THE COURT FOUND THAT THE DEPUTY DID NOT SOUND HER AIR HORN BEFORE THE INTERSECTION COLLISION WITH PLAINTIFFS' VEHICLE, THERE WAS SUFFICIENT EVIDENCE THAT THE DEPUTY TOOK PRECAUTIONS BEFORE ENTERING THE INTERSECTION; THEREFORE THE COUNTY DEMONSTRATED THE DEPUTY DID NOT ACT WITH RECKLESS DISREGARD FOR THE SAFETY OF OTHERS IN VIOLATION OF VEHICLE AND TRAFFIC LAW 1104 (CT APP).

The Court of Appeals, affirming the Appellate Division, in a full-fledged opinion by Judge Wilson, over an extensive dissent, determined the county was entitled to summary judgment in this negligence suit stemming from an intersection accident involving a sheriff's deputy (Wong) who was responding to an emergency call. Although the court found that Wong did not sound her air horn prior to the collision with plaintiffs' (Granaths') car, the evidence demonstrated Wong did not act with reckless disregard for the safety of others:

It is undisputed that, before proceeding through the intersection, Deputy Fong slowed down, came to a complete stop at least once, observed northbound traffic,

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waited for that traffic to yield to her, and turned on her overhead lights. The Granaths contend that a jury could nonetheless find that Deputy Fong exhibited reckless disregard for the safety of others by failing to activate her air horn or siren; declining to call in a “Code 77” as required by MCSD [sheriff’s department] policy; and proceeding into the intersection despite having an obstructed view of southbound traffic.

We agree with the Appellate Division that defendants met their initial burden on their summary judgment motion and that, in opposition, the Granaths failed to raise a material triable issue of fact. Even assuming Deputy Fong failed to activate her air horn or siren, call in a “Code 77,” or observe southbound traffic—either because her view was obstructed or she neglected to look to her right—taken together with the actions she undisputably did take—slowing down, stopping, activating her emergency lights and proceeding only once she observed northbound traffic yield to her—we cannot conclude that Deputy Fong, with “conscious indifference to the outcome,” “reckless[ly] disregard[ed] . . . a highly probable risk of harm” [Granath v Monroe County, 2026 NY Slip Op 01586, CtApp 3-19-26](#)

Practice Point: Consult this opinion for insight into the meaning of “reckless disregard for the safety of others” in the context of an intersection traffic accident involving a sheriff’s deputy responding to an emergency call.

March 19, 2026

WORKERS’ COMPENSATION, ADMINISTRATIVE LAW, ATTORNEYS.

THE WORKERS’ COMPENSATION BOARD IS NOT AUTHORIZED TO AWARD ATTORNEY’S FEES FOR CHARGES ASSESSED AGAINST AN EMPLOYER OR INSURANCE CARRIER FOR UNTIMELY COMPENSATION PAYMENTS (CT APP).

The Court of Appeals, in a full-fledged opinion by Judge Rivera, over a two-judge dissent, determined that the Workers’ Compensation Board (Board) did not have the authority to approve attorney’s fees for charges against an employer or insurance carrier under Workers’ Compensation Law (WCL) section 25 for

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untimely compensation payments. The Board may only approve legal fees in accord with its counsel fees schedule in WCL section 24 which does not include charges under WCL section 25:

Counsel argues that the Board has long recognized that legal fees may be payable from late payment penalties, and that WCL 24 (2) ... does not expressly limit the Board's authority to approve such fees. Counsel further asserts that a claimant's late payment award under WCL 25 is "compensation" under the WCL and thus falls within the WCL 24 (2) fee schedule. Counsel adds that permitting legal fees based on these charges furthers the WCL's legislative purpose of promoting access to justice for injured workers by incentivizing attorneys skilled in handling WCL cases to represent claimants.

The Board counters that the plain text of WCL 24 (2) limits legal fee awards to those enumerated in the statute's fee schedule. The Board further argues that charges assessed for late payments are not compensation but a separate award for a claimant assessed against an employer or insurance carrier. Lastly, the Board maintains that the amount of legal fees generated from an award listed on the fee schedule and the certainty that an attorney will receive those fees are sufficient incentives for attorneys to represent claimants.

We conclude that the Board does not have authority to approve legal fees based on charges assessed pursuant to WCL 25 because the text of WCL 24 (2) establishes a mandatory fee schedule that does not provide for such fees. Our interpretation does not lead to an absurd result. Indeed, the legislative history makes no mention of legal fees based on charges imposed for violations of WCL 25, let alone reflect a legislative concern that attorneys would refuse workers' compensation cases if such fees were unavailable. [Matter of Gonzalez v Northeast Parent & Child Socy., 2026 NY Slip Op 01443, CtApp 3-17-26](#)

March 17, 2026

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