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Weekly Reversal
Reports
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CIVIL PROCEDURE, CRIMINAL LAW, EVIDENCE.

A POLICE REPORT INDICATING DEFENDANT WAS “HIGHLY INTOXICATED” AT THE TIME OF THE SHOOTING WAS NOT ADMISSIBLE AS A BUSINESS RECORD, CRITERIA EXPLAINED IN SOME DEPTH (THIRD DEPT).

The Third Department, in a full-fledged opinion by Justice Powers, affirmed County Court’s ruling that a police report which indicated defendant was “highly intoxicated” was not admissible as a business record. Defendant sought to use the report as a basis for his expert’s testimony (presumably to the effect that defendant was intoxicated at the time of the shooting):

It is uncontested that the drafter of the report, a lieutenant with the State Police, did not observe the events described therein or, more specifically, defendant’s level of intoxication that night. The inquiry thus distills to whether defendant, as the proponent of the report, sufficiently demonstrated that the source of the statement that he was “highly intoxicated” was an individual with a duty to report such information. We find that defendant failed to meet this burden. The hearing testimony demonstrated that the lieutenant drafted the report based upon information received from numerous sources. However, he was unable to identify who had reported defendant to be highly intoxicated. Defendant’s argument that, because the scene had been secured, the statement must have come from a responding officer’s personal observations is entirely speculative, as nothing in the language of the report itself or the record confirms that an officer was the source of the statement. It is possible that the clause was included based upon defendant’s fiancée’s description of defendant as “drunk as a skunk” when making a 911 call that evening. She, as opposed to responding law enforcement, had no business duty to report Because defendant did not meet this foundational requirement by demonstrating that “the initial declarant was] acting within the course of regular business conduct,” he failed to demonstrate the admissibility of the report, as well as the specific statement at issue, pursuant to the business records exception . . .

. [People v Mawhiney, 2026 NY Slip Op 04460, Third Dept 7-16-26](#)

Practice Point: Here defendant unsuccessfully sought to have a police report which indicated he was highly intoxicated at the time of the shooting admitted as a

business record. The criteria for admission as a business record are explained in depth.

July 16, 2026

CIVIL PROCEDURE, MEDICAL MALPRACTICE, NEGLIGENCE.

A DISCOVERY RULE ENACTED IN 2018 REACHED BACK TEN MONTHS BEFORE THE RULE WAS ENACTED TO RENDER TIMELY THIS MEDICAL MALPRACTICE CAUSE OF ACTION ALLEGING THE NEGLIGENT FAILURE TO DIAGNOSE CANCER (SECOND DEPT).

The Second Department, reversing Supreme Court, determined the medical malpractice cause of action alleging the negligent failure to diagnose cancer was rendered timely by a discovery rule which reaches back ten months before the discovery rule was enacted:

The causes of action arising from negligent failure to diagnose cancer accrued on October 23, 2014, when the defendants failed to advise [plaintiff] to submit to additional testing, such as a mammogram. However, the 2018 enactment also includes a provision providing for the revival of certain causes of action, such that an action may be commenced within six months after the effective date, i.e., by July 31, 2018, when it alleges a failure to diagnose cancer or a malignant tumor, and when it became time-barred within 10 months prior to the effective date of the statute—January 31, 2018, that is, on or after March 31, 2017 (see L 2018, ch 1, § 4...). Here, the causes of action qualify for revival pursuant to that provision, as they became time-barred in April 2017, within the 10-month period prior to the act's effective date, and this action was commenced on June 11, 2018, prior to the July 31, 2018 deadline [Rhodes v Dilena, 2026 NY Slip Op 04444, Second Dept 7-15-26](#)

Practice Point: Consult this decision for an explanation of the application of the discovery rule enacted in 2018 providing for the revival of a medical malpractice action alleging negligent failure to diagnose cancer after the statute of limitations expired.

July 15, 2026

CRIMINAL LAW, EVIDENCE.

DEFENDANT’S MURDER CONVICTION HINGED ON THE CREDIBILITY OF A POLICE OFFICER’S CLAIM DEFENDANT CONFESSED TO INTENTIONAL MURDER; ALL OTHER STATEMENTS ATTRIBUTED TO DEFENDANT WERE CONSISTENT WITH AN ACCIDENTAL SHOOTING; WITHHOLDING TWO FEDERAL COMPLAINTS AGAINST THE OFFICER AND THE OFFICER’S “CIVILIAN COMPLAINT REVIEW BOARD” (CCRB) RECORDS FROM THE DEFENSE WAS A REVERSIBLE BRADY VIOLATION (FIRST DEPT).

The First Department, affirming the vacation of defendant’s conviction stemming from the People’s Brady violation, in a detailed opinion by Justice Kapnick, determined the murder conviction hinged on the credibility of a police officer’s (Rodriguez’) claim defendant confessed to intentional murder. All of the other statements attributed to defendant were consistent with an accidental shooting. The opinion is far too complex to fairly summarize here and is well worth studying:

Defendant argued that the People possessed but did not disclose (i) two federal complaints brought by pro se plaintiff Dale Robertson against Detective Rodriguez, (ii) a complaint brought by plaintiff Enger Miguel Javier against Detective Rodriguez in Bronx Supreme Court, and (iii) a three-page CCRB [Civilian Complaint Review Board] Officer History. Defendant argued that the People’s failure to disclose these materials undermined the fairness of his trial and may have impacted the verdict.

The verified complaint for Javier v City of New York, filed approximately one year [the instant shooting], alleged that Detective Rodriguez and his partner interrogated the plaintiff, Javier, over two days without Miranda warnings and deprived him of access to a lawyer It further alleged that the detectives forced a witness to falsely accuse Javier of the crime, even though Javier repeatedly told the detectives

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that he was innocent and identified the actual perpetrator. Ultimately, the Bronx DA dismissed the charges against Javier.

In Robertson, the plaintiff alleged that Detective Rodriguez coerced him into confessing that he had accidentally murdered the victim while he was being transported to Central Booking Robertson claimed that Detective Rodriguez and another officer transported him in the back of an unmarked police vehicle with the front seat pushed all the way back, crushing Robertson's legs. Detective Rodriguez, who was seated next to him, allegedly pressed him against the window to coerce the confession.

The People conceded that they possessed but did not disclose a CCRB Officer History containing summary information regarding 40 allegations made against Detective Rodriguez, including the dates, categories of allegations, and disposition of each incident. The 40 allegations of misconduct reflect 16 discrete CCRB incidents where Detective Rodriguez allegedly used physical force, caused property damage and threatened arrest. [People v White, 2026 NY Slip Op 04475, First Dept 7-16-26](#)

Practice Point: Consult this opinion for an in-depth analysis of when civilian complaints against a police officer must be disclosed by the People as Brady material.

July 16, 2026

CRIMINAL LAW, JUDGES.

THE JUDGE FAILED TO FOLLOW THE THREE-STEP PROCEDURE FOR ASSESSING A BATSON CHALLENGE; THE DEFENDANT WAS NOT GIVEN THE OPPORTUNITY TO ARGUE THAT THE PEOPLE'S PURPORTED RACE-NEUTRAL REASONS FOR ELIMINATING A PROSPECTIVE HISPANIC JUROR WERE PRETEXTUAL; NEW TRIAL ORDERED (SECOND DEPT).

The Second Department, reversing defendant's conviction, determined the judge did not follow the established three-step procedure for assessing defendant's

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Batson challenge to the People's peremptory challenge to an Hispanic prospective juror:

The defendant challenged the People's use of a peremptory challenge pursuant to *Batson v Kentucky* (476 US 79) with respect to the challenge to strike the third Hispanic prospective juror. The defendant contended that the People's prior use of a peremptory challenge to a Hispanic prospective juror in the first round of jury selection and the People's challenges to the two prospective Hispanic jurors in the second round were racially motivated. The defendant pointed out that the People moved to strike the only three Hispanic prospective jurors. In response to the defendant's challenge, the County Court required the defendant to articulate an additional reason as to why the defendant contended that the People's exercise of its peremptory challenge was racially motivated. Defense counsel essentially reiterated his contentions. Thereafter, following the People's articulation of a race-neutral reason for their exercise of each of the three challenges, the court denied the defendant's Batson challenge on the ground that the defendant did not carry his prima facie burden. The court failed to reach step three of Batson wherein the burden shifts to the defendant to argue a basis as to why the reasons proffered by the People were pretextual. * * *

... [T]he defendant satisfied step one of Batson Accordingly, at that point, the burden shifted to the People to proffer race-neutral explanations for exercising their peremptory challenges to eliminate those prospective jurors Thereafter, the court failed to allow the defendant to challenge whether the reasons proffered, although facially neutral, were pretextual and not genuine reasons for the challenges [People v Williams, 2026 NY Slip Op 04440, Second Dept 7-15-26](#)

Practice Point: Consult this decision for a clear explanation of the three-step procedure for assessing a Batson challenge to the People's exercise of a peremptory challenge.

July 15, 2026

LABOR LAW-CONSTRUCTION LAW.

VERTICALLY-STACKED SHEETS OF METAL ON A DOLLY FELL ON PLAINTIFF WHEN HE MOVED IT; THE HEIGHT DIFFERENTIAL WAS NOT DE MINIMUS AND PLAINTIFF WAS ENTITLED TO SUMMARY JUDGMENT IN THIS LABOR LAW 240(1) FALLING-OBJECT CASE; THE FACT THAT THE DOLLY BELONGED TO ANOTHER CONTRACTOR WAS NOT DISPOSTIVE, PLAINTIFF WAS DIRECTED TO MOVE THE DOLLY AS PART OF HIS EMPLOYMENT (FIRST DEPT).

The First Department, reversing Supreme Court, determined plaintiff should have been awarded summary judgment on the Labor Law 240(1) cause of action. Plaintiff moved a dolly belonging to another contractor. The dolly tipped over and the vertically-stacked sheets of metal that were on the dolly struck him. The elevation differential between the dolly and floor was not de minimus and, although the dolly belonged to another contractor, plaintiff was directed to move it:

Based on plaintiff's testimony as well as the testimony of OTL Enterprises' principal that an unsecured load of material on a dolly was unsafe because the material could fall, plaintiff established that the metal sheets required securing ... , the material that fell here was elevated on a dolly such that the elevation differential was not de minimus but rather was sufficient for the load of metal sheets to generate a significant amount of force and was a proximate cause of plaintiff's injuries.

Plaintiff's conduct of moving another subcontractor's loaded dolly that was in the way of his work after an unnamed site supervisor allegedly directed him to do so was in the scope of plaintiff's employment and was not the act of a volunteer falling outside the ambit of Labor Law § 240(1) Plaintiff's conduct in moving the dolly was at most comparative negligence, which is not a defense to a Labor Law § 240(1) claim [Aponte v 298 E. Vil. Owner LLC, 2026 NY Slip Op 04138, Fist Dept 6-30-26](#)

Practice Point: The difference in height between the platform of a dolly and the floor was not de minimus. Plaintiff was entitled to summary judgment on the Labor

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Law 240(1) cause of action after being struck by metal plates which fell from the dolly and struck him.

June 30, 2026

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