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An Organized Compilation of Summaries of Selected Decisions, Mostly Reversals, Released by Our New York State Appellate Courts July 20 – 24, 2026, and Posted on the New York Appellate Digest Website on Monday, August 3, 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.

Weekly Reversal Report
July 20 – 24, 2026

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STATUTORY PENALTIES ARE NOT AVAILABLE IN CLASS ACTIONS UNLESS THE STATUTE SPECIFICALLY AUTHORIZES RECOVERY IN A CLASS ACTION, NOT THE CASE HERE (SECOND DEPT).

The Second Department, reversing (modifying) Supreme Court, determined the class action plaintiffs were not entitled to class certification for the causes of action seeking statutory penalties and attorneys' fees for failure to provide wage notices and statements in violation of Labor Law section 195 (1) and (3):

CPLR 901(b) provides that, "[u]nless a statute creating or imposing a penalty, or a minimum measure of recovery specifically authorizes the recovery thereof in a class action, an action to recover a penalty, or minimum measure of recovery created or imposed by statute may not be maintained as a class action." The Labor Law provides for statutory penalties for violations of Labor Law § 195(1) and (3) (see id. §§ 198[1-b], [1-d] …). Inasmuch as Labor Law § 198(1-b) and § 198(1-d) do not specifically authorize recovery as part of a class action, the court should not have granted certification with respect to those issues … Maylou v Mittal, 2026 NY Slip Op 04497, Second Dept 7-22-26

Practice Point: Here the class action plaintiffs sought recovery of statutory penalties. The statutory penalties could not be recovered in a class action because the statute did not explicitly so provide.

July 22, 2026

CIVIL PROCEDURE.

DEFENDANT'S COUNTERCLAIMS MADE IN AN ACTION IN WHICH A DEFAULT JUDGMENT WAS GRANTED ARE NOT BARRED BY THE RES JUDICATA DOCTRINE; DEFENDANT, NOW AS A PLAINTIFF, CAN BRING A NEW ACTION BASED ON THE COUNTERCLAIMS; NEW YORK IS A "PERMISSIVE COUNTERCLAIM" JURISDICTION (FOURTH DEPT).

The Fourth Department, reversing Supreme Court, over a dissent, determined the causes of action first brought as counterclaims in a prior action were not barred by the res judicata doctrine after a default judgment in the prior action:

"New York does not have a compulsory counterclaim rule" … . Thus, a defendant who fails to bring a counterclaim in an action that results in an adverse judgment will be barred from bringing that same claim only if " 'the two causes of action have such a measure of identity that a different judgment in the second would destroy or impair rights or interests established by the first' " … . Stated another way, "the permissive counterclaim rule operates to save from the bar of res judicata those claims for separate or different relief that could have been but were not interposed in the parties' prior action so long as the second action is not based on a preexisting claim for relief that would impair the rights or interests established in the first action" … .

Inasmuch as the judgment sought by plaintiff in this action would not " 'destroy or impair rights or interests established' " by defendant's default judgment in the prior action … , plaintiff's complaint is not barred by the doctrine of res judicata. The mere fact that a counterclaim may serve as an offset to lessen the net amount owed to a plaintiff is not, in and of itself, sufficient to "impair" the rights established as a result of a default judgment inasmuch as every counterclaim—to the extent established by a defendant—provides an offset to the initial claim … . Vince's Pizza Plus, Inc. v Dion DeFedericis, 2026 NY Slip Op 04598, Fourth Dept 7-24-26

Practice Point: New York is a "permissive counterclaim" jurisdiction. Therefore counterclaims made by a defendant in a prior action which resulted in a default judgment can be the basis of a new action brought by the defendant, now as a plaintiff, without triggering the res judicata doctrine.

July 24, 2026

CONTRACT LAW, CONSTITUTIONAL LAW.

ALTHOUGH THE CONTRACT WAS BETWEEN SOPHISTICATED PARTIES, THE CLAUSE "THE OWNER AND ARCHITECT AGREE TO MUTUALLY WAIVE EACH OTHER [SIC] RIGHT TO SUE OR PLACE CLAIMS AGAINST EACH OTHER" WAS VOID AS AGAINST PUBLIC POLICY (SECOND DEPT).

The Second Department, reversing (modifying) Supreme Court, determined the contract clause "THE OWNER AND ARCHITECT AGREE TO MUTUALLY WAIVE EACH OTHER [sic] RIGHT TO SUE OR PLACE CLAIMS AGAINST EACH OTHER" was unenforceable as against public policy:

… [T]he waiver provision … purports to completely foreclose the possibility of any form of judicial or nonjudicial review. Although … the agreement was negotiated at arm's length between sophisticated parties, freedom of contract is not merely an individual right, and enforcing the waiver provision has implications beyond the individual choices of the contracting parties … . In 159 MP Corp. v Redbridge Bedford, LLC (33 NY3d 353), the Court of Appeals upheld a waiver precluding the plaintiffs from commencing a declaratory judgment action. The Court of Appeals noted that "[c]ritically, the waiver clause at issue here does not preclude access to the courts but leaves available other judicial avenues through which plaintiffs may adjudicate their rights under the leases" … . The Court of Appeals specified that "the waiver does not impair plaintiffs' ability to seek damages on breach of contract or tort theories" … .

Here, in contrast, the waiver provision precludes access to the courts and leaves no judicial or nonjudicial avenues through which the plaintiff may adjudicate his rights under the agreement. Thus, the waiver provision is void and unenforceable as against public policy … . Hochhauser v Urban Off. Architecture, PLLC, 2026 NY Slip Op 04491, Second Dept 7-22-26

Practice Point: A contract clause with waives all access to the courts is void as against public policy.

July 22, 2026

COURT OF CLAIMS, CIVIL PROCEDURE, EVIDENCE.

TO STATE A MERITORIOUS CLAIM AGAINST THE STATE IN THE COURT OF CLAIMS, CLAIMANT NEED NOT MAKE OUT A PRIMA FACIE CASE; IT IS ENOUGH THAT THE CLAIM HAS THE APPEARANCE OF MERIT; HERE CLAIMANT'S APPLICATION FOR PERMISSION TO FILE A LATE CLAIM SHOULD HAVE BEEN GRANTED (FOURTH DEPT).

The Fourth Department, reversing the Court of Claims, determined claimant's application for permission to file a late claim should have been granted. The Court of Claims found that claimant did not demonstrate a meritorious claim. The Fourth Department explained that a claimant need not make out a prima facie case at this stage. If the claim is not patently groundless, frivolous or legally defective it should be deemed meritorious:

… [W]hile being treated in the inpatient psychiatric unit at Upstate, she was restrained by security officers and nurses because she was engaging in self-harm or had refused medication and injection. According to claimant, security officers escorted her to a seclusion room and forcefully pinned her down, with several security officers lying on top of her while her left arm was underneath her body. Claimant's medical records confirmed that four security officers and two nurses were involved in the restraining incident. Claimant allegedly screamed out in pain, and a nurse told the security officers to get off of her. Consistent with claimant's allegations, the medical records establish that, as a result of the incident, claimant suffered a dislocated left elbow, which first required a closed reduction under sedation and placement of a cast and later required surgery under general anesthesia to correct the recurrent instability in her elbow and a complete tear of the ligament complex.

… [T]he evidence presented by claimant in support of the application demonstrates that the security officers and nurses may have caused her injuries, as she alleges, by negligently applying excessive force while attempting to restrain her … . Further, contrary to the State's assertion, to the extent that Upstate's account of the incident in the medical records suggests that claimant somehow dislocated her own elbow, that notation created at most a factual issue with respect to causation … . Consequently, on this record, it cannot be said that "the claim raised is patently groundless, frivolous or legally defective" … . … [C]aimant's submissions on the application are sufficient, at this stage in the proceedings, to demonstrate that there appears to be merit to her claim within the meaning of Court of Claims Act § 10 (6) … . Viola v SUNY Upstate Univ. Hosp., 2026 NY Slip Op 04604, Fourth Dept 7-24-26

Practice Point: In seeking permission to make a late claim in the Court of Claims, claimant need not make out a prima facie case. It is enough that the claim has the appearance of merit, i.e., that it is not patently groundless, frivolous or legally defective.

July 24, 2026

COURT OF CLAIMS, NEGLIGENCE.

THE STATE'S SNOWPLOW DRIVER WAS NOT DRIVING ON A PLOW ROUTE WHEN HE MADE AN ILLEGAL RIGHT TURN AND STRUCK PLAINTIFF'S CAR; THE VEHICLE AND TRAFFIC LAW 1103(B) "RECKLESS DISREGARD" STANDARD, THEREFORE, DID NOT APPLY; CLAIMANT'S CLAIM SHOULD HAVE BEEN GRANTED (FOURTH DEPT).

The Fourth Department, reversing the Court of Claims, determined the State's snowplow driver was not engaged in work on the highway when it made an illegal right turn on a city street, striking claimant's car. Therefore the "reckless disregard" negligence standard in Vehicle and Traffic Law 1103(b) was not applicable. The Fourth Department granted the claim and sent the action back for a trial on damages only:

Here, the evidence at trial established that the snowplow driver's route consisted of a series of exits on I-190 in Buffalo, including the on-ramps and off-ramps, and that he would routinely travel on city streets, including the street on which the accident occurred, to access the next ramp on his route. Inasmuch as the testimony reflects that the snowplow driver did not have the authority to plow or salt city streets such as the one where the accident occurred, we conclude that, at the time of the accident, he "was not driving on part of his plow route but instead was traveling from one part of his route to another by way of a [municipal] road that he was not responsible for plowing" … .

Inasmuch as the snowplow driver admitted that he was aware that he was not permitted to make a right turn against a red light at the subject intersection, admitted that he was aware that other drivers treated that portion of road as having two northbound lanes, and nonetheless elected to make an illegal right turn on red from the left-hand lane, we conclude that the evidence established that the snowplow driver was negligent … . We further conclude that claimant was not contributorily negligent inasmuch as he was lawfully on the roadway and stopped at a red light when struck … . Bushley v New York State Thruway Auth., 2026 NY Slip Op 04686, Fourth Dept 7-24-26

Practice Point: Here the State's snowplow driver was not driving on a plow route when he made an illegal right turn and struck plaintiff's car. The "reckless disregard" standard, which would have applied if the snowplow were engaged in work on a plow route, did not apply. Ordinary negligence is the applicable standard.

July 24, 2026

CRIMINAL LAW, CONSTITUTIONAL LAW, EVIDENCE.

THE DEFENSE SPECIFICALLY CHALLENGED THE RELIABILITY OF THE IDENTIFICATION OF THE DEFENDANT WHICH WAS RELAYED TO THE POLICE BY A CIVILIAN PROPERTY OWNER; THE PEOPLE FAILED TO ESTABLISH THE IDENTIFICATION WAS BASED UPON THE PROPERTY OWNER'S PERSONAL KNOWLEDGE, AS OPPOSED TO SPECULATION; SUPPRESSION GRANTED AND INDICTMENT DISMISSED (FOURTH DEPT).

The Fourth Department determined the People did not establish the legality of the defendant's arrest, granted suppression and dismissed the indictment. The defendant specifically challenged the reliability of the identification of the defendant by a civilian property owner. The People failed to demonstrate the civilian's identification was based upon personal knowledge as opposed to speculation:

The first officer testified that the civilian property owner had identified defendant in the video as the shooter and that she had reported having interacted with him more than 100 times.

We conclude that the civilian's basis of knowledge was not established at the hearing. "The 'basis-of-knowledge' prong of the test may be satisfied upon a showing that the information furnished is so detailed as to make it clear that it must have been based upon personal knowledge" … . "The basis of knowledge component . . . requires that the information provided by the informant be corroborated orthrough details sufficient in number and suggestive of, or directly related to, the criminal activity informed about" … . Although the first officer testified that the civilian property owner had previously had more than 100 interactions with defendant, the record reflects that the level of detail needed to enable the court to determine whether her identification of defendant was "more than mere speculation" is lacking … . Notably, the People never offered the supporting deposition or the video of the underlying incident at the suppression hearing, and the hearing testimony failed to provide the requisite evidence of the civilian's "own description of underlying circumstances personally observed" … .

Although police observations can provide the corroborating details required to allow a court to properly infer a basis of knowledge, no such details were offered at the hearing … . As an example, the first officer testified that he had observed defendant "half a dozen times or so" prior to defendant's arrest, but that he could not identify defendant in the video "because the video was grainy." As another example, the court asked the first officer, "Did [the third officer] relay to you that he had had any prior involvement with [defendant]?," to which the first officer responded, "I did not ask him." As a result of the lack of detail, the court was relegated to reliance upon the first officer's conclusory statement—provided to him by the civilian property owner—that defendant was the shooter in the underlying incident—"in order to determine the reliability of the information claimed to have established probable cause" … . People v Asbury, 2026 NY Slip Op 04617, Fourth Dept 7-24-26

Practice Point: Where the police rely on information provided to them by other officers, a computer database, civilians, etc,, for probable cause, if the defense specifically challenges the reliability of the source of the information the People must demonstrate its reliability at the suppression hearing. Here the police relied on an identification of the defendant by a civilian property owner who was shown a video. The basis of the property owner's knowledge was not demonstrated at the suppression hearing and the indictment was dismissed on appeal.

July 24, 2026

CRIMINAL LAW, CORRECTION LAW, JUDGES, APPEALS, CIVIL PROCEDURE.

WHERE THE SENTENCING JUDGE ORDERS DOCCS TO ENROLL DEFENDANT IN A SHOCK PROBATION PROGRAM, DOCCS CANNOT CONSIDER THE ORDER TO BE MERELY A RECOMMENDATION WHICH CAN BE IGNORED (THIRD DEPT).

The Third Department, reversing Supreme Court, in a full-fledged opinion by Justice Clark, determined the Department of Corrections and Community Supervision (DOCCS) did not have the discretion to treat Supreme Court's order to enroll petitioner in the shock probation program as a recommendation which need not be implemented. Although the petitioner had been released from incarceration, the Third Department considered the case as an exception to the mootness doctrine:

… [W]hen applying the literal language of Penal Law § 60.04 (7) (a) and Correction Law § 865 (1), the most rational interpretation of the statutes is that, when the same sentencing judge imposes concurrent sentences on convictions for an eligible drug offense and another non-enumerated offense, the sentencing judge's directive to enroll an eligible incarcerated individual into the shock incarceration program upon the conviction for the qualifying drug offense is binding on DOCCS, so long as the conviction on the additional non-drug offense is not one of the disqualifying offenses listed in Correction Law § 865 (1). Matter of Adams v Martuscello, 2026 NY Slip Op 04542, Second Dept 7-23-26

Practice Point: Absent a statutory exception, DOCCS must implement a sentencing judge's order to enroll defendant in the shock probation program.

July 23, 2026

CRIMINAL LAW, ATTORNEYS, EVIDENCE, JUDGES.

PRESENTING THE GRAND JURY WITH EVIDENCE SUBSEQUENTLY RULED IRRELEVANT DID NOT AMOUNT TO PROSECUTORIAL MISCONDUCT WARRANTING DISMISSAL OF THE INDICTMENT (FOURTH DEPT).

The Fourth Department, in a full-fledged opinion by Justice Curran, reversing County Court, determined the prosecutor's presentation of evidence to the grand jury which was subsequently ruled irrelevant did not amount to misconduct warranting dismissal of the indictment. Defendant drove his car at high speed in poor road conditions. The car left the road, crashed and burned. The two passengers were killed. Defendant was charged with criminally negligent homicide. Driving at a high speed in poor road conditions, without more, will not support criminally negligent homicide. The prosecutor presented evidence of a blood test which indicated defendant had used marijuana to meet the criteria for criminally negligent homicide. When County Court determined the marijuana evidence was irrelevant because there was no proof the marijuana-use affected defendant's ability to operate the car, County Court dismissed the indictment. The Fourth Department found that the presentation of the irrelevant evidence was not "prosecutorial misconduct" which justified dismissal of the indictment:

… [W]e conclude that the court erred in granting defendant's renewed motion on the ground that the grand jury proceedings were rendered defective due to prosecutorial misconduct. At the outset, it is worth noting what is not at issue here. Specifically, we note that there is no evidence in this case that the People, in introducing the cannabinoid evidence to the grand jury, intentionally engaged "in an over-all pattern of bias and misconduct" that was "pervasive" and "willful" (Thompson, 22 NY3d at 699 [internal quotation marks omitted]). There also is no evidence that, in introducing the challenged evidence, the prosecutor was "motivated by bias or a desire to deceive the grand jury" (id. at 706) or that there was any "nefarious design to deliberately cause unfairness to defendant" (People v Wisdom, 23 NY3d 970, 973 [2014]).

Rather, the court's conclusion that the People had impaired the integrity of the grand jury proceedings through misconduct was predicated on its determination that the People had improperly introduced the cannabinoid evidence—evidence that was later found to be irrelevant. In so concluding, the court failed to explain how the People's reliance on the allegedly flawed cannabinoid evidence met the dismissal standard set forth by the Court of Appeals in the aforementioned cases. Indeed, it is quite clear from those decisions that a mere error or flaw by a prosecutor in presenting evidence does not, in fact, meet the demanding test for establishing entitlement to dismissal due to the impairment of the integrity of the grand jury proceedings … . People v Stencel, 2026 NY Slip Op 04574, Fourth Dept 7-24-26

Practice Point: Consult this opinion for a discussion of the nature of prosecutorial misconduct at the grand jury stage which mandates dismissal of the indictment, not the case here.

July 24, 2026

CRIMINAL LAW, CONSTITUTIONAL LAW, EVIDENCE.

DEFENDANT SPECIFICALLY CHALLENGED THE ACCURACY OF THE DMV DATABASE WHICH PURPORTEDLY INDICATED DEFENDANT'S DRIVER'S LICENSE HAD BEEN SUSPENDED (THE BASIS FOR THE TRAFFIC STOP): THE PEOPLE THEREFORE WERE REQUIRED TO DEMONSTRATE THE RELIABILITY OF THE DMV DATABASE TO DEMONSTRATE PROBABLE CAUSE; BY FAILING TO INTRODUCE ANY EVIDENCE ON THE ISSUE, THE PEOPLE DID NOT DEMONSTRATE THE LEGALITY OF THE STOP (FOURTH DEPT).

The Fourth Department, reversing the judgment of conviction, suppressing the physical evidence and dismissing the indictment, over a two-justice dissent, determined the People did not demonstrate that the traffic stop was justified because the People offered no proof defendant's license had been suspended at the time of the stop. An officer testified, just prior to stopping the defendant, he checked the DMV database on his in-vehicle computer where the suspension of defendant's license was indicated. But no evidence establishing the license suspension or the accuracy of the DMV database was introduced:

Defendant contends that the People were required to establish, at the suppression hearing, that defendant's license had been suspended, because defendant challenged the reliability of the DMV information, and that the court therefore erred in refusing to suppress physical evidence. We agree.

"It is well settled that, although 'a defendant who challenges the legality of a search and seizure has the burden of proving illegality, the People are nevertheless put to the burden of going forward to show the legality of the police conduct in the first instance' " … . As relevant here, a vehicle stop is permissible when based on probable cause that the driver has committed a traffic violation … .

Under the "fellow officer rule" …. , "[a] police officer is entitled to act on the strength of a radio bulletin or a telephone or teletype alert from a fellow officer or department and to assume its reliability" … , and the same rule applies to the DMV database accessible on an in-vehicle computer … . "[T]he probabilities are that such detailed information of the type in these communications does not find its way onto the police air waves [or mobile data terminal] without substantial basis” … .

“But where on a motion to suppress, a challenge to the [officer’s] action is made, the presumption of probable cause that originally cloaked that action disappears from the case” … . If a defendant raises a “specific challenge” to the reliability of certain transmitted information, that information may not be relied upon by the suppression court … . “[B]are reliance on an unsubstantiated hearsay communication from the instigating officer or department will not suffice for probable cause” … . “[T]he People must demonstrate that the sender or sending agency itself possessed the requisite probable cause to act” … . “The pertinent inquiry in all situations has been directed to the nature and reliability of the information possessed by the person or agency transmitting the information” … . People v McGuire, 2026 NY Slip Op 04597, Fourth Dept 7-24-26

Practice Point: When the accuracy of information transmitted to the arresting officer is specifically challenged, the People must prove the reliability of the information. Here the accuracy of the DMV database (showing that defendant’s license had been suspended) was specifically challenged. Because the People did not attempt to prove the information in the DMV database was reliable, they did not demonstrate probable cause for the traffic stop.

July 24, 2026

CRIMINAL LAW, CONSTITUTIONAL LAW, EVIDENCE.

THE POLICE ASKED FOR DEFENDANT'S NAME AND DATE OF BIRTH; HE PROVIDED A FALSE NAME; HE PROVIDED HIS REAL NAME ONLY AFTER HE WAS WARNED OF THE CONSEQUENCES OF PROVIDING A FALSE NAME AND DETAINED; THE POLICE QUESTIONING DID NOT TRIGGER THE NEED FOR THE MIRANDA WARNINGS BECAUSE THE POLICE WERE SEEKING ONLY "PEDIGREE" INFORMATION; THERE WAS A TWO-JUSTICE DISSENT (FOURTH DEPT).

he Fourth Department, affirming the conviction, determined there was no Miranda violation because the police asked only pedigree questions. The two dissenters disagreed:

… [T]he police officer, accompanied by two other members of the police department, responded to a residence after receiving a complaint that there were unwanted guests there. Upon their arrival, the complainant reported to the police that there were two unwanted guests in the residence: a female guest identified by name and a male guest supposedly named "Rodney." The police identified the female guest by name and she agreed to leave without argument.

The police located the male guest—later identified as defendant—in the closet of a back bedroom underneath some clothes and other items. The police asked defendant to identify himself by name and date of birth. Defendant provided the police with the false name "Rodney Miller" and a purported date of birth. The police gave defendant multiple warnings that it was illegal to lie to them about his name, but defendant continued to provide the false name. The officer testified that defendant was not free to leave during the interaction until the police identified him. The officer explained, among other things, that the police did not provide defendant with Miranda warnings prior to asking for his name and date of birth because they were merely attempting to obtain defendant's pedigree information as a routine matter for any such encounter. The officer further testified that the police then informed defendant that he was going to be detained and, upon being detained, defendant provided his real name. Thereafter, the police ultimately determined that there was an order of protection in place against defendant and in favor of the female guest. The police then arrested defendant for violating the order of protection and for providing false pedigree information. * * *

… [W]e conclude that the court properly determined that the pedigree exception applied and thus properly denied that part of defendant's omnibus motion seeking to suppress his statements to the police. The officer testified at the suppression hearing that the purpose of asking pedigree questions of both the female guest and defendant was "[t]o identify who they were and advise them they were no longer welcome there," and that requesting general information such as names and dates of birth was routine for any such encounter. The officer's testimony thus established the administrative purpose for seeking pedigree information during an encounter of that nature: the police must know with whom they are speaking in a residence … . The People "thereby established the threshold basis for the pedigree exception to apply, i.e., the questions were reasonably related to the police's administrative concerns" … . * * *

As the Court of Appeals has cautioned, "[a]lthough there may be some circumstances where asking a suspect for core identifying information such as name, date of birth, and address will not qualify for the pedigree exception to Miranda, those circumstances will be rare" (id. at 416). People v Milton, 2026 NY Slip Op 04584, Fourth Dept 7-24-26

Practice Point; The police may ask for a person's name and date of birth without providing Miranda warnings, even when the police are aware the person has provided a false name.

July 24, 2026

CRIMINAL LAW, CONSTITUTIONAL LAW, EVIDENCE.

THE POLICE HAD PROBABLE CAUSE TO ARREST THE DEFENDANT, WITHOUT A WARRANT, THREE DAYS AFTER THE SHOOTING, BASED UPON THEIR INVESTIGATION WHICH INCLUDED VIEWING VIDEO SURVEILLANCE TAPES; AN ARREST IN A PUBLIC HALLWAY OF AN APARTMENT BUILDING DOES NOT VIOLATE "PAYTON;" TWO DISSENTERS WOULD HAVE AFFIRMED COUNTY COURT'S RULING THAT THE POLICE DID NOT HAVE PROBABLE CAUSE (FOURTH DEPT).

The Fourth Department, reversing County Court's suppression of a handgun, over a two-justice dissent, determined the police had probable cause to arrest the defendant without a warrant based upon video evidence showing the defendant entering the victim's apartment with the victim, showing the defendant leaving the apartment and demonstrating no one else entered the apartment during the relevant period of time (when the victim was shot).. County Court's ruling that the arrest in the common hallway of an apartment building was a Payton violation was rejected because the defendant had no expectation of privacy there:

The police "may arrest a person without a warrant when [they] ha[ve] probable cause to believe that such person has committed a crime" … . "Probable cause 'does not require proof sufficient to warrant a conviction beyond a reasonable doubt but merely information sufficient to support a reasonable belief that an offense has been . . . committed' by the person arrested" … . "When determining whether the police had probable cause to arrest, the inquiry is not as to [the person's] guilt but as to the sufficiency for arrest purposes of the grounds for the arresting officer's belief that [the person] was guilty" … . "[T]he basis for such a belief must not only be reasonable, but it must appear to be at least more probable than not that a crime has taken place and that the one arrested is its perpetrator" … . " '[T]he legal conclusion [as to whether probable cause existed] is to be made after considering all of the facts and circumstances together' " … . "A synoptic evaluation is essential because '[v]iewed singly, these may not be persuasive, yet when viewed together the puzzle may fit and probable cause found' " … .

… [O]n January 24, 2024, the tenant who actually rented the victim's apartment in Jamestown found the victim deceased in the apartment and then reported the discovery to a neighbor, who then accompanied the tenant back to the apartment and called 911 to report the discovery of the victim's body. The police thereafter discovered that the victim had sustained a fatal gunshot wound to the back of the head. As of that day and into the next, the murder weapon had not been located. During their investigation into the homicide, the police obtained security footage that depicted the hallway outside of the victim's apartment. The security footage showed the victim and another male entering the victim's apartment on January 22, 2024, but only the yet-to-be-identified male left the victim's apartment later that same day. The investigative section commander with the investigating police department testified that, after obtaining a still photograph from the security footage and conducting further investigation, the police determined that defendant was the other male shown entering the apartment with the victim on January 22, 2024. Indeed, another officer recognized the other male—defendant—as the same person with whom he had a brief street encounter on January 22, 2024 in an alleyway on the backside of the victim's apartment complex, i.e., defendant's presence at the victim's apartment complex was independently confirmed by a law enforcement source. Notably, during the street encounter that day, defendant partially misrepresented his name by giving his middle name as his surname. The police thus developed knowledge that defendant was the other male depicted leaving the victim's apartment that same day. Based upon the police department's review of the relevant duration of the security footage, however, no one else, including the victim, ever exited or entered the apartment from January 22, 2024 until January 24, 2024, i.e., the day that the victim's body was discovered and the discovery was reported to the police. People v Kadenhead, 2026 NY Slip Op 04680, Fourth Dept 7-24-26

Practice Point: Here the Fourth Department determined the police had probable cause to arrest the defendant in the hallway of his apartment building, without a warrant, three days after the shooting.

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CRIMINAL LAW, EVIDENCE, APPEALS.

THE ATTEMPTED RAPE AND ROBBERY CONVICTIONS WERE "AGAINST THE WEIGHT OF THE EVIDENCE" (FOURTH DEPT).

The Fourth Department, reversing the attempted rape and robbery convictions, determined there was insufficient evidence defendant intended to have intercourse with the victim there was insufficient evidence defendant intended to deprive the victim of her emergency alarm which he possessed only briefly and then discarded. The convictions were deemed "against the weight of the evidence." The defendant was an inmate in a correctional facility and the victim a civilian employee. The defendant attacked and fell on top of the victim after following her to a secluded area of the prison kitchen. The assault conviction was affirmed:

… [W]e conclude that the People failed to prove beyond a reasonable doubt that defendant intended and attempted to have sexual intercourse with the victim. Beyond the surrounding circumstances, such as the location of the attack and defendant's insistence that the victim be quiet, the sole evidence presented by the People from which a factfinder could infer any sexual component to defendant's actions was the victim's testimony that, after they fell to the floor and defendant was on top of her, defendant's "hands were all over [her] at that point." The victim further acknowledged, however, that defendant never physically reached underneath any of her clothing and never attempted to remove her pants. Unlike comparable cases, the People here adduced no evidence of a particularized sexual motivation or component underlying defendant's actions, nor did the People present evidence—beyond the generalized testimony that defendant's hands were "all over" the victim—that defendant attempted to engage specifically in sexual intercourse with the victim … . Even though "the absence of an explicit demand for sex does not undermine a finding of attempted rape" under circumstances from which a factfinder could reasonably conclude that the defendant intended and attempted to engage, specifically, in forcible sexual intercourse … , we conclude that the evidence is not strong enough to establish the existence of such circumstances in this case. People v Jenkins, 2026 NY Slip Op 04677, Fourth Dept 7-24-26

Practice Point: Consult this decision for two rare examples of "against the weight of the evidence" reversals.

July 24, 2026

CRIMINAL LAW, EVIDENCE, APPEALS.

TO RENDER THE "HARMLESS ERROR" DOCTRINE INAPPLICABLE, THERE MUST BE "OVERWHELMING" EVIDENCE OF GUILT, WHICH IS MORE THAN "PROOF BEYOND A REASONABLE DOUBT;" HERE THERE WAS "OVERWHELMING" EVIDENCE OF GUILT FOR THE BURGLARY COUNTS, BUT ONLY "PROOF BEYOND A REASONABLE DOUBT" FOR THE SHARED INTENT ELEMENT OF THE ASSAULT COUNT; THEREFORE THE ERROR IN ADMITTING IDENTIFICATION EVIDENCE COULD NOT BE DEEMED HARMLESS FOR THE ASSAULT COUNT AND A NEW TRIAL ON THAT COUNT WAS ORDERED (FOURTH DEPT).

The Fourth Department, reversing defendant's assault conviction, determined the evidence defendant shared the codefendant's intent to cause physical injury was not "overwhelming," therefore the harmless error standard did not apply. The error, which was deemed harmless for other counts for which the evidence was deemed "overwhelming," was the introduction of identification evidence where no CPL 710.30 notice was provided by the People. The motion court determined the identification was "confirmatory," but the Fourth Department disagreed because the victim only met defendant once for a few minutes:

An identification is considered confirmatory only where, "as a matter of law, the witness is so familiar with the defendant that there is 'little or no risk' that police suggestion could lead to a misidentification" … . "In effect, it is a ruling that however suggestive or unfair the identification procedure might be, there is virtually no possibility that the witness could misidentify the defendant" … . The exception "does not apply where the familiarity emanates from a brief encounter" … .

Here, the victim testified at the Rodriguez hearing that he had met defendant only once before the crimes were committed, and then for only a few minutes. Under the circumstances, it cannot be said, as a matter of law, that there was " 'little to no risk' " of misidentification resulting from an unduly suggestive photo array or identification procedure … . * * *

The People were required to prove, among other things, that defendant shared the codefendant's intent to cause physical injury to the victim, and they proved beyond a reasonable doubt that defendant shared the requisite intent by presenting evidence that defendant punched the victim upon entering the apartment, albeit with no discernable effect. Overwhelming proof of guilt, however, is a greater burden than proof beyond a reasonable doubt … and, in our view, the evidence as it relates to the intent element of assault in the second degree does not satisfy that burden. The harmless error doctrine is thus inapplicable with respect to the assault charge … . We therefore modify the judgment by reversing that part convicting defendant of assault in the second degree, granting the part of the omnibus motion seeking preclusion of the identification testimony, and granting defendant a new trial on count 3 of the indictment. People v Hurst, 2026 NY Slip Op 04717, Fourth Dept 7-24-26

Practice Point: This decision highlights a difference between a "legal sufficiency" and a "weight of the evidence" analysis on appeal. Under a "weight of the evidence" analysis, if the proof of guilt is "beyond a reasonable doubt" (i.e., legally sufficient), but is not "overwhelming," the harmless error doctrine in inapplicable. [EDITOR'S NOTE: I HAVE DIFFICULTY UNDERSTANDING THE CRITERIA FOR "LEGAL INSUFFICIENCY" VERSUS "AGAINST THE WEIGHT OF THE EVIDENCE" AT THE APPELLATE LEVEL. THIS DECISION APPEARS TO ILLUSTRATE ONE OF THE DIFFERENCES. IF ANYONE CAN HELP ME UNDERSTAND THE RELEVANT ANALYTICAL CRITERIA, I WOULD BE MOST GRATEFUL.]

July 24, 2026

CRIMINAL LAW, EVIDENCE.

AT THE SUPPRESSION HEARING THE ARRESTING OFFICER TESTIFIED HIS PARTNER TOLD HIM THERE WAS PROBABLE CAUSE TO ARREST AFTER HIS PARTNER SPOKE TO THE DRIVER; THE DEFENSE CHALLENGED THE INFORMATION IMPARTED BY THE DRIVER TO THE PARTNER UNDER THE FELLOW OFFICER RULE; BECAUSE NO EVIDENCE WAS PRESENTED TO DEMONSTRATE THE PARTNER HAD THE REQUISITE LEVEL OF SUSPICION, SUPPRESSION SHOULD HAVE BEEN GRANTED (FOURTH DEPT).

The Fourth Department, reversing the denial of defendant's suppression motion, determined the People did not present evidence at the suppression hearing justifying handcuffing the defendant after a "tinted windows" traffic stop. The officer who testified at the hearing said his partner told him there was probable cause but he was not aware of what the driver told his partner. Because the defense challenged the information under the fellow officer rule, the People were required to demonstrate the officer who spoke with the driver had the requisite level of suspicion, but no evidence on that issue was presented:

We agree with defendant that, under these circumstances, by placing him in handcuffs after directing him to exit the vehicle, the troopers transformed the traffic stop into, at minimum, a "forcible stop and detention" … , which "must be justified by some additional circumstances, such as a threat of evasive conduct . . . ; a need to transport the defendant for a showup procedure . . . ; a fear that the suspect may interfere with the execution of a search warrant . . . ; or a concern for officer safety" … .

Although … the Trooper testified that he observed an "orange pill bottle with no markings on it in the center console of the vehicle," that alone is insufficient to justify the forcible stop and detention … . The Trooper conceded that he could not see inside the bottle and did not know what was inside. He also did not observe any other indicia of criminality and did not see defendant acting in a suspicious manner. Although a conversation took place between the Trooper and his partner, defendant challenged that information under the fellow officer rule. The People were thus required to establish at the hearing that the partner, who imparted information to the Trooper, in fact possessed the requisite level of suspicion to act … . Here, however, the Trooper's partner did not testify, and the Trooper testified that his partner did not relay the substance of the conversation with the driver to him. We are therefore unable to infer that the Trooper received information sufficient to justify his subsequent actions … . People v Purrier, 2026 NY Slip Op 04681, Fourth Dept 7-24-26

Practice Point: This case presents another example of a defense challenge to information passed from one police officer to another in the context of a probable-cause determination at a suppression hearing. The officer who testified at the hearing relied on information from his partner who told him there was probable cause to arrest after the partner spoke with the driver. Because of the challenge under the fellow officer rule, the People were required to demonstrate the partner had the requisite level of suspicion after speaking with the driver, but the People presented no testimony on that issue.

July 24, 2026

CRIMINAL LAW, FAMILY LAW.

DEFENDANT'S SHOWING A HANDGUN TO HER EX-BOYFRIEND DID NOT CONSTITUTE "DISPLAYING" THE WEAPON IN FURTHERANCE OF THE OFFENSE; THEREFORE THERE WAS NO IMPEDIMENT TO REMOVING THE SEVENTEEN-YEAR-OLD DEFENDANT'S "CRIMINAL POSSESSION OF A WEAPON" CASE TO FAMILY COURT (FOURTH DEPT).

The Fourth Department, in a full-fledged opinion by Justice Nowak, over an extensive dissent, determined the seventeen-year-old defendant's showing her ex-boyfriend a handgun she had on her person dis not amount to "displaying" the weapon such that the case could not be removed to Family Court:

… [D]efendant was charged with a violent felony (see Penal Law § 70.02 [1] [b]), and thus the People could prevent removal to Family Court without a formal motion under one of the CPL 722.23 (2) (c) exceptions, i.e., as relevant here, that defendant “displayed a firearm, shotgun, rifle or deadly weapon as defined in the penal law in furtherance of [the charged] offense[s]” (CPL 722.23 [2] [c] [ii]; see Penal Law §§ 265.02 [3]; 265.03 [3]). * * *

… [D]efendant did not “further” her possession of the weapon merely by displaying it to her ex-boyfriend, even if she did so to emphasize her control of the handgun … .Every display of a handgun emphasizes control by the person possessing it, and thus every display would always further the charged offense. So too with the dissent’s proposed construction. Every display of a weapon provides evidence of possession—it is not possible to display the weapon without possessing it—and thus there would always be a “logical nexus” between a display and the possessory offense … . Either reading would effectively render meaningless the separate statutory requirement that the display “further[ ]” the charged offense (CPL 722.23 [2] [c] [ii]). Had the legislature wished to do so, it could have required that the People demonstrate only that the adolescent offender “displayed” a designated weapon, and stopped there, without also requiring that the offender did so “in furtherance of” the charged offense (CPL 722.23 [2] [c] [ii]). That language must be given effect and interpreted to require something more than merely displaying the weapon … . People v Neyshaliz M. V., 2026 NY Slip Op 04581, Fourth Dept 7-24-26

Practice Point: Consult this opinion for a discussion of what it means to “display” a weapon “in furtherance” of the charged offense (criminal possession of a weapon). Merely showing the weapon to defendant’s ex-boyfriend did not amount to displaying the weapon in furtherance of the offense.

July 24, 2026

CRIMINAL LAW, JUDGES, ATTORNEYS.

THE JUDGE DID NOT MAKE THE REQUISITE “SEARCHING INQUIRY” BEFORE ALLOWING DEFENDANT TO REPRESENT HIMSELF; DECISION RESERVED AND MATTER SENT BACK (FOURTH DEPT).

The Fourth Department, reserving decision on this appeal of the denial of a suppression motion, determined the trial judge did not conduct the requisite “searching inquiry” before allowing the defendant to represent himself:

As defendant contends and the People correctly concede, the court failed to conduct a sufficient inquiry into his request to represent himself. “[A]n application to proceed pro se must be denied unless defendant effectuates a knowing, voluntary and intelligent waiver of the right to counsel . . . To this end, trial courts must conduct a ‘searching inquiry’ to clarify that defendant understands the ramifications of such a decision” … . In other words, a “searching inquiry” is required to “warn defendant of the risks inherent in representing [themself]” and to “apprise [them] of the value of counsel” … , including that “going pro se would be ‘extraordinarily dangerous’ and ‘that most defendants who represent themselves are not successful’ ” … . “When a record lacks the requisite ‘searching inquiry’ or fails to measure up to the prescribed standards, a waiver of the right to counsel will be deemed ineffective” … .

Here, the court erred in allowing defendant to proceed pro se inasmuch as it did not “undertake a searching inquiry . . . to insur[e] that . . . defendant [was] aware of the dangers and disadvantages of proceeding without counsel” … . We conclude that “the tainted proceeding had an adverse impact on defendant” … and, therefore, we hold the case, reserve decision, and remit the matter to Supreme Court for further proceedings in accordance with our prior determination … . People v Ocasio, 2026 NY Slip Op 04595, Fourth Dept 7-24-26

Practice Point: Consult this decision for a discussion of the “searching inquiry” a judge must engage in before allowing a defendant to represent himself.

July 24, 2026

CRIMINAL LAW, JUDGES, ATTORNEYS.

WHEN DEFENDANT TOLD THE JUDGE “MY LAWYER IS INEFFECTIVELY COUNSELING ME” THE JUDGE MADE NO INQUIRY INTO THE BASIS FOR THE STATEMENT AND SHUT DOWN ANY FURTHER STATEMENTS BY THE DEFENDANT; THE MAJORITY CONCLUDED THAT WAS REVERSIBLE ERROR; THERE WAS A DISSENT (FIRST DEPT).

The First Department, reversing the conviction and ordering a new trial, over a dissent, determined the judge’s failure to conduct any inquiry when defendant requested new counsel was reversible error:

A defendant may be entitled to new counsel “upon showing good cause for a substitution, such as a conflict of interest or other irreconcilable conflict with counsel … . The defendant’s request “may not be used merely to delay the orderly administration of justice” … . It must be supported by “specific factual allegations of serious complaints about counsel” … . Once the court determines that defendant’s request is not “merely to delay” but is “seemingly serious,” the court is required to make a minimal inquiry before exercising its discretion to grant or deny substitution of counsel … .

However, before the court can determine whether the defendant’s allegations are sufficiently serious to warrant minimal inquiry, it must at the very least allow the defendant the opportunity to make the allegations … . Thus, this Court has repeatedly held that a defendant is entitled to a new trial where the trial court “denied [a] request for new counsel without making any inquiry into the substance of his request, and without giving defendant any opportunity to explain the basis for his request” … . * * *

In this case, after jury selection was complete and as the jurors were about to enter the courtroom, defendant told the court, “I feel I’m not getting a fair trial. I’m not even prepared for a trial. My lawyer, my lawyer is ineffectively counseling me . . . . [a]nd also representing me.” The court responded that “You made your record” and “I’m not relieving your counsel. Don’t interrupt me.” Defendant tried to continue his request and stated, “I asked for a lab report. He gave me a field test.” The courtinterjected and instructed defendant to “not interrupt me” and warned that "[i]f you do this kind of behavior, particularly if the jury is here, it's going to be a problem, okay. So just get yourself under control." The court's admonition effectively foreclosed any further discussion. People v Cooper, 2026 NY Slip Op 04561, First Dept 7-23-26

Practice Point: When a defendant tells the judge he is not being effectively represented by counsel, the judge should make at least a minimal inquiry. Here the failure to make any inquiry into the basis of defendant's statement was deemed reversible error.

July 23, 2026

CRIMINAL LAW, JUDGES, EVIDENCE.

THE FAILURE TO GIVE THE CIRCUMSTANTIAL EVIDENCE JURY INSTRUCTION WAS REVERSIBLE ERROR HERE, BUT WAS HARMLESS ERROR IN THE CODEFENDANT'S APPEAL (FOURTH DEPT).

The Fourth Department, reversing defendant's conviction and ordering a new trial, determined the defense request for a circumstantial evidence jury instruction should have been granted. Defendant and his uncle were charged with murder, robbery and criminal possession of a weapon. The uncle was convicted and the Fourth Department ruled that the failure to give the circumstantial evidence jury instruction was harmless error. However the evidence against defendant was weaker and the jury charge may well have led to an acquittal:

… [W]e agree with defendant that the court erred in denying the request for a circumstantial evidence charge … . As we noted in the codefendant's appeal, "[a]lthough surveillance video footage of a crime can constitute direct evidence . . . , it did not constitute direct evidence here. Defendant's identity cannot be discerned clearly from the surveillance video footage offered at trial inasmuch as the perpetrators in the videos are masked" … .

We concluded in the codefendant's appeal that the court's failure to give the circumstantial evidence charge was harmless given that the codefendant and his vehicle could be tracked to the scenes of the offenses based upon cell phone data, license plate readers, and surveillance video (McEnnis, 247 AD3d at 1475-1476). Here, however, the evidence of defendant's involvement was substantially less. While one perpetrator on the surveillance video generally matched defendant's height and build, no witness identified him at the scene of any of the robberies. Moreover, as the People's expert acknowledged, the expert had "no location information" for defendant's phone at the times that the alleged incidents occurred. Although the evidence at trial established that defendant exchanged text messages and calls with the codefendant on the dates of the offenses and that the codefendant drove to defendant's apartment building in Niagara Falls prior to and after the offenses, the People's expert conceded that he could do little more than "speculate [as to] where [defendant] was during [those] periods of time" when the robberies were being committed. Thus, this is not "the exceptional case where the failure to give the circumstantial evidence charge was harmless error" … . People v Coleman, 2026 NY Slip Op 04629. Fourth Dept 7-24-26

Practice Point: Defendant and his uncle were charged with murder and robbery and tried separately. The failure to give the circumstantial evidence jury instruction was harmless error in the uncle's trial. But it was reversible error in defendant's trial because the evidence tying defendant to the crimes was weaker.

July 24, 2026

CRIMINAL LAW, EVIDENCE.

THE PEOPLE DID NOT DISPROVE THE JUSTIFICATION DEFENSE; MANSLAUGHTER CONVICTION REVERSED (FOURTH DEPT).

The Fourth Department, reversing defendant's manslaughter conviction, determined the People did not disprove the justification defense. The evidence demonstrated shots were fired at the car in which defendant was a passenger before defendant fired his weapon:

A person is justified in using deadly physical force against another person if they "reasonably believe[ ] that such other person is using or about to use deadly physical force" (Penal Law § 35.15 [2] [a]). Deadly physical force "encompasses not merely the striking of the first blow or infliction of the first wound. It also encompasses acts by a person that cause the defendant reasonably to believe that the defendant is facing the 'imminent threat' of deadly force," and therefore "the imminent threat to use a gun constitute[s] the threat of deadly physical force even if the gun is never fired" … . The evidence at trial established that defendant told the police that the unnamed assailants started shooting at the occupants of the vehicle before any shots were fired by those inside the vehicle. A witness to the shootout testified that she saw one of the unnamed assailants remove a gun out of his pocket and then she saw and heard gunshots. The evidence further established that multiple rounds were fired at the vehicle from the outside. Contrary to the People's contention, they did not establish beyond a reasonable doubt that defendant, who was not the driver of the vehicle, could have retreated with complete personal safety before he used deadly physical force, or that he knew he could do so … . People v Major, 2026 NY Slip Op 04585, Fourth Dept 7-24-26

Practice Point: Multiple shots were fired at the vehicle in which defendant was a passenger before defendant fired his weapon. The People failed to disprove the justification defense and the manslaughter conviction was reversed.

July 24, 2026

DEFAMATION.

CALLING PLAINTIFF A PEDOPHILE, THREATENING TO HAVE PLAINTIFF ARRESTED, AND THE STATEMENT "YOU'RE TAKING PICTURES OF 10-YEAR-OLD KIDS" CONSTITUTED NONACTIONABLE RHETORICAL OPINION, NOT DEFAMATION (FOURTH DEPT).

The Fourth Department, reversing Supreme Court, determined defendant's motion for summary judgment in this defamation action should have been granted. The court found that the statements accusing plaintiff of being a pedophile were expressions of opinion, not assertions of fact:

…[T]he employee [defendant] accused plaintiff of either "playing politics or [being] a fucking pedophile." After plaintiff denied playing politics, the employee responded "Then you're a fucking pedophile" and stated, "I'm going to Town right now and fucking see if I can get you arrested for being a fucking pedophile. You're taking pictures of 10-year-old kids, are you crazy or what?" * * *

"Expressions of opinion, as opposed to assertions of fact, are deemed privileged and, no matter how offensive, cannot be the subject of an action for defamation" ,,, .. "A pure opinion may take one of two forms. It may be a statement of opinion which is accompanied by a recitation of the facts upon which it is based, or it may be [a]n opinion not accompanied by such a factual recitation so long as it does not imply that it is based upon undisclosed facts" … . "Whether a particular statement constitutes fact or opinion is a question of law" … . "The dispositive inquiry . . . is whether a reasonable [listener] could have concluded that [the statements were] conveying facts about the plaintiff" … .* * *

"Rather than sifting through a communication for the purpose of isolating and identifying assertions of fact, the court should look to the over-all context in which the assertions were made and determine on that basis whether the reasonable [listener] would have believed that the challenged statements were conveying facts about the . . . plaintiff" … . Indeed, the court should consider "the circumstances and . . . the broader social context (i.e., the factual background leading to the [statement])" to determine whether the "message would be taken by the ordinary person not literally, but figuratively" … , particularly where an "audience may anticipate [the use] of epithets, fiery rhetoric or hyperbole" … . Bieber v Town of Hamburg, 2026 NY Slip Op 04605, Fourth Dept 7-24-26

Practice Point: Consult this decision for insight into the difference between statements which constitute "rhetorical opinion" and statements which constitute "defamation."

July 24, 2026

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ENVIRONMENTAL LAW, CONSTITUTIONAL LAW, TRUSTS AND ESTATES.

PLAINTIFFS, RESIDENTS OF EAST BUFFALO, STATED CAUSES OF ACTION AGAINST THE STATE FOR VIOLATION OF THE PUBLIC TRUST DOCTRINE AND VIOLATION OF THE GREEN AMENDMENT TO THE NEW YORK CONSTITUTION BY THE CONSTRUCTION OF AN EXPRESSWAY (FOURTH DEPT).

The Fourth Department, reversing (modifying) Supreme Court, in a full-fledged opinion by Justice Nowak, over an extensive dissent, determined the complaint alleging the State, in constructing an expressway, violated the public trust doctrine and the Green Amendment, should not have been dismissed:

Plaintiffs are individual residents of East Buffalo who contend that they suffered adverse health consequences due to traffic on a nearby expressway (portions of New York State Routes 33 and 198) and an unincorporated association of people who live or work near the expressway. They commenced this action alleging that defendants: (1) violated the public trust doctrine by alienating parkland comprising the former Humboldt Parkway for the construction of the expressway; and (2) are violating the Green Amendment to the New York State Constitution (NY Const, art 1, § 19) by continuing to maintain and operate the expressway. * * *

Having expressly granted authority to construct arterial highways within parks in other cities and having declined to do so with respect to Humboldt Parkway, it cannot be said as a matter of law that the legislature “plainly conferred” the alienation of Humboldt Parkway … . * * *

The Green Amendment to the New York State Constitution states that “[e]ach person shall have a right to clean air and water, and a healthful environment” (NY Const, art I, § 19 …). Plaintiffs specifically allege in the amended complaint that the Green Amendment is self-executing, and defendants did not dispute that contention below. East Side Parkways Coalition v New York State Dept. of Transp., 2026 NY Slip Op 04562, Fourth Dept 7-24-26

Practice Point: Here plaintiffs, residents of East Buffalo who live near an expressway, stated causes of action against the State stemming from the construction of the expressway on land which once served as a park.

July 24, 2026

FAMILY LAW, CONTRACT LAW, DEBTOR-CREDITOR, USURY.

THE PARTIES IN THIS DIVORCE PROCEEDING ENTERED A LITIGATION FUNDING AGREEMENT IN WHICH DEFENDANT ADVANCED FUNDS TO PLAINTIFF IN RETURN FOR THE ASSIGNMENT OF PROCEEDS FROM THE DIVORCE CLAIM; DESPITE THE INCLUSION OF THE TERM "THIS IS NOT A LOAN" IN THE AGREEMENT, THE FIRST DEPARTMENT HELD THE AGREEMENT WAS IN FACT AN INVALID LOAN AT A USURIOUS 18.96% ANNUAL INTEREST RATE (FIRST DEPT).

The First Department, in a full-fledged opinion by Justice Michael, reversing (modifying) Supreme Court, determined the parties' divorce-litigation funding agreement was a usurious loan, not an investment, and was therefore void and unenforceable:

The parties entered into a Purchase and Sale Agreement, dated May 23, 2018 (the PSA), wherein defendant agreed to advance approximately$200,000 to plaintiff to fund the legal costs of plaintiff's pending divorce action. In return, plaintiff agreed to assign to defendant his right to receive any proceeds from the divorce claim up to the amount owed to defendant under the PSA. The "Proceeds" consisted of "the total recovery from the Claim" and the "Claim" was defined as plaintiff's right, title, and interest in and to any amount granted to plaintiff in connection with his pending divorce action, any appeal or settlement with respect thereto, and any related action. * * *

The PSA clarified that "THIS IS NOT A LOAN" and was expressly contingent on plaintiff's "successful" recovery on the Claim. It proclaimed that "[i]f there is no recovery on the Claim, nothing will be owed to [defendant]." Yet, several provisions of the PSA together with the Sweetheart Guaranty … , entitled defendant to recoup the money it advanced plus interest even if "there is no recovery on the Claim," such as in the event of plaintiff's death or reconciliation with his wife. * * *

Considering the totality of the circumstances … , we find that the parties' PSA was in fact a loan. The only remaining question is whether the loan was usurious. A loan is usurious if the interest exceeds the maximum legal rate of 16% (see General Obligations Law § 5-501[1], [2]; Banking Law § 14-a[1]). It is undisputed that under the PSA, interest accrued at 18.96% annually, which exceeds the legal limit. Denemark v New Ch. Capital, Inc., 2026 NY Slip Op 04553, First Dept 7-23-26

Practice Point: Consult this opinion for insight into when an agreement constitutes a "loan" subject to the usury law rather than an "investment."

July 23, 2026

FAMILY LAW, EVIDENCE.

THE DERIVATIVE NEGLECT FINDING WAS BASED ON A PRIOR FINDING MOTHER NEGLECTED THREE OLDER CHILDREN; BUT THE CONDUCT WHICH WAS THE BASIS OF THE PRIOR NEGLECT FINDING WAS NOT DESCRIBED IN THE MOTION PAPERS; THE BURDEN OF PROOF, THEREFORE, NEVER SHIFTED TO MOTHER AND THE MOTION SHOULD HAVE BEEN DENIED (FOURTH DEPT).

The Fourth Department, reversing Family Court, determined the burden never shifted to mother in this derivative neglect proceeding. The derivative neglect finding was based upon a prior finding mother neglected three older children. But the order in that case did not describe the conduct that resulted in the "Inadequate guardianship" finding:

… [W]e conclude that the court erred in granting the motion because petitioner's submissions did not satisfy its initial burden to show that the subject child was derivatively neglected … . To the extent that petitioner relied on the court's prior order of disposition finding that the mother had neglected the three older children as the basis to support a finding of derivative neglect with respect to the subject child, we note that the prior order merely states that she neglected the older children through "[i]nadequate guardianship, thus placing the children at risk of harm." Inasmuch as the prior order did not identify what conduct by the mother had been substantiated for purposes of making the "inadequate guardianship" finding with respect to the three older children, petitioner did not establish the egregiousness of that conduct or show that, with respect to the subject child, the potential harmful result of that conduct could be said to reasonably still exist … . In other words, the evidence supplied by petitioner did not establish, as a matter of law, the nature of the mother's conduct that supported the prior finding of neglect or its surrounding circumstances … . Matter of Ty'Shawn B., 2026 NY Slip Op 04694, Fourth Dept 7-24-26

Practice Point: A motion for summary judgment seeking a derivative neglect finding cannot merely mention a prior "inadequate guardianship" finding regarding mother's other children with no description of the underlying conduct. The moving papers must demonstrate egregious conduct which is ongoing.

July 24, 2026

FAMILY LAW. CIVIL PROCEDURE.

FAMILY COURT DID NOT HAVE JURISDICTION TO CONDUCT A "BEST INTERESTS OF THE CHILD" HEARING WHERE THE AUTHORIZED ADOPTION AGENCY WITHDREW ITS CONSENT TO THE ADOPTION; THE SECOND DEPARTMENT ASKED THE LEGISLATURE TO ADDRESS THIS STATUTORY PROBLEM (SECOND DEPT).

The Second Department, in a full-fledged opinion by Justice Wooten, was constrained to find that the court did not have jurisdiction to conduct a "best interests of the child" hearing where the authorized adoption agency withdrew its consent to the adoption. The Second Department explained that the current statutory scheme places an authorized adoption agency in the role typically performed by Family Court and requested that the Legislature address the problem:

The primary issue presented by this appeal is whether a court reviewing an adoption proceeding has jurisdiction to entertain a hearing to determine the best interests of a child where an authorized agency with custody of the child has withdrawn or withheld its consent to the adoption petition. We are constrained by the statutory scheme for adoptions from an authorized agency to answer that question in the negative. However, the circumstances underlying this proceeding highlight the potential conflict between the governing statutory law and the paramount concerns of the best interests of the child and achieving permanency. We therefore take this occasion to ask the New York State Legislature to consider whether changes are needed to ensure the best interests of children placed in the custody of authorized agencies for the purpose of adoption. * * *

… [B]efore a best interests hearing was conducted, the proposed adoptive father withdrew the adoption petition insofar as asserted by him on the ground that he was no longer seeking to jointly adopt the child with the appellant. The proposed adoptive father's withdrawal of the joint adoption petition insofar as asserted by him was precipitated by the biological parents' decision to support adoption of the child by the proposed adoptive father alone.

,,, [T]he agency withdrew its consent to the joint adoption of the child by the proposed adoptive parents on the ground that the proposed adoptive father "is no longer petitioning the Court to adopt jointly with [the appellant]." The agency then moved to dismiss the adoption petition on the ground that the Family Court lacked jurisdiction to entertain the adoption petition due to the agency's withdrawal of its consent to the joint adoption. In support of the motion, the agency argued that dismissal of the adoption petition was mandated, without a best interests hearing, since the agency had lawful custody of the child and, therefore, its consent to the adoption was required pursuant to Domestic Relations Law § 111. Matter of Aurora A. (Leigh A.–Giuseppe A.), 2026 NY Slip Op 04500, Second Dept 7-22-26

July 22, 2026

FORECLOSURE, REAL PROPERTY ACTIONS AND PROCEEDINGS LAW (RPAPL).

THERE IS A QUESTION OF FACT WHETHER THE BANK USED THE CORRECT LANGUAGE IN ITS RPAPL 1304 NOTICE OF FORECLOSURE; THE LEGISLATION HAD BEEN AMENDED CHANGING "YOU COULD LOSE YOUR HOME" TO "YOU MAY BE AT RISK OF FORECLOSURE;" RPAPL 1304 MUST BE STRICTLY COMPLIED WITH (SECOND DEPT).

The Second Department, reversing Supreme Court, determined the defendants in this foreclosure action raised a question of fact whether the bank complied with the notice requirements in RPAPL 1304, which had been changed prior to the commencement of the foreclosure action:

On December 20, 2016, the Legislature amended RPAPL 1304 to change the language required in the 90-day notice … . The amendment changed the opening language from "YOU COULD LOSE YOUR HOME" to "YOU MAY BE AT RISK OF FORECLOSURE" … . The amendment also added the language: "IMPORTANT: You have the right to remain in your home until you receive a court order telling you to leave the property. If a foreclosure action is filed against you in court, you still have the right to remain in the home until a court orders you to leave. You legally remain the owner of and are responsible for the property until the property is sold by you or by order of the court at the conclusion of any foreclosure proceedings. This notice is not an eviction notice, and a foreclosure action has not yet been commenced against you" … . This statutory language was in effect at the time this action was commenced, in July 2018 … .

Here, the plaintiff failed to establish that the notice sent to the defendants complied with the statutory language of RPAPL 1304 as it existed at the commencement of the action. Since the notice was sent more than a year and a half prior to the commencement of the action, nothing prevented the plaintiff from sending the defendants a new RPAPL 1304 notice, using the updated language, 90 days prior to commencing the action … . The defendants, therefore, raised a triable issue of fact as to whether the plaintiff strictly complied with RPAPL 1304 as it existed at the time the action was commenced. Bank of Am., N.A. v Thomas, 2026 NY Slip Op 04485, Second Dept 7-22-26

Practice Point: Here the bank failed to establish it used the correct statutory language in its RPAPL 1304 notice of foreclosure, raising a question of fact about whether RPAPL 1304 was strictly complied with.

July 22, 2026

MUNICIPAL LAW, NEGLIGENCE.

THE "NOTICE-OF-A-DANGEROUS-CONDITION" REQUIREMENT FOR A SLIP AND FALL CAUSE OF ACTION BROUGHT BY A POLICE OFFICER PURSUANT TO GENERAL MUNICIPAL LAW 205-E IS IDENTICAL TO THE NOTICE REQUIREMENT IN A COMMON LAW SLIP AND FALL ACTION (FOURTH DEPT).

The Fourth Department, reversing Supreme Court, determined the General Municipal Law standard for negligence includes the requirement that the municipal defendant have notice of the dangerous condition. General Municipal Law section 205-e provides police officers with a cause of action for negligence where a well-developed body of law is violated. The question raised by the appeal of the denial of the municipal defendant's motion for summary judgment is whether the notice requirement in a General Municipal Law 205-e action is the same as at common law. The Fourth Department held that it is: The police officer slipped and fell on icy metal stairs but failed to demonstrate the municipal defendant had notice of the condition … .

[U]nder General Municipal Law § 205-e, a defendant is, in fact, entitled to notice of the dangerous condition at issue before liability may attach. Indeed, courts have made plain that "[n]otice is clearly material to recovery under the statute … . * * *

… [A]ccepting plaintiffs' contention that notice is not required would unjustifiably expand the duty owed by premises owners to one discrete class of putative plaintiffs beyond any reasonable interpretation contemplated by the language of the statute, existing precedent or established policy. We decline to impose liability without fault upon those legally responsible for premises conditions when police officers are present, especially when the statute was not designed to provide them with greater protections than ordinary citizens. Alternatively stated, the duty owed by landowners to police officers under the statute is not broader than it is for any other class of individuals … . * * *

… [P]laintiffs failed to raise a triable issue of material fact with respect to the issue of notice; indeed, plaintiffs' opposition to the motion did not address the issue of notice at all … . Plaintiffs also have not contended that the icy condition at issue here was sufficiently recurrent, or was of such a longstane been aware of the need to more promptly remedy it … . Whelan v Buffalo Mun. Hous. Auth.,2026 NY Slip Op 04624, Fourth Dept 7-24-26

July 24, 2026

NEGLIGENCE, EVIDENCE.

DEFENDANT DRIVER STRUCK PLAINTIFF PEDESTRIAN AS HE ATTEMPTED TO CROSS THE ROAD; DEFENDANT DID NOT DEMONSTRATE SHE COULD NOT HAVE SEEN PLAINTIFF AND COULD NOT HAVE AVOIDED STRIKING PLAINTIFF; DEFENDANT'S SUMMARY JUDGMENT MOTION SHOULD NOT HAVE BEEN GRANTED (FOURTH DEPT).

The Fourth Department, reversing Supreme Court, determined defendant driver did not demonstrate she could not have seen plaintiff pedestrian and could not have avoided striking plaintiff as he attempted to cross the road:

… [D]efendant, "as the movant for summary judgment, had the burden of establishing as a matter of law that [she] was not negligent or that, even if [she] was negligent, [her] negligence was not a proximate cause of the accident" … . Defendant failed, however, to meet her initial burden with respect to either her negligence or proximate cause. Although the evidence submitted by defendant established that she was not speeding, was not impaired and had not committed any traffic violations, defendant's evidence included, inter alia, deposition testimony from a driver of an eastbound vehicle who observed plaintiff begin to cross his lanes of traffic, and that driver testified that he was able to swerve and avoid colliding with plaintiff. Defendant's submissions indicate that plaintiff then proceeded through the median area between the eastbound and westbound lanes and then attempted to cross the westbound lanes, whereupon he collided with defendant's vehicle.

We agree with plaintiff that defendant's own evidence raises triable issues of fact whether she " 'could have seen [plaintiff] before the accident and failed to exercise due care to avoid the accident' " (Uhteg, 200 AD3d at 1697). In Uhteg, as here, "the pedestrian had already crossed a few lanes of traffic and had done so at a pace faster than a walk but not fully a run" … . Moreover, there is no evidence that defendant's view of the oncoming lanes or median area was obscured … . Koff v Lawson, 2026 NY Slip Op 04582, Fourth Dept 7-24-26

Practice Point: Consult this decision for a discussion of what a defendant must demonstrate for summary judgment where defendant driver strikes plaintiff pedestrian as plaintiff attempted to cross the road.

July 24, 2026

NEGLIGENCE.

IN THE CONTEXT OF A SLIP AND FALL, “FAILURE TO WARN” OF A DANGEROUS CONDITION AND “FAILURE TO MAINTAIN A PREMISES IN A REASONABLY SAFE CONDITION” ARE DISTINCT CAUSES OF ACTION AND A PLAINTIFF MAY PROCEED ON ONE OR BOTH THEORIES; IN THIS “NEGLIGENT MOPPING” “EXCESS WATER ON THE FLOOR” CASE, THE “FAILURE TO WARN” CAUSE OF ACTION WAS PROPERLY DISMISSED, BUT THE “FAILURE TO MAINTAIN THE PREMISES IN A REASONABLY SAFE CONDITION” CAUSE OF ACTION SHOULD NOT HAVE BEEN DISMISSED (FOURTH DEPT).

The Fourth Department, reversing (modifying) Supreme Court in this slip and fall case, noted that a “failure to warn” of a dangerous condition, and a “failure to maintain a premises in a reasonably safe condition” are distinct causes of action and a plaintiff may proceed on one or both theories. Here the “failure to warn” cause of action was properly dismissed. But the “failure to maintain the premises in a reasonably safe condition” cause of action should not have been dismissed. It was alleged mopping was negligently done leaving excess water on the floor:

… [D]efendants had the initial burden on their motion of establishing that they did not create the allegedly dangerous condition and that they did not have actual or constructive notice thereof … . We conclude that defendants failed to meet that burden inasmuch as they failed to establish that they did not create the allegedly dangerous condition by negligently mopping the area and leaving excess water on the floor … * * * Failure to warn of an alleged hazard is a separate and distinct theory of liability from the failure to maintain premises in a reasonably safe condition, and a plaintiff may proceed on one or both of those theories …
. Brennan v Kandon, LLC, 2026 NY Slip Op 04685, Fourth Dept 7-24-26

Practice Point: In the context of a slip and fall, “failure to warn” and “failure to maintain the premises in a reasonably safe condition” are distinct causes of action and a plaintiff may proceed on one or both.

July 24, 2026

TRUSTS AND ESTATES, JUDGES, EVIDENCE.

THE JUDGE SHOULD NOT HAVE REMOVED RESPONDENT CO-TRUSTEE WITHOUT A HEARING, CRITERIA EXPLAINED (FOURTH DEPT).

The Fourth Department, reversing (modifying) Surrogate's Court, determined the respondent co-trustee should not have been removed without a hearing. Where the facts are disputed, a hearing is required:

… "[The] removal of a fiduciary pursuant to SCPA 711 [or] 719 is equivalent to 'a judicial nullification of the [settlor's] choice and may only be decreed when the grounds set forth in the relevant statutes have been clearly established' " … . Under either SCPA 711 or 719, " '[t]he Surrogate may remove without a hearing only where the misconduct is established by undisputed facts or concessions [or] where the fiduciary's in-court conduct causes such facts to be within the court's knowledge' " … , and the removal of a trustee without a hearing "will constitute an abuse of discretion 'where the facts are disputed, where conflicting inferences may be drawn therefrom . . . or where there are claimed mitigating facts that, if established, would render summary removal an inappropriate remedy' " … . Here, in response to the factual averments by petitioners as to his misconduct, respondent submitted, inter alia, an affidavit in which he denied having ever improperly removed Trust assets or interfering with the leasing of Trust property, explained how his actions accorded—in his view—with his powers and obligations under the Trust documents, and disputed petitioners' underlying factual averments. Presented with the competing claims, a hearing was required inasmuch as "the Surrogate must make a credibility determination concerning those issues, and then exercise [their] discretion concerning whether respondent should be removed from [his] appointment[ ]" … . Matter of Simmons (Simmons), 2026 NY Slip Op 04675, Fourth Dept 7-24-26

Practice Point: Consult this decision for insight into when a hearing is required before a co-trustee can be removed under the Surrogate's Court Procedure Act (SPCA).

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