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Weekly Reversal Report
October 26 – 30, 2026

An Organized Compilation of Summaries of Selected Decisions, Mostly Reversals, Released by Our New York State Appellate Courts October 26 – 30, 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 Go to the Full Decisions on the Official New York Courts Website. Right Click on the Citations to Keep Your Place in the Reversal Report. Copyright 2026 New York Appellate Digest, Inc.

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THE DEVELOPMENTALLY-DISABLED PETITIONER HAD THE RIGHT TO COUNSEL OF HER OWN CHOOSING IN THIS PROCEEDING TO DISSOLVE THE GUARDIANSHIP OF HER PERSON (SECOND DEPT).

The Second Department, reversing Surrogate's Court, in a full-fledged opinion by Justice Duffy, considering matters of first impression, determined the developmentally-disabled petitioner had the right to counsel of her own choosing in a proceeding to dissolve the guardianship of her person:

The right of an individual to select counsel "implicates both the First Amendment guarantees of freedom of association and the Sixth Amendment right to counsel and will not yield unless confronted with some overriding competing public interest" … .

Contrary to the determination of the Surrogate's Court, the record demonstrates that, under the circumstances present here, the petitioner freely and independently retained counsel of her own choosing. At the hearing, the petitioner articulated her purpose in retaining counsel and demonstrated an understanding of the nature and

consequences of having counsel. The record shows, inter alia, that the petitioner had contacted more than one legal organization and spoke personally to the attorney whom she retained, and continued to communicate and work with that attorney. During the court's inquiry, the petitioner was able to articulate a clear understanding of the purpose and goals of the proceeding and why counsel was sought to be retained. Matter of Jessica L.M. (Deborah M.), 2026 NY Slip Op 06306, Second Dept 10-28-26

Practice Point: Here the developmentally-disabled petitioner had the right to counsel of her own choosing in this dissolution-of-guardianship proceeding.

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CRIMINAL LAW, APPEALS.

SUBDIVISION 6 OF CRIMINAL PROCEDURE LAW (CPL) SECTION 30.30 (THE SPEEDY TRIAL STATUTE), ENACTED IN 2020, APPLIES TO APPEALS PENDING AT THE TIME OF ENACTMENT; SUBIVISION 6 PROVIDES THAT SPEEDY TRIAL CLAIMS ARE REVIEWABLE ON APPEAL WHETHER THE CONVICTION IS BY TRIAL OR GUILTY PLEA (CT APP).

The Court of Appeals, reversing the Appellate Term, in a full-fledged opinion by Judge Rivera, over a three-judge dissent, determined subdivision 6 of the speedy trial statute (CPL 30.30 (6)), enacted in 2020, applies to appeals which were pending at the time of enactment:

Defendant asserts that CPL 30.30 (6), which provides that speedy trial claims "shall be reviewable upon an appeal," including from a conviction based on a guilty plea, applies to appeals pending as of its effective date. We conclude that the plain text of CPL 30.30 (6) expands appellate review of speedy trial claims to all cases, without reservation, regardless of whether the appeal arose from a judgment of conviction entered prior to when the statute took effect. * * *

CPL 30.30 (6) unambiguously and unconditionally applies to all criminal appeals challenging an underlying order finally denying a motion to dismiss based on

speedy trial grounds, regardless of whether the conviction arose from a guilty plea or a trial verdict. Appellate review of speedy trial errors alleged in pending appeals advances … salutary policy objectives … by ensuring errors in the timely adjudication of criminal matters are corrected not only for the affected individual defendant, but throughout our State's criminal legal system. As we have emphasized, statutory amendments that are "procedural and remedial in nature . . . should be liberally construed to spread [their] beneficial effects as widely as possible" … . People v Nantan, 2026 NY Slip Op 06379, CtApp 10-27-26

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CRIMINAL LAW, APPEALS.

THE SPEEDY TRIAL STATUTE, CPL 30.30, DOES NOT PRECLUDE APPEAL WAIVERS (CT APP).

The Court of Appeals, affirming the Appellate Division, over a three-judge dissent, determined the speedy trial statute, Criminal Procedure Law (CPL) section 30.30, does not preclude appeal waivers:

Before CPL 30.30 (6)'s enactment, it was well settled that a criminal defendant forfeited any statutory speedy trial claim by pleading guilty … . CPL 30.30 (6) abrogates this forfeiture rule: the statute straightforwardly provides that "[a]n order finally denying a motion to dismiss" on statutory speedy trial grounds "shall be reviewable upon an appeal from an ensuing judgment of conviction notwithstanding the fact that such judgment is entered upon a plea of guilty" (CPL 30.30 [6]). The statute's text does not address appeal waivers in any way; its "notwithstanding" clause is instead directed exclusively to the consequences of a guilty plea. Thus, giving the text its plain meaning, CPL 30.30 (6) does not preclude appeal waivers. People v Ekukpe, 2026 NY Slip Op 06378, CtApp 10-29-26

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CRIMINAL LAW, ATTORNEYS, APPEALS.

DEFENDANT FILED A SUBSTANTIAL MOTION TO ALLOW DEFENSE COUNSEL TO BE PRESENT AT THE PRESENTENCE INTERVIEW; THE ISSUE IS A MATTER OF JUDICIAL DISCRETION; HERE THE DENIAL OF THE MOTION WAS AN ABUSE OF DISCRETION (FIRST DEPT).

The First Department, reversing Supreme Court, determined defendant's motion to have defense counsel present at the presentence interview should have been granted. The issue was not preserved but was considered under the court's interest of justice jurisdiction. Because there is no statute on point, whether to allow defense counsel at the presentence interview is a matter of discretion:

… [T]he absence of a provision indicating whether counsel is permitted to attend the presentence interview leaves the issue to the court's discretion, reviewable for abuse or improvident exercise thereof … .

Here, in advance of the presentence interview, defendant filed a substantial application requesting that counsel be permitted to attend. Because the extent of defendant's sentence was subject to the court's decision following his trial conviction and his application noted, among other things, the applicability of SORA at the conclusion of his incarceratory term, Supreme Court's denial of defense counsel's attendance at the presentence interview was an improvident exercise of discretion. Accordingly, defendant's sentence should be vacated, and the matter remanded for resentencing after a presentence interview at which defense counsel may appear. People v Lee, 2026 NY Slip Op 06259, First Dept 10-27-26

Practice Point: Here defendant's "substantial" motion seeking permission to have defense counsel at the presentence interview should have been granted. Matter remitted.

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CRIMINAL LAW, EVIDENCE, JUDGES.

WHERE AN ENDANGERING-THE-WELFARE-OF-A-CHILD CHARGE IS BASED UPON THE USE OF FORCE, THE JUSTIFICATION DEFENSE IS AVAILABLE IF SUPPORTED BY A REASONABLE VIEW OF THE EVIDENCE (CT APP).

The Court of Appeals, reversing the conviction and ordering a new trial, in a full-fledged opinion by Judge Halligan, with a concurring opinion, determined the defendant was entitled to the justification jury instruction in this endangering-the -welfare-of-a-child prosecution:

The relevant statutory text and our precedent confirm that a justification instruction pursuant to Penal Law § 35.15 may be available for a charge of endangering the welfare of a child that is premised on the use of force. We also conclude that there is a reasonable view of the evidence here in support of the defense, and the refusal to charge the justification defense was not harmless. * * *

… [T]he defendant shared a home with his girlfriend, J.L., and her fifteen-year-old son, R.T. During a night out, the defendant and J.L. argued and returned home. Each went back out to a bar, and they eventually returned home again, still quarreling. A physical altercation between the defendant and R.T. ensued, leaving R.T. on the floor, seemingly unconscious. * * *

Article 35 instructs that, "[i]n any prosecution for an offense, justification, as defined in sections 35.05 through 35.30, is a defense" … . And the self-defense justification defense, set forth in section 35.15, includes no limiting or qualifying language regarding the availability of the defense. We thus see no basis in Article 35's broad language for denying a section 35.15 justification defense in a prosecution involving a charge of endangering the welfare of a child. * * *

When a prosecution for endangering the welfare of a child is based on the use of force, a charge of justification pursuant to Penal Law § 35.15 is available if there is a reasonable view of the evidence to support it. To the extent that [Varela (164 AD2d 924), and Williams (102 AD3d 566)] are inconsistent with that holding, they should not be followed. People v Mears, 2026 NY Slip Op 06237, CtApp 10-27-26

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CRIMINAL LAW, EVIDENCE.

HERE THE "MERGER DOCTRINE" APPLIED TO THE KIDNAPPING AND ASSAULT CHARGES, THE KIDNAPPING CONVICTION WAS REVERSED AND THE COUNT DISMISSED (THIRD DEPT).

The Third Department, reversing County Court in this assault/kidnapping case, determined the merger doctrine should have been applied and reversed the kidnapping conviction:

… [A] kidnapping is generally deemed to merge with another offense where there is minimal asportation immediately preceding the other crime or where the restraint and underlying crime are essentially simultaneous" … . Notwithstanding the foregoing, "the merger doctrine does not apply 'where the manner of detention is egregious' " … .

Here, the proof at trial demonstrated that the victim was lured to the residence on the promise of sex and drugs and, immediately upon entering, he was assaulted while also being prevented from leaving for 15 to 20 minutes. Thus, the kidnapping and the assault occurred simultaneously, as part of a single, uninterrupted and relatively brief episode … . * * * … [T]he manner of detention was not so egregious that the kidnapping conviction should be sustained … . People v Hart, 2026 NY Slip Op 06360, Third Dept 10-29-26

Practice Point: Under the merger doctrine, where the actions of the defendant are not "egregious" and the victim is restrained for a brief period of time while other offenses are committed, a kidnapping charge will be deemed "merged" with the other offenses and the kidnapping count will be dismissed.

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CRIMINAL LAW, JUDGES, ATTORNEYS, EVIDENCE.

HERE IT WAS REVERSIBLE ERROR TO PRECLUDE CROSS-EXAMINATION OF THE COMPLAINING WITNESS ABOUT HER DRUG USE AND PSYCHIATRIC CONDITION; NEW TRIAL ORDERED (SECOND DEPT).

The Second Department, reversing the conviction and ordering a new trial, determined the judge should not have precluded cross-examination of the complaining witness about drug use and psychiatric condition:

In general, evidence of a witness's substance abuse "is admissible to impeach [the] witness' credibility if tending to show that [the witness] was under the influence of drugs while testifying, or at the time of the events to which [the witness] testified, or that [the witness's] powers of perception or recollection, were actually impaired by the habit" … . Under the circumstances of this case, where the People disclosed that the complaining witness was in drug treatment at the time of her testimony and may have been using drugs when she first made allegations against the defendant, the County Court should not have precluded cross-examination as to the complaining witness's drug use … .

Further, "[w]here a primary prosecution witness is shown to suffer from a psychiatric condition, the defense is entitled to show that the witness's capacity to perceive and recall events was impaired by that condition" … . Here, the County Court should not have, in effect, granted the People's application to preclude cross-examination of the complaining witness with respect to her mental health diagnosis, particularly since the People's case primarily rested upon the complaining witness's testimony … .People v Romero-Lopez, 2026 NY Slip Op 06331, Second Dept 10-28-26

Practice Point: If there is evidence the complaining witness was using drugs at the time the allegations were made, it is reversible error to preclude cross-examination about drug use.

Practice Point: If the People disclose the complaining witness has a psychiatric condition, it is reversible error to preclude cross-examination about the condition.

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CRIMINAL LAW, SEX OFFENDER REGISTRATION ACT (SORA).

HERE DEFENDANT'S ONGOING RELATIONSHIP WITH THE VICTIM WAS A "MITIGATING," NOT AN "AGGRAVATING," FACTOR IN THE SORA RISK-LEVEL ANALYSIS (SECOND DEPT).

The Second Department, reversing (modifying) Supreme Court, determined the People did not identify an aggravating factor that justified an upward departure. The fact that defendant had a long-term relationship with the victim was actually a mitigating factor:

… [T]he People failed to identify an aggravating factor that tends to establish a higher likelihood of reoffense or danger to the community not adequately taken into account by the risk assessment instrument … . The ongoing nature of the defendant's relationship with the victim, if anything, tended to demonstrate a lower likelihood of reoffense and danger to the community … . Accordingly, the County Court improvidently exercised its discretion in granting the People's application for an upward departure from the defendant's presumptive risk level. People v Call, 2026 NY Slip Op 06335, Second Dept 10-28-26

Practice Point: Here the defendant's ongoing relationship with the victim was deemed a mitigating, not an aggravating, SORA factor.

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FAMILY LAW, APPEALS, JUDGES.

SUA SPONTE DISPOSITIONAL ORDERS ISSUED BY FAMILY COURT ARE APPEALABLE; THE FAMILY COURT ACT, NOT THE CPLR, CONTROLS (THIRD DEPT).

The Third Department, in a full-fledged opinion by Justice Pritzker, determined a sua sponte dismissal of a petition in Family Court is appealable:

… [T]he sua sponte dismissal of the petition is appealable. Pursuant to Family Ct Act § 1112 (a), "[a]n appeal may be taken as of right from any order of disposition under the Family Ct Act, which includes an order issued sua sponte that dismisses a petition in its entirety" … . To the extent that this Court's prior cases, specifically Matter of Casey Q. v Jeffrey O. (244 AD3d at 1521) and Matter of Donald QQ. v Stephanie RR. (198 AD3d 1155, 1156 n 1 [3d Dept 2021]), can be read as holding that an ex parte or sua sponte Family Court dispositional order is not appealable as of right, they should not be followed. Indeed, the decisive issue when determining whether a Family Court order is appealable as of right is whether the order is dispositional (see Family Ct Act § 1112 [a]). Moreover, because Family Ct Act § 1112 (a) specifically addresses appealability of Family Court orders, it is improper to resort to CPLR provisions addressing appealability by way of Family Ct Act §§ 165 and/or 1118 … .. Matter of Jeffrey O. v Casey Q., 2026 NY Slip Op 06363, Second Dept 10-29-26

Practice Point: Dispositional orders issued by Family Court are appealable; the Family Court Act, not the CPLR controls.

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LABOR LAW-CONSTRUCTION LAW, EVIDENCE.

PLAINTIFF DID NOT DEMONSTRATE THE STAIRCASE WHERE HE SLIPPED ON ICE WAS THE ONLY MEANS OF ACCESS TO THE WORK SITE; THEREFORE PLAINTIFF WAS NOT ENTITLED TO SUMMARY JUDGMENT ON THE LABOR LAW 240(1) CAUSE OF ACTION (FIRST DEPT).

The First Department, reversing Supreme Court, determined plaintiff's summary judgment motion for the Labor Law 240(1) cause of action should not have been granted. Plaintiff slipped on ice on a permanent staircase. A permanent staircase qualifies as a "safety device" only when it is the only means of access to the worksite. Plaintiff failed to prove the "only means of access" element:

Plaintiff failed to establish that the staircase was the sole means of access because he testified that he could have gone up one flight of stairs and then taken the hoist down, which was how he returned to the worksite after his accident. Even if plaintiff established prima facie that the staircase was the sole means of access, defendants raised an issue of fact through the site safety manager's affidavit, which stated there were additional staircases that plaintiff could have used as well as other hoists in operation at the site at the time of the accident. Ramos v Lendlease (US) Constr. LMB Inc., 2026 NY Slip Op 06394, First Dept 10-29-26

Practice Point: A permanent staircase is a "safety device" within the meaning of Labor Law 240(1) if it is the only means of access to the work site.

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