



When an on-duty state trooper in two separate incidents rams his police vehicle into occupied vehicles while travelling at speeds up to 130 miles per hour on the Thruway, causing those vehicles to crash and an 11-year-old girl to be killed, does the evidence presented to the grand jury support a criminal charge of depraved indifference murder? The Third Department tackled that troubling question recently, holding that the evidence, when viewed in the light most favorable to the People, was legally sufficient to allow the state trooper to be tried on the depraved indifference murder charge. Let's take a look at that opinion and what else has been happening in New York's appellate courts over the past week.

## FIRST DEPARTMENT

### CRIMINAL LAW

[People v Torres, 2024 NY Slip Op 04442 \(1st Dept Sept. 12, 2024\)](#)

**Issue:** Was a frisk of a criminal suspect that led to the discovery of eight postage-stamp-sized bags containing PCP in his sock legal under the Court of Appeals' precedent in *People v De Bour* (40 NY2d 210 [1976])?

**Facts:** Late at night in June 2013, officers observed defendant driving a minivan playing very loud music. One of the officers followed the minivan in an unmarked police vehicle, at which point the officer noticed the van make a left turn without a signal. The officer turned on his lights and pulled the van over under the Manhattan Bridge because of the defendant's failure to signal and the excessively loud music in a residential area. Another officer that had also been following the van approached, said he smelled the odor of PCP emanating from the van, and asked the defendant for his license and registration, which the defendant was unable to produce. The officers asked the defendant to exit the van, observed the defendant acting "nervous" and "fidgety," and then frisked the defendant, during which the officers recovered PCP from the defendant's sock. After being charged with criminal possession, the defendant moved to suppress the physical evidence, arguing that the officers lacked authority to escalate the traffic stop to a physical search of defendant's person. Supreme Court denied the suppression motion.

**Holding:** The First Department reversed Defendant's subsequent conviction by guilty plea, holding that although the officers had legal basis to inquire of the defendant, they lacked a sufficient basis to escalate the stop to a *De Bour* level three frisk of defendant's person. The Court explained, "[t]he rule of *De Bour*—New York's four-tiered framework used to evaluate police-civilian encounters with escalating measures of suspicion necessary to justify each level—undoubtedly governs encounters during lawful traffic stops. At the first level, which is the least intrusive, a request for information is permissible when there is some objective credible reason for that interference not necessarily indicative of criminality. The second level, the common-law right to inquire, is activated by a founded suspicion that criminal activity is afoot and allows interference with a citizen to the extent necessary to gain explanatory information, but is short of a forcible seizure. Level three, applicable to our analysis, permits a forcible stop and detention where the officer has a reasonable suspicion that a particular person has committed, is committing or is about to commit a felony or misdemeanor . . . Finally, at the fourth and highest level of intrusion, a police officer may arrest a person if the officer has probable cause to believe that person has committed a crime."

At level three, most relevant to this case, the Court noted, "a corollary of the statutory right to temporarily detain for questioning is the authority to frisk if the officer reasonably suspects that he is in danger of physical injury by virtue of the detainee being armed. To conduct a frisk absent probable cause, the officer must have knowledge of some fact or circumstance that supports a reasonable suspicion that the suspect is armed or poses a threat to safety. Moreover, facts providing the police with reasonable suspicion justifying a forcible stop do not necessarily provide reasonable suspicion justifying a frisk. Relevant considerations in the determination of whether there is reasonable suspicion that the suspect poses a danger include, among others, the substance and reliability of the report that brought the officers to the scene, the nature of the crime that the police are investigating, the suspect's behavior and the shape, size, and location of any bulges in the suspect's clothing."

Here, the Court held, because the defendant committed a traffic infraction, the police were justified in stopping the van, and could ask the defendant to leave the vehicle. "The issue presented is therefore whether the circumstances in this case support a reasonable suspicion that defendant was armed and dangerous, thereby justifying the level three frisk . . . Ultimately, the circumstances here supported, at most, a level two intrusion to gain explanatory information but not an escalation to level three." Notably, because the police frisked the defendant immediately after he stepped out of the van, any of the circumstance to show that the police had a reasonable suspicion that he was armed had to have occurred while the defendant was still in the van. Defendant's "failure to produce his license and registra-

tion, along with the other circumstances attending the encounter—namely, Officer McDevit’s observation that the vehicle was shaking after being pulled over, the PCP odor, the poor lighting conditions, and [the defendant’s] nervousness —provided Officer Galarza with, at most, the founded suspicion that criminality was afoot. This, in turn, escalated the encounter from the request for information to the common-law right to inquire. Officer Galarza was therefore authorized to engage in invasive questioning. Upon [the defendant’s] failure to respond, rather than engaging in further inquiry or investigation (e.g. running the vehicle’s plates), the officers too hastily escalated the encounter from the common-law right to inquire to a level three frisk without the requisite reasonable suspicion.”

“[W]hen viewed in the aggregate, the combined circumstances of this stop are insufficient to give rise to a reasonable suspicion that [the defendant] was armed or posed a safety threat to the officers. [The defendant] did not reach for his waistband, he did not have a bulge in his clothing in the outline of a weapon, and he did not engage in any furtive movements indicative of guilt or suggesting an attempt to reach for or secret a weapon. Furthermore, far from responding to a report of an armed individual involved in a dispute or some other violent crime, such as an armed robbery, the officers pulled [the defendant] over for a routine, traffic infraction. Undoubtedly, police face an extraordinary vulnerability in confronting occupants of a car. Nonetheless, once those persons have left the car, the parties are in the same position as exist in any street encounter, and the standard for justifying a frisk is well established. Under the circumstances here, we conclude that reasonable suspicion did not exist at the point Officer Galarza conducted the frisk, and the search was therefore improper.”

## SECOND DEPARTMENT

### LANDLORD/TENANT

[ZG Palmetto, LLC v Alongi, 2024 NY Slip Op 04419 \(2d Dept Sept. 11, 2024\)](#)

**Issue:** Does the COVID-19 Emergency Rental Assistance Program apply to stay proceedings other than RPAPL Article 7 proceedings?

**Facts:** The defendants . . . have lived in a rent-stabilized apartment in Ridgewood, Queens, since 1994. The plaintiff is the owner of the apartment. In December 2019, the plaintiff commenced a holdover proceeding in the Civil Court, Queens County, alleging that the defendants’ right to occupy the apartment had been terminated on the ground that the defendants committed a nuisance . . . In October 2020, while the holdover proceeding was pending, the plaintiff commenced this action in the Supreme Court, Queens County, based upon the same allegations of nuisance, seeking, inter alia, to eject the defendants from the apartment and to recover from them market rent from October 1, 2020, until they vacated the apartment.” Plaintiff moved for leave to enter a default judgment, and then defendants appeared and opposed the motion. Supreme Court denied the initial default application. In January 2022, one of the defendants “applied for assistance from the COVID-19 Emergency Rental Assistance Program” (“CERAP”), which pursuant to the law stayed all “eviction proceedings.” Plaintiff notified the Civil Court of the stay, but failed to notify the Supreme Court. Plaintiff then again sought leave to enter a default judgment. Defendants opposed, but Supreme Court granted the motion. On Defendants’ motion to vacate the default judgment and for a stay of the proceeding under the CERAP. Supreme Court denied the motion, holding that CERAP only stays summary proceedings under RPAPL Article 7, but not to ejectment actions like the one in Supreme Court.

**Holding:** The Second Department reversed, noting that “[a]mong the public health measures taken in response to the COVID-19 pandemic, the Legislature enacted CERAP as part of its efforts to prevent residential evictions. CERAP provided rental assistance, among other things, to eligible applicants. As relevant here, CERAP provided for a stay of an ‘eviction proceeding’ upon a tenant’s application for assistance and declaration of hardship.” Examining the plain meaning of the term “eviction proceeding,” the Court held that the Legislature’s definition of an “eviction proceeding” to include “a summary proceeding to recover possession of real property under [RPAPL article 7] relating to a residential dwelling unit or any other judicial or administrative proceeding to recover possession of real property relating to a residential dwelling unit” clearly showed that the CERAP stay applied to any “judicial proceeding to recover possession of real property, such as this action, inter alia, for ejectment.”

## THIRD DEPARTMENT

### CRIMINAL LAW

[People v Baldner, 2024 NY Slip Op 04495 \(3d Dept Sept. 19, 2024\)](#)

**Issue:** Was the evidence before the grand jury legally sufficient to establish that defendant, an on-duty state trooper, acted with depraved indifference to human life as required by the crimes of depraved indifference murder and first-degree reckless endangerment when he intentionally crashed his police vehicle at high speed into two vehicles in two separate incidents on the Thruway?

**Facts:** “On two separate occasions — once in September 2019 and once in December 2020 — defendant, an on-duty state trooper, engaged in high-speed chases with vehicles traveling on Interstate 87 . . . in Ulster County. Both chases ended when defendant collided with the vehicles from behind, forcing them off the road. One of those vehicles flipped over and landed upside down, and a [11-year-old] passenger inside the vehicle died.” Following an Attorney General investigation, defendant was charged with “one count of murder in the

second degree (depraved indifference murder), one count of manslaughter in the second degree and six counts of reckless endangerment in the first degree. Defendant filed an omnibus motion contending, as relevant here, that the evidence before the grand jury was not legally sufficient to establish that defendant acted with depraved indifference to human life as required by the crimes of depraved indifference murder and first-degree reckless endangerment. County Court agreed and dismissed the count of depraved indifference murder and reduced the counts of first-degree reckless endangerment to reckless endangerment in the second degree.”

**Holding:** The Third Department reversed, and reinstated the depraved indifference murder and first-degree reckless endangerment counts. The Court explained, “[d]epraved indifference is a culpable mental state that is best understood as an utter disregard for the value of human life — a willingness to act not because one intends harm, but because one simply does not care whether grievous harm results or not. A person is guilty of reckless endangerment in the first degree when, under circumstances evincing a depraved indifference to human life, he or she recklessly engages in conduct which creates a grave risk of death to another person. A person is guilty of depraved indifference murder if, by that same conduct, the person causes the death of another person. Thus, depraved indifference is an essential element of both crimes that has meaning independent of recklessness and the gravity of the risk created.”

The Court held that the evidence presented to the grand jury, when viewed in the light most favorable to the People, was legally sufficient to establish depraved indifference. In particular, in the September 2019 incident, defendant chased a minivan on the Thruway after it failed to stop for a traffic stop, exceeding speeds of 80 miles an hour. When the minivan failed to stop a second time, Defendant then slammed his police vehicle into the rear of the minivan “at highway speed,” which caused it “to spin 180 degrees, leave the roadway and hit the guardrail in the median. Defendant then crashed his State Police vehicle head-on into the front of the stationary minivan with [the driver] and his two passengers still inside . . . Defendant then pointed his gun at [the driver] and the two passengers and ordered them outside to lie on the ground, repeatedly asking whether they had weapons or drugs but never whether anyone was hurt.”

In the December 2020 incident, Defendant pulled over a SUV on the Thruway and “began the traffic stop by angrily and profanely accusing [the driver] of traveling over 100 miles per hour.” After the driver asked Defendant to summon a supervisor, Defendant stepped away and then “returned and, without warning or provocation, pepper-sprayed the passenger cabin of the SUV, and [the driver’s] wife and two children began screaming in pain. [The driver], who had shielded his eyes from the spray, fled the traffic stop; in the commotion, defendant’s pepper spray canister ended up inside the passenger cabin of the SUV.” “[D]efendant pursued and caught up to the SUV and, without activating his siren, intentionally rammed the back of the SUV at 130 miles per hour. Defendant radioed dispatch, however, that the SUV had ‘just f\*\*\*ing rammed me.’ The collision caused the SUV to fishtail, and pieces of it fell onto the road. The SUV continued on, so defendant intentionally rammed the back of the SUV again, this time at 100 miles per hour. Defendant radioed dispatch that the SUV ‘rammed me again.’ The second collision caused [the driver] to lose control of the SUV, and the SUV flipped over, coming to a stop upside down in the grass next to the Thruway with [the driver], his wife and two children inside. Defendant, seeing this, radioed that a car was overturned. Testimony established that defendant drew his gun, instructed the occupants of the SUV to put their hands out of the windows and asked repeatedly whether they possessed weapons or drugs. Defendant did not inquire if anyone inside was injured in the crash and, when [the driver’s] 11-year-old child could not be located, defendant did not assist him in looking for her. According to [the driver], who had sustained arm, hand and head injuries, defendant ‘did not care.’ The child was later found pinned inside the wreck of the SUV, having already died from severe injuries sustained in the accident.”

After recounting the evidence of these disturbing incidents, the Court explained that “[a]lthough the mens rea of depraved indifference will rarely be established by risky behavior alone, intentionally colliding with occupied vehicles traveling 70 to 100 miles per hour comes close. Viewed in the light most favorable to the People, the grand jury could rely on testimony and evidence indicating that, after both incidents, defendant exhibited no signs of remorse for the results of his recklessness as proof that he hit the minivan in 2019 and the SUV in 2020 with an utter disregard for the value of the human lives within them.” “Remaining mindful that trying to cover up a crime does not prove indifference to it, in our view, proof tending to show that defendant was avoiding supervisory scrutiny and fabricating a record in real time to justify the brutal act of intentionally crashing his State Police vehicle into two occupied civilian vehicles at high speed supports an inference that he did so because of wanton cruelty and a contemptuous disregard for whether the occupants of those vehicles lived or died.”

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