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Summarizing recent significant New York appellate cases

May a judge face a $1,000 penalty to be personally paid if the judge erroneously declines to issue a writ of habeas corpus? CPLR 7003(c) provides explicitly for that relief. The Appellate Division, Second Department, however, in a case of first impression, has held that penalty unconstitutional, as running afoul of the Compensation Clause of the New York Constitution and the separation of powers doctrine. 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, DE FACTO ARREST

***People v Williams*, 2025 NY Slip Op 04526 (1st Dept July 31, 2025)**

Issue: **Did probable cause exist to support the Department of Homeless Services' de facto arrest of the defendant, prior to the police's arrival?**

Facts: "Defendant was arrested based on his similarities in dress to a person shown on video surveillance footage depicting the vicinity shortly after the alleged crime occurred — specifically, the fact that the figure wore distinctive pants. The victim of the crime, however, described the perpetrator as wearing a black nylon jacket, with no further description of his attire; nothing other than the pants, therefore, linked defendant to the crime. Video surveillance of the alleged crime itself was 'murky' and inconclusive, with the assailant's clothing described as 'dark' by the investigating detective and the distinctive pants not apparent."

The police sent photo stills from the video to the nearby Department of Homeless Services shelter, hoping that officials there would recognize the perpetrator. Approximately 10 days after the crime, the DHS officials notified the police that defendant had entered the shelter and "that he appeared to be the same person, wearing the same pants, as in the surveillance footage." The police told DHS to advise when defendant returned to the shelter and to hold him there until they could arrive to confirm that defendant was the same person as appeared in the video; at the same time, however, the police "activated a 'suspect' I-card, which indicated that defendant was a suspect *but that there was not probable cause for an arrest*." Later that evening, DHS detained and handcuffed defendant to a bench at the shelter when he returned, based only on the "stills of the man wearing the distinctive pants provided by the police, before any confirmatory process."

When the police arrived, they questioned defendant, who admitted that the distinctive pants were his, but denied any involvement in the crime. Defendant thereafter moved to suppress his statement and the contents of his box, including the pants, arguing that "the People failed to show he was the perpetrator of the crime. He contended that by handcuffing and holding him for at least 30 minutes prior to Detective Hostetter's arrival, DHS arrested him without probable cause, and that all fruit of the arrest was therefore suppressible. The People chose not to address DHS's initial physical restraint and detention of defendant, instead arguing that the statements and box contents were the fruits of a lawful arrest because Detective Hostetter had both reasonable suspicion and probable cause upon his confirmatory viewing of defendant in the DHS office."

Supreme Court denied the suppression motion, holding that "prior to his arrival at the shelter to view defendant, [the police] had at least reasonable suspicion to detain and question the individual with the distinctive pants based upon the surveillance footage. The court held that upon confirming defendant was the individual depicted in the footage, [the police's] reasonable suspicion evolved to probable cause warranting an arrest. While the court held that DHS had reasonable suspicion to detain defendant for a reasonable period of time, it did not directly address whether DHS had probable cause to arrest defendant, holding only that DHS's 30-to-45-minute detention of defendant was reasonable under the circumstances."

Holding: The Appellate Division, First Department reversed, granted the defendant's suppression motion, and dismissed the indictment. The Court held that "DHS's handcuffing of defendant to a bench in the DHS shelter office constituted de facto arrest requiring probable cause." The People, however, "presented virtually no evidence concerning the circumstances of the DHS arrest. They failed to produce a DHS witness to elicit pertinent details, such as the timing of DHS's initial stop and handcuffing of defendant and, by extension, the total length of the detention; the identities of the officers involved and what knowledge those officers possessed prior to the arrest; whether defendant willingly came to the DHS office and waited for [the police's] arrival; and whether defendant was handcuffed willingly or posed a physical threat or flight risk." But because the People failed to argue that the DHS arrest was based on probable cause before the trial court, the First Department held it unpreserved.

"Because DHS arrested defendant without probable cause, all evidence flowing from the arrest, including defendant's statements and the contents of the shoe box, was unlawfully obtained and must be suppressed. The People are not entitled to a remand for further suppres-

sion proceedings, as they had a full opportunity to present their case at the original hearing and refrained from submitting alternative theories for denying suppression. Dismissal of the indictment is the appropriate remedy in this case. The People's remaining evidence — namely, the surveillance videos showing the suspect in the area before and after the attack and Detective Hostetter's "confirmatory" identification of defendant at the shelter — is not sufficient to establish a prima facie case if the People were to try defendant upon remand. The complainant could not provide a description of her assailant, the assailant is unidentifiable in the videos showing the attack, and defendant's now-suppressed statements and pants were the only evidence connecting him to the crime scene."

SECOND DEPARTMENT

EVIDENCE

Pillco v 160 Dikeman St., LLC, 2025 NY Slip Op 04495 (2d Dept July 30, 2025)

Issue: May a certain hearsay statement appearing in the plaintiff's medical records regarding how the plaintiff was injured be properly considered under the business records exception to the hearsay rule to defeat the plaintiff's motion for summary judgment?

Facts: Following an accident on the worksite, the plaintiff was treated at Precision Pain Medicine. Plaintiff commenced a Labor Law § 240(1) action against defendants, and subsequently moved for summary judgment on liability, arguing that he was removing sheetrock that had been improperly installed on the ceiling using a ladder when he fell 7 feet to the ground, sustaining injuries. In opposition to the plaintiff's motion, the defendant submitted a certified copy of the plaintiff's medical records from Precision Pain, which contained the following statements: "Accident: Patient was on a ladder, was picking up heavy [sheetrock] and felt a pull on his lower back and R shoulder . . . Incident patient described the competent medical cause of this injury? YES. Are the patient's complaints consistent with his/her history of injury? YES. Is the patient's history of the injury consistent with my objective findings? YES."

Supreme Court denied the plaintiff's motion for summary judgment, holding that triable issues of fact existed regarding how the accident occurred.

Holding: The Appellate Division, Second Department affirmed, emphasizing that "the challenged statement regarding how the accident occurred in the Precision Pain medical records involves multiple levels of hearsay. The first level of hearsay is the medical records themselves, and where the proper foundation is laid, medical records may be admissible through the business records exception. However, medical and hospital records may contain not only written statements reflecting the medical provider's own personal knowledge, but also the statements of the patient, statements of others accompanying the patient, and/or statements and reports by other medical providers. Such statements and reports, contained in the medical records, are hearsay within hearsay."

Because the medical provider did not have personal knowledge as to how the accident actually occurred, the Court held, "[f]or the challenged statement to be admissible, both the medical records themselves and the challenged statement contained therein must satisfy hearsay exceptions. A party's admission contained within a medical record may not be bootstrapped into evidence if a proper foundation for the admissibility of the record itself has not been laid. Conversely, the fact that medical records themselves may be admissible under the business records exception does not establish that every hearsay statement contained therein is admissible."

Here, the Court held, the medical records and the statement both satisfied the business records exception to the hearsay rule. The Court explained, "with respect to medical records, the scope of the business duty of medical personnel is limited to recording information relating to diagnosis and treatment. Accordingly, the only entries in medical records that are admissible under the business records exception are those that are germane to the diagnosis or treatment of the patient. By contrast, entries that are not germane to medical diagnosis and treatment may not be regarded as having been made in the regular course of the hospital's business and, therefore, are not admissible under the business records exception."

The medical records indicated that "the plaintiff was on a ladder, was picking up heavy sheetrock and felt a pull on his lower back and right shoulder. Notably, in contrast to the plaintiff's deposition testimony, the challenged statement makes no mention that the plaintiff fell off the ladder. In our view, it was germane to [Dr.] Khaimov's medical diagnosis and treatment of the plaintiff that the plaintiff's shoulder and back allegedly were injured as he was picking up a heavy object and 'felt a pull'. First, the statement that the plaintiff 'felt a pull' indicates the sensation that the plaintiff felt as the injury allegedly occurred. Second, the medical records themselves indicate that how the accident occurred was relevant to medical diagnosis or treatment. Among other things, on pages three and four of the medical records, Khaimov noted that the incident the 'patient described' was the 'competent medical cause of this injury' and that 'the patient's history of the injury' was 'consistent with his objective findings.'" The Court cautioned, "[t]here also may be instances where it is not obvious whether a particular entry is or is not germane to medical diagnosis or treatment. In such situations, there may need to be evidence from a medical provider or an expert on the issue of whether the entry was germane to medical diagnosis and treatment. But again, that is not the situation here."

Having concluded that the statement in the medical records was germane to the doctor's diagnosis, the Court finally examined whether each custodian of the record was acting the regular course of the business in recording it. "Firsthand accounts from the patient to the medical provider are presumptively reliable, as the patient has a clear motivation to report accurately. However, where the source of the information on the hospital or doctor's record is unknown, the record is inadmissible. We reject the plaintiff's contention that testimony

or an affidavit from the medical provider who recorded the challenged statement was required to identify the plaintiff as the source of the challenged statement. Although such evidence is certainly one way to identify the source of the information, it is not the *only* way to do so . . . [T]o be sufficient, the medical record must clearly indicate that the plaintiff was the source of the information. Where there are ambiguities in the medical record, which could indicate that someone else, such as someone accompanying the patient, may have provided the information, the medical record alone is insufficient to establish that the patient was the source of the information. Likewise, a lack of *any* evidence in the medical record itself indicating that the patient was the source of the information is plainly insufficient. It is those situations where testimony from the provider—or some other evidence—is necessary for the proponent to establish that the patient was the source of the information." Because the plaintiff was the source of the challenged statement here, the requirement was satisfied, the Court held. Thus, it was properly considered in denying the plaintiff's motion for summary judgment on liability.

CIVIL PROCEDURE, WRIT OF HABEAS CORPUS, CONSTITUTIONALITY OF CPLR 7003(a)

***Poltorak v Clarke*, 2025 NY Slip Op 04496 (2d Dept July 30, 2025)**

Issue: Is section 7003(c) of the Civil Practice Law and Rules, which provides that a judge who violates CPLR 7003(a) in refusing to issue a writ of habeas corpus "forfeits to the person detained one thousand dollars," unconstitutional?

Facts: Following a protracted custody dispute, the father obtained a temporary order of custody that required the mother to return the oldest of their three children to the father. The mother sought and obtained a temporary restraining order and stay of enforcement of the temporary custody order, pending the determination of her motion for a stay pending appeal. But when the father nevertheless refused to return the child in the interim, the mother sought a writ of habeas corpus from Family Court. The parties appeared before Family Court before the Appellate Division decided the mother's pending motion, and Family Court orally refused to issue the writ, stating in essence that it would allow the Appellate Division to decide.

One week later, the mother filed an Article 78 proceeding against the Family Court judge seeking to compel the judge to issue the writ of habeas corpus based on the Appellate Division temporary restraining order and a written order denying the writ of habeas corpus, and seeking $1,000 damages against the Judge under CPLR 7003(c) for improperly refusing to issue the writ in the first place. Ultimately, the Family Court judge issued the written order denying the writ of habeas corpus in the custody proceeding, and the mother appealed. After granting the mother a stay of enforcement pending appeal, the Second Department reversed the Family Court order, and granted the writ of habeas corpus, holding that Family Court did not have sufficient evidence to determine that it was in the eldest child's best interests to have custody temporarily transferred to the father.

Thereafter, the mother and the Family Court judge stipulated to convert the CPLR Article 78 proceeding into an action, and the judge answered the complaint, asserting that CPLR 7003(c) violates the Compensation Clause of the New York Constitution and the separation of powers doctrine. The mother moved for summary judgment on her CPLR 7003(c) claim, and the Family Court judge cross-moved to dismiss, in effect seeking a judgment that CPLR 7003(c) is unconstitutional. Supreme Court agreed with the Family Court judge and declared CPLR 7003(c) unconstitutional, "reason[ing] that CPLR 7003(c) was a diminution of judicial salaries in violation of the Compensation Clause of the New York State Constitution." The trial court held, however, that it did not violate the separation of powers.

Holding: The Appellate Division, Second Department affirmed, deciding this question of first impression against CPLR 7003(c)'s constitutionality. The Court examined the long legislative history that underlies section 7003(c)'s $1,000 forfeiture provision, tracing it back to 1789, the year before the state's founding, and noting that "it has consistently had a provision imposing a monetary penalty on a judge or judges who did not issue a writ of habeas corpus." Although the provision continued through New York's history, including through the enactment of the Civil Practice Act in 1920, the 1959 Advisory Committee that led to the adoption of the CPLR in 1962 "observed that the forfeiture provision of section 1235 of the Civil Practice Act 'imposed an unjust burden upon a judge whose failure to issue the writ results from an honest mistake of law. His error can be corrected by application to another judge or by appeal. Moreover, the provision is not used.' Based on these factors, the 1959 Advisory Committee recommended that the provision be deleted. Nevertheless, the forfeiture provision present in all previous iterations of the statute was enacted as CPLR 7003(c)."

Moreover, the Court noted, only a handful of New York cases have ever mentioned the forfeiture penalty under CPLR 7003(c), and none had actually granted it to a party. In fact, throughout the New York case law, "the courts perceptively recognized the constitutional concerns presented by the forfeiture provision and held that a judge cannot be held personally liable for a mistake in judgment when assessing a petition seeking habeas corpus relief." Thus, the Court explained, "while the Legislature's purpose for enacting the prior iterations of CPLR 7003, namely to protect an individual's right of habeas corpus by ensuring a writ is signed in a timely fashion, is a valid and legitimate one, in the more than 200 years and the spanning of four centuries that these iterations of the statute have existed, forfeiture relief pursuant thereto has never been imposed to our knowledge, and until now, the constitutionality of CPLR 7003(c) has not been examined."

Turning to the Family Court judge's challenge to its constitutionality, the Second Department held that CPLR 7003(c) could not survive. In particular, the Court reasoned, section 7003(c)'s $1,000 forfeiture provision runs afoul of the Compensation Clause of the New York Constitution, which prohibits the diminishment of judicial compensation while in office. The Court explained, "[t]he Compensation Clause of the New York State Constitution serves to protect against the danger of external control over judicial pay as a means by which to exert influence over the judiciary and to preclude the legislature from diminishing salaries in recognition of the risk that salary manipulation might be used as retaliation for unpopular judicial decisions."

Here, the Court concluded, "CPLR 7003(c) is violative of the Compensation Clause of the New York State Constitution as an improper legislative target on judges. The forfeiture at issue may be sought against a judge by a party aggrieved by the judge's determination of the party's petition for a writ of habeas corpus. The statute holds a judge personally responsible for paying the forfeiture sum of $1,000 to the aggrieved litigant. By the plain language of CPLR 7003(c), the forfeiture is to be paid personally by a judge, without question, from the judge's own personal income, thereby establishing an unlawful diminution of judicial compensation in violation of the Compensation Clause of the New York State Constitution. Thus, by imposing a forfeiture, CPLR 7003(c) discriminates against judges who, upon exercising their judgment to determine whether the subject of the writ of habeas corpus is or is not legally detained, do not issue a writ of habeas corpus. Contrary to the plaintiff's contention, reaching the merits of a petition for a writ of habeas corpus is clearly not a mere ministerial act by a judge, but rather requires a judge to exercise his or her judgment. Indeed, there exists the strong possibility that a judge may be improperly influenced to issue the writ of habeas corpus out of fear of personal retribution and so as to avoid the consequence mandated by CPLR 7003(c). Such a circumstance runs afoul of the purpose of the Compensation Clause of the New York State Constitution, which is to preserve the independence of the judiciary from the legislature's influence via salary manipulation in retaliation for unpopular decisions."

Moreover, even if the Court hadn't concluded that CPLR 7003(c) violated the Compensation Clause, it would have held that it violates the separation of powers and is an unconstitutional intrusion upon judicial independence: "By imposing a penalty on a judge who refuses a petitioner's request for habeas corpus relief where such relief should have been issued, the Legislature, through CPLR 7003(c), is interfering with judicial functions by incentivizing one specific outcome, namely, issuance of the writ, because a judge only faces a penalty if he or she refuses to issue a writ. Such influence is impermissible, as the mere existence of the power to interfere with or to influence the exercise of judicial functions contravenes the fundamental principles of separation of powers embodied in our State constitution and cannot be sustained."

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