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Summarizing recent significant New York appellate cases

In this issue, we are reprinting selected decision summaries from the past several months that you may have missed. Regular issues will resume next week.

COURT OF APPEALS

CRIMINAL LAW, CONSTITUTIONAL RIGHT TO JURY OF 12

People v Sargeant, 2025 NY Slip Op 06361 (Ct App Nov. 20, 2025)

Issue: **May a criminal defendant forfeit the constitutional right to trial by a jury of 12 persons by engaging in misconduct?**

Facts: Following "a violent confrontation with a 20-year-old escort," defendant was charged and tried for assault in the third degree, criminal obstruction of breathing or blood circulation, criminal possession of a weapon in the second degree, and criminal possession of forgery devices. During the course of the trial, one of the jurors was excused, and the only alternate juror was seated in his place.

After the jury's deliberations began, defendant claimed to experience a migraine and "asked the court to suspend deliberations until the following day. The court directed defendant to contact his counsel after going to urgent care and to come back the next morning. The court adjourned. That afternoon, however, the court received a call from the jury foreperson, who said that 'something happened' and he could no longer be impartial. In addition, a Brooklyn assistant district attorney, who was uninvolved in the case but was a friend of the foreperson, reported to the court that the foreperson called him earlier in the day and said that defendant had confronted him at his home. The court reconvened in the afternoon with both counsel present to inform them of those calls, issued a warrant for defendant's arrest, and promised to address the issues in the morning."

The Court then held a hearing in the morning, segregated the foreperson from the other jurors, and directed the jury to cease deliberations until the issue was resolved. The foreperson explained to the court that a man approached him on defendant's behalf outside of his home, "said that defendant was innocent and 'being extorted,' " handed him three documents, and explained that he has found the foreperson's home by searching the public records. Because he was concerned for his family's safety, the foreperson explained to the court that he could no longer be impartial in the trial. "With the agreement of the parties, the court discharged him from the jury, reminded him that the case was ongoing, and instructed him not to speak to anyone about his experience.

The People moved to proceed to verdict with the remaining 11 jurors. They argued that defendant had forfeited his right to trial by a jury of 12 by intentionally procuring the foreperson's absence. The People observed that the foreperson was 'extremely upset' on the witness stand and argued that he had not identified defendant in court as the one who approached him because he was afraid to do so. The People noted that the documents that were handed to the foreperson were legal documents to which defendant had access, and that defendant had not come to court with proof that he had gone to urgent care. The People argued that, in light of this clear and convincing evidence of defendant's 'egregious' misconduct, defendant forfeited the right to a jury of 12. Defendant declined to waive his right to trial by a jury of 12 and moved for a mistrial on the ground that it would be "inappropriate" to continue with 11 jurors."

The trial court granted the People's motion and denied a mistrial, reasoning that "defendant had forfeited his right to trial by a jury of 12." The Court "relied on federal and state cases concerning forfeiture of constitutional rights generally and federal and state cases permitting verdicts by juries composed of 11 persons. The court likened defendant's act of jury tampering to cases of witness tampering wherein defendants have been found to have forfeited their right to confrontation. The court applied the standards for forfeiture of that right as set forth in *People v Geraci* (85 NY2d 359 [1995]) and found by clear and convincing evidence that defendant, believing he could obtain a favorable verdict or a mistrial, intentionally engaged in jury tampering, conduct that resulted in the foreperson's inability to continue to serve as a juror. The court thus concluded that defendant forfeited his right to trial by a jury of 12, and it further concluded that continuing trial with the remaining 11 jurors was reasonable and justifiable." After the 11-person jury convicted defendant of some but not all of the charges, and defendant appealed, the Appellate Division, Second Department affirmed.

Holding: The Court of Appeals affirmed, holding that "in these exceedingly rare circumstances where there was clear and convincing evidence that defendant engaged in egregious conduct affecting a sworn juror after the jury commenced its deliberations, requiring the discharge of that juror, defendant forfeited the right to a jury of 12 persons and, there being no alternate jurors to substitute for the dismissed juror, the trial court did not abuse its discretion in proceeding with the remaining 11 jurors." The Court explained, "[c]enturies before our country's founding, the common law afforded those accused of serious offenses a trial by a jury of 12. Colonial New York codified the common-law right to a jury of 12 over a century before the ratification of the U.S. Constitution, and our first State Constitution

guaranteed that the right to a 'trial by jury, in all cases in which it hath heretofore been used in the colony of New York, shall . . . remain inviolate forever.'" Although the right to a jury of 12 persons was initially absolute, the Constitution was amended in 1938 to provide that the right could be waived if done in writing with the permission of the trial judge. "Because the constitutional amendments and decisions since *Cancemi* transformed the constitutional guarantee of a jury of 12 into a personal right, defendant may waive the right or, in a case such as this one, forfeit it by engaging in misconduct."

"Whether forfeiture applies to the right to a jury of 12 is an issue of first impression, but forfeiture has been applied to many constitutional rights in the criminal procedure context. For example, a defendant may forfeit the right to counsel by engaging in egregious conduct, albeit only as a matter of extreme, last-resort analysis in cases involving brutal, violent, or persistent abuse. Use of violence, threats or chicanery to make a witness unavailable may result in the forfeiture of the right to confront the witness. A defendant may forfeit the right to be present at all stages of trial by engaging in courtroom conduct so disruptive that the trial cannot proceed in their presence. Likewise, a pro se defendant's disruptive conduct may result in the forfeiture of the right to self-representation. We see no reason to exclude the right to trial by a jury of exactly 12 persons from the universe of forfeitable rights. While the reason the common law settled on that precise figure is lost to history, we cannot say that the precise number is any more crucial to protecting defendants than the rights we have already determined may be forfeited. There can be no serious debate that the assistance of counsel is essential to assure the defendant a fair trial because, in the vast majority of criminal prosecutions, defendants could better defend with counsel's guidance than by their own unskilled efforts. And, without the right to confront one's accusers, juries may convict defendants based on out-of-court statements by witnesses who cannot be cross-examined. If a defendant may forfeit those essential constitutional rights by engaging in misconduct, the same is true of the right to a jury of precisely 12."

The Court explained that waiver of that right will be exceedingly rare. "Indeed, in the 342 years that the right to trial by a jury of 12 persons has been codified in New York, we know of no other cases that involve forfeiture of that right." To find a waiver, "only egregious conduct toward a sworn juror can result in a forfeiture of the right to a jury of 12. Black's Law Dictionary defines 'egregious' as 'extremely or remarkably bad' or 'flagrant.' The Merriam-Webster Online Dictionary defines 'flagrant' as 'conspicuously offensive,' and especially as 'so obviously inconsistent with what is right or proper as to appear to be a flouting of law or morality.' Conduct cannot be deemed egregious unless it rises to this level. The fact that a juror might refuse to continue jury service due to a defendant's bad behavior will not be sufficient by itself to establish egregious conduct.

While the removal of a deliberating juror is not a sufficient condition of a forfeiture, it is most assuredly a necessary condition. For as long as a lawful jury of 12 exists or can be composed through the lawful substitution of an alternate juror, the court has no occasion to consider questions of forfeiture." And here, the Court held, "the totality of the facts and circumstances demonstrates the egregiousness of defendant's conduct. He did not merely protest his innocence to a sitting juror or leave court papers at the juror's home. His conduct was not accidental or spontaneous but instead involved a great deal of preplanning over at least two days. He searched public records for juror's home address and confronted the juror outside his front gate, wearing a disguise and pretending to be someone else. He also deceived the court and his own counsel in feigning a medical condition so that he would have the afternoon free to confront the juror at his home. Defendant thus undertook a persistent course of conduct revealing a deliberate and methodical attempt to interfere with the impartial nature of the jury. He violated the juror's privacy and the sanctity of his home and in doing so reasonably and foreseeably, and perhaps intentionally, caused the juror to fear for the safety of his family. Defendant's behavior, viewed in totality, is so clearly performed with aforethought and so inappropriate as to place his misconduct well outside the realm of ordinary bad behavior."

CRIMINAL LAW, REMEDY FOR INACCURATE CPL 30.30 (5-A) CERTIFICATION

***People v Williams*, 2025 NY Slip Op 06535 (Ct App Nov. 25, 2025)**

Issue: **What remedy is available when the People provide the required certification or trial readiness under CPL § 30.30(5-a) that all counts in the accusatory instrument meet the statutory requirements of facial sufficiency and that any noncompliant counts have been dismissed, but the representations made as to at least one count of the instrument are inaccurate or incorrect?**

Facts: After "defendant struck a pedestrian with his vehicle in a Brooklyn intersection," he was charged with a number of misdemeanor counts, including failure to obey a traffic control device. "The misdemeanor complaint contained numerous factual allegations in support of the unlicensed operation counts, but none supporting the failure to obey a traffic control signal count. The People later filed an information which, once again, did not include factual allegations concerning the failure to obey a traffic signal count. The People also filed a statement of readiness and certification pursuant to CPL 30.30 (5-a) stating that 'all counts in the accusatory instrument . . . [met] the requirements of CPL §§ 100.15 and 100.40,' and that any counts not meeting those requirements had been dismissed. It is undisputed that the count for failure to obey a traffic signal was facially insufficient and therefore did not comply with the requirements of CPL 100.40."

After the People's time to declare readiness for trial expired, defendant moved to dismiss the "information for facial insufficiency and on statutory speedy trial grounds. Defendant contended that the inaccuracies in the People's CPL 30.30 (5-a) certification, specifically those concerning the count for failure to obey a traffic control signal, rendered the statement of readiness invalid." The People conceded that the failure to obey a traffic signal count was deficient and should be dismissed, but argued that that defect did not invalidate the remainder of the facially sufficient information.

"Criminal Court dismissed that count but otherwise denied the motion, determining that the People met CPL 30.30 (5-a)'s requirement of filing a certification, and that inaccuracies contained within the certification, with respect to the dismissed count did not warrant dismissal of the entire instrument. The Appellate Term affirmed, holding that the statute requires only that a certification be made in order for a statement of readiness to be valid and does not provide for sanctions in the event that the certification is ultimately deemed to contain inaccuracies."

Holding: The Court of Appeals held that "the clear language of CPL 30.30 (5-a) requires that the People, in conjunction with filing their statement of readiness, certify that each count of the accusatory instrument is supported by facially sufficient, nonhearsay allegations, and that any counts that are not so supported have been dismissed. However, the statute does not provide for any readiness-related consequence for a mistaken or incorrect certification. Such a requirement would make little sense because facial sufficiency is a legal question—sometimes a close legal question—and the People cannot reasonably be expected to attest accurately to the outcome of a defendant's challenge to the facial sufficiency of the instrument."

Based on the text of the statute, and its legislative history, the Court concluded that the Legislature did not "want to require the severe sanction of dismissal of the entire accusatory instrument as a consequence of the insufficiency of a single count." Rather, the Court held, the proper consequence is dismissal of the insufficient count. Indeed, the Court explained, this rule was consistent with the statute's elimination of piecemeal count-by-count trial readiness statements. "By tying readiness to a certification that *all* counts are facially sufficient and properly converted, CPL 30.30 (5-a) makes trial readiness a singular event for the entire accusatory instrument. Under this rule, the People are required to make a choice: either indicate their readiness to proceed to trial on all remaining counts, subjecting the entire accusatory instrument to the stricter facial requirements for a misdemeanor information, or elect not to declare trial readiness on any count. This rule effectively serves to streamline pretrial motion practice, opening a window during which a defendant can move to dismiss any count which does not meet the facial sufficiency requirements for a misdemeanor information."

SECOND DEPARTMENT

HUMAN RIGHTS LAW, PRELIMINARY INJUNCTION

Long Is. Roller Rebels v County of Nassau, 2025 NY Slip Op 05512 (2d Dept Oct. 8, 2025)

Issue: **Did the plaintiff adequately demonstrate its entitlement to a preliminary injunction enjoining enforcement of Nassau County Local Law No. 3-2024, "which prohibits the use of Nassau County park property 'for the purposes of organizing a sporting event or competition that allows athletic teams or sports designated for females, women, or girls to include biological males as competitors'"?**

Facts: The plaintiff, a "women's roller derby league that permits transgender women, among others, to participate in its league," commenced this action to permanently enjoin enforcement of the Nassau County local law, alleging that it "discriminates against women's leagues with transgender women participants in violation of the New York State Human Rights Law and Civil Rights Law § 40-c." The plaintiff moved for a preliminary injunction to enjoin enforcement of the local law while the action was pending, but Supreme Court denied motion, without making express findings on the plaintiff's likelihood of success, irreparable harm, or the balance of the equities.

Holding: The Appellate Division, Second Department reversed, and granted plaintiff the preliminary injunction enjoining the Nassau County local law. The Court held, "[t]he plaintiff demonstrated a likelihood of success on the merits on the cause of action alleging discrimination on the basis of gender identity, defined as 'a person's actual or perceived gender-related identity, appearance, behavior, expression, or other gender-related characteristic regardless of the sex assigned to that person at birth, including, but not limited to, the status of being transgender' (Executive Law § 292[35]), in violation of the NYSHRL and the Civil Rights Law." As a result, the Court explained, the likely violation of the civil rights law led to a presumption that the plaintiff had suffered irreparable harm. In any event, the Court noted, "[t]he plaintiff made credible allegations that it would be denied a permit to use a place of public accommodation based on its designation as a women's team that allows transgender women to participate. Further, the plaintiff has found it difficult to find private facilities for practice, which reduced its opportunities for practice, resulting in a lowering of its ranking. While the County suggests that the plaintiff can use its facilities by designating itself as a mixed-sex league, which is permitted under the local law, this would change the identity of the league and would force its players to identify themselves as playing in a mixed-sex league. The plaintiff demonstrated that this would jeopardize its status with its governing body, its ability to find teams from other leagues to compete against, and its ability to grow as a league." Thus, the Court held that a preliminary injunction should be granted to preserve the status quo while the action proceeded to a determination on the merits.

THIRD DEPARTMENT

ADMINISTRATIVE LAW

***Matter of County of Rockland v New York State Dept. of Envtl. Conservation*, 2025 NY Slip Op 06231 (3d Dept Nov. 13, 2025)**

Issue: Did the New York State of Environmental Conservation rationally decline to rescind its 2018 notice of complete application for Rockland County's SPDES permit so as to allow the County to amend the application to include a proposed diffuser project to mitigate the draft permit's effluent limits for ammonia?

Facts: In May 2013, Rockland County applied to the DEC to renew its SPDES permit. After 5 years of review, the DEC issued a notice of complete application and advised the County that it had commenced a technical review. "DEC also prepared a draft permit, which imposed more stringent water quality based effluent limits (hereinafter effluent limits) for ammonia and residual chlorine (see 6 NYCRR 750-1.11 [a] [5] [i]). Petitioner and the District, in its capacity as petitioner's administrative arm, challenged the draft permit in ensuing discussions with DEC. Following these discussions, the District informed DEC that, to address the new effluent limits, it was contemplating a diffuser project and DEC replied that if the District provided certain technical documents prior to a specified date, it would issue a revised draft permit incorporating the design and adjusting the effluent limits accordingly. Upon receiving a portion of the requested documents, DEC instructed the District that it was also required to submit a permittee-initiated modification request by October 31, 2019. In response, the District requested that, instead of requiring the submission of a permittee-initiated modification, DEC change the status of the 2013 SPDES renewal application to incomplete and begin the review process anew, with consideration of the District's proposed diffuser project. DEC declined the requested approach and issued a final permit, effective in March 2021."

In response, the County requested an adjudicatory hearing on the permit limits, but the ALJ determined that "there were no issues warranting adjudication regarding the permit conditions, DEC's effluent limits for ammonia, or actions by DEC during the permitting process." The DEC Commissioner rejected the County's administrative appeal, and Supreme Court dismissed the County's ensuing Article 78 proceeding, holding that DEC's determinations were rational.

Holding: The Appellate Division, Third Department affirmed, holding that DEC's refusal to reopen the permit process for the County's "speculative, proposed diffusor project" was rational in light of the significant passage of time following the expiration of the County's prior SPDES permit. The Court explained, "in May 2020, the District submitted a written request to DEC to rescind the 2018 completeness determination and recommence the application process, including environmental impact review, in consideration of its proposed diffusor project. Given the significant passage of time since the expiration of the prior SPDES permit — nearly eight years — and the uncertain timeline for the District's diffusor planning and completion, DEC declined to rescind its 2018 completeness determination and instead devised a compliance schedule under the permit that afforded the District three years to develop plans for compliance with the new effluent limits on ammonia and total residual chlorine under the permit. Petitioner's contention that it should not have been required to submit a permittee-initiated modification request misses the mark, as its failure to do so renders its argument tantamount to asking DEC to leave resolution of the SPDES application in limbo while awaiting the District's potential submission of definitive plans to address the very real underlying environmental concerns. Under these circumstances, we find that DEC rationally declined the District's request to rescind its completeness determination and further delay the issuance of a final SPDES permit, thereby addressing the need for regulatory certainty while facilitating the District's ability to pursue its proposed diffusor project through the implementation of an enforceable, yet generous, schedule of compliance."

FOURTH DEPARTMENT

TORTS, NEGLIGENT SUPERVISION

***Harper v Buffalo City Sch. Dist.*, 2025 NY Slip Op 05595 (4th Dept Oct. 10, 2025)**

Issue: Did Supreme Court properly dismiss on summary judgment the plaintiff's Child Victims Act claims for negligent supervision against defendant?

Facts: Plaintiff commenced a Child Victims Act action, claiming that "when he was a student in the seventh or eighth grade in approximately 1975-1976, he was subjected to sexual abuse by a nonparty music teacher employed by defendants." Defendant moved for summary judgment dismissing the complaint, and Supreme Court, among other things, dismissed the plaintiff's "second cause of action, alleging negligent supervision of plaintiff while acting in loco parentis," and "fifth cause of action, alleging negligent supervision and training of the music teacher and negligent training of defendants' other employees."

Holding: The Appellate Division, Fourth Department reversed, and reinstated the plaintiff's negligent supervision claims. The Court explained, "[s]chools have a duty to adequately supervise students in their care, and may be held liable for foreseeable injuries proximately related to the absence of adequate supervision. That duty requires that the school exercise such care of them as a parent of ordinary

prudence would observe in comparable circumstances. A plaintiff may succeed on a claim of negligent supervision by establishing that school authorities had sufficiently specific knowledge or notice of the dangerous conduct which caused injury. Where an employee acquires knowledge within the scope of their employment, that knowledge is imputed to the employer and the latter is bound by such knowledge even if the information is never actually communicated to the employer. The adequacy of a school's supervision of its students is generally a question left to the trier of fact to resolve, as is the question of whether inadequate supervision was a proximate cause of the plaintiff's injury."

Here, the Court held, the plaintiff raised a triable issue of fact on "whether defendants had sufficiently specific knowledge or notice of the music teacher's conduct" by submitting an affidavit describing "that on two occasions the music teacher entered the boys' locker room while plaintiff and his classmtes were changing and that on each occasion the gym teacher instructed the music teacher to leave" and the gym teacher's affidavit from a different case averring that "he had heard rumors from many students that the music teacher had a sexual interest in the male students at the school and that he was suspicious that the music teacher may have had inappropriate relationships with students." Further, the music teacher "testified that he had 'always' had students visit him at his home and that other teachers were aware that students would visit him at his home, where the abuse of plaintiff is, in part, alleged to have occurred." This, the Court held, was enough to preclude summary judgment. .

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