



A quick appellate practice reminder this week from the First Department. Even where a department of the Appellate Division does not find an abuse of discretion in a trial court determination—here, the granting of the People’s motion to prevent removal of an adolescent offender’s case to Family Court under the Raise the Age legislation—the Appellate Division still retains its own independent discretion to substitute its discretion for that of the trial court, based on the particular circumstances of the case. That authority is rarely exercised, but it does exist, and the First Department thought it an appropriate use of that power in the Raise the Age case to deny the People’s motion. Let’s take a look at that opinion and what else has been going on in the New York appellate courts over the last week.

FIRST DEPARTMENT

CRIMINAL LAW, RAISE THE AGE, EXTRAORDINARY CIRCUMSTANCES TO PREVENT REMOVAL TO FAMILY COURT

People v Key, 2026 NY Slip Op 05234 (1st Dept Sept. 3, 2026)

Issue: Did the People meet their burden of establishing the “extraordinary circumstances” necessary to overcome the Raise the Age legislation’s statutory presumption that an adolescent offender’s case be transferred to Family Court?

Facts: “When he was 17 years old, defendant was charged with two counts of criminal possession of a weapon after police officers discovered a loaded firearm in his fanny pack during a postarrest inventory search. Based on his age and these charges, defendant’s case was presumptively eligible for transfer to Family Court under New York’s ‘Raise the Age’ legislation.”

“[T]he People moved pursuant to CPL 722.23 to prevent removal of defendant’s case to Family Court. The People first maintained that ‘defendant’s criminal history and character’ warranted retaining the case in the Youth Part of Supreme Court . . . [T]he People noted that defendant had a prior youthful offender adjudication for firing a gun on a public street when he was 14 years old. The People, however, conceded that this incident, which occurred more than two and a half years prior to the incident at issue in this case, was defendant’s only significant contact with the criminal justice system. Next, the People observed that, in this case, defendant was rearrested while possessing a gun despite receiving employability and life skills training, access to internships in his field of interest, job training, and access to an alumni network. Third, the People suggested that removal to Family Court would undermine the public’s confidence in the criminal justice system to deal with recidivist defendants. Finally, the People contended that removal would have a ‘negative effect’ on the ‘safety and welfare of the community’ because defendant’s possession of a weapon in a crowded area is a violent and dangerous act.”

The defendant opposed the application, arguing that “none of the aggravating factors raised by the People constituted “exceptional” or “unusual” circumstance that justified retention in the Youth Part. Defendant further maintained that removal to Family Court was appropriate based on various aspects of his personal and familial circumstances. Defendant noted that he is being raised by a single mother in a high-crime area, and his father, who was previously incarcerated, was largely absent in his life. Defendant also pointed to his close relationships with his six-year-old sister and baby brother, his childcare responsibilities and household duties, and his academic success. Defendant also engaged in sports programs that promoted his friendships and social skills. When his case was resolved, he hoped to find a vocational program to explore career options, such as becoming a sound engineer, performing automotive work, or obtaining a barber’s license. Finally, defendant emphasized the positive evaluations he received following his participation in several Family Court programs.”

Supreme Court granted the People’s motion and retained jurisdiction in the Youth Part, “holding that extraordinary circumstances established a ‘clear and compelling basis for overcoming the statutory preference that an adolescent offender have his case transferred to family court.’ Although it acknowledged that the intent of the RTA was that ‘the overwhelming bulk of cases would be removed to Family Court,’ the court maintained that defendant’s ‘repeated arrests, each arrest involving the alleged possession of a firearm and after having had the benefit of a youthful offender adjudication, demonstrate a disregard for the criminal justice system.’”

Following defendant’s plea and sentence, he appealed the Supreme Court order that retained jurisdiction in the Youth Part.

Holding: The First Department held that although Supreme Court’s decision was not an abuse of discretion, “in the interest of justice, the People’s motion should be denied and the case removed to Family Court.” The court explained, “[a]n ‘extraordinary circumstances’ determination by Supreme Court sitting in the Youth Part is discretionary. And generally, we do not disturb a trial court’s exercise of its discretion in the absence of an abuse of that discretion, which represents an error of law. However, we have the power, in the interests of justice, to reverse or modify a discretionary determination even in the absence of an abuse of discretion. That power recognizes that there will be instances where a trial court committed no error of law demanding correction, but the facts and circumstances of a particular case

call for a different outcome in the eyes of the intermediate appellate court. It is a power that we admittedly employ sparingly.” But here was such a rare case, the court reasoned, “in light of the text of the RTA, the purpose of that law, the presumption in favor of removal, and the particular facts and circumstances of this case.”

“Under the RTA, prosecutions of adolescent offenders — defined as 16 or 17 year olds charged with a felony — are presumptively removable from the Youth Part of Supreme Court to Family Court. The People can rebut that presumption if a defendant is charged with a class A nondrug felony or a violent felony, and the People prove, by a preponderance of the evidence, that defendant (1) caused significant physical injury during the commission of the offense, (2) displayed a firearm, shotgun, rifle or deadly weapon in furtherance of the offense, or (3) committed a sex offense.” In the absence of one of those three conditions, the People may also establish, by motion on notice, that “extraordinary circumstances exist that should prevent the transfer of the action to Family Court.”

The court explained that the RTA does not define the “extraordinary circumstances” required, leaving the courts to evaluate each case on the totality of its own circumstances. Indeed, the legislative history provided “several illustrative examples of ‘extraordinary circumstances’ . . . Such examples of ‘aggravating factors that may involve extraordinary circumstances’ included those situations where an adolescent offender committed ‘a series of serious crimes . . . over the course of many days,’ acted in an ‘especially cruel and heinous manner,’ or served as ‘a ringleader who threatened and coerced reluctant youths to participate in the crimes.’ These aggravating factors would then be considered in tandem with mitigating circumstances, such as ‘economic difficulties, substandard housing, poverty, learning difficulties, of course, and educational challenges, lack of insight and susceptibility to peer pressure due to immaturity, absence of positive role models, behavioral role models, abuse of alcohol or controlled substances by the [adolescent offender], by family or by peers.’ Legislators also expressed hope that, when engaging in this ‘extraordinary circumstances’ analysis, courts would look at each case and draw inferences in a light that’s most favorable to the juvenile who they stand in jurisdiction of.”

In light of the standard for appellate review of an extraordinary circumstances determination, which is reviewed for abuse of the trial court’s wide discretion, the court could not “say that, as a matter of law, Supreme Court *abused* its discretion by granting the People’s motion to prevent removal to Family Court. To support its finding of extraordinary circumstances, Supreme Court considered the parties’ respective submissions and weighed competing aggravating and mitigating factors to conclude that there was a ‘clear and compelling basis’ to retain defendant’s case in Youth Part. Given this analysis, we must conclude that Supreme Court acted within its broad discretion by applying the correct analytical framework set forth in *Guerrero* for evaluating the existence of ‘extraordinary circumstances.’ Our review, however, does not end there. Indeed, unlike the Court of Appeals, the Appellate Division may substitute its own discretion even where a trial court has not abused its discretion. This interest-of-justice review power recognizes that, even in the absence of an abuse of discretion, the facts and circumstances of a particular case may warrant a determination other than the one reached by the trial court. Although we generally do not exercise our prerogative to substitute our discretion for that of the trial court, here we conclude that, in light of the text of the RTA, the purpose of the act, the presumption in favor of removal, and the particular facts and circumstances of this case, this appeal presents an appropriate circumstance for us to do so.”

Noting the significant aggravating factors upon which Supreme Court had based its determination to retain jurisdiction in the Youth Part, the court nonetheless held that “the record contains considerable countervailing mitigating factors. To start, defendant experienced significant financial hardships and a difficult upbringing. He was primarily raised by a single mother who was only 18 years old and in high school at the time defendant was born, and he spent his childhood in a public housing project that his mother described as a full of ‘killings’ and ‘gang activity.’ Throughout his childhood, defendant’s family remained economically strained, with his mother working three jobs in the hopes of moving defendant away from ‘toxic’ environment in which they were living. Compounding these difficult circumstances, defendant’s father was incarcerated at the time of defendant’s birth, and upon his release, made no effort to be in defendant’s life, depriving him of a meaningful role model. Despite these challenges, defendant shouldered caretaker responsibilities for his family, including assisting his mother during a difficult pregnancy and being a source of mentorship and support for his younger siblings. He participated avidly in sports teams and lessons. His maturity was importantly manifested by his demonstrated amenability to Family Court’s services. For example, defendant highlighted his improved school performance during the COVID-19 pandemic, his interest in pursuing vocational studies, and his successful graduation from the Exalt Youth program with perfect attendance and outstanding participation. In our view, these are precisely the types of facts that the legislators contemplated would support removal to Family Court. Hence, when carefully balanced with the aggravating factors in this case, these mitigating circumstances *decidedly* tipped the scale in favor of denying the People’s motion.”

The court noted, importantly, that its exercise of its own discretion should not be read as “‘severely limit[ing]’ the discretion of a Youth Part court in adjudicating a removal motion. Like our dissenting colleagues, we recognize that the jurists in those parts are rightly trusted under the RTA with broad discretion in determining CPL 722.23 applications, and nothing in this decision can be reasonably read to disturb that sound conclusion. We simply have a healthy, albeit robust, disagreement with our dissenting colleagues about whether the particular facts and circumstances of this appeal warrant substituting our discretion for that of the trial courts given the intent and goals of the RTA.”

SECOND DEPARTMENT

CONSTITUTIONAL LAW, CIVIL ASSET FORFEITURE

Cohen v A 2019 Nissan, 2026 NY Slip Op 05158 (2d Dept Sept. 2, 2026)

Issue: Is Suffolk County's civil asset forfeiture statute, pursuant to which a defendant's vehicle was seized following his second conviction for driving while intoxicated, unconstitutional, as preempted by state law and in violation of the excessive fine clauses of the state and federal constitutions?

Facts: Under Suffolk County's civil asset forfeiture statute, "a police officer may seize, among other things, a motor vehicle as an 'instrumentality of an offense,' upon probable cause to believe that there has been a violation of Vehicle and Traffic Law § 1192, operating a motor vehicle while under the influence of alcohol or drugs." Here, in February 2022, at 2:40 a.m., the police observed the defendant driving at "a speed of 100 miles per hour in a 35-mile-per-hour zone and passing a steady red traffic control light." He was pulled over and the officers observed the defendant in an intoxicated state, with "a .20% blood alcohol content." The defendant was arrested and charged with "aggravated driving while intoxicated per se pursuant to VTL § 1192(2-a)(a) and driving while intoxicated pursuant to VTL § 1192(3). The defendant had previously been convicted of driving while intoxicated pursuant to VTL § 1192(3) on April 1, 2015. The vehicle was seized and impounded by the SCPD pursuant to the civil asset forfeiture statute. Rather than proceeding with a post-seizure hearing, as required under the statute, the defendant agreed to "post a bond, install an interlock device, and pay the towing and storage fees" in exchange for release of the vehicle.

Following the defendant's conviction, upon his guilty plea, for "aggravated driving while intoxicated per se pursuant to VTL § 1192(2-a) (a), with one prior conviction" and sentence to five years of probation, a \$1,000 fine, and revocation of his license for 18 months, the County commenced this action under its civil asset forfeiture statute for forfeiture of the defendant's vehicle as an instrumentality of his aggravated DWI offense. Defendant answered and counterclaimed, alleging that the civil asset forfeiture statute was unconstitutional. The parties then both made summary judgment motions, with the County arguing that "forfeiture of the vehicle was proper pursuant to [the civil asset forfeiture statute] as the instrumentality of a VTL § 1192 offense, since the defendant had previously been convicted of a violation of VTL § 1192" and the defendant asserting that "the forfeiture of the vehicle constituted an excessive fine under the State and Federal Constitutions" and that the statute was preempted by state law.

Supreme Court granted the County's motion and denied the defendant's cross-motion, and directed forfeiture of the vehicle.

Holding: The Second Department affirmed the forfeiture, rejecting the defendant's constitutional challenges to Suffolk County's civil asset forfeiture statute. The court held that the civil asset forfeiture statute was not preempted by the VTL or CPLR article 13-A. The court explained that although CPLR 1311(1) provides for civil asset forfeiture, "the fact that CPLR article 13-A expressly provides that post-conviction forfeiture applies to 'any felony' does not evince the State's intent to preempt any local legislation in this area. CPLR article 13-A provides that a claiming authority 'may' commence a civil action against a defendant to recover property that constitutes an instrumentality of a crime for any felony, and expressly provides that 'the remedies provided for in this article are not intended to substitute for or limit or supersede the lawful authority of any public officer or agency or other person to enforce any other right or remedy provided by law.' Moreover, while both CPLR article 13-A and [Suffolk County's civil asset forfeiture statute] concern the seizure and forfeiture of property used as the instrumentality of a crime, the fact that the State and local laws touch upon the same area is insufficient to support a determination that the State has preempted the entire field of regulation in this area." Nor does the VTL preempt the local civil asset forfeiture statute, the court held, as it does not constitute a comprehensive and exclusive regulation of civil asset forfeiture.

The court further held that the forfeiture statute did not violate the Excessive Fines Clause. The court explained, "[a] punitive forfeiture of an instrumentality of a crime violates the Excessive Fines Clause if it is grossly disproportional to the gravity of a defendant's offense. The Court of Appeals has provided that the factors to be considered in determining gross disproportionality are the seriousness of the offense, the severity of the harm caused and of the potential harm had the defendant not been caught, the relative value of the forfeited property and the maximum punishment to which defendant could have been subject for the crimes charged, and the economic circumstances of the defendant. The Court of Appeals has further noted that given the gravity of the crime of drunk driving, it is difficult to imagine that forfeiture of an automobile for such a crime could ever be excessive." Here, the court held, "the forfeiture of the defendant's vehicle did not constitute an excessive fine" because of the seriousness of his DWI conviction, which was his second, the potential harm to the public of the DWI offense was grievous, and the value of the vehicle (\$21,000) "was not grossly disproportional to the potential maximum sentence of imprisonment"—four years imprisonment.

CasePrepPlus | September 18, 2026

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