

SUPREME COURT, APPELLATE DIVISION  
FIRST DEPARTMENT

MARCH 6, 2018

THE COURT ANNOUNCES THE FOLLOWING DECISIONS:

Friedman, J.P., Richter, Gesmer, Kern, Moulton, JJ.

5387      Luz Ocasio,  
                Plaintiff-Appellant,  
                -against-

Dormitory Authority of the State  
of New York, et al.,  
Defendants-Respondents,

Prosec Protection Systems Inc.,  
Defendant.

Michelstein & Associates, PLLC, New York (Stephen J. Riegel of counsel), for appellant.

Zachary W. Carter, Corporation Counsel, New York (Daniel Matza-Brown of counsel), for Dormitory Authority of the State of New York, respondent.

Raven & Kolbe, LLP, New York (Michael T. Gleason of counsel), for Nouveau Elevator Industries, Inc., respondent.

Order, Supreme Court, Bronx County (Sharon A. M. Aarons, J.), entered on or about July 14, 2016, which granted the motions of defendants Dormitory Authority of the State of New York (DASNY) and Nouveau Elevator Industries, Inc. (Nouveau) for summary judgment dismissing the complaint and all cross claims as against them, unanimously modified, on the law, to the extent of

denying Nouveau's motion, and otherwise affirmed, without costs.

Plaintiff alleges that she was injured at her workplace, Building 6 of Jacobi Medical Center, while traveling on an elevator on the way to her office. Plaintiff asserts that she was standing near the elevator doors when they opened at an intermediate floor. She heard a "gunshot"-like noise from above and was struck at the top of her forehead by a hot metal object. Plaintiff felt a sharp pain and lost consciousness. She woke up in the hospital's emergency room. A washer was retrieved from the scene.

DASNY had contracted with the City of New York and its Health and Hospitals Corporation to both construct Building 6 and to lease and operate the building. At the time of plaintiff's accident, DASNY had a contract with Nouveau to install equipment in the elevators associated with an "Infant Abduction System" (IA-System). Nouveau also had a maintenance contract with Jacobi Medical Center to provide elevator maintenance services for the hospital.<sup>1</sup> Nouveau's witness stated that it was possible to install an IA-System on one elevator while keeping in service

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<sup>1</sup>The August 1, 2016 contract in the record is unsigned, but the parties assume the existence of a maintenance contract in their papers. Nouveau's maintenance manager further alluded to an April 5, 2005 maintenance contract at his deposition. The record contains work tickets for Nouveau's hospital elevator maintenance work during the relevant period.

other elevators in the same bank.

DASNY's and Nouveau's motions for summary judgment were granted by the motion court. We now modify.

DASNY and Nouveau established their entitlement to judgment as a matter of law by submitting, *inter alia*, deposition testimony and affidavits showing that Nouveau's work in an elevator shaft adjacent to the elevator in which plaintiff was riding did not require washers or welding equipment.

However, in opposition, plaintiff raised triable issues of fact, as circumstantial evidence showed that a prompt investigation of the incident indicated that Nouveau's workers were installing equipment in an adjacent elevator shaft several floors above where plaintiff's elevator cab had come to a stop, and that no other construction crews were in the vicinity of the elevator bank in question. Contrary to the motion court's finding, the evidence could be sufficient to support an inference that it was more likely that the injury was caused by negligence on the part of Nouveau rather than by some other actor (*see Gayle v City of New York*, 92 NY2d 936 [1998]).

Contrary to the motion court's finding, "neither plaintiff's failure to specifically plead *res ipsa loquitur* nor the allegation of specific acts of negligence . . . constitutes a bar to the invocation of *res ipsa loquitur* where the facts warrant

its application" (*Weeden v Armor El. Co.*, 97 AD2d 197, 201-202 [2d Dept 1983] [emphasis omitted]; see *Estrategia Corp. v Lafayette Commercial Condo*, 95 AD3d 732 [1st Dept 2012]). However, we are unable to determine on this record whether, as plaintiff contends, the doctrine of res ipsa loquitur is applicable to Nouveau.

The motion court properly granted summary judgment to DASNY on the basis that DASNY had no notice of the hot washer and therefore, could not be negligent. The doctrine of res ipsa loquitur does not assist plaintiff in her claim against DASNY because plaintiff does not argue that DASNY was in control of the washer, which was the instrumentality of her injury. Nor has plaintiff argued that DASNY is properly held vicariously liable for any defect created by the elevator company, which would obviate the need for plaintiff to demonstrate actual or constructive notice (see e.g. *Barkley v Plaza Realty Invs. Inc.*,

149 AD3d 74, 79 [1st Dept 2017] [vicarious liability under  
Multiple Dwelling Law § 78]; *Mas v Two Bridges Assoc.*, 75 NY2d  
680, 689 [1990] [same]).

THIS CONSTITUTES THE DECISION AND ORDER  
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: MARCH 6, 2018



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Sweeny, J.P., Manzanet-Daniels, Gische, Kahn, Oing, JJ.

5707        In re Laurie Kellogg,  
                 Petitioner-Respondent,

Index 160366/16

-against-

The New York State Board of Parole,  
Respondent-Appellant.

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Eric T. Schneiderman, Attorney General, New York (Philip V. Tisne of counsel), for appellant.

Spektor & Tsirkin, P.C., New York (Vladimir Tsirkin of counsel), for respondent.

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Judgment (denominated an order), Supreme Court, New York County (Arthur F. Engoron, J.), entered on or about March 23, 2017, granting the petition to vacate the denial of parole and order a new parole hearing by directing respondent to grant petitioner parole within 30 days of the judgment, unanimously modified, on the law, to vacate the directive that respondent grant petitioner parole, and to direct respondent to hold a new parole hearing within 60 days of entry of this order before a board of commissioners who have not sat on her previous hearings, and otherwise affirmed, without costs.

In 1991, petitioner learned that her husband was molesting a 16-year-old who lived with them and babysat their sons. While the husband was spending the weekend at a family cottage near Seneca Lake, petitioner, the babysitter, and the babysitter's

boyfriend, as well as two other teens, drove to the cabin to confront the husband about the abuse. The group took the husband's loaded handgun with them.

Driving through the night, they arrived at the cottage at approximately 4:00 a.m. As they pulled up, the sitter's boyfriend leapt from the truck, took the handgun, entered the cottage, and shot the husband multiple times as he slept, killing him. During this time, petitioner remained in the truck. Afterwards, the group tossed the gun into a creek and returned home.

The sitter's boyfriend subsequently pleaded guilty to second-degree (intentional) murder and first-degree conspiracy and was sentenced to 25 years to life.

After trial, petitioner was found guilty of second-degree (felony) murder, first-degree manslaughter, first-degree burglary, and possession of a weapon, but was acquitted of intentional murder and multiple degrees of conspiracy.

As an inmate, petitioner participated in numerous programs, including working as a teacher's aide and helping inmates obtain their GEDs, training service dogs, and serving as a chaplain's clerk. Notably, petitioner compiled an extraordinary disciplinary record without a single Tier 2 or 3 disciplinary infraction, despite decades in prison. In July 2015,

petitioner's risk assessment placed her in the lowest category of likelihood of reoffense.

At the parole hearing, petitioner maintained, consistent with the jury verdict, that she never conspired to kill her husband and did not intend to kill him. Petitioner emphasized, however, her sense of responsibility for making "choices and decisions that led to a chain of events that led to the death of [her] husband."

Petitioner attempted to explain that she had been convicted on a felony murder theory, rather than intentional murder, but, being a layperson, was unable to clearly convey the distinction.

The commissioners acknowledged that petitioner presented a low risk of reoffense. Nonetheless, near the end of the hearing, the commissioners asked petitioner to explain in "what significant way [she] changed," because they did not "see where [she had] admitted to being such a bad person." Petitioner replied that she "[did not] believe that [she] was a horribly bad person." Instead, she was "young and naive" and "made some bad choices," which she recognized now "look[ing] back at 51, as opposed to that young girl at 16, who married a 33-year-old man." Petitioner "wished that [she] hadn't been impulsive" and "understood now that every decision we make, everything we say carries weight, carries responsibility."

The commissioners denied parole, finding that if released at that time "there [wa]s a reasonable probability that [petitioner] would not live and remain at liberty without again violating the law." The commissioners emphasized that petitioner had failed to admit responsibility for the crimes she had been found guilty of committing, noting that it was not until the end of the interview that she "expressed any emotion approaching remorse." Petitioner's administrative appeal was denied.

Supreme Court granted petitioner's article 78 petition, stating, *inter alia*, that "[s]ubjective views of [petitioner's] alleged lack of remorse . . . cannot be allowed to override objective evidence of the last 25 years," noting that petitioner had received "not a single complaint, much less any infraction [and] no word of bad behavior." The court reflected, "Does saying you are 'sorry,' as a means to seek freedom from incarceration, mean that you are less likely to re-offend than if you do not?" We now modify to remand for a new hearing, rather than outright release, and otherwise affirm.

The jury acquitted petitioner of intentional murder and conspiracy to commit murder, while convicting her of burglary, felony murder, and manslaughter. The manslaughter conviction in particular expresses a clear finding on the part of the jury that, while petitioner wished her husband harm, she either did

not intend that he die, or acted under the influence of extreme emotional disturbance, or both (see Penal Law § 125.20[1], [2]).

The commissioners failed to appreciate that petitioner's murder conviction was not for intentional murder, but rather for second-degree felony murder. The felony murder rule, of course, provides that a person is guilty of second-degree murder when, "[a]cting either alone or with one or more other persons, [she] commits or attempts to commit [violent crimes including] burglary, . . . and, in the course of and in furtherance of such crime or of immediate flight therefrom, [she], or another participant, . . . causes the death of a person other than one of the participants" (Penal Law § 125.25[3]). In essence, and particularly in the context of a burglary conviction, the felony murder rule imposes strict and vicarious liability for a killing that one did not intend, provided that it was the result of an enumerated felony that one did intentionally commit. Intent to kill plays no role in a finding of felony murder (see *People v Howard*, 241 AD2d 920, 921 [4th Dept 1997], lv denied 90 NY2d 940 [1997]; see *Matter of King v New York State Div. of Parole*, 190 AD2d 423, 433-434 [1st Dept 1993] [holding that BOP erred in relying on felony murder conviction as aggravating factor supporting denial of parole], affd 83 NY2d 788 [1994]).

At the parole hearing, petitioner nonetheless accepted

responsibility for her "choices and decisions that led to a chain of events that led to the death of [her] husband." Far from showing any lack of insight into her crime, petitioner's testimony at the parole hearing was truthful, accurate, and consistent with what the jury found happened in 1991.

Accordingly, respondent's determination denying petitioner parole manifested "irrationality bordering on impropriety," warranting granting the petition to vacate the denial of parole (*Matter of Silmon v Travis*, 95 NY2d 470, 476 [2000] [internal quotation marks omitted]). The proper remedy is, however, not release, but a new hearing (see *Matter of Rossakis v New York State Bd. of Parole*, 146 AD3d 22, 29 [1st Dept 2016]; *Matter of Newton v Dennison*, 47 AD3d 538, 538 [1st Dept 2008]).

THIS CONSTITUTES THE DECISION AND ORDER  
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: MARCH 6, 2018



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Surma R.  
CLERK

Friedman, J.P., Tom, Mazzarelli, Singh, JJ.

5741-		Index 13386/10
5742	Zoran Scekic, et al., Plaintiffs, -against-	590275/11 590815/11 590948/12
	SL Green Realty Corp., et al., Defendants. - - - - -	
	Structure Tone, Inc., Third-Party Plaintiff-Appellant, -against-	
	React Industries, Inc., et al., Third-Party Defendants-Respondents,	
	Schindler Elevator, Third-Party Defendant. - - - - -	
	Structure Tone, Inc., Second Third-Party Plaintiff-Appellant, -against-	
	SL Green Realty Corp., Second Third-Party Plaintiff, -against-	
	FRP Sheet Metal Contracting Corp., Second Third-Party Defendant-Respondent. - - - - -	
	Structure Tone, Inc., Third Third-Party Plaintiff-Appellant, -against-	
	SL Green Realty Corp., et al., Third Third-Party Plaintiffs, -against-	
	React Industries, Inc., et al., Third Third-Party Defendants-Respondents,	

Schindler Elevator,  
Third Third-Party Defendant.

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Barry, McTiernan & Moore LLC, New York (Laurel A. Wedinger of counsel), for appellant.

Gallo Vitucci Klar LLP, New York (Daniel P. Mevorach of counsel), for React Industries, Inc., respondent.

Wade Clark Mulcahy, New York (Georgia G. Coats of counsel), for FL Mechanical LLC, respondent.

Fabiani Cohen & Hall, LLP, New York (Allison A. Synder of counsel), for FRP Sheet Metal Contracting Corp., respondent.

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Judgment, Supreme Court, New York County (Barbara Jaffe, J.), entered August 5, 2016, to the extent appealed from as limited by the briefs, dismissing the third-party complaints as against React Industries, Inc. and FL Mechanical LLC, and the second-third party complaint, and bringing up for review the pretrial dismissal of the complaint and all claims as against defendant 1515 Broadway Fee Owner, LLC, unanimously modified, on the law, to vacate the dismissal of the second-third-party complaint, and reinstate the second third-party claim for contractual indemnification as against FRP Sheet Metal Contracting Corp., and otherwise affirmed, without costs. Appeal from order, same court and Justice, entered May 26, 2016, as amended July 26, 2016, which denied Structure Tone's motion to set aside the jury verdict as to its claims against React and for

reconsideration of its motion for a directed verdict against React as to contractual defense and indemnification, unanimously dismissed, without costs, as subsumed in the appeal from the judgment.

The purchase orders issued by Structure Tone to FRP and by FRP to React establish that Structure Tone subcontracted all the HVAC work to FRP, which sub-subcontracted the mechanical portion of that work to React. The jury's express and implicit findings that there were contractual agreements between Structure Tone and FRP and between FRP and React, but none between Structure Tone and React, are consistent with the "long-established principles . . . [that] the existence of a binding contract is not dependent on the subjective intent of either [party,] [and that] [i]n determining whether the parties entered into a contractual agreement and what were its terms, it is necessary to look, rather, to the objective manifestations of the intent of the parties as gathered by their expressed words and deeds" (*Brown Bros. Elec. Contrs. v Beam Constr. Corp.*, 41 NY2d 397, 399 [1977] [citations omitted]). Thus, Structure Tone's second third-party claim against FRP for contractual indemnification is reinstated.

When the blanket indemnity agreement between Structure Tone and React is read "as a harmonious and integrated whole" (*Nomura Home Equity Loan, Inc., Series 2006-FM2 v Nomura Credit &*

*Capital, Inc.*, NY3d, 2017 NY Slip Op 08622, \*2 [2017] [internal quotation marks omitted]), it is plain that a direct contractual relationship between Structure Tone and React is required as a predicate for React to have an indemnity obligation to Structure Tone thereunder. Since the project at issue was deliberately structured to avoid creating a direct contractual relationship between these two parties, the blanket indemnity agreement does not apply in this case.

The trial court correctly precluded parol evidence that Structure Tone was the "customer" referred to in FL Mechanical's indemnity agreement with React. In any event, under that agreement, FL Mechanical owed indemnity only for claims arising from its own negligence, and the jury found that it was not negligent. Structure Tone is not aggrieved by the dismissal of 1515 Broadway's claims.

THIS CONSTITUTES THE DECISION AND ORDER  
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: MARCH 6, 2018

  
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Tom, J.P., Kapnick, Webber, Oing, JJ.

5789-

Index 111365/04

5790       Verizon New York Inc.,  
             Plaintiff-Appellant,

-against-

The City of New York,  
Defendant-Respondent.

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The Cosgrove Law Firm, Buffalo (Edward C. Cosgrove of counsel),  
for appellant.

Zachary W. Carter, Corporation Counsel, New York (Donna B. Morris  
of counsel), for respondent.

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Order, Supreme Court, New York County (Margaret A. Chan,  
J.), entered January 16, 2015, which granted defendant's motion  
for summary judgment dismissing the complaint, unanimously  
affirmed, without costs. Appeal from order, same court and  
Justice, entered October 5, 2016, which, to the extent appealed  
from as limited by the briefs, denied plaintiff's motion for  
leave to reargue, unanimously dismissed, without costs.

Defendant made a *prima facie* showing that it had no prior  
notice of a defective water main at the location of the incident,  
as it found no records reflecting a water main break for two  
years prior to the event (*see generally De Witt Props. v City of  
New York*, 44 NY2d 417, 424 [1978]; *see also Clindinin v New York  
City Hous. Auth.*, 117 AD3d 628, 628 [1st Dept 2014]). Although

there were several reports of leaking hydrants during the relevant period, defendant investigated and determined that the complaints were unwarranted or promptly addressed them. Further, while water was reported to be leaking into the manhole involved in the incident about a year and a half before the event, the water was tested and found not to be from defendant's facilities.

Plaintiff's argument that defendant's records were not in admissible form and should not have been considered by the motion court is improperly raised for the first time on appeal (see *Weicht v City of New York*, 148 AD3d 551, 552 [1st Dept 2017]). In any event, the records, which were attached to a City official's affidavit, were admissible (see *Viviane Etienne Med. Care, P.C. v Country-Wide Ins. Co.*, 25 NY3d 498, 508 [2015]).

Plaintiff failed to raise a triable issue of fact as to notice. Although two of its employees submitted affidavits stating that water had infiltrated the manhole at the subject location prior to the event, the employees were not specific as to when this occurred, and plaintiff failed to produce any records of its own concerning such prior incidents.

The denial of plaintiff's motion for leave to reargue is not appealable (*see Rosado v Edmundo Castillo Inc.*, 54 AD3d 278, 279 [1st Dept 2008]).

THIS CONSTITUTES THE DECISION AND ORDER  
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: MARCH 6, 2018



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Surma R.  
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Friedman, J.P., Tom, Webber, Kern, JJ.

-against-

James Moore,  
Defendant-Appellant.

Robert S. Dean, Center for Appellate Litigation, New York (Molly Ryan of counsel), for appellant.

Cyrus R. Vance, Jr., District Attorney, New York (Christine DiDomenico of counsel), for respondent.

Order, Supreme Court, New York County (A. Kirke Bartley, Jr., J.), entered on or about September 16, 2014, which denied defendant's motion for resentencing pursuant to the Drug Law Reform Act of 2005, unanimously affirmed.

The court correctly denied resentencing on the ground that defendant was less than three years from his parole eligibility date when he filed the motion (see *People v Mills*, 11 NY3d 527, 536 [2008]), and it providently disregarded the People's erroneous concession to the contrary (see e.g. *People v Wells*, 16 AD3d 174 [1st Dept 2005], lv denied 5 NY3d 796 [2005]). Accordingly, the court was not required to assign counsel or conduct a hearing (see *People v Santana*, 44 AD3d 340 [1st Dept 2007], lv dismissed 9 NY3d 964 [2007]). A defendant is entitled to a hearing on the merits of a resentencing application, but not

necessarily on the threshold issue of eligibility (*People v Golo*, 26 NY3d 358, 362-363 [2015]). Here, defendant's ineligibility was clear, and there was nothing to litigate.

Defendant argues that the 2005 Act should be reinterpreted in light of recent developments, including those relating to the resentencing of persons convicted of other types of drug felonies. However, no decision finding eligibility with regard to any other Drug Law Reform Act has vitiated the 2005 Act's clear eligibility requirement that the applicant's parole eligibility date be at least three years in the future. To accept defendant's argument, we would have to rewrite the statute to treat persons convicted of class A-II felonies the same as persons convicted of other drug felonies (see *People v Horning*, 143 AD3d 520 [1st Dept 2016], *lv dismissed* 28 NY3d 1124 [2016]). We have considered and rejected defendant's constitutional arguments (see *People v Paniagua*, 45 AD3d 98, 109-110 [1st Dept 2007], *lv denied* 9 NY3d 992 [2007]).

THIS CONSTITUTES THE DECISION AND ORDER  
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: MARCH 6, 2018



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Friedman, J.P., Tom, Webber, Kern, JJ.

5892       Indyra Luna,  
                Plaintiff-Respondent,  
  
                -against-

Index 302488/13

CEC Entertainment, Inc., doing  
business as Chuck E. Cheese's,  
Defendant-Appellant.

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Rutherford & Christie, LLP, New York (L. Diana Mulderig of  
counsel), for appellant.

Budin, Reisman, Kupferberg & Bernstein, LLP, New York (Gregory C.  
McMahon of counsel), for respondent.

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Order, Supreme Court, Bronx County (Elizabeth A. Taylor,  
J.), entered July 14, 2016, which denied defendant's motion for  
summary judgment dismissing the complaint, unanimously reversed,  
on the law, without costs, and the motion granted. The Clerk is  
directed to enter judgment accordingly.

Plaintiff alleges that, on October 2, 2011, she slipped and  
fell on a wet condition, on the steps of a ride, at a restaurant  
and entertainment facility owned and operated by defendant.

Defendant met its prima facie burden on the motion of  
establishing that it neither created the alleged wet condition  
nor had prior actual or constructive notice of it. By  
plaintiff's own admission, the wet condition, which she never saw  
but assumes was there, could only have been created moments

earlier, having not been present when she walked up the steps (see *Rosario v Haber*, 146 AD3d 685 [1st Dept 2017]; *Nepomuceno v City of New York*, 137 AD3d 646, 647 [1st Dept 2016]; *Espinal v New York City Hous. Auth.*, 215 AD2d 281, 281-282 [1st Dept 1995]).

Based upon plaintiff's testimony that she was using both hands to carry her daughter down the steps when she fell, without any indication that she reached for a handrail, defendant established that the lack of a handrail did not proximately cause or contribute to the accident (see *Pena v Women's Outreach Network, Inc.*, 35 AD3d 104, 111 [1st Dept 2006]; *Plowden v Stevens Partners, LLC*, 45 AD3d 659 [2d Dept 2007]).

Plaintiff's affidavit in opposition, wherein she claimed that she tried to reach for a handrail when she fell, raised only feigned issues of fact, as it directly contradicted, and appears to have been tailored to avoid the consequence of, her earlier testimony (see *Smith v Costco Wholesale Corp.*, 50 AD3d 499, 501 [1st Dept 2008]; *Telfeyan v City of New York*, 40 AD3d 372 [1st Dept 2007]).

Pursuant to CPLR 3116(a), plaintiff's unsigned deposition transcript may be used as though fully signed, as defendant submitted proof that the certified transcript was provided to her attorneys for execution and not returned. Moreover, an unsigned

but certified transcript may be used as an admission (see *Morchik v Trinity School*, 257 AD2d 534, 536 [1st Dept 1999]), especially where, as here, there is no dispute as to the accuracy of the transcript (see *Bennett v Berger*, 283 AD2d 374 [1st Dept 2001]).

THIS CONSTITUTES THE DECISION AND ORDER  
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

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CLERK

A handwritten signature in black ink, appearing to read "Suzanne R." or "Suzanne R.", is written over a horizontal line. Below the line, the word "CLERK" is printed in a standard font.

Friedman, J.P., Tom, Webber, Kern, JJ.

5893        Tonyia B. Watson,  
                    Claimant-Appellant,

Claim 126836

-against-

The State of New York,  
Defendant-Respondent.

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Tonyia B. Watson, appellant pro se.

Eric T. Schneiderman, Attorney General, New York (David Lawrence III of counsel), for respondent.

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Order, Court of Claims of the State of New York (Faviola A. Soto, J.), entered July 1, 2016, which granted defendant's motion to dismiss the claim, unanimously affirmed, without costs.

The claim at issue was properly dismissed where claimant failed to comply with the pleading requirements of Court of Claims Act § 11(b) (see *Lepkowski v State of New York*, 1 NY3d 201, 208-209 [2003]). Notwithstanding claimant's pro se status, strict construction of and compliance with such statutory preconditions to suit under the Court of Claims Act is required

(see *Kolnacki v State of New York*, 8 NY3d 277, 280-281 [2007]; *Morra v State of New York*, 107 AD3d 1115 [3d Dept 2013]). Thus, the court correctly observed that this claim suffers from the same judicial infirmities as claimant's prior claims (see 147 AD3d 708 [1st Dept 2017], lv denied 29 NY3d 1114 [2017]).

THIS CONSTITUTES THE DECISION AND ORDER  
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: MARCH 6, 2018



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Susan R.  
CLERK

Friedman, J.P., Tom, Webber, Kern, JJ.

5894-

Ind. 2652/10

5895

The People of the State of New York,  
Respondent,

-against-

Carl Fraser,  
Defendant-Appellant.

Rosemary Herbert, Office of the Appellate Defender, New York  
(William Kendall of counsel), for appellant.

Cyrus R. Vance, Jr., District Attorney, New York (Courtney M. Wen of counsel), for respondent.

Judgment, Supreme Court, New York County (Rena K. Uviller, J.), rendered February 22, 2013, convicting defendant, after a jury trial, of 14 counts of unlawful surveillance in the second degree, and sentencing him to an aggregate term of 2 $\frac{1}{3}$  to 8 years, unanimously affirmed.

The verdict was supported by legally sufficient evidence and was not against the weight of the evidence (see *People v Danielson*, 9 NY3d 342, 348-349 [2007]). There was ample evidence that defendant surreptitiously used his camera to take photographs of the intimate body parts of his victims. The evidence supports the conclusion that "defendant was acting in a furtive or stealthy manner, attempting to obtain the [photos] without being discovered - in other words, that he was acting

surreptitiously" (*People v Schreier*, 22 NY3d 494, 499 [2014]). Although "the element of surreptitiousness is clearly not duplicative of the requirement that the recording be made without the victim's knowledge or consent" (*id.* at 498), the type of photography in which defendant engaged, commonly known as "upskirting," inherently requires "an effort to conceal [one's] conduct or to escape detection" (*id.*). We have considered and rejected defendant's remaining arguments regarding the sufficiency and weight of the evidence.

We perceive no basis for reducing the sentence. The sentencing court's discretionary determination to certify defendant as a sex offender under the special provision relating to unlawful surveillance convictions (see Correction Law § 168-a [2] [e]) was also providently made.

THIS CONSTITUTES THE DECISION AND ORDER  
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: MARCH 6, 2018

  
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Friedman, J.P., Tom, Webber, Kern, JJ.

5896-

Index 656434/16

5897

Huynh, So Muon,  
Plaintiff-Appellant,

-against-

Thach, Ly Sun,  
Defendant-Respondent.

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Butterman & Kahn, LLP, New York (Jay R. Butterman of counsel),  
for appellant.

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Order, Supreme Court, New York County (Joan M. Kenney, J.), entered April 25, 2017, which denied plaintiff's motion for summary judgment in lieu of complaint in an action seeking recognition and enforcement of an Australian money judgment in the amount of US \$4,855,500, unanimously reversed, on the law, without costs, and the motion granted. The Clerk is directed to enter judgment in the principal amount, plus costs, disbursements and interest. Appeal from order, same court (Robert D. Kalish, J.), entered October 27, 2017, which, insofar as appealed from as limited by the brief, denied plaintiff's motion for entry of a default judgment, unanimously dismissed, without costs, as moot.

Plaintiff's papers in support of her motion for summary judgment in lieu of complaint, on their face, established, *prima facie*, that she had a meritorious claim for domestication of the Australian judgment under CPLR article 53. Since defendant did

not appear to contest New York's jurisdiction over this matter or to raise any statutory defenses to recognition or enforcement of the Australian judgment (see CPLR 5304), plaintiff's motion should have been granted (*cf. AlbaniaBEG Ambient Sh.p.k. v Enel S.p.A.*, \_\_\_AD3d\_\_\_, 2018 NY Slip Op 00928 [1st Dept 2018]).

THIS CONSTITUTES THE DECISION AND ORDER  
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: MARCH 6, 2018



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Surma R.  
CLERK

Friedman, J.P., Tom, Webber, Kern, JJ.

5898        Julio Bermeo,  
                Plaintiff-Respondent,  
                -against-

Index 305754/12

Time Warner Entertainment Co., L.P.,  
et al.,  
Defendants-Appellants.

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Mauro Lilling Naparty, LLP, Woodbury (Seth M. Weinberg of  
counsel), for appellants.

Kelner and Kelner, New York (Gail S. Kelner of counsel), for  
respondent.

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Order, Supreme Court, Bronx County (Howard H. Sherman, J.),  
entered on or about August 4, 2017, which, insofar as appealed  
from as limited by the briefs, granted plaintiff's motion for  
partial summary judgment on the issue of liability, unanimously  
reversed, on the law, without costs, and the motion denied.

Plaintiff, while traveling south on a bicycle, collided with  
the passenger side of defendants' northbound truck as it turned  
left across his path. While the record establishes that

plaintiff had the right of way, an issue of fact exists as to whether plaintiff was negligent in that he could have avoided the collision through the exercise of reasonable care but failed to do so. Accordingly, plaintiff was not entitled to summary judgment on the issue of liability.

THIS CONSTITUTES THE DECISION AND ORDER  
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: MARCH 6, 2018



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Susan R.  
CLERK

Friedman, J.P., Tom, Webber, Kern, JJ.

5899 The People of the State of New York, Ind. 3802/15  
Respondent,

-against-

Gary Turrell, true name Gary Burrell,  
Defendant-Appellant.

Seymour W. James, Jr., The Legal Aid Society, New York (Ronald Alfano of counsel), for appellant.

Cyrus R. Vance, Jr., District Attorney, New York (Alan Gadlin of counsel), for respondent.

An appeal having been taken to this Court by the above-named appellant from a judgment of the Supreme Court, New York County (Gregory Carro, J.), rendered November 18, 2015,

Said appeal having been argued by counsel for the respective parties, due deliberation having been had thereon, and finding the sentence not excessive,

It is unanimously ordered that the judgment so appealed from be and the same is hereby affirmed.

THIS CONSTITUTES THE DECISION AND ORDER  
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: MARCH 6, 2018

*Suzanne R. P.*  
CLERK

Counsel for appellant is referred to  
§ 606.5, Rules of the Appellate  
Division, First Department.

Friedman, J.P., Tom, Webber, Kern, JJ.

5900            In re Wilkyn Artiles, etc.,            Index 101575/13  
                  Petitioner,

-against-

Raymond W. Kelly, etc., et al.,  
Respondents.

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Law Office of Ricardo A. Aguirre, Bronx (Ricardo A. Aguirre of counsel), for petitioner.

Zachary W. Carter, Corporation Counsel, New York (Susan P. Greenberg of counsel) respondents.

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Determination of respondents, dated July 30, 2013, which affirmed the determination of the Assistant Deputy Commissioner of Trials dismissing petitioner from his position as a police officer, unanimously confirmed, the petition denied, and the proceeding brought pursuant to CPLR article 78 (transferred to this Court by order of Supreme Court, New York County [Shlomo Hagler, J.], entered on or about September 22, 2014), dismissed, without costs.

Petitioner was terminated from his position as a police officer after he was found guilty of impersonating four individuals to file false complaints with the New York City Civilian Complaint Review Board (CCRB), and making a false report of police corruption to the police department's Internal Affairs Bureau (IAB).

Respondents' determination is supported by substantial evidence (see *Matter of Berenhaus v Ward*, 70 NY2d 436, 443 [1987]). It is undisputed that the CCRB complaints were fabricated, that they were sent from an IP address corresponding to petitioner's home, at a time when petitioner was off-duty, and that petitioner was angry due to a lost career opportunity. It is also undisputed that petitioner's IAB report was determined to be unsubstantiated after the alleged victim denied the allegations.

The determination was also in accord with due process, as it was made after a seven-day hearing, at which petitioner was represented by counsel and had the opportunity to present evidence and cross-examine witnesses, and at which 17 witnesses testified and 28 exhibits were introduced.

Petitioner objects that one box of evidence was lost and could not be produced, and that one proposed witness — a former police officer who moved to another state — refused to testify despite being served with a subpoena. However, this evidence related to a prior IAB investigation that was not the basis for the termination decision and was relevant only insofar as it gave petitioner a motive to make the false complaints. Additionally, petitioner's motive was corroborated by his own testimony, and by the testimony of several other police officers. Thus,

petitioner's rights were not violated by the omission of this evidence (*see Matter of Gordon v Brown*, 84 NY2d 574, 578 [1994]; *Matter of Miller v Schwartz*, 72 NY2d 869, 870 [1988]; *Matter of Pena v Hughes*, 121 AD3d 550, 550 [1st Dept 2014]).

The record also does not support petitioner's contention that the hearing officer was biased against him (*see Matter of Warder v Board of Regents of Univ. of State of N.Y.*, 53 NY2d 186, 197 [1981], cert denied 454 US 1125 [1981]).

The penalty of dismissal is not disproportionate to petitioner's serious misconduct so as to shock the conscience (*see Matter of Kelly v Safir*, 96 NY2d 32, 38 [2001]; *see also Matter of Smith v Kelly*, 117 AD3d 564, 565 [1st Dept 2014]; *Matter of Kim v Kelly*, 104 AD3d 556, 556 [1st Dept 2013]; *Matter of Alvarez v Kelly*, 2 AD3d 219, 220 [2003]; *Matter of Ildefonso v Bratton*, 238 AD2d 142, 142 [1st Dept 1997], lv denied 90 NY2d 810 [1997]). Moreover, "[i]n matters of police discipline, we must accord great leeway to the Commissioner's determinations concerning appropriate punishment, because he . . . is accountable to the public for the integrity of the Department"

(*Berenhaus*, 70 NY2d at 445).

We have considered petitioner's remaining arguments and find them unavailing.

THIS CONSTITUTES THE DECISION AND ORDER  
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: MARCH 6, 2018



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CLERK

A handwritten signature in black ink, appearing to read "Suzanne R. J." or a similar variation, is written over a horizontal line. Below the line, the word "CLERK" is printed in a standard font.

Friedman, J.P., Tom, Webber, Kahn, JJ.

5901 Luis Colon, et al., Plaintiffs-Appellants,  
Index 300150/09  
-against-

Metropolitan Transportation Authority,  
et al., Defendants-Respondents.

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Sacks and Sacks, LLP, New York (Scott N. Singer of counsel), for appellants.

London Fisher LLP, New York (Deborah J. Denenberg of counsel), for respondents.

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Order, Supreme Court, Bronx County (Barry Salman, J.), entered November 7, 2016, which, to the extent appealed from as limited by the briefs, granted defendants summary judgment dismissing plaintiffs' Labor Law § 241(6) claim, and denied plaintiffs summary judgment on the question of defendants' Labor Law § 240(1) liability, unanimously affirmed, without costs.

Plaintiff Luis Colon was injured when he fell from a makeshift platform while torquing bolts on the Henry Hudson Bridge restoration project. At the time of his fall, plaintiff was wearing a vest and lanyard; however, he did not attach himself to the available lifeline. There are questions of fact on this record concerning whether it was feasible or even practical for Colon to have attached himself to the lifeline or

whether another safety device was required and whether it was provided (see e.g. *Robinson v East Med. Ctr., LP*, 6 NY3d 550, 554 [2006]).

Plaintiffs' claims predicated on Labor Law § 241(6) were correctly dismissed. On their cross motion for summary judgment and in opposition to defendants' motion for summary judgment, plaintiffs only argued that defendants violated Industrial Code (12 NYCRR) § 23-1.7(e) (2). Plaintiff Colon's own testimony, however, demonstrates that a violation of this Industrial Code section was not a factor in his accident (*Urbano v Rockefeller Ctr. N., Inc.*, 91 AD3d 549, 550 [1st Dept 2012]). Plaintiffs failed to preserve their arguments concerning section 23-1.16 of the Industrial Code.

THIS CONSTITUTES THE DECISION AND ORDER  
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: MARCH 6, 2018



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Surma R.  
CLERK

Friedman, J.P., Tom, Webber, Kern, JJ.

5902        Charles Conklin,  
                Plaintiff-Respondent,

Index 159014/14

-against-

500-512 Seventh Avenue, LP, LLC,  
Defendant-Appellant.

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LeClair Ryan, P.C., New York (Michael J. Case of counsel), for  
appellant.

Law Offices of Stevens & Traub, PLLC, New York (Peter Pearson  
Traub, Jr. of counsel), for respondent.

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Order, Supreme Court, New York County (Jennifer G. Schechter,  
J.), entered August 16, 2017, which granted plaintiff's motion  
for summary judgment on the issue of liability, unanimously  
affirmed, without costs.

Plaintiff, a handyman employed by defendant's managing  
agent, was injured when the landing of a metal staircase in the  
sub-basement of defendant's building collapsed under him, causing  
him to fall about 20 feet to the cement floor below. Plaintiff  
established *prima facie* that defendant had constructive notice of  
the defective condition of the stairs by submitting photographs  
showing the staircase covered in rust, and evidence that  
defendant had no program of inspection for the staircase and had  
never inspected it in the 27 years preceding the accident (see  
*Hayes v Riverbend Hous. Co., Inc.*, 40 AD3d 500, 501 [1st Dept

2007], lv denied 9 NY3d 809 [2007]; *Serna v 898 Corp.*, 90 AD3d 560 [1st Dept 2011]). In opposition, defendant failed to raise an issue of fact as to constructive notice.

We note that stairs do not ordinarily collapse absent negligence, and plaintiff did not contribute to the happening of the accident.

We have considered defendant's remaining arguments and find them unavailing.

THIS CONSTITUTES THE DECISION AND ORDER  
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: MARCH 6, 2018



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Susan R.  
CLERK

Friedman, J.P., Tom, Webber, Kern, JJ.

5903-

5903A        In re Pamela N.,  
                 Petitioner-Respondent,

-against-

Aaron A.,  
                 Respondent-Appellant.

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Carol L. Kahn, New York, for appellant.

Kenneth M. Tuccillo, Hastings on Hudson, attorney for the child.

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Order, Family Court, Bronx County (Carol R. Sherman, J.), entered on or about April 20, 2016, which, after a hearing, granted petitioner mother's motion for temporary emergency jurisdiction in New York under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), Domestic Relations Law § 76-c, and granted her a temporary order of custody of the subject child and a temporary order of protection against respondent father based on findings that he committed acts of domestic violence against the mother and child, unanimously affirmed, without costs. Order, same court and Judge, entered on or about November 28, 2016, denying the father's motion to vacate an order, same court and Judge, entered on or about June 27, 2016, which, upon his default, granted the mother a final order of custody of the subject child and an order of protection,

unanimously affirmed, without costs.

While the ultimate dispositional order was entered on default, the fact-finding order was not, inasmuch as the father's counsel actively participated and the court drew a negative inference from the father's failure to testify rather than continuing the hearing as an inquest (*compare Matter of Iyana W. [Shamark W.]*, 124 AD3d 418 [1st Dept 2015]). Thus, the appeal from the order of fact-finding is properly taken. The father's challenge to the court's exercise of emergency jurisdiction is unavailing, however. In light of the mother's testimony and documentary evidence, including prior neglect findings against the father showing the father's violent behavior toward her, the child and his older children, as well as his failure to testify or offer evidence in his defense, the record supports the finding that there was imminent risk under Domestic Relations Law § 76-c of the child returning to a home where abuse or neglect occurred (see *Matter of Bridget Y. [Kenneth M.Y.]*, 92 AD3d 77 [4th Dept 2011], *appeal dismissed* 19 NY3d 845 [2012]).

The father's motion to vacate his default at the dispositional hearing was properly denied, since he failed to provide any evidence in support of his claim that he was financially unable to appear in Family Court (see e.g. *Matter of Christopher James A. [Anne Elizabeth Pierre L.]*, 90 AD3d 515 [1st

Dept 2011], lv denied 18 NY3d 918 [2012]; *Matter of Isaiha M.* [Atavia M.], 115 AD3d 575 [1st Dept 2014]). He never called his counsel or the court to advise that he would not appear, and failed to appear on dates of which he had advance notice and had requested (see *Matter of Ilyas Zaire A.-R. (Habiba A.-R.)*, 104 AD3d 512 [1st Dept 2013], lv denied 21 NY3d 859 [2013]). It is further noted that the father had funds to travel to New York on prior occasions (see *Matter of Cornelius G.*, 2 AD3d 283 [1st Dept 2003], lv dismissed 2 NY3d 759 [2004]).

The father also failed to set forth a meritorious defense. Contrary to his argument, he failed to avail himself of multiple opportunities to testify or submit evidence on his behalf (see *Matter of Amirah Nicole A. (Tamika R.)*, 73 AD3d 428, 428 [1st Dept 2010], lv dismissed 15 NY3d 766 [2010]). Absent a showing of exceptional circumstances, the court in its discretion properly denied the father's request to testify by videoconference (*Matter of State of New York v Robert F.*, 25 NY3d

448 [2015]). Nor is there support for the father's argument that the mother was attempting to avoid jurisdiction in North Carolina.

THIS CONSTITUTES THE DECISION AND ORDER  
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: MARCH 6, 2018



Susan R.  
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CLERK

Friedman, J.P., Tom, Webber, Kern, JJ.

-against-

Jacoboi Feliz,  
Defendant-Appellant.

Robert S. Dean, Center for Appellate Litigation, New York (Robin Nichinsky of counsel), for appellant.

Cyrus R. Vance, Jr., District Attorney, New York (Jonathon Krois of counsel), for respondent.

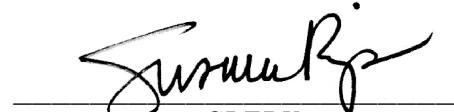
Judgment, Supreme Court, New York County (Laura A. Ward, J.), rendered January 29, 2007, convicting defendant, upon his plea of guilty, of attempted criminal possession of a controlled substance in the third degree, and sentencing him to a term of one year, and judgment, same court (Michael R. Ambrecht, J. at plea; Laura A. Ward, J. at sentencing), rendered January 29, 2007, as amended February 9, 2007, convicting defendant, upon his plea of guilty, of bail jumping in the second degree, and sentencing him to a concurrent term of one year, unanimously affirmed.

Because defendant did not move to withdraw his guilty pleas, and because none of the recognized exceptions to the preservation requirement applies (see *People v Pastor*, 28 NY3d 1089 [2016];

*People v Conceicao*, 26 NY3d 375, 381-382 [2015]; *People v Peque*, 22 NY3d 168, 182-183 [2013]), defendant did not preserve any of his challenges to the voluntariness of his pleas, and we decline to review them in the interest of justice. As an alternative holding, we conclude that defendant has not established that he is entitled to have his pleas vacated on any of the grounds he asserts.

THIS CONSTITUTES THE DECISION AND ORDER  
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: MARCH 6, 2018

  
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Friedman, J.P., Tom, Webber, Kern, JJ.

Eva Lana,  
Petitioner-Appellant,

-against-

Nicolle Assimakopoulos-Panuthos,  
Respondent-Respondent.

Eva Lana, appellant pro se.

Nicolle Assimakopoulos-Panuthos, respondent pro se.

Decree, Surrogate's Court, New York County (Rita Mella, S.), entered on or about September 25, 2013, which, among other things, granted limited ancillary letters of administration c.t.a. to cross petitioner Nicolle Assimakopoulos-Panuthos, and bringing up for review an order, same court and Surrogate, entered on or about June 26, 2013, which denied petitioner Eva Lana's motion to renew, unanimously reversed, on the law and the facts, without costs, the decree vacated, the letters revoked, and letters of administration c.t.a. issued to the Public Administrator of New York County.

Based on the evidence presented by petitioner Eva Lana on her motion to renew, the court should have granted renewal, and upon renewal, determined that decedent was a New York

domiciliary.

Even if the Florida court had decided that decedent was a domiciliary of that state, "the decree of the State of original probate is not conclusive on the question of domicile or residence" (*Matter of Cornell*, 267 NY 456, 462 [1935], cert denied 297 US 708 [1936]). Accordingly, this Court may make an independent inquiry into domicile (see *Matter of Neumayer*, 168 Misc 173, 179 [Sur Ct, Oneida County 1938], appeal dismissed 256 App Div 1039 [4th Dept 1939]).

Assimakopoulos-Panuthos failed to meet her burden of showing, by clear and convincing evidence, that decedent had changed her domicile from New York to Florida (see *Matter of Ranftle*, 108 AD3d 437, 441 [1st Dept 2013], affd 22 NY3d 1146 [2014], cert denied 135 S Ct 270 [2014]). The documentation submitted by petitioner in support of her motion to renew, showed that decedent voted in New York, her driver's license was from New York, and her passport application used her New York address (see *Matter of Winkler*, 171 AD2d 474, 475 [1st Dept 1991], lv dismissed 78 NY2d 908 [1991]). She filed New York State tax returns (see *Ranftle*, 108 AD3d at 439), and her will and death certificate said she was from New York (see *Matter of Gadway*, 123 AD2d 83, 86 [3d Dept 1987]). Moreover, when decedent left New York for Florida in July 2009, she said she intended to return,

but never did because of medical complications (see *Matter of Lockwood*, 147 NYS2d 106, 107-110 [Sur Ct, Suffolk County 1955]).

Since decedent was a New York domiciliary, ancillary probate in this state is inappropriate, even though her will has already been probated in Florida (*Matter of Rosenak*, 184 Misc 2d 807, 809 [Sur Ct, Kings County 2000]; see also *Matter of Beban*, 135 Misc 25, 34 [Sur Ct, NY County 1929]). Therefore, the grant of ancillary letters to Assimakopoulos-Panuthos is revoked, and nonancillary letters are granted to the Public Administrator.

The choice of the Public Administrator is appropriate given the inability of decedent's daughters (Lana and Assimakopoulos-Panuthos) to work together; we note that the court appointed the Public Administrator as the administrator of the sisters' father's estate (see *Estate of Nick Assimakopoulos*, 2017 WL 2937491, \*1, 2017 NYLJ LEXIS 1760, \*1 [Sur Ct, NY County, July 5, 2017, No. 2011-874/B]).

THIS CONSTITUTES THE DECISION AND ORDER  
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: MARCH 6, 2018



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CLERK

Friedman, J.P., Tom, Webber, Kern, JJ.

5907 The People of the State of New York, Ind. 3713/15  
Respondent,

-against-

Alberto Calderon,  
Defendant-Appellant.

Seymour W. James, Jr., The Legal Aid Society, New York (Joanne Legano Ross of counsel), for appellant.

Judgment, Supreme Court, New York County (Larry Stephen, J.), rendered November 16, 2015, unanimously affirmed.

Application by defendant's counsel to withdraw as counsel is granted (see *Anders v California*, 386 US 738 [1967]; *People v Saunders*, 52 AD2d 833 [1st Dept 1976]). We have reviewed this record and agree with defendant's assigned counsel that there are no non-frivolous points which could be raised on this appeal.

Pursuant to Criminal Procedure Law § 460.20, defendant may apply for leave to appeal to the Court of Appeals by making application to the Chief Judge of that Court and by submitting such application to the Clerk of that Court or to a Justice of the Appellate Division of the Supreme Court of this Department on reasonable notice to the respondent within thirty (30) days after service of a copy of this order.

Denial of the application for permission to appeal by the judge or justice first applied to is final and no new application may thereafter be made to any other judge or justice.

THIS CONSTITUTES THE DECISION AND ORDER  
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: MARCH 6, 2018



Susan R. J.  
CLERK

Friedman, J.P., Tom, Webber, Kern, JJ.

5908 & The People of the State of New York, Ind. 3905/14  
M-167 Respondent,

-against-

Jacob Nolan,  
Defendant-Appellant.

Law Office of Stephen N. Preziosi, P.C., New York (Stephen N. Preziosi of counsel), for appellant.

Cyrus R. Vance, Jr., District Attorney, New York (Karen Schlossberg of counsel), for respondent.

Judgment, Supreme Court, New York County (Thomas Farber, J.), rendered July 27, 2016, convicting defendant, after a jury trial, of attempted murder in the second degree, burglary in the first degree (two counts) and attempted assault in the first and second degrees, and sentencing him to an aggregate term of 9½ years, unanimously affirmed.

The court properly permitted the People to introduce portions of their psychiatric expert's videotaped interview of defendant. Although defendant did not assert an affirmative psychiatric defense such as insanity, he presented psychiatric evidence in an effort to negate the element of intent. This opened the door to the receipt, for limited purposes, of evidence of the People's expert's examination (see generally *People v Segal*, 54 NY2d 58 [1981]). To the extent that defendant argues

that CPL 60.55 limits the admissibility of this type of evidence to cases involving affirmative psychiatric defenses, that claim is unpreserved, and without merit in any event (see *People v Cobo*, 245 AD2d 72 [1st Dept 1997], lv denied 91 NY2d 1006 [1998]). The interview did not improperly introduce new facts as evidence, and the People did not misuse the interview in their summation or otherwise. Furthermore, this evidence could not have caused defendant any prejudice, particularly in light of the court's thorough limiting instructions, which the jury is presumed to have followed (see *People v Davis*, 58 NY2d 1102, 1104 [1983]).

The court providently exercised its discretion in precluding defendant from cross-examining the People's expert about his ability to form a legal conclusion as to whether defendant's cousin was criminally involved in the crimes at issue, in which defendant attacked his cousin's ex-husband. This line of questioning was too remote from the issue of the expert's bias to warrant its admission (see *People v Thomas*, 46 NY2d 100, 105 [1978], appeal dismissed 444 US 891 [1979]),

Defendant's constitutional arguments relating to the above-discussed issues, and all of his remaining claims of trial error, are unpreserved and we decline to review them in the interest of justice. As an alternative holding, we also reject them on the

merits. We have also considered and rejected defendant's ineffective assistance of counsel claims relating to the issues we have found to be unpreserved (see *People v Benevento*, 91 NY2d 708, 713-714 [1998]; *Strickland v Washington*, 466 US 668 [1984]).

We perceive no basis for reducing the sentence.

We find no basis for enlarging the record to include matters relating to the recently commenced prosecution of defendant's cousin for her alleged role in this crime. These matters are irrelevant to the issues raised on defendant's appeal.

**M-167        *People v Jacob Nolan***

Motion to enlarge the record and for related relief denied.

THIS CONSTITUTES THE DECISION AND ORDER  
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: MARCH 6, 2018



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CLERK

Friedman, J.P., Tom, Webber, Kern, JJ.

5909 135 Bowery LLC, et al.,  
Plaintiffs-Respondents,

Index 156014/13

-against-

Beach Channel Shoppers Mart Co.,  
LLC,  
Defendant-Appellant.

Lindenbaum & Young P.C., Long Island City (Robert J. Young of counsel), for appellant.

Stein Riso Mantel McDonough, LLP, New York (Gerard A. Riso of counsel), for respondents.

Order, Supreme Court, New York County (O. Peter Sherwood, J.), entered on or about June 3, 2016, which granted plaintiffs' motion for summary judgment on the complaint, and denied defendant's cross motion for summary judgment dismissing the complaint, unanimously affirmed, with costs.

Plaintiffs established prima facie that defendant aided and abetted a fraud (see *Oster v Kirschner*, 77 AD3d 51, 55 [1st Dept 2010]). Copious documentation demonstrates that, without plaintiffs' authorization, defendant's now deceased managing member, Alan Young, acting as plaintiffs' attorney in a real estate transaction, funneled a portion of escrowed funds through defendant, and then disbursed the funds to affiliated entities. This transaction was part of a larger scheme to defraud

plaintiffs of the proceeds of the sale of their property. Given that Young, as managing member of defendant and the sole signatory on defendant's bank account, perpetrated the fraud, knowledge of the fraud can be imputed to defendant (*see Kirschner v KPMG LLP*, 15 NY3d 446, 465 [2010]). Defendant then provided substantial assistance in the fraud by placing the proceeds of the fraud beyond plaintiffs' reach, thereby causing plaintiffs harm (*see Chambers v Weinstein*, 135 AD3d 450 [1st Dept 2016]). In opposition, defendant failed to raise an issue of fact.

Plaintiffs established a prima facie case of conversion (*see State of New York v Seventh Regiment Fund*, 98 NY2d 249, 259 [2002]; *Lemle v Lemle*, 92 AD3d 494, 497 [1st Dept 2012] ["(C)onversion occurs when funds designated for a particular purpose are used for an unauthorized purpose"]). It is undisputed that defendant possessed plaintiffs' funds without authorization and in derogation of plaintiffs' right of ownership. That the possession was only temporary raises no issue of fact (*cf. People v Hardy*, 26 NY3d 245, 250 [2015] ["The 'taking' element of larceny 'is satisfied by a showing that the thief exercised dominion and control over the property for a period of time, however temporary, in a manner wholly inconsistent with the owner's continued rights"]).

We need not determine whether the record establishes

plaintiffs' unjust enrichment claim as a matter of law, since the damages sought under that claim are the same as those sought under the other claims.

Defendant's contention that under the doctrine of respondeat superior it cannot be held liable because Young was acting outside the scope of his employment when he committed his fraudulent acts was not raised before the motion court and thus is not properly before us. In any event, we reject the argument (see *Kirschner*, 15 NY3d at 465).

THIS CONSTITUTES THE DECISION AND ORDER  
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: MARCH 6, 2018



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Susan R.  
CLERK

Friedman, J.P., Tom, Webber, Kern, JJ.

5910 The People of the State of New York, Ind. 3653/16  
Respondent,

-against-

Ruben Garcia,  
Defendant-Appellant.

Robert S. Dean, Center for Appellate Litigation, New York (Jody Ratner of counsel), for appellant.

Darcel D. Clark, District Attorney, Bronx (Shera Knight of counsel), for respondent.

An appeal having been taken to this Court by the above-named appellant from a judgment of the Supreme Court, Bronx County (Albert Lorenzo, J.), rendered February 14, 2017,

Said appeal having been argued by counsel for the respective parties, due deliberation having been had thereon, and finding the sentence not excessive,

It is unanimously ordered that the judgment so appealed from be and the same is hereby affirmed.

THIS CONSTITUTES THE DECISION AND ORDER  
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: MARCH 6, 2018

*Susan Rj*  
CLERK

Counsel for appellant is referred to  
§ 606.5, Rules of the Appellate  
Division, First Department.

Friedman, J.P., Tom, Webber, Kern, JJ.

5911-

Ind. 5642/14  
984/15

-against-

Lakira McPhail,  
Defendant-Appellant.

Robert S. Dean, Center for Appellate Litigation, New York (Jody Ratner of counsel), for appellant.

Cyrus R. Vance, Jr., District Attorney, New York (Christine DiDomenico of counsel), for respondent.

An appeal having been taken to this Court by the above-named appellant from judgments of the Supreme Court, New York County (Bonnie Wittner, J.), rendered February 17, 2016,

Said appeal having been argued by counsel for the respective parties, due deliberation having been had thereon, and finding the sentence not excessive,

It is unanimously ordered that the judgments so appealed from be and the same are hereby affirmed.

THIS CONSTITUTES THE DECISION AND ORDER  
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: MARCH 6, 2018

*Suzanne R. P.*  
CLERK

Counsel for appellant is referred to  
§ 606.5, Rules of the Appellate  
Division, First Department.

Friedman, J.P., Tom, Webber, Kern, JJ.

5914N        Keesha Carr,  
                Plaintiff-Respondent,  
                -against-

Index 154845/14

Trans American Express, Inc.,  
et al.,  
Defendants-Appellants.

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Smith Mazure Director Wilkins Young & Yagerman, P.C., New York  
(Louise M. Cherkis of counsel), for appellants.

Law Firm of Vaughn, Weber & Prakope, PLLC, Mineola (John A. Weber  
IV of counsel), for respondent.

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Order, Supreme Court, New York County (Leticia M. Ramirez,  
J.), entered August 18, 2016, which, in an action arising out of  
a motor vehicle accident that occurred in Bronx County, denied  
defendants' motion to change venue from New York County to Nassau  
County, and granted plaintiff's cross motion to change venue from  
New York County to Bronx County, unanimously reversed, on the law  
and the facts, the motion granted, and the cross motion denied,  
without costs.

Plaintiff Keesha Carr chose an improper place of trial in  
the first instance by placing venue in New York County. It is  
undisputed that she resided in Nassau County when the action was  
commenced; plaintiff does not allege that the individual  
defendant resided, or that the corporate defendant had a

principal office, within New York County.

Supreme Court improvidently exercised its discretion by denying defendants' motion to change venue (see *Newman v Physicians' Reciprocal Insurers*, 204 AD2d 210 [1st Dept 1994]), because they established that plaintiff resided in Nassau County when the action was commenced (CPLR 503[a]).

Although plaintiff was not precluded from making an application to change venue pursuant to CPLR 510(3) (see *Berberich v York Scaffold Equip. Corp.*, 177 AD2d 451, 451-452 [1st Dept 1991]; *Carrasco v Cablevision Sys. Corp.*, 248 AD2d 122, 123 [1st Dept 1998]), the court improvidently exercised its discretion in granting her cross motion because plaintiff failed to demonstrate, *inter alia*, the existence of material witnesses whose convenience is at issue, and the substance of their testimony (see *Oquendo v Nationwide Ins. Co.*, 270 AD2d 174, 175-176 [1st Dept 2000]; *Bonfeld v Suburban Tr. Corp.*, 236 AD2d 335,

336 [1st Dept 1997]; *Quiles v Orsi*, 182 AD2d 499, 499-500 [1st Dept 1992]).

THIS CONSTITUTES THE DECISION AND ORDER  
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: MARCH 6, 2018



Susan R.  
CLERK

SUPREME COURT, APPELLATE DIVISION  
FIRST DEPARTMENT

**MARCH 6, 2018**

THE COURT ANNOUNCES THE FOLLOWING MOTION ORDERS:

Present: Hon. Rolando T. Acosta, Presiding Justice,  
David Friedman  
John W. Sweeny, Jr.  
Dianne T. Renwick  
Rosalyn H. Richter, Justices.

-----X  
Belinda J.,

Plaintiff-Respondent,

-against-

Tyrone J.,

Defendant-Appellant.

- - - - -

Lisa Licata, Esq.,  
Attorney for the Children.

-----X

**CONFIDENTIAL**

M-103

Index No. 76468/14  
(IDV Case)

Defendant-appellant having moved for leave to prosecute, as a poor person, the appeal taken from the order of the Supreme Court, Bronx County, Integrated Domestic Violence Part, entered on or about October 11, 2017, and for the assignment of counsel, a free copy of the transcript, and for related relief,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon, it is

Ordered that the motion is granted to the extent of (1) assigning, pursuant to Article 18b of the County Law and §1120 of the Family Court Act, Richard L. Herzfeld, Esq, 112 Madison Avenue, 8<sup>th</sup> Floor, New York, NY 10016, Telephone No. (212) 818-9019, as counsel for purposes of prosecuting the appeal; (2) directing the Clerk of said Family Court to have

transcribed the minutes of the proceedings held therein, for inclusion in the record on appeal, the cost thereof to be charged against the City of New York from funds available therefor<sup>2</sup> **within 30 days (FCA 1121[7]) of service of a copy of this order upon the Clerk;** (3) permitting appellant to dispense with any fee for the transfer of the record from the Family Court to this Court. **The Clerk of the Family Court shall transfer the record upon receipt of this order;** and (4) appellant is directed to perfect this appeal, in compliance with Rule 600.11 of the Rules of this Court, **within 60 days** of receipt of the transcripts. **Assigned counsel is directed to immediately serve a copy of this order upon the Clerk of the Family Court.**

ENTERED: March 6, 2018

  
\_\_\_\_\_  
CLERK

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<sup>2</sup>Service of appellant's brief upon respondent(s) shall include assigned counsel's copy of the transcript.

Present: Hon. Rolando T. Acosta,  
David Friedman  
John W. Sweeny, Jr.  
Dianne T. Renwick  
Rosalyn H. Richter,  
Presiding Justice,  
Justices.

-----X  
In the Matter of

Heaven C. E.,  
and Joseph C.,

Children Under 18 Years of Age Alleged  
to be Abused and/or Neglected Under  
Article 10 of the Family Court Act.

-----  
Administration for Children's  
Services,

Petitioner-Respondent,

Tiara C.,  
Respondent-Appellant,

Maurice D.,  
Respondent.

-----  
Vicki Light, Esq.,  
Attorney for the Children.

**CONFIDENTIAL**  
**M-124**

Docket Nos. NA-13072/16  
NA-13073/16

Respondent-appellant having moved for leave to prosecute,  
as a poor person, the appeal taken from an order of the Family  
Court, Bronx County, entered on or about December 6, 2017, and  
for assignment of counsel, a free copy of the transcript, and  
for related relief,

Now, upon reading and filing the papers with respect to the  
motion, and due deliberation having been had thereon, it is

Ordered that the motion is granted to the extent of  
(1) assigning, pursuant to Article 18b of the County Law and

§1120 of the Family Court Act, Larry S. Bachner, P.C., c/o Bachner & Associates, P.C., 39 Broadway, Suite 1610, New York, NY 10006, Telephone No. (917) 674-9516, as counsel for purposes of prosecuting the appeal; (2) directing the Clerk of said Family Court to have transcribed the minutes of the proceedings held therein, for inclusion in the record on appeal, the cost thereof to be charged against the City of New York from funds available therefor<sup>1</sup> **within 30 days (FCA 1121[7]) of service of a copy of this order upon the Clerk;** (3) permitting appellant to dispense with any fee for the transfer of the record from the Family Court to this Court. **The Clerk of the Family Court shall transfer the record upon receipt of this order;** and (4) appellant is directed to perfect this appeal, in compliance with Rule 600.11 of the Rules of this Court, **within 60 days** of receipt of the transcripts. **Assigned counsel is directed to immediately serve a copy of this order upon the Clerk of the Family Court.**

ENTERED: March 6, 2018



CLERK

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<sup>1</sup>Service of appellant's brief upon respondent(s) shall include assigned counsel's copy of the transcript.

Present - Hon. Rolando T. Acosta,  
David Friedman  
John W. Sweeny, Jr.  
Dianne T. Renwick  
Rosalyn H. Richter,

Presiding Justice,  
Justices.

-----X  
In the Matter of

Noel R.,

A Dependent Child Under 18 Years of  
Age Pursuant to §384-b of the Social  
Services Law of the State of New York.

-----  
SCO Family of Services,  
Petitioner-Respondent,

Laqueenia S.,  
Respondent-Appellant.

-----  
Garline Octobre, Esq.,  
Attorney for the Child.

**CONFIDENTIAL**  
**M-194**

Docket No. B-44442/14

Respondent-appellant having moved for leave to prosecute, as a poor person, the appeal taken from an order of the Family Court, New York County, entered on or about December 5, 2017, and for assignment of counsel, a free copy of the transcript, and for related relief,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon, it is

Ordered that the motion is granted to the extent of (1) assigning, pursuant to Article 18b of the County Law and §1120 of the Family Court Act, Geoffrey P. Berman, Esq., 2005 Palmer Avenue, #176, Larchmont, NY 10538, Telephone No. (914) 419-8407, as counsel for purposes of prosecuting the appeal;

(2) directing the Clerk of said Family Court to have transcribed the minutes of the proceedings held therein, for inclusion in the record on appeal, the cost thereof to be charged against the City of New York from funds available therefor<sup>1</sup> **within 30 days (FCA 1121[7]) of service of a copy of this order upon the Clerk;**  
(3) permitting appellant to dispense with any fee for the transfer of the record from the Family Court to this Court. **The Clerk of the Family Court shall transfer the record upon receipt of this order;** and (4) appellant is directed to perfect this appeal, in compliance with Rule 600.11 of the Rules of this Court, **within 60 days** of receipt of the transcripts. **Assigned counsel is directed to immediately serve a copy of this order upon the Clerk of the Family Court.**

ENTERED: March 6, 2018



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CLERK

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<sup>1</sup>Service of appellant's brief upon respondent(s) shall include assigned counsel's copy of the transcript.

Present - Hon. Rolando T. Acosta, Presiding Justice,  
David Friedman  
John W. Sweeny, Jr.  
Dianne T. Renwick  
Rosalyn H. Richter, Justices.

-----X  
In the Matter of a Family Offense  
Proceeding Under Article 8 of  
the Family Court Act.

- - - - -  
Cheryl H.,  
Petitioner-Respondent,

**CONFIDENTIAL**

M-210  
Docket No. O-27428-15/15C

-against-

Clement H.,  
Respondent-Appellant.

-----X

Respondent-appellant having moved for leave to prosecute, as a poor person, the appeal from two orders of the Family Court, Bronx County, entered on or about December 14, 2017 and December 15, 2017, and for assignment of counsel, a free copy of the transcript, and for related relief,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon, it is

Ordered that the motion is granted to the extent of (1) assigning, pursuant to Article 18b of the County Law and §1120 of the Family Court Act, Hani M. Moskowitz, Esq., 225 Broadway, Suite #715, New York, NY 10007, Telephone No. 212-227-8208, as counsel for purposes of prosecuting the appeal; (2) directing the Clerk of said Family Court to have transcribed the minutes of the proceedings held therein, for inclusion in the record on appeal, the cost thereof to be charged against the City

of New York from funds available therefor<sup>1</sup> **within 30 days (FCA 1121[7]) of service of a copy of this order upon the Clerk;** (3) permitting appellant to dispense with any fee for the transfer of the record from the Family Court to this Court. **The Clerk of the Family Court shall transfer the record upon receipt of this order;** and (4) appellant is directed to perfect this appeal, in compliance with Rule 600.11 of the Rules of this Court, **within 60 days** of receipt of the transcripts. **Assigned counsel is directed to immediately serve a copy of this order upon the Clerk of the Family Court.**

ENTERED: March 6, 2018

  
\_\_\_\_\_  
CLERK

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<sup>1</sup>Service of appellant's brief upon respondent(s) shall include assigned counsel's copy of the transcript.

Present: Hon. Rolando T. Acosta,  
David Friedman  
John W. Sweeny, Jr.  
Dianne T. Renwick  
Rosalyn H. Richter,

Presiding Justice,  
Justices.

-----X  
In the Matter of

Kayla C.,  
Kylie D.,  
Christian D.,  
McKenzie G., and  
Melanie G.,

Children Under 18 Years of Age Alleged  
to be Neglected/Abused Under Article 10  
of the Family Court Act.

-----  
Administration for Children's Services,  
Petitioner-Appellant,

Faith J. and Stephanie C.,  
Respondents-Respondents.

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Seymour W. James, Jr., Esq.,  
The Legal Aid Society,  
Juvenile Rights Division,  
Attorney for the Children  
Kylie D., Christian D.,  
McKenzie G., and Melanie G.,

Larry S. Bachner, P.C.,  
Attorney for Child Kayla C.

**CONFIDENTIAL**

**M-214**

Docket Nos.  
NA-32217/16  
NA-32218/16  
NA-32216/16  
NA-31273/16  
NA-31272/16

Patricia L. Moreno, Esq., court attorney for the subject child, Kayla C., having moved on said child's behalf for leave to respond, as a poor person, to the appeal taken from orders of the Family Court, Bronx County, entered on or about August 9, 2017 and an Order to Show Cause, entered on or about November 27, 2017, and for assignment of counsel, a free copy of the transcript, and for related relief,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted to the extent of (1) assigning, pursuant to §1120 of the Family Court Act, Larry S. Bachner, P.C., c/o Bachner & Associates, P.C., 39 Broadway, Suite #1610, New York, NY 10006, Telephone No. (917) 674-9516, as counsel for purposes of responding to the appeal; (2) permitting movant to respond to the appeal upon a reproduced respondent's brief, on condition that one copy of such brief be served upon the attorney for petitioner-appellant and 8 copies thereof are filed with this Court.

ENTERED: March 6, 2018

  
\_\_\_\_\_  
CLERK

Present: Hon. Rolando T. Acosta, Presiding Justice,  
David Friedman  
John W. Sweeny, Jr.  
Dianne T. Renwick  
Rosalyn H. Richter, Justices.

-----X  
In the Matter of a Family Offense  
Proceeding Under Article 8 of the  
Family Court Act.

-----  
Shirley D-A.,  
Petitioner-Respondent,

-against-

Gregory D-A.,  
Respondent-Appellant.

**CONFIDENTIAL**

**M-222**

Docket No. O-26250/17

Respondent-appellant having moved for leave to prosecute, as a poor person, the appeal taken from an order of the Family Court, New York County, entered on or about November 30, 2017, and for assignment of counsel, a free copy of the transcript, and for related relief,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon, it is

Ordered that the motion is granted to the extent of (1) assigning, pursuant to Article 18b of the County Law and §1120 of the Family Court Act, Lewis S. Calderon, Esq., 155-03 Jamaica Avenue, Jamaica, New York 11432, Telephone No. (718) 883-1560, as counsel for purposes of prosecuting the appeal; (2) directing the Clerk of said Family Court to have transcribed the minutes of the proceedings held therein, for inclusion in

the record on appeal, the cost thereof to be charged against the City of New York from funds available therefor<sup>1</sup> **within 30 days (FCA 1121[7]) of service of a copy of this order upon the Clerk;** (3) permitting appellant to dispense with any fee for the transfer of the record from the Family Court to this Court. **The Clerk of the Family Court shall transfer the record upon receipt of this order;** and (4) appellant is directed to perfect this appeal, in compliance with Rule 600.11 of the Rules of this Court, **within 60 days** of receipt of the transcripts. **Assigned counsel is directed to immediately serve a copy of this order upon the Clerk of the Family Court.** (See M-98, decided simultaneously herewith.)

ENTERED: March 6, 2018

  
\_\_\_\_\_  
**Susan R.**  
CLERK

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<sup>1</sup>Service of appellant's brief upon respondent(s) shall include assigned counsel's copy of the transcript.

Present: Hon. Rolando T. Acosta, Presiding Justice,  
David Friedman  
John W. Sweeny, Jr.  
Dianne T. Renwick  
Rosalyn H. Richter, Justices.

-----X  
In the Matter of a Family Offense  
Proceeding Under Article 8 of the  
Family Court Act.

-----  
Shirley D-A., Petitioner-Respondent,

-against-

Gregory D-A., Respondent-Appellant.

**CONFIDENTIAL**  
**M-98**

Docket No. O-26250/17

-----X  
Petitioner-respondent having moved for leave to respond, as a poor person, to the appeal taken from the order of the Family Court, New York County, entered on or about November 30, 2017, and for assignment of counsel, a free copy of the transcript, and for related relief,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted to the extent of (1) assigning, pursuant to §1120 of the Family Court Act, Larry S. Bachner, P.C., c/o Bachner & Associates, P.C., 39 Broadway, Suite 1610, New York, NY 10006, Telephone No. (917) 674-9516, as counsel for purposes of responding to the appeal; (2) permitting movant to respond to the appeal upon a reproduced respondent's brief, on condition that one copy of such brief be served upon the attorney for respondent-appellant and 8 copies thereof are filed with this Court. (See M-222, decided simultaneously herewith.)

ENTERED: March 6, 2018

  
\_\_\_\_\_  
CLERK

Present - Hon. Rolando T. Acosta, Presiding Justice,  
David Friedman  
John W. Sweeny, Jr.  
Dianne T. Renwick  
Rosalyn H. Richter, Justices.

-----X

In the Matter of a Proceeding for  
Custody/Visitation Under Article 6  
of the Family Court Act.

-----  
Shawn C.,  
Petitioner-Appellant,

**CONFIDENTIAL**

M-229

Docket No. V-12541-11/16A

-against-

Cesare R.,  
Respondent-Respondent.

-----X

Petitioner-appellant having moved for leave to prosecute, as a poor person, the appeal taken from an order of the Family Court, Bronx County, entered on or about July 27, 2017, and for assignment of counsel, a free copy of the transcript, and for related relief,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon, it is

Ordered that the motion is granted to the extent of (1) assigning, pursuant to Article 18b of the County Law and §1120 of the Family Court Act, Hani M. Moskowitz, Esq., 225 Broadway, Suite #715, New York, NY 10007, Telephone No. 212-227-8208, as counsel for purposes of prosecuting the appeal; (2) directing the Clerk of said Family Court to have transcribed the minutes of the proceedings held therein, for inclusion in the record on appeal, the cost thereof to be charged against the City

of New York from funds available therefor<sup>1</sup> **within 30 days (FCA 1121[7]) of service of a copy of this order upon the Clerk;** (3) permitting appellant to dispense with any fee for the transfer of the record from the Family Court to this Court. **The Clerk of the Family Court shall transfer the record upon receipt of this order;** and (4) appellant is directed to perfect this appeal, in compliance with Rule 600.11 of the Rules of this Court, **within 60 days** of receipt of the transcripts. **Assigned counsel is directed to immediately serve a copy of this order upon the Clerk of the Family Court.**

ENTERED: March 6, 2018

  
\_\_\_\_\_  
CLERK

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<sup>1</sup>Service of appellant's brief upon respondent(s) shall include assigned counsel's copy of the transcript.

Present - Hon. Rolando T. Acosta,  
David Friedman  
John W. Sweeny, Jr.  
Dianne T. Renwick  
Rosalyn H. Richter,  
Presiding Justice,  
Justices.

-----X  
In the Matter of a Custody/Visitation  
Proceeding Under Article 6 of the  
Family Court Act.

-----  
Michael B.,  
Petitioner-Appellant,  
-against-

Latasha T-McP.,  
Respondent-Respondent.

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Seymour W. James, Jr., Esq.,  
The Legal Aid Society,  
Juvenile Rights Division,  
Attorney for the Child.

**CONFIDENTIAL**  
**M-99**

Docket Nos. V-9221-12/171  
V-9221-12/17J  
V-13381-12/17I  
V-13381-12/17K  
V-9221-12/17K  
V-13381-12/17J

Petitioner-appellant having moved for leave to prosecute,  
as a poor person, the appeal taken from an order of the Family  
Court, Bronx County, entered on or about December 13, 2017, and  
for assignment of counsel, a free copy of the transcript, and for  
related relief,

Now, upon reading and filing the papers with respect to the  
motion, and due deliberation having been had thereon, it is

Ordered that the motion is granted to the extent of  
(1) assigning, pursuant to Article 18b of the County Law and  
§1120 of the Family Court Act, Carol L. Kahn, Esq., 225 Broadway,  
Suite #1510, New York, NY 10007, Telephone No. (212)227-0206, as  
counsel for purposes of prosecuting the appeal; (2) directing the  
Clerk of said Family Court to have transcribed the minutes of the  
proceedings held therein, for inclusion in the record on appeal,  
the cost thereof to be charged against the City of New York from

funds available therefor<sup>1</sup> **within 30 days (FCA 1121[7]) of service of a copy of this order upon the Clerk;** (3) permitting appellant to dispense with any fee for the transfer of the record from the Family Court to this Court. **The Clerk of the Family Court shall transfer the record upon receipt of this order;** and (4) appellant is directed to perfect this appeal, in compliance with Rule 600.11 of the Rules of this Court, **within 60 days** of receipt of the transcripts. **Assigned counsel is directed to immediately serve a copy of this order upon the Clerk of the Family Court.**

ENTERED: March 6, 2018



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CLERK

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<sup>1</sup>Service of appellant's brief upon respondent(s) shall include assigned counsel's copy of the transcript.

Present - Hon. Rolando T. Acosta,  
David Friedman  
John W. Sweeny, Jr.  
Dianne T. Renwick  
Rosalyn H. Richter,  
Presiding Justice,  
Justices.

-----X  
In the Matter of

Jeremy B.,  
Jalissa B.,  
and Rene J. T.,

**CONFIDENTIAL**

M-6409

Docket No. NA-20776/16

Children Under 18 Years of Age  
Alleged to be Abused and/or Neglected  
Under Article 10 of the Family Court  
Act.

-----  
Administration for Children's Services,  
Petitioner-Respondent,

Jeffrey B.,  
Respondent-Appellant,

Melissa N.,  
Respondent.

-----  
Seymour W. James, Jr., Esq.,  
The Legal Aid Society,  
Juvenile Rights Division,  
Attorney for the Children.

-----X  
Respondent-appellant having moved for leave to prosecute,  
as a poor person, the appeal taken from an order of the Family  
Court, Bronx County, entered on or about May 9, 2017, and for  
assignment of counsel, a free copy of the transcript, and for  
related relief,

Now, upon reading and filing the papers with respect to the  
motion, and due deliberation having been had thereon, it is

Ordered that the motion is granted to the extent of  
(1) assigning, pursuant to Article 18b of the County Law and

§1120 of the Family Court Act, Steven N. Feinman, Esq., One North Broadway, Suite #412, White Plains, NY 10601, Telephone No. (914) 949-8214, as counsel for purposes of prosecuting the appeal; (2) directing the Clerk of said Family Court to have transcribed the minutes of the proceedings held therein, for inclusion in the record on appeal, the cost thereof to be charged against the City of New York from funds available therefor<sup>1</sup> **within 30 days (FCA 1121[7]) of service of a copy of this order upon the Clerk;** (3) permitting appellant to dispense with any fee for the transfer of the record from the Family Court to this Court. **The Clerk of the Family Court shall transfer the record upon receipt of this order;** and (4) appellant is directed to perfect this appeal, in compliance with Rule 600.11 of the Rules of this Court, **within 60 days** of receipt of the transcripts. **Assigned counsel is directed to immediately serve a copy of this order upon the Clerk of the Family Court.**

ENTERED: March 6, 2018

  
\_\_\_\_\_  
CLERK

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<sup>1</sup>Service of appellant's brief upon respondent(s) shall include assigned counsel's copy of the transcript.

Present: Hon. Rolando T. Acosta, Presiding Justice,  
David Friedman  
John W. Sweeny, Jr.  
Dianne T. Renwick  
Rosalyn H. Richter, Justices.

-----X  
In the Matter of a Custody/Visitation  
Proceeding Under Article 6 of the  
Family Court Act.

-----  
Josephine F.,  
Petitioner-Appellant,

**CONFIDENTIAL**

**M-6410**

Docket No. V-28833/15

-against-

Rodney W.,  
Respondent-Respondent.

-----  
Seymour W. James, Jr., Esq.,  
The Legal Aid Society,  
Juvenile Rights Division,  
Attorney for the Children.

-----X

Petitioner-appellant having moved for leave to prosecute, as a poor person, the appeal taken from orders of the Family Court, Bronx County, entered on or about September 21, 2017 and October 5, 2017, and for assignment of counsel, a free copy of the transcript, and for related relief,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon, it is

Ordered that the motion is granted to the extent of (1) assigning, pursuant to Article 18b of the County Law and §1120 of the Family Court Act, Richard L. Herzfeld, Esq., 112 Madison Avenue, 8<sup>th</sup> Floor, New York, NY 10016, Telephone No. (212) 818-9019, as counsel for purposes of prosecuting the

appeal; (2) directing the Clerk of said Family Court to have transcribed the minutes of the proceedings held therein, for inclusion in the record on appeal, the cost thereof to be charged against the City of New York from funds available therefor<sup>1</sup> **within 30 days (FCA 1121[7]) of service of a copy of this order upon the Clerk;** (3) permitting appellant to dispense with any fee for the transfer of the record from the Family Court to this Court. **The Clerk of the Family Court shall transfer the record upon receipt of this order;** and (4) appellant is directed to perfect this appeal, in compliance with Rule 600.11 of the Rules of this Court, **within 60 days** of receipt of the transcripts. **Assigned counsel is directed to immediately serve a copy of this order upon the Clerk of the Family Court.**

ENTERED: March 6, 2018

  
\_\_\_\_\_  
CLERK

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<sup>1</sup>Service of appellant's brief upon respondent(s) shall include assigned counsel's copy of the transcript.

Present - Hon. Rolando T. Acosta,  
David Friedman  
John W. Sweeny, Jr.  
Dianne T. Renwick  
Rosalyn H. Richter,

Presiding Justice,  
Justices.

-----X  
In the Matter of

Giovanni Z.,  
Jeremiah Z.,  
and Ethan Z.,

Children Under 18 Years of Age Alleged  
to be Abused and or Neglected Under  
Article 10 of the Family Court Act.

-----  
Administration for Children's  
Services,

Petitioner-Respondent,

Kaitlyn C.,  
Respondent-Appellant,

Jorge Z.,  
Respondent.

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Seymour W. James, Jr., Esq., The Legal  
Aid Society, Juvenile Rights Division,  
Attorney for the Children.

**CONFIDENTIAL**

**M-6413**

Docket Nos. NA-31697/15  
NA-31698/15  
NA-31699/15

-----X  
  
Respondent-appellant having moved for leave to prosecute,  
as a poor person, the appeal taken from an order of the Family  
Court, Bronx County, entered on or about March 28, 2017, and for  
assignment of counsel, a free copy of the transcript, and  
for related relief,

Now, upon reading and filing the papers with respect to the  
motion, and due deliberation having been had thereon, it is

Ordered that the motion is granted to the extent of (1) assigning, pursuant to Article 18b of the County Law and §1120 of the Family Court Act, Steven N. Feinman, Esq., One North Broadway, Suite #412, White Plains, NY 10601, Telephone No. (914) 949-8214, as counsel for purposes of prosecuting the appeal; (2) directing the Clerk of said Family Court to have transcribed the minutes of the proceedings held therein, for inclusion in the record on appeal, the cost thereof to be charged against the of New York from funds available therefor<sup>1</sup> **within 30 days (FCA 1121[7]) of service of a copy of this order upon the Clerk;** (3) permitting appellant to dispense with any fee for the transfer of the record from the Family Court to this Court. **The Clerk of the Family Court shall transfer the record upon receipt of this order;** and (4) appellant is directed to perfect this appeal, in compliance with Rule 600.11 of the Rules of this Court, **within 60 days** of receipt of the transcripts. **Assigned counsel is directed to immediately serve a copy of this order upon the Clerk of the Family Court.**

ENTERED: March 6, 2018



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CLERK

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<sup>1</sup>

Service of appellant's brief upon respondent(s) shall include assigned counsel's copy of the transcript.

Present: Hon. Rolando T. Acosta,  
David Friedman  
John W. Sweeny, Jr.  
Dianne T. Renwick  
Rosalyn H. Richter,  
Presiding Justice,  
Justices.

-----X  
In the Matter of

Malia B.,

A Child Under 18 Years of Age Alleged  
to be Neglected Under Article 10 of  
the Family Court Act.

-----  
Administration for Children's  
Services,  
Petitioners-Respondents,

Shavon B.,  
Respondent-Appellant.

-----  
Seymour W. James, Jr., Esq.,  
The Legal Aid Society,  
Juvenile Rights Division,  
Attorney for the Child.

**CONFIDENTIAL**  
**M-6493**

Docket No. NN-6701/17

-----X

Respondent-appellant having moved for leave to prosecute,  
as a poor person, the appeal taken from an order of the Family  
Court, Bronx County, entered on or about October 20, 2017, and  
for assignment of counsel, a free copy of the transcript, and  
for related relief,

Now, upon reading and filing the papers with respect to the  
motion, and due deliberation having been had thereon, it is

Ordered that the motion is granted to the extent of  
(1) assigning, pursuant to Article 18b of the County Law and  
§1120 of the Family Court Act, John R. Eyerman, Esq., 225  
Broadway, Suite #1800, New York, NY 10007, Telephone No. (212)  
921-0069, as counsel for purposes of prosecuting the appeal;

(2) directing the Clerk of said Family Court to have transcribed the minutes of the proceedings held therein, for inclusion in the record on appeal, the cost thereof to be charged against the City of New York from funds available therefor<sup>1</sup> **within 30 days (FCA 1121[7]) of service of a copy of this order upon the Clerk;** (3) permitting appellant to dispense with any fee for the transfer of the record from the Family Court to this Court. **The Clerk of the Family Court shall transfer the record upon receipt of this order;** and (4) appellant is directed to perfect this appeal, in compliance with Rule 600.11 of the Rules of this Court, **within 60 days** of receipt of the transcripts. **Assigned counsel is directed to immediately serve a copy of this order upon the Clerk of the Family Court.**

ENTERED: March 6, 2018

  
\_\_\_\_\_  
CLERK

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<sup>1</sup>Service of appellant's brief upon respondent(s) shall include assigned counsel's copy of the transcript.

Present: Hon. Rolando T. Acosta, Presiding Justice,  
David Friedman  
John W. Sweeny, Jr.  
Dianne T. Renwick  
Rosalyn H. Richter, Justices.

-----X  
In the Matter of a Proceeding for  
Custody/Visitation Under Article 6  
of the Family Court Act.

- - - - -  
Yadira S.,  
Petitioner-Respondent,  
-against-

Rafael H.,  
Respondent-Appellant.

**CONFIDENTIAL**

M-6638  
Docket Nos. V-18808-09/16

Petitioner-respondent having moved for leave to respond, as a poor person, to the appeal from the order of the Family Court, Bronx County, entered on or about February 28, 2017, and for assignment of counsel, a free copy of the transcript, and for related relief,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted to the extent of (1) assigning, pursuant to §1120 of the Family Court Act, John R. Eyerman, Esq., 225 Broadway, Suite #1800, New York, NY 10007, Telephone No. 212-921-0069, as counsel for purposes of responding to the appeal; (2) permitting movant to respond to the appeal upon a reproduced respondent's brief, on condition that one copy of such brief be served upon the attorney for respondent-appellant and 8 copies thereof are filed with this Court.

ENTERED: March 6, 2018

  
CLERK

Present: Hon. Rolando T. Acosta,  
David Friedman  
John W. Sweeny, Jr.  
Dianne T. Renwick  
Rosalyn H. Richter,  
Presiding Justice,  
Justices.

-----X  
In the Matter of

Giovanni Cristian Raphael M.,

A Dependent Child Under 18 Years of  
Age Pursuant to §384-b of the Social  
Services Law of the State of New York.

-----  
Edwin Gould Services for Children  
and Families, and the Commissioner  
of the Administration for Children's  
Services of the City of New York,  
Petitioners-Respondents,

Nina M.,  
Respondent-Appellant.

-----  
Shirley Caro, Esq.,  
Lawyers for Children,  
Attorney for the Child.

**CONFIDENTIAL**

M-6639

Docket No. B-40370/16

-----X  
Respondent-appellant having moved for leave to prosecute,  
as a poor person, the appeal taken from an order of the Family  
Court, New York County, entered on or about November 15, 2017,  
and for assignment of counsel, a free copy of the transcript,  
and for related relief,

Now, upon reading and filing the papers with respect to the  
motion, and due deliberation having been had thereon, it is

Ordered that the motion is granted to the extent of (1) assigning, pursuant to Article 18b of the County Law and §1120 of the Family Court Act, Aleza Ross, Esq., 31 Oak Street, Suite #26, Patchogue, NY 11772, Telephone No. (631) 361-6900, as counsel for purposes of prosecuting the appeal; (2) directing the Clerk of said Family Court to have transcribed the minutes of the proceedings held therein, for inclusion in the record on appeal, the cost thereof to be charged against the City of New York from funds available therefor<sup>1</sup> **within 30 days (FCA 1121[7]) of service of a copy of this order upon the Clerk;** (3) permitting appellant to dispense with any fee for the transfer of the record from the Family Court to this Court. **The Clerk of the Family Court shall transfer the record upon receipt of this order;** and (4) appellant is directed to perfect this appeal, in compliance with Rule 600.11 of the Rules of this Court, **within 60 days** of receipt of the transcripts. **Assigned counsel is directed to immediately serve a copy of this order upon the Clerk of the Family Court.**

ENTERED: March 6, 2018

  
CLERK

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<sup>1</sup>Service of appellant's brief upon respondent(s) shall include assigned counsel's copy of the transcript.

At a Term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York on March 6, 2018.

Present - Hon. Rolando T. Acosta, Presiding Justice,  
David Friedman  
John W. Sweeny, Jr.  
Dianne T. Renwick  
Rosalyn H. Richter, Justices.

-----X

In the Matter of the Commitment of

Elijah Kenny G., also known as  
Elijah K. G., also known as  
Elijah G.,

A Child Under 18 Years of Age  
Pursuant to §384-b of the Social  
Services Law of the State of New York.

- - - - -  
Saint Dominic's Home, et al.,  
Petitioners-Respondents,

**CONFIDENTIAL**

M-6649

Docket No. B-34957/14

Stephanie S.,  
Respondent-Appellant.

- - - - -  
Seymour W. James, Jr., Esq., The Legal  
Aid Society, Juvenile Rights Division,  
Attorney for the Child.

-----X

Respondent-appellant having moved for leave to prosecute, as a poor person, the appeal from two orders of the Family Court, New York County, entered on or about November 13, 2017 and December 5, 2017, and for assignment of counsel, a free copy of the transcript, and for related relief,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon, it is

Ordered that the motion is granted to the extent of (1) assigning, pursuant to Article 18b of the County Law and §1120 of the Family Court Act, Richard L. Herzfeld, Esq., 112

Madison Avenue, 8<sup>th</sup> Floor, New York, NY 10016, Telephone No. 212-818-9019, as counsel for purposes of prosecuting the appeal; (2) directing the Clerk of said Family Court to have transcribed the minutes of the proceedings held therein, for inclusion in the record on appeal, the cost thereof to be charged against the City of New York from funds available therefor<sup>2</sup> **within 30 days (FCA 1121[7]) of service of a copy of this order upon the Clerk;** (3) permitting appellant to dispense with any fee for the transfer of the record from the Family Court to this Court. **The Clerk of the Family Court shall transfer the record upon receipt of this order;** and (4) appellant is directed to perfect this appeal, in compliance with Rule 600.11 of the Rules of this Court, **within 60 days** of receipt of the transcripts. **Assigned counsel is directed to immediately serve a copy of this order upon the Clerk of the Family Court.**

ENTERED:

  
\_\_\_\_\_  
CLERK

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<sup>2</sup>Service of appellant's brief upon respondent(s) shall include assigned counsel's copy of the transcript.

Present: Hon. Rolando T. Acosta,  
David Friedman  
John W. Sweeny, Jr.  
Dianne T. Renwick  
Rosalyn H. Richter,  
Presiding Justice,  
Justices.

-----X  
In the Matter of a Family Offense  
Proceeding Under Article 8 of the  
Family Court Act.

- - - - -  
Dawn Monique Worthley W.,  
Petitioner-Appellant,  
-against-

**CONFIDENTIAL**  
**M-6652**

Docket No. O-17406/17

Melvin Alexander W., Sr.,  
Respondent-Respondent.

-----X

Petitioner-appellant having moved for leave to prosecute, as a poor person, the appeal taken from an order of the Family Court, New York County, entered on or about November 13, 2017, and for assignment of counsel, a free copy of the transcript, and for related relief,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon, it is

Ordered that the motion is granted to the extent of (1) assigning, pursuant to Article 18b of the County Law and §1120 of the Family Court Act, Larry S. Bachner, P.C., c/o Bachner & Associates, P.C., 39 Broadway, Suite 1610, New York, NY 10006, Telephone No. (917) 674-9516, as counsel for purposes of prosecuting the appeal; (2) directing the Clerk of said Family Court to have transcribed the minutes of the proceedings held therein, for inclusion in the record on appeal, the cost thereof

to be charged against the City of New York from funds available therefor<sup>1</sup> **within 30 days (FCA 1121[7]) of service of a copy of this order upon the Clerk;** (3) permitting appellant to dispense with any fee for the transfer of the record from the Family Court to this Court. **The Clerk of the Family Court shall transfer the record upon receipt of this order;** and (4) appellant is directed to perfect this appeal, in compliance with Rule 600.11 of the Rules of this Court, **within 60 days** of receipt of the transcripts. **Assigned counsel is directed to immediately serve a copy of this order upon the Clerk of the Family Court.**

ENTERED: March 6, 2018

  
\_\_\_\_\_  
CLERK

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<sup>1</sup>Service of appellant's brief upon respondent(s) shall include assigned counsel's copy of the transcript.

Present: Hon. Rolando T. Acosta, Presiding Justice,  
David Friedman  
John W. Sweeny, Jr.  
Dianne T. Renwick  
Rosalyn H. Richter, Justices.

-----X  
In the Matter of

Kalani H.,  
Caylee H.,  
and Manuel O. F.,

Children Under 18 Years of Age Alleged  
to be Neglected Under Article 10 of  
the Family Court Act.

**CONFIDENTIAL**  
**M-6654**

Docket Nos. NN-41286/16  
NN-41287/16  
NN-41288/16

-----  
Administration for Children's Services,  
Petitioner-Respondent,

Shantae H.,  
Respondent-Appellant.

-----  
Seymour W. James, Jr., Esq.,  
The Legal Aid Society,  
Juvenile Rights Division,  
Attorney for Children Caylee H.  
and Manuel F.,

Kira Ewig, Esq.,  
Lawyers for Children,  
Attorney for Child Kalani H.

-----X  
Respondent-appellant having moved for leave to prosecute,  
as a poor person, the appeal taken from an order of the Family  
Court, New York County, entered on or about September 29, 2017,  
and for assignment of counsel, a free copy of the transcript,  
and for related relief,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon, it is

Ordered that the motion is granted to the extent of (1) assigning, pursuant to Article 18b of the County Law and §1120 of the Family Court Act, Steven N. Feinman, Esq., One North Broadway, Suite #412, White Plains, NY 10601, Telephone No. (914) 949-8214, as counsel for purposes of prosecuting the appeal; (2) directing the Clerk of said Family Court to have transcribed the minutes of the proceedings held therein, for inclusion in the record on appeal, the cost thereof to be charged against the City of New York from funds available therefor<sup>1</sup> **within 30 days (FCA 1121[7]) of service of a copy of this order upon the Clerk;** (3) permitting appellant to dispense with any fee for the transfer of the record from the Family Court to this Court. **The Clerk of the Family Court shall transfer the record upon receipt of this order;** and (4) appellant is directed to perfect this appeal, in compliance with Rule 600.11 of the Rules of this Court, **within 60 days** of receipt of the transcripts. **Assigned counsel is directed to immediately serve a copy of this order upon the Clerk of the Family Court.**

ENTERED: March 6, 2018

  
\_\_\_\_\_  
CLERK

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<sup>1</sup>Service of appellant's brief upon respondent(s) shall include assigned counsel's copy of the transcript.

Present: Hon. Rolando T. Acosta,  
David Friedman  
John W. Sweeny, Jr.  
Dianne T. Renwick  
Rosalyn H. Richter,  
Presiding Justice,  
Justices.

-----X  
In the Matter of a Custody/Visitation  
Proceeding Under Article 6 of the  
Family Court Act.

-----  
Marco B.,  
Petitioner-Appellant,

**CONFIDENTIAL**  
**M-6698**

Docket Nos. V-36042-16/16A

-against-

Marnie Ann J.,  
Respondent-Respondent.

-----  
Colleen Samuels, Esq.,  
Attorney for the Children.

-----X

Plaintiff-appellant having moved for leave to prosecute,  
as a poor person, the appeal taken from an order of the Family  
Court, New York County, entered on or about September 20, 2017,  
and for assignment of counsel, a free copy of the transcript,  
and for related relief,

Now, upon reading and filing the papers with respect to the  
motion, and due deliberation having been had thereon, it is

Ordered that the motion is granted to the extent of  
(1) assigning, pursuant to Article 18b of the County Law and  
§1120 of the Family Court Act, Larry S. Bachner, P.C., c/o  
Bachner & Associates, P.C., 39 Broadway, Suite 1610, New York,  
N.Y., 10006, Tel. No. (917) 674-9516, as counsel for purposes of  
prosecuting the appeal; (2) directing the Clerk of said Family  
Court to have transcribed the minutes of the proceedings held

therein, for inclusion in the record on appeal, the cost thereof to be charged against the City of New York from funds available therefor<sup>1</sup> **within 30 days (FCA 1121[7]) of service of a copy of this order upon the Clerk;** (3) permitting appellant to dispense with any fee for the transfer of the record from the Family Court to this Court. **The Clerk of the Family Court shall transfer the record upon receipt of this order;** and (4) appellant is directed to perfect this appeal, in compliance with Rule 600.11 of the Rules of this Court, **within 60 days** of receipt of the transcripts. **Assigned counsel is directed to immediately serve a copy of this order upon the Clerk of the Family Court.**

ENTERED: March 6, 2018

  
\_\_\_\_\_  
CLERK

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<sup>1</sup>Service of appellant's brief upon respondent(s) shall include assigned counsel's copy of the transcript.

Present - Hon. Rolando T. Acosta, Presiding Justice,  
David Friedman  
John W. Sweeny, Jr.  
Dianne T. Renwick  
Rosalyn H. Richter, Justices.

-----X  
The People of the State of New York,  
Respondent,  
-against-

**CONFIDENTIAL**

M-6427  
SCID No. 30156/17

Donovan Cushnie,  
Defendant-Appellant.

-----X  
Defendant having moved for leave to prosecute, as a poor person, the appeal from the order of the Supreme Court, New York County (Stolz, J.), entered on or about November 29, 2017, for leave to have the appeal heard upon the original record and upon a reproduced appellant's brief, for an enlargement of time in which to perfect the appeal, and for related relief,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon, it is

Ordered that the motion is granted to the extent of permitting the appeal to be heard on the original record and upon a reproduced appellant's brief, on condition that appellant serves one copy of such brief upon the District Attorney of said county and files 8 copies of such brief, together with the original record, pursuant to Rule 600.11 of the Rules of this Court.

The Clerk of the Supreme Court shall expeditiously have made and file with the criminal court (CPL 460.70) one transcript of the stenographic minutes of the SORA hearing and any other proceedings before Justice Stolz as yet not transcribed. The Clerk shall furnish a copy of such transcripts to appellant's counsel, Robert S. Dean, Esq., without charge, the transcripts to be returned to this Court when appellant's brief is filed.

The time within which appellant shall perfect this appeal is hereby enlarged until 120 days from the date of filing of the record.

ENTERED: March 6, 2018



A handwritten signature in black ink, appearing to read "Susan R.", is written over a horizontal line. Below the line, the word "CLERK" is printed in capital letters.

Present - Hon. Rolando T. Acosta, Presiding Justice,  
David Friedman  
John W. Sweeny, Jr.  
Dianne T. Renwick  
Rosalyn H. Richter, Justices.

-----X  
The People of the State of New York,

Respondent,  
M-6435  
-against- Ind. No. 3748/16

Redron Cohen,

Defendant-Appellant.

-----X  
Defendant having moved for leave to prosecute, as a poor person, the appeal from a judgment of the Supreme Court, New York County, rendered on or about May 15, 2017, for leave to have the appeal heard upon the original record and a reproduced appellant's brief, and for related relief,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted to the extent of permitting the appeal to be heard on the original record, except that a certified copy of the indictment(s) shall be substituted in place of the original indictment(s), and upon a reproduced appellant's brief, on condition that appellant serves one copy of such brief upon the District Attorney of said county and files 8 copies of such brief, together with the original record, pursuant to Rule 600.11 of the Rules of this Court.

The court reporter shall promptly make and file with the criminal court (CPL §460.70) one transcript of the stenographic minutes of any proceedings pursuant to CPL §210.20, Arts. 710 and 730, of the plea or trial and sentence. The Clerk shall furnish a copy of such transcripts to appellant's counsel, without charge, the transcripts to be returned to this Court when appellant's brief is filed.

Robert S. Dean, Esq., Center for Appellate Litigation,  
120 Wall Street, 28<sup>th</sup> Floor, New York, New York 10005, Telephone  
No. 212-577-2523, is assigned as counsel for defendant-appellant  
for purposes of the appeal. The time within which appellant  
shall perfect this appeal is hereby enlarged until 120 days from  
the date of filing of the record.

ENTERED: March 6, 2018



---

Susan R.  
CLERK

Present - Hon. Rolando T. Acosta, Presiding Justice,  
David Friedman  
John W. Sweeny, Jr.  
Dianne T. Renwick  
Rosalyn H. Richter, Justices.

-----X  
The People of the State of New York,

Respondent,  
M-6442  
-against- Ind. No. 3885N/16

Juan Cruz,

Defendant-Appellant.

-----X  
Defendant having moved for leave to prosecute, as a poor person, the appeal from a judgment of the Supreme Court, New York County, rendered on or about October 30, 2017, for leave to have the appeal heard upon the original record and a reproduced appellant's brief, and for related relief,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted to the extent of permitting the appeal to be heard on the original record, except that a certified copy of the indictment(s) shall be substituted in place of the original indictment(s), and upon a reproduced appellant's brief, on condition that appellant serves one copy of such brief upon the District Attorney of said county and files 8 copies of such brief, together with the original record, pursuant to Rule 600.11 of the Rules of this Court.

The court reporter shall promptly make and file with the criminal court (CPL §460.70) one transcript of the stenographic minutes of any proceedings pursuant to CPL §210.20, Arts. 710 and 730, of the plea or trial and sentence. The Clerk shall furnish a copy of such transcripts to appellant's counsel, without charge, the transcripts to be returned to this Court when appellant's brief is filed.

Robert S. Dean, Esq., Center for Appellate Litigation,  
120 Wall Street, 28<sup>th</sup> Floor, New York, New York 10005, Telephone  
No. 212-577-2523, is assigned as counsel for defendant-appellant  
for purposes of the appeal. The time within which appellant  
shall perfect this appeal is hereby enlarged until 120 days from  
the date of filing of the record.

ENTERED: March 6, 2018

  
\_\_\_\_\_  
CLERK

Present - Hon. Rolando T. Acosta, Presiding Justice,  
David Friedman  
John W. Sweeny, Jr.  
Dianne T. Renwick  
Rosalyn H. Richter, Justices.

-----X  
The People of the State of New York,

Respondent, M-6506  
-against- Ind. Nos. 4853N/15  
Stephen Edey, 4745N/15  
Defendant-Appellant.

-----X  
Defendant having moved for leave to prosecute, as a poor person, the appeal from a judgment of the Supreme Court, New York County, rendered on or about September 20, 2017, for leave to have the appeal heard upon the original record and a reproduced appellant's brief, and for related relief,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted to the extent of permitting the appeal to be heard on the original record, except that a certified copy of the indictment(s) shall be substituted in place of the original indictment(s), and upon a reproduced appellant's brief, on condition that appellant serves one copy of such brief upon the District Attorney of said county and files 8 copies of such brief, together with the original record, pursuant to Rule 600.11 of the Rules of this Court.

The court reporter shall promptly make and file with the criminal court (CPL §460.70) one transcript of the stenographic minutes of any proceedings pursuant to CPL §210.20, Arts. 710 and 730, of the plea or trial and sentence. The Clerk shall furnish a copy of such transcripts to appellant's counsel, without charge, the transcripts to be returned to this Court when appellant's brief is filed.

Robert S. Dean, Esq., Center for Appellate Litigation,  
120 Wall Street, 28<sup>th</sup> Floor, New York, New York 10005, Telephone  
No. 212-577-2523, is assigned as counsel for defendant-appellant  
for purposes of the appeal. The time within which appellant  
shall perfect this appeal is hereby enlarged until 120 days from  
the date of filing of the record.

ENTERED: March 6, 2018



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Susan R.  
CLERK

Present - Hon. Rolando T. Acosta, Presiding Justice,  
David Friedman  
John W. Sweeny, Jr.  
Dianne T. Renwick  
Rosalyn H. Richter, Justices.

-----X  
The People of the State of New York,

Respondent,  
M-6507  
-against- Ind. No. 5332/16

Luis Guzman,

Defendant-Appellant.

-----X  
Defendant having moved for leave to prosecute, as a poor person, the appeal from a judgment of the Supreme Court, New York County, rendered on or about November 1, 2017, for leave to have the appeal heard upon the original record and a reproduced appellant's brief, and for related relief,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted to the extent of permitting the appeal to be heard on the original record, except that a certified copy of the indictment(s) shall be substituted in place of the original indictment(s), and upon a reproduced appellant's brief, on condition that appellant serves one copy of such brief upon the District Attorney of said county and files 8 copies of such brief, together with the original record, pursuant to Rule 600.11 of the Rules of this Court.

The court reporter shall promptly make and file with the criminal court (CPL §460.70) one transcript of the stenographic minutes of any proceedings pursuant to CPL §210.20, Arts. 710 and 730, of the plea or trial and sentence. The Clerk shall furnish a copy of such transcripts to appellant's counsel, without charge, the transcripts to be returned to this Court when appellant's brief is filed.

Robert S. Dean, Esq., Center for Appellate Litigation,  
120 Wall Street, 28<sup>th</sup> Floor, New York, New York 10005, Telephone  
No. 212-577-2523, is assigned as counsel for defendant-appellant  
for purposes of the appeal. The time within which appellant  
shall perfect this appeal is hereby enlarged until 120 days from  
the date of filing of the record.

ENTERED: March 6, 2018



---

Susan R.  
CLERK

Present - Hon. Rolando T. Acosta, Presiding Justice,  
David Friedman  
John W. Sweeny, Jr.  
Dianne T. Renwick  
Rosalyn H. Richter, Justices.

-----X  
The People of the State of New York,

Respondent,  
M-6657  
-against- Ind. No. 2536/17

Mark Leflore,

Defendant-Appellant.

-----X  
Defendant having moved for leave to prosecute, as a poor person, the appeal from a judgment of the Supreme Court, New York County, rendered on or about November 1, 2017, for leave to have the appeal heard upon the original record and a reproduced appellant's brief, and for related relief,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted to the extent of permitting the appeal to be heard on the original record, except that a certified copy of the indictment(s) shall be substituted in place of the original indictment(s), and upon a reproduced appellant's brief, on condition that appellant serves one copy of such brief upon the District Attorney of said county and files 8 copies of such brief, together with the original record, pursuant to Rule 600.11 of the Rules of this Court.

The court reporter shall promptly make and file with the criminal court (CPL §460.70) one transcript of the stenographic minutes of any proceedings pursuant to CPL §210.20, Arts. 710 and 730, and of the plea or trial and sentence. The Clerk shall furnish a copy of such transcripts to appellant's counsel, without charge, the transcripts to be returned to this Court when appellant's brief is filed.

Christina Swarns, Esq., Office of the Appellate Defender, 11 Park Place, Room 1601, New York, New York 10007, Telephone No. 212-402-4112, is assigned as counsel for defendant-appellant for purposes of the appeal. The time within which appellant shall perfect this appeal is hereby enlarged until 120 days from the date of filing of the record.

ENTERED: March 6, 2018

  
\_\_\_\_\_  
CLERK

Present - Hon. Rolando T. Acosta, Presiding Justice,  
David Friedman  
Rosalyn H. Richter  
Barbara R. Kapnick, Justices.

-----X  
The People of the State of New York,  
Respondent,

-against- M-353  
Reginald Trammell, Ind. Nos. 2796/08  
Defendant-Appellant. 1474/08  
-----X

An appeal having been taken to this Court from the judgment of the Supreme Court, New York County, rendered on or about February 24, 2011, and said appeal having been perfected,

And defendant-appellant having moved for leave to file a pro se supplemental brief in connection with the aforesaid appeal, for a copy of the trial transcripts and for an enlargement of time in which to file said pro se supplemental brief,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted to the extent of directing defendant to serve and file 8 copies of his pro se supplemental brief on or before August 6, 2018 for the October 2018 Term of this Court, to which Term the appeal is adjourned. The Clerk of the Court is directed to forward to the Warden at the State correctional facility wherein defendant is incarcerated transcripts of the minutes relating to defendant's appeal, said transcripts to be made available to appellant and returned by appellant to this Court when submitting the pro se supplemental brief hereto. The appeal will not be heard unless and until all material furnished to appellant has been returned.

ENTERED: March 6, 2018

  
\_\_\_\_\_  
CLERK

Present - Hon. Rolando T. Acosta, Presiding Justice,  
Rosalyn H. Richter  
Richard T. Andrias  
Marcy L. Kahn  
Ellen Gesmer, Justices.

-----x  
Walter Iwachiw, RN, Plaintiff-Appellant, M-1040  
Plaintiff-Appellant, M-1195  
-against- M-1196  
Stefan Bahr, et al., Defendants-Respondents. M-1716  
-----x  
Index No. 401546/11

An appeal having been taken to this Court from an order of the Supreme Court, New York County, entered on or about September 19, 2016,

And defendants-respondents Tower Group moves (M-1040), and Adorno Denker Assoc. Inc. (M-1195) and Terry Scheiner (M-1196) having separately cross-moved for dismissal of the aforesaid appeal,

And plaintiff-appellant having cross-moved for summary judgment, and to deny the aforesaid motion and cross motions to dismiss the aforesaid appeal (M-1716),

Now, upon reading and filing the papers with respect to the motion and cross motions, and due deliberation having been had thereon,

It is ordered that the defendants' motion and cross motions are granted, and the appeal is dismissed (M-1040/M-1195/M-1196). Plaintiff-appellant's cross motion is denied (M-1716).

ENTERED: March 6, 2018

  
CLERK

Gentry T. Beach, et al.,  
Plaintiffs-Respondents,

-against-

Touradji Capital Management, LP,  
et al.,  
Defendants-Appellants.

**CONFIDENTIAL**

M-106

Index No. 603611/08

Touradji Capital Management, LP and  
Paul Touradji,  
Counterclaim Plaintiffs-Appellants,

-against-

Gentry T. Beach and Robert A. Vollero,  
Counterclaim Defendants-Respondents.

Touradji Capital Management, LP,  
Deeprock Venture Partners, LP and  
Paul Touradji,  
Counterclaim Plaintiffs-Appellants,

-against-

Vollero Beach Capital Partners, LLC,  
Vollero Beach Capital Fund LP,  
Vollero Beach Associates LLC,  
Vollero Beach Capital Offshore, Ltd.,  
and Gary Beach,  
Counterclaim Defendants-Respondents.

An appeal having been taken to this Court from the order of the Supreme Court, New York County, entered on or about January 4, 2018,

And appellants Touradji Capital Management, L.P., Deep Rock Venture Partners, L.P. and Paul Touradji having moved for a stay of the aforesaid order pending hearing and determination of the appeal taken therefrom,

Now, upon reading and filing the papers with respect to the motion, and the letter from O'Brien LLP, counsel for appellants/movants, dated January 24, 2018, and due deliberation having been had thereon,

It is ordered that the motion is deemed withdrawn, and the interim stay granted by the order of a Justice of this Court, dated January 8, 2018, is vacated.

ENTERED: March 6, 2018

  
\_\_\_\_\_  
CLERK

Present: Hon. David Friedman, Justice Presiding,  
John W. Sweeny, Jr.  
Marcy L. Kahn  
Anil C. Singh  
Peter H. Moulton, Justices.

-----X  
In the Matter of a Proceeding for  
Support Under Article 4 of the Family  
Court Act.

- - - - -  
Pierre S.,  
Petitioner-Respondent,  
-against-

**CONFIDENTIAL**  
**M-264**

Docket Nos. F-10985-09/14A  
F-46996/14

Cecelia D.,  
Respondent-Appellant.

- - - - -  
Seymour W. James, Jr., Esq.,  
The Legal Aid Society,  
Juvenile Rights Division,  
Attorney for the Children.

-----X  
Respondent-appellant mother having moved for leave to prosecute, as a poor person, the appeal taken from an order of the Family Court, New York County, entered on or about July 19, 2017, and for assignment of counsel, a free copy of the transcript, and for related relief,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon, it is

Ordered that the motion is granted only to the extent of (1) granting respondent-appellant leave to prosecute the appeal upon the original record and 8 appellant's briefs. The Clerk of

the Family Court is directed to have transcribed the minutes of the proceedings held therein, for inclusion in the record on appeal, the cost thereof to be charged against the City of New York from funds available therefor<sup>1</sup> **within 30 days (FCA 1121[7]) of service of a copy of this order upon the Clerk;** (3) permitting respondent-appellant mother to dispense with any fee for the transfer of the record from the Family Court to this Court.

**The Clerk of the Family Court shall transfer the record upon receipt of this order;** and (4) respondent-appellant is directed to perfect this appeal, in compliance with Rule 600.11 of the Rules of this Court, **within 60 days** of receipt of the transcripts from the Clerk's Office of this Court. **Respondent-appellant is directed to immediately serve a copy of this order upon the Clerk of the Family Court.** So much of the motion which seeks the assignment of counsel is denied.

ENTERED: March 6, 2018



CLERK

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<sup>1</sup>Service of appellant's brief upon respondent(s) shall include a copy of the transcript.

Present - Hon. David Friedman, Justice Presiding,  
Peter Tom  
Angela M. Mazzarelli  
Anil C. Singh, Justices.

-----x  
In the Matter of a Proceeding for  
Support Under Article 6 of the  
Family Court Act.

Rita F. H.,  
Petitioner-Respondent,  
-against-

Jesse M. H.,  
Respondent-Appellant.

**CONFIDENTIAL**

M-187  
Docket No.  
F-2657-93/10E/11G/16H/16I

Respondent-appellant having moved for leave to prosecute, as a poor person, the appeal from the order of the Family Court, New York County, entered on or about November 29, 2017, and the order of a Support Magistrate, entered on or about September 13, 2017, and for assignment of counsel, a free copy of the transcript, and for related relief,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is denied.

ENTERED: March 6, 2018

  
CLERK

Present - Hon. David Friedman, Justice Presiding,  
Peter Tom  
Troy K. Webber  
Cynthia S. Kern, Justices.

-----x  
In the Matter of

Thaiheed Oalam H.,  
also known as Thaiheed H.,

A Dependent Child Under 18 Years  
of Age Pursuant to §384-b of the  
Social Services Law of the State  
of New York.

-----  
New York Foundling Hospital,  
Petitioner-Respondent,

Willie H.,  
Respondent-Appellant.

-----  
Seymour W. James, Jr., Esq.,  
The Legal Aid Society,  
Juvenile Rights Division,  
Attorney for the Child.

**CONFIDENTIAL**

M-341  
Docket No. B-21200/12

An appeal having been taken to this Court from the order of  
the Family Court, Bronx County, entered on or about October 5,  
2016, and said appeal having been perfected,

And the attorney for the child having moved for dismissal of  
the aforesaid appeal,

Now, upon reading and filing the papers with respect to the  
motion, and due deliberation having been had thereon,

It is ordered that the motion is denied.

ENTERED: March 6, 2018

  
\_\_\_\_\_  
CLERK

Present - Hon. David Friedman, Justice Presiding,  
Peter Tom  
Troy K. Webber  
Cynthia S. Kern, Justices.

-----x  
Oumar Doumbia,  
Plaintiff-Respondent,

-against-

M-557  
Index No. 302911/14

Moonlight Towing, Inc.,  
Defendant-Appellant,

-and-

"John Doe", etc., et al.,  
Defendants-Respondents.

-----x

An appeal having been taken to this Court from the order of the Supreme Court, Bronx County, entered on or about May 8, 2017, and said appeal having been perfected,

And defendant-appellant having moved for a stay of trial pending hearing and determination of the aforesaid appeal,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is denied.

ENTERED: March 6, 2018

  
\_\_\_\_\_  
CLERK

Present - Hon. David Friedman, Justice Presiding,  
Marcy L. Kahn  
Ellen Gesmer  
Cynthia S. Kern  
Peter H. Moulton, Justices.

The People of the State of New York,  
Respondent,

-against-

M-5737  
SCT No. 3059/16

Jermaine Castle,  
Defendant-Appellant.

- - X

Defendant having moved for an enlargement of time in which to file a notice of appeal from a judgment of the Supreme Court, Bronx County, rendered on or about December 14, 2016, for leave to prosecute the appeal as a poor person upon the original record and a reproduced appellant's brief, and for related relief,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted to the extent of deeming the moving papers a timely filed notice of appeal and permitting the appeal to be heard on the original record, except that a certified copy of the indictment(s) shall be substituted in place of the original indictment(s), and upon a reproduced appellant's brief, on condition that appellant serves one copy of such brief upon the District Attorney of said county and files 8 copies of such brief, together with the original record, pursuant to Rule 600.11 of the Rules of this Court.

The court reporter shall promptly make and file with the criminal court (CPL §460.70) one transcript of the stenographic minutes of any proceedings pursuant to CPL §210.20, Arts. 710 and 730, and of the plea or trial and sentence. The Clerk shall furnish a copy of such transcripts to appellant's counsel, without charge, the transcripts to be returned to this Court when appellant's brief is filed.

Seymour W. James, Jr., Esq., 199 Water Street, 5th Floor,  
New York, New York 10038, Telephone No. 212-577-3688, is assigned  
as counsel for defendant-appellant for purposes of the appeal.  
The time within which appellant shall perfect this appeal is  
hereby enlarged until 120 days from the date of filing of the  
record.

ENTERED: March 6, 2018

  
CLERK

Present - Hon. David Friedman, Justice Presiding,  
Marcy L. Kahn  
Ellen Gesmer  
Cynthia S. Kern  
Peter H. Moulton, Justices.

The People of the State of New York,  
Respondent,

-against-

**CONFIDENTIAL**

M-5751

Ind. No. 3047/15

Djiba Kourouma,  
Defendant-Appellant.

-----X

Defendant having moved for an enlargement of time in which to file a notice of appeal from a judgment of the Supreme Court, Bronx County, rendered on or about August 7, 2017, for leave to prosecute the appeal as a poor person upon the original record and a reproduced appellant's brief, and for related relief,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted to the extent of deeming the moving papers a timely filed notice of appeal and permitting the appeal to be heard on the original record, except that a certified copy of the indictment(s) shall be substituted in place of the original indictment(s), and upon a reproduced appellant's brief, on condition that appellant serves one copy of such brief upon the District Attorney of said county and files 8 copies of such brief, together with the original record, pursuant to Rule 600.11 of the Rules of this Court.

The court reporter shall promptly make and file with the criminal court (CPL §460.70) one transcript of the stenographic minutes of any proceedings pursuant to CPL §210.20, Arts. 710 and 730, and of the plea or trial and sentence. The Clerk shall furnish a copy of such transcripts to appellant's counsel, without charge, the transcripts to be returned to this Court when appellant's brief is filed.

Robert S. Dean, Esq., Center for Appellate Litigation, 120 Wall Street, 28<sup>th</sup> Floor, New York, New York 10006, Telephone No. 212-577-2523, is assigned as counsel for defendant-appellant for purposes of the appeal. The time within which appellant shall perfect this appeal is hereby enlarged until 120 days from the date of filing of the record.

ENTERED: March 6, 2018

  
CLERK

PRESENT: Hon. John W. Sweeny, Jr., Justice Presiding,  
Dianne T. Renwick  
Peter Tom  
Angela M. Mazzarelli  
Jeffrey K. Oing, Justices.

-----X

Koya Abe,  
Plaintiff-Appellant,

-against-

M-366  
Index No. 157465/16

New York University and John Sexton,  
Defendants-Respondents.

Koya Abe,  
Plaintiff-Appellant,

-against-

Index No. 105985/10

New York University, David W. McLaughlin,  
Nancy Barton, Ken Castronuovo, Joseph  
Giovannelli, Roger Ho, Mary Brabeck,  
Barbara Cardeli-Arroyo and Cathleen  
Dawe,  
Defendants-Respondents.

An appeal having been taken from an order of the Supreme Court, New York County, entered on or about December 5, 2017,

And plaintiff-appellant having moved to stay certain portions of the aforesaid order that, inter alia, directed the payment of sanctions by plaintiff and barred plaintiff from making motions and commencing other litigation, pending determination of the appeal,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is denied and the interim relief granted by an order of a Justice of this Court, dated January 11, 2018, is hereby vacated.

ENTERED: March 6, 2018

  
\_\_\_\_\_  
CLERK

Present - Hon. John W. Sweeny, Jr., Justice Presiding,  
Sallie Manzanet-Daniels  
Angela M. Mazzarelli  
Jeffrey K. Oing  
Peter H. Moulton, Justices.

Doron Avgush,

Plaintiff-Appellant,

-against-

M-629  
Index No. 20734/12E

Jerry Fontan, Inc., et al.,

## Defendants-Respondents.

Plaintiff-appellant having moved for an enlargement of time to perfect the appeal taken from the order of the Supreme Court, Bronx County, entered on or about August 26, 2016,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted to the extent of enlarging the time to perfect the appeal to the September 2018 Term, with no further enlargements to be granted.

ENTERED: March 6, 2018

  
Susan R.  
CLERK

Present - Hon. John W. Sweeny, Jr., Justice Presiding,  
Sallie Manzanet-Daniels  
Troy K. Webber  
Marcy L. Kahn  
Peter H. Moulton, Justices.

-----x  
The People of the State of New York,

-against- M-6053  
George Yates, Ind. No. 700/17  
Defendant.

-----x  
Defendant having moved, pursuant to CPL 230.20, for an order granting a change of venue of this action from Bronx County to Kings County, and for related relief,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is denied.

ENTERED: March 6, 2018

  
\_\_\_\_\_  
CLERK

Present - Hon. John W. Sweeny, Jr., Justice Presiding,  
Sallie Manzanet-Daniels  
Troy K. Webber  
Marcy L. Kahn  
Peter H. Moulton, Justices.

-----X  
The People of the State of New York,

Respondent,  
-against- M-6708  
Ind. No. 34N/13

Ronald Vaughan,

Defendant-Appellant.

-----X  
Assigned counsel for defendant-appellant having moved for withdrawal of the appeal taken from the judgment of the Supreme Court, New York County, rendered on or about February 4, 2014, as abandoned,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is denied, without prejudice to counsel, Robert S. Dean, Esq., the Center for Appellate Litigation, perfecting the appeal on a brief seeking leave to withdraw as counsel.

ENTERED: March 6, 2018

  
\_\_\_\_\_  
CLERK

Present - Hon. Dianne T. Renwick, Justice Presiding,  
Rosalyn H. Richter  
Sallie Manzanet-Daniels  
Angela M. Mazzarelli  
Richard T. Andrias, Justices.

-----x  
Hertz Vehicles, LLC,  
Plaintiff-Respondent,

-against-

M-6553  
Index No. 160423/14

Darren T. Mollo, D.C., et al.,  
Defendants-Appellants,

Middle Village Diagnostic Imaging,  
P.C., et al.,  
Defendants.

-----x

Defendants-appellants Darren T. Mollo, D.C., et al. having moved for an extension of time to serve and file a notice of appeal with respect to the order of the Supreme Court, New York County, entered on or about May 11, 2017,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is denied.

ENTERED: March 6, 2018

  
\_\_\_\_\_  
CLERK

Present - Hon. Dianne T. Renwick, Justice Presiding,  
Rosalyn H. Richter  
Richard T. Andrias  
Barbara R. Kapnick  
Marcy L. Kahn, Justices.

-----x

Hong Zhang,

Petitioner-Appellant,

-against-

M-382  
Index No. 153061/17

Chinatown Apartments, Inc.,

Respondent-Respondent.

An appeal having been taken to this Court from the order of the Supreme Court, New York County, entered on or about August 1, 2017,

And petitioner-appellant having moved for a stay of all proceedings, including execution of the warrant of eviction, pending hearing and determination of the aforesaid appeal,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is denied.

ENTERED: March 6, 2018

  
\_\_\_\_\_  
CLERK

Present: Hon. Dianne T. Renwick, Justice Presiding,  
Rosalyn H. Richter  
Richard T. Andriاس  
Barbara R. Kapnick  
Marcy L. Kahn, Justices.

Raphael Maman,  
Plaintiff-Respondent.

-against-

Marx Realty & Improvement Co.,  
Inc., FJ Sciame Construction Corp.,  
Defendants-Appellants,

M-662

M-617

Index No. 152441/12

Marx Realty & Improvement Co.,  
Inc., and FJ Sciame Construction  
Corp.,  
Third-Party Plaintiffs-  
Appellants,

-against-

Weir Welding Company, Inc.,  
Third-Party Defendant-  
Appellant.

Weir Welding Company, Inc.,  
Second Third-Party Plaintiff-  
Appellant,

-against-

Cross-County Contracting, Inc.,  
Second Third-Party Defendant-  
Respondent.

Separate appeals having been taken from an order of the Supreme Court, New York County, entered on or about September 9, 2016, and said appeals having been perfected,

And appellants having moved by separate motions (M-662/M-617) for a stay of trial, pending determination of the appeals,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motions are denied.

ENTERED: March 6, 2018

  
\_\_\_\_\_  
CLERK

Present - Hon. Peter Tom, Justice Presiding,  
Barbara R. Kapnick  
Troy K. Webber  
Jeffrey K. Oing, Justices.

-----x  
Ethan Goldwater,

Plaintiff-Appellant,

-against-

M-40  
Index No. 160002/15

Amicus Associates Limited Partnership,

Defendant-Respondent.

An appeal having been taken to this Court from the order of the Supreme Court, New York County, entered on or about December 8, 2017,

And plaintiff-appellant having moved, pursuant to CPLR 5519(c), for a stay of execution of the order on appeal pending hearing and determination of the aforesaid appeal,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion is granted to the extent of continuing the interim stay granted by the order of a Justice of this Court, dated January 5, 2018. However, that portion of the order on appeal directing plaintiff's counsel to release escrowed funds to defendant for use and occupancy is not subject to this stay, and plaintiff-appellant is further directed to continue paying use and occupancy until further order of this Court, and upon further condition the appeal is perfected for the September 2018 Term.

ENTERED: March 6, 2018

  
CLERK

Friedman, J.

M-591        People v Green, Danny

Leave to appeal to this Court granted, as indicated.

Acosta, P.J., Friedman, Richter, Mazzarelli, Moulton, JJ.

M-97        In the Matter of John L. Weischel,  
a suspended attorney:

Petitioner reinstated as an attorney and counselor-at-law in the State of New York. No opinion. All concur.

Friedman, J.P., Sweeny, Gische, Mazzarelli, Kapnick, JJ.

In the Matter of Attorneys Who Are in Violation  
of Judiciary Law Section 468-a:

M-806        Deborah Principe Lake, admitted on 1-5-1999,  
at a Term of the Appellate Division,  
First Department

Petitioner reinstated as a retired attorney and counselor-at-law in the State of New York, effective the date hereof. No opinion. All concur.

Friedman, J.P., Sweeny, Gische, Mazzarelli, Kapnick, JJ.

In the Matter of Attorneys Who Are in Violation  
of Judiciary Law Section 468-a:

M-807        Sybil Aurora Lombillo, admitted on 3-13-2000,  
at a Term of the Appellate Division,  
First Department

Petitioner reinstated as an attorney and counselor-at-law in the State of New York, effective the date hereof. No opinion. All concur.

Friedman, J.P., Sweeny, Gische, Mazzarelli, Kapnick, JJ.

In the Matter of Attorneys Who Are in Violation  
of Judiciary Law Section 468-a:

M-778      Martin Joseph Schwartz, admitted on 10-21-1991,  
at a Term of the Appellate Division,  
First Department

Petitioner reinstated as an attorney and counselor-at-law in the State of New York, effective the date hereof. No opinion. All concur.

**The following motion orders were entered and filed on 3/1/18:**

PRESENT: Hon. John W. Sweeny, Jr., Justice Presiding,  
Sallie Manzanet-Daniels  
Angela M. Mazzarelli  
Jeffrey K. Oing  
Peter H. Moulton, Justices.

-----X  
Jacqueline S., Plaintiff-Respondent-Appellant,

**CONFIDENTIAL**

M-450

M-645

Index No. 312320/14

-against-  
Zarko S., Defendant-Appellant-Respondent.

Plaintiff-respondent-appellant having moved for dismissal of defendant's appeal taken from a judgment of divorce of the Supreme Court, New York County, entered on or about March 22, 2017, or in the alternative for an order striking defendant's brief and appendix, for an enlargement of time to file its respondent/cross-appellant's brief and for sanctions against defendant (M-450),

And defendant-appellant-respondent having cross-moved to supplement the appendix with a notice of cross-appeal; for leave to cure any inadequacies in said appendix, to waive his compliance with other Court rules; to direct plaintiff-respondent-appellant to file a supplemental appendix containing certain documents not present in the filed appendix; to order and declare that appellant's amended appendix, together with the respondent's supplemental appendix will constitute the parties' joint record; to deny plaintiff's motion to dismiss its appeal and to adjourn the perfected appeal (M-645),

Now, upon reading and filing the papers with respect to the motion and cross motion, and due deliberation having been had thereon,

It is ordered that the motion and cross motion are granted to the extent of adjourning the perfected appeal to the September 2018 Term, and enlarging the time to perfect the cross-appeal to said Term; plaintiff is directed to file a supplemental appendix, at her own expense, containing the notice of cross-appeal, findings of fact and conclusions of law signed by the trial court, the complete motion papers below, including all the exhibits, and the complete trial transcript, if so advised. Defendant is directed to physically excise the following pages of the appendix; A254-255, A265, 26, 264, 268-275, from all copies of the appendix within 15 days of entry of this order. Defendant-appellant is also directed to supplement its appendix with copies of the documents now contained in the appendix at A262, 264, 268-275, with all typed notations redacted, and otherwise denied. So much of the motion (M-450) seeking an order striking appellant's brief without prejudice to arguments in the brief for respondent/cross-appellant is denied.

ENTERED: March 1, 2018



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Susan R.  
CLERK

Present: Hon. John W. Sweeny, Jr., Justice Presiding,  
Dianne T. Renwick  
Peter Tom  
Angela M. Mazzarelli  
Jeffrey K. Oing, Justices.

-----X  
In the Matter of the Application for  
a Recommitment Order, Pursuant to  
Section 330.20 of the Criminal  
Procedure Law, by the New York State  
Office of Mental Health,  
Petitioner-Respondent,

**CONFIDENTIAL**  
**M-356**

Index No. 530245/99

-against-

Marco G., a Patient at Manhattan  
Psychiatric Center,  
Defendant-Appellant.

-----X  
An appeal having been taken to this Court by defendant-appellant from an order of the Supreme Court, New York County, entered on or about January 23, 2018, which denied defendant's demand for a jury rehearing and review of a recommitment order,

And defendant-appellant having moved for a stay of the aforesaid denial of the recommitment order, pending hearing and determination of the appeal,

Now, upon reading and filing the papers with respect to the motion, and due deliberation having been had thereon,

It is ordered that the motion for a stay is denied.

ENTERED: March 1, 2018

  
\_\_\_\_\_  
CLERK