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COURT OF APPEALS

STATE OF NEW YORK

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PEOPLE,

Respondent,

-against-

NO. 4

DONDORFER (PHILLIP),

Appellant.

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20 Eagle Street  
Albany, New York  
January 6, 2026

Before:

CHIEF JUDGE ROWAN D. WILSON  
ASSOCIATE JUDGE JENNY RIVERA  
ASSOCIATE JUDGE MICHAEL J. GARCIA  
ASSOCIATE JUDGE MADELINE SINGAS  
ASSOCIATE JUDGE ANTHONY CANNATARO  
ASSOCIATE JUDGE SHIRLEY TROUTMAN  
ASSOCIATE JUDGE CAITLIN J. HALLIGAN

Appearances:

FARES A. RUMI, ESQ.  
WYOMING COUNTY PUBLIC DEFENDER  
Attorney for Appellant  
143 North Main Street  
Warsaw, NY 14569

DANA R. POOLE, ESQ.  
NEW YORK DISTRICT ATTORNEY'S OFFICE  
Attorney for Respondent  
1 Hogan Place  
New York City, NY

Chrishanda Sassman-Reynolds  
Official court Transcriber

1 CHIEF JUDGE WILSON: Next matter on the calendar  
2 is People v. Dondorfer.

3 MR. RUMI: Good afternoon, Your Honors.

4 Fares Rumi, attorney for defendant and appellant,  
5 Phillip Dondorfer. I'm requesting to reserve two minutes  
6 for rebuttal.

7 CHIEF JUDGE WILSON: Yes.

8 MR. RUMI: Thank you, Your Honors.

9 Your Honors, as the court is aware, this case  
10 came about because county court dismissed Count 1 of the  
11 indictment. The charge was aggravated DWI with a child in  
12 the car. The sub theory was that my client was operating a  
13 motor vehicle while impaired by the combined influence of  
14 alcohol or any drug or drugs.

15 The People instructed the grand jury on per the  
16 Cruz standard, instructing the grand jury that if they  
17 found - - -

18 JUDGE RIVERA: Why doesn't the well-established  
19 rule of statutory interpretation that a term is used in one  
20 provision is assumed to have the same meaning throughout  
21 the statute?

22 MR. RUMI: Because, Your Honors, to do so here  
23 would lead to a result that was both absurd and unjust.

24 CHIEF JUDGE WILSON: Well, why would it be  
25 absurd?

1 MR. RUMI: Well, Your Honor, it would be absurd  
2 because it would lead to a situation where a person who's  
3 facing felony or misdemeanor level charges for allegedly  
4 driving while ability impaired, it doesn't matter how great  
5 the impairment is under the influence of drugs - - -

6 JUDGE CANNATARO: And that's not a legislative  
7 prerogative?

8 MR. RUMI: Well, Your Honors, the way the  
9 legislature drafted the law, I would submit that it shows  
10 clearly that their intent was to treat 1192(4-a) as a sub  
11 theory of driving while intoxicated.

12 So it was their intention to treat driving  
13 ability impaired by drugs or a combination with the same  
14 level of severity.

15 JUDGE CANNATARO: I'm sorry. That's something  
16 you can gather from the language of the statute?

17 MR. RUMI: Yes, Your Honor.

18 JUDGE CANNATARO: How do you do that?

19 MR. RUMI: Because 1192(2-a)(b) with a sub theory  
20 of driving while ability impaired by combination of drugs,  
21 it's still called aggravated driving while intoxicated.  
22 The legislature did not create a separate charge, calling  
23 it aggravated driving while impaired by the combined  
24 influence of alcohol or any drug or drugs.

25 JUDGE TROUTMAN: So does the title control?

1 MR. RUMI: It - - - I would submit that it does  
2 affect how the statute should be interpreted pursuant to  
3 the legal doctrine of *expressio unius est exclusio*  
4 *alterius*, because by expressing one thing, the legislature  
5 implied the exclusion of the other. That it should be  
6 interpreted to the lower standard of impairment by alcohol.

7 JUDGE TROUTMAN: Couldn't the legislature have  
8 decided to treat drugs stricter?

9 MR. RUMI: Well, Your Honor - - -

10 JUDGE TROUTMAN: For the impairment?

11 MR. RUMI: I would submit that the legislative  
12 memoranda that was submitted when both 1192(4-a) and  
13 1192(2-a)(b) were established, show that the legislature  
14 was solely or primarily focused on combating driving while  
15 intoxicated. So they treat this as a form of intoxication.

16 JUDGE SINGAS: Can you identify anywhere else  
17 where we've looked at the same word and the same statute,  
18 and attributed different meanings to it?

19 MR. RUMI: I cannot off the top of my head, Your  
20 Honors. But again - - -

21 JUDGE HALLIGAN: And that's a pretty standard  
22 canon of construction, right? That we give one word the  
23 same meaning across provisions. And I think you're asking  
24 for us to depart from that here.

25 MR. RUMI: But Your Honors, according to the

1 third rule of statutory construction, if it will lead to an  
2 absurd result it should be - - -

3 JUDGE HALLIGAN: Right. But that's a policy  
4 assumption that I think you're asking us to make. And - -  
5 - and you know, the legislature could have, seems to me,  
6 made a different determination perhaps. In part, because I  
7 believe that - - - you know, for a long time, consumption  
8 of alcohol, though not driving while impaired under the  
9 influence of alcohol, was legal and consumption of various  
10 drugs was illegal. So there could have been a  
11 determination to treat it differently, it seems.

12 MR. RUMI: Your Honors, I'd submit that that  
13 supposition is not supported by the legislative memorandum.  
14 In addition - - -

15 JUDGE HALLIGAN: My point is just that - - - that  
16 it may not be absurd as you're suggesting, which is what I  
17 think the canon gets at, to assume that the legislature  
18 could not have meant to distinguish between them.

19 MR. RUMI: Well, Your Honor, I think it's absurd  
20 when you take into account Leandra's Law, because, again,  
21 it's a sub theory of aggravated driving while intoxicated.  
22 I think because of that, it would be absurd to interpret  
23 1192(4-a) to hold it to the same low standard as driving  
24 while ability impaired by alcohol. And I would again  
25 submit that there is ambiguity.

1 JUDGE CANNATARO: So I'm not sure I understand  
2 that. So you're saying when a child is involved, the only  
3 thing the legislature could have meant was that  
4 intoxication is the requirement, not just impairment? How  
5 does that - - -

6 MR. RUMI: Because - - -

7 JUDGE CANNATARO: - - - logic work?

8 MR. RUMI: - - - because the way they drafted the  
9 actual statute, Your Honor, is they called it aggravated  
10 driving while intoxicated with a child in the car and there  
11 are sub theories. And the one at issue here is includes if  
12 someone violates 1192 - - - VTL 1192(4-a) which is driving  
13 while ability impaired by the combined influence of alcohol  
14 or any drug or drugs. The same day the legislature passed  
15 Leandra's Law, they could have easily, in the same breath,  
16 passed a second statute saying aggravated driving while  
17 ability impaired by the combined influence of drugs. They  
18 did not do so.

19 JUDGE GARCIA: But when they drafted this  
20 Leandra's Law, we had long before that defined impairment  
21 in Cruz. We presume they're aware of those definitions and  
22 they could have used intoxicated, but they used impaired.

23 MR. RUMI: Well, Your Honor, Cruz dealt solely  
24 with alcohol. Cruz did not specifically deal with  
25 impairment by drugs or a combination of drugs and alcohol.

1 JUDGE CANNATARO: Yeah. But you would also  
2 assume that they're aware of our canons of statutory  
3 construction, which, as you heard, require us to interpret  
4 the same word the same way when it's used in different  
5 sections of the same statute.

6 So I mean, this is all on the table. None of  
7 that was hidden to the legislature.

8 MR. RUMI: But also, Your Honor, you know, the  
9 second rule of statutory construction requires that the  
10 provisions be read to harmonize the statutory context. And  
11 if the legislature is looking at all four rules, they'd  
12 have to say what - - - how does this harmonize with the  
13 rest of VTL 1192(2)? And does it create a result - - -

14 JUDGE RIVERA: Well, then one would - - - one  
15 would think they would not use the word impaired. That  
16 they would find some other word.

17 MR. RUMI: Well, that's why - - -

18 JUDGE RIVERA: That would then maintain all these  
19 rules in play.

20 MR. RUMI: Again, that's why, Your Honor, I think  
21 that's why when the legislature created Leandra's Law,  
22 looking at the text that they finalized, if we're assuming  
23 that they did not intend a result that was unjust or that  
24 did not make sense, I think that the most logical reading  
25 is that they felt that 1192(4-a) impaired by a combination

1 of alcohol or drugs - - -

2 JUDGE RIVERA: So if we disagree with you that it  
3 leads to an absurd result - - - we disagree. We say it's a  
4 policy choice. They - - - it can be very rational to make  
5 this policy choice, do you lose?

6 Is that the only way that you can deal with these  
7 rules of construction? By - - -

8 MR. RUMI: I think not.

9 JUDGE RIVERA: - - - by us agreeing that there  
10 would be an absurd result?

11 MR. RUMI: I think there is another way, because,  
12 you know, we also argue the doctrine that to express or  
13 include one thing implies the exclusion of the other. And  
14 based on that doctrine, again, the legislature called this  
15 a subset of aggravated driving while intoxicated. I think  
16 we could still prevail on that argument.

17 And I don't think that adopting the Cruz standard  
18 leads to a result that harmonizes the interpretation of  
19 1192.4-a in combination with the rest of VTL 1192. So I  
20 think we actually have three arguments as to why this court  
21 should overturn the decision of the Fourth Department.

22 And again - - -

23 JUDGE RIVERA: Even though the Third Department  
24 has Caden in its prior decision?

25 MR. RUMI: Yes. Because - - -

1 JUDGE RIVERA: How does that affect your  
2 argument?

3 MR. RUMI: I would say it does not, Your Honor,  
4 for two reasons. You know, Justice Lynch dissented, and I  
5 submit that he was correct because the Caden fact-pattern  
6 was based on an alleged violation of 1192(4) impaired by  
7 drugs. So it was factually on point.

8 So it actually, I'd submit, it doesn't actually  
9 make sense the Third Department's majority opinion in  
10 Ambrosio, where they said Caden does not apply outside of a  
11 vehicular manslaughter case.

12 And again, Your Honors, just to refer I did  
13 review ADNYS amicus brief that the court permitted. And I  
14 also agree with them that adopting the Cruz standard, as  
15 the Fourth Department did, does create a violation of equal  
16 protection under the law because someone - - - you know,  
17 they're - - - they're charged with driving while ability  
18 impaired, maybe with marijuana or a combination of alcohol  
19 and any of the - - - the listed substances under the public  
20 health law, some analysis charged with - - - you know, DWA  
21 by alcohol, and it is unfair that that's the only  
22 difference.

23 JUDGE GARCIA: You never made that argument in  
24 this case.

25 MR. RUMI: I did not, but that was in the amicus

1           brief by ADNYS I'm just citing as well, Your Honor. That,  
2           you know, it's treating them very differently, and the only  
3           difference it - - -

4                    JUDGE TROUTMAN: But couldn't the legislature  
5           make that determination that they wanted to treat driving  
6           while impaired by drugs more harshly?

7                    JUDGE RIVERA: That they're not similarly  
8           situated?

9                    MR. RUMI: Well, I would again submit there's no  
10          evidence that that was their intention, and I think it  
11          would be an unjust result.

12                   JUDGE TROUTMAN: But they could? It's up to  
13          them.

14                   MR. RUMI: I think they could spell it out. I -  
15          - - I'd argue that they have not done so.

16                   CHIEF JUDGE WILSON: Why would that be unjust?  
17          Why couldn't it be simply that it's much easier to use a  
18          breathalyzer to test for the level of alcohol than it is to  
19          test for drugs, and therefore they're going to try and  
20          deter the conduct by a more severe penalty because of the  
21          inadequacy of the testing for those things?

22                   MR. RUMI: Well, also because, Your Honor, that -  
23          - - you know, in theory, someone could be convicted of DWAI  
24          by alcohol without a breathalyzer test. An officer could  
25          still conduct field sobriety tests. And if it's the same

1 level of impairment, then a person should not be penalized  
2 more just because on one hand, they're under the influence  
3 of drugs or a combination of alcohol and drugs, and on the  
4 other are under the influence of just alcohol.

5 And I see I have one minute left, so I will  
6 return for rebuttal. Thank you, Your Honors.

7 CHIEF JUDGE WILSON: Thank you.

8 MS. POOLE: Good afternoon, Your Honors. Dana  
9 Poole for the People.

10 As you have noted, this court defined impaired  
11 driving in Cruz over forty years ago. And there's nothing  
12 about the statute itself or the legislative history or how  
13 that legislative history has intertwined with this court's  
14 decisions about impaired and intoxicated driving to  
15 indicate that impaired shifts or morphs definition simply  
16 because of the substance that is involved. And the - - -  
17 one of the clearest indications of that is that the  
18 ultimate outcome of the defense argument here is that if  
19 they are correct that - - - that being impaired by drugs or  
20 a combination of drugs and alcohol requires the same  
21 substantial impairment as required for intoxication, that  
22 would mean that anything less than substantial impairment  
23 by drugs would not be penalized at all. And there is  
24 absolutely - - -

25 JUDGE TROUTMAN: So would that result in someone

1 actually driving while impaired under drugs, not being able  
2 to be prosecuted?

3 MS. POOLE: Absolutely, Your Honor. And that is  
4 - - - is clearly not what the legislature has intended.

5 JUDGE CANNATARO: Yes. But Counsel, when you  
6 bring the other side of the equation, the punishments into  
7 the discussion, they become widely disparate for people  
8 impaired by drugs versus people impaired by alcohol.

9 MS. POOLE: That is - - -

10 JUDGE CANNATARO: And that - - - you know, I  
11 don't know if that's due process or equal protection or  
12 what it is, but it's notable that they're treated  
13 differently.

14 MS. POOLE: They are treated differently. And  
15 we're not dealing with a protected class or a fundamental  
16 right here. And so all there has to be is a rational basis  
17 for the legislature's policy choice. And the choice they  
18 made is to treat alcohol differently than drugs.

19 And there's any number of reasons to make that  
20 distinction. Simply alcohol is different than drugs. It  
21 has a different history, a different acceptance throughout  
22 - - - you know, the history of the state and this country.  
23 And you also have the issue of gradations of impairment are  
24 easier to distinguish when we're dealing with alcohol,  
25 because we have - - -

1                   JUDGE HALLIGAN: Presumably, if either the  
2                   ability to test were to be refined, or for example, taking  
3                   into account the legalization of, say, marijuana, the  
4                   legislature, I assume, could revisit those choices if it  
5                   wanted to and recalibrate, right?

6                   MS. POOLE: It could, Your Honor. But one of the  
7                   notable things is that when marijuana was legalized, what -  
8                   - - there was an option to then put cannabis in with  
9                   alcohol in that level of impairment under sub 1. And that  
10                  was certainly proposed. And how cannabis would be dealt  
11                  with was something that actually delayed that legislation  
12                  because there was so much concern about that.

13                  And ultimately, what the legislature decided to  
14                  do was to make clear that cannabis was going to stay in the  
15                  - - - in the drugs category so that any impairment, to  
16                  whatever - - - to any extent, would remain illegal and  
17                  prosecutable.

18                  And again, that is a policy choice. And the fact  
19                  that anyone can come up with different policy choices or  
20                  argue the wisdom of any of them or what we might prefer,  
21                  that's not the question here. The question is how to  
22                  enforce the policy chosen by the legislature, as the  
23                  legislature is the body that is entitled to make those  
24                  kinds of determinations.

25                  And - - - and just to briefly address the

1 subheading issue. New York Statute section 123 makes clear  
2 that titles can be used to balance out any ambiguity in the  
3 statute, but where the language is unambiguous, the title  
4 cannot change the meaning of those unambiguous terms.

5 And one of the things that the subsection does  
6 here is it incorporates other subsections where the word  
7 "impaired" has been used. And as the legislature has never  
8 indicated that this court got it wrong in Cruz, has never  
9 altered those definitions, and has never used other  
10 language, indicates that the legislature has intended to  
11 treat drugs differently than alcohol, and that is a policy  
12 choice it may make.

13 CHIEF JUDGE WILSON: Am I right that 1192(1) is a  
14 traffic infraction?

15 MS. SOUSOU: Yes.

16 CHIEF JUDGE WILSON: And 4 is a misdemeanor?

17 MS. POOLE: That is correct, Your Honor.

18 CHIEF JUDGE WILSON: So the legislature has - - -  
19 and those are both impairments?

20 MS. SOUSOU: Um-hum.

21 CHIEF JUDGE WILSON: So the legislature has  
22 facially made a distinction in terms of severity of penalty  
23 between drugs and alcohol?

24 MS. POOLE: Absolutely. Yes. And that's - - -  
25 they're the body that makes that determination.

1                   Unless Your Honors have any further questions, I  
2 will ask that you affirm the Fourth Department's decision.

3                   CHIEF JUDGE WILSON: Thank you.

4                   MR. RUMI: Thank you, Your Honors.

5                   I'll just briefly respond that, again, there is  
6 ambiguity. Again, the legislature could - - - could have  
7 created a new charge: aggravated driving while ability  
8 impaired by a combination of drugs or alcohol. So they did  
9 not. So that's why when you look at the statute, there is  
10 ambiguity.

11                   And the most logical way to resolve this with all  
12 four rules and the doctrine, is to interpret that the  
13 legislature intended for 1192(4-a) to be a subset of  
14 driving while intoxicated, and to be treated the same in  
15 terms of what would need to be proven to convict the  
16 person.

17                   And again, as Your Honor pointed out, 1192(4) is  
18 a misdemeanor. 1192(4) is a misdemeanor, becomes a felony  
19 when it's under Leandra's Law. 1192(1) is just an  
20 infraction.

21                   And again, to allow the People to prosecute  
22 someone and have to prove the same standard of impairment -  
23 - -

24                   CHIEF JUDGE WILSON: Well, I don't think that  
25 observation helps you, because if 1192(4) is a misdemeanor

1 and then you add a minor to the car, you're providing no  
2 elevation for that fact. And that seems inconsistent with  
3 the statutory scheme.

4 MR. RUMI: Well, I think it's because - - - you  
5 know, the - - - you know, the assumption is there - - - a  
6 child could be endangered. So that's why it's elevated.  
7 But what I'm arguing, Your Honor, is that because whether  
8 it's a misdemeanor or a felony, it's both absurd and unjust  
9 to allow the People to have to show the same standard of  
10 impairment. Whereas the first person could face a felony  
11 or misdemeanor conviction, with all the much more serious  
12 consequences. The second is just facing a traffic  
13 infraction when only alcohol is alleged.

14 And if there's nothing further, Your Honors, I  
15 rest on my briefs.

16 CHIEF JUDGE WILSON: Thank you.

17 MR. RUMI: Thank you.

18 (Court is adjourned)

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C E R T I F I C A T I O N

I, Chrishanda Sassman-Reynolds, certify that the foregoing transcript of proceedings in the Court of Appeals of People v. Dondorfer (Phillip), No. 4 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



Signature: \_\_\_\_\_

Agency Name: eScribers

Address of Agency: 7227 North 16th Street  
Suite 207  
Phoenix, AZ 85020

Date: January 12, 2026

