

State of New York Court of Appeals

Summaries are prepared based on the parties' briefs and are for background purposes only.

To be argued Thursday, September 11, 2025

People v Henry Fuentes (81 Misc3d 136[A] [AppTerm])
Court PASS Docket No. APL 2024-00052

In January 2020, Officer Congedo found Mr. Fuentes, who was intoxicated, 19 years old, and holding an open bottle of tequila, stuck in a toddler swing in the backyard of an abandoned building. After Mr. Fuentes extracted himself from the swing, Officer Congedo took the bottle of tequila and drove Mr. Fuentes home. Once there, Mr. Fuentes asked Officer Congedo to return the bottle of tequila. Officer Congedo refused and a struggle ensued. According to Officer Congedo, Mr. Fuentes pushed her, causing her patrol car keys to fall to the ground, Mr. Fuentes grabbed the keys and hopped in the patrol car. Several officers pulled Mr. Fuentes from the patrol car and he was charged with obstruction of governmental administration, petit larceny, harassment in the second degree, and unlawful possession of alcohol.

In May 2021, the People filed their initial Certificate of Compliance (COC) and statement of readiness (SOR), indicating that they completed discovery and were ready for trial. In July 2021, the People provided documents to the defense relating to a federal civil rights lawsuit against Officer Congedo and other police officers. In January 2022, Officer Congedo testified at a pre-trial hearing.

Four days after this pre-trial hearing, the People gave the defense Internal Affairs Bureau (IAB) reports relating to the federal civil rights lawsuit. These reports involved a matter that happened two years before Mr. Fuentes was charged, did not involve Mr. Fuentes, and exonerated Officer Congedo.

Based on the People belatedly disclosing the IAB reports, Mr. Fuentes asked the trial court to find the People's COC invalid and to dismiss the case against him. The People countered that they acted with due diligence to try to obtain the IAB reports and, because the IAB reports exonerated Officer Congedo, the delayed disclosure did not render the COC and SOR invalid.

District Court granted the motion because, it said, the People violated the automatic discovery provisions in CPL 245.20. The court explained that Mr. Fuentes was unable to use any potential information in the IABs when questioning Officer Congedo in the pre-trial hearing.

The Appellate Term reversed. That court noted CPL 245.20 required the People to automatically disclose "all items and information that relate to the subject matter of the case and are in [the People's] possession, custody or control," including all evidence and information known to police enforcement agencies that tends to "impeach the credibility of a testifying prosecuting witness." Here, the court said, it is undisputed that the IAB reports are not "related to the subject matter of the case" and, thus the reports were not subject to automatic discovery.

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People v Richecarde Licius (82 Misc 3d 18 [AppTerm])
Court PASS Docket No. APL 2024-00047

On May 3, 2022, Mr. Licius was arraigned on an accusatory instrument charging him with various offenses, the highest being a class A misdemeanor. For class A misdemeanors, the speedy trial statute requires the People to be ready for trial within 90 days (CPL 30.30). The People must communicate that they are ready for trial on the record in open court or by a written notice filed with the court and sent to defense counsel.

On August 1, 2022, the last day of the 90-day CPL 30.30 period, the People served defense counsel with a statement of readiness (SOR) for trial. At 5:03PM, the People transmitted the SOR to the Unified Court System's Electronic Document Delivery System (EDDS). The New York City Criminal Court clerk's office reviewed the SOR on August 2, 2022.

Mr. Licius asked the trial court to dismiss the accusatory instrument against him, arguing that the People did not file a statement with the court that they were ready for trial within the 90 day CPL 30.30 period.

City Court granted the motion. It said before EDDS there was no way to file a SOR with the court when the court was not actually open for business and, because it is impossible to commence a trial after court has closed for the day, the People's after-hours filing on August 1 was effective only the next day.

The Appellate Term reversed. That court held the People's readiness for trial and the court's ability to start a trial are separate issues and CPL 30.30 only requires that the People be ready for trial within a certain time. And CPL 30.30 does not provide that the People must announce readiness for trial during business hours; rather, the court said, CPL 30.30 states the People must be ready within 90 "days." Because the CPL does not define a "day," the court relied on the definition of a calendar day in the General Construction Law—the time from "midnight to midnight." Based on this definition, the Appellate Term concluded the speedy trial time is to be calculated by days, not by any specific hour within the day.

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To be argued Thursday, September 11, 2025

People v Rosemary Hernandez (224 AD3d 415 [AD1])

Court PASS Docket No. APL-2024-00113

***case materials not available on Court-PASS, contact Clerk's Office*

Ms. Hernandez stabbed her boyfriend, killing him. With the People's consent, the trial court determined Ms. Hernandez was a victim of domestic violence and qualified for sentencing under the Domestic Violence Survivors Justice Act (DVSJA, Penal Law § 60.12). Ms. Hernandez pleaded guilty to the class A felony of second-degree murder in exchange for a 10-year determinate sentence followed by 5-years post-release supervision.

The DVSJA allows for a lesser sentence when a court determines that (1) at the time of the offense, defendant was a victim of domestic violence subjected to substantial physical, sexual or psychological abuse inflicted by a member of the same family or household as the defendant; (2) such abuse was a significant contributing factor to defendant's criminal behavior; and (3) having regard for the nature and circumstances of the crime and the history, character and condition of the defendant, the statutory term of imprisonment would be unduly harsh. For class A felonies, the DVSJA specifies that the lesser sentence must be a determinate term of between 5 and 15 years.

Penal Law § 70.45 says when a court imposes a determinate sentence "it shall in each case state not only the term of imprisonment, but also an additional period of post-release supervision as determined by this article." The default term of post-release supervision is 5 years, and lesser terms of post-release supervision may be imposed when the determinate sentence is for a Class B, C, D or E felony, including determinate sentences imposed under the DVSJA for Class B, C, D or E felonies.

On appeal, Ms. Hernandez argued that no period of post-release supervision can be imposed on her determinate sentence for a class A felony, because Penal Law § 70.45 does not address determinate sentences imposed for Class A felonies under the DVSJA. The Appellate Division rejected this argument, holding the imposition of a term of post-release supervision pursuant to Penal Law § 70.45 is not contrary to the legislative intent of the DVSJA to provide for less severe determinate sentences for victims of domestic violence convicted of certain felonies.

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To be argued Thursday, September 11, 2025

People v Arthur H. Morgan, Jr. (230 AD3d 864 [AD3])

Court PASS Docket No. APL-2024-00124

***case materials not available on Court-PASS, contact Clerk's Office*

Arthur H. Morgan, Jr. and his wife lived together in a trailer home in Columbia County. Mr. Morgan's wife was last seen in March 2008 and reported missing by a family member on April 8, 2008. On April 9, 2008, her body was found wrapped in a blanket under the shared trailer home. Mr. Morgan was charged with murder in the second degree and a jury convicted him as charged. In 2017, the Appellate Division granted Mr. Morgan a new trial because he had been deprived of his right to testify in his own defense.

During jury selection for the second trial, defendant raised a *Batson* challenge after the People peremptorily struck prospective jurors of color. Under *Batson v Kentucky*, the trial court had to follow these steps to decide whether the People could peremptorily challenge the jurors: (1) the defendant must show that the strike was used to discriminate, if that showing is made, (2) the People must give a non-discriminatory reason for the strike, and (3) the court must determine whether the People's reason for the strike was pretextual and whether defendant showed purposeful discrimination. County Court heard the parties' *Batson* arguments and granted the People's peremptory challenges.

The second trial resulted in the jury convicting defendant of manslaughter in the first degree.

The Appellate Division, in a 3-2 split, affirmed. The majority held that County Court proceeded through the three steps of the *Batson* inquiry, heard the parties' arguments, and ultimately set forth on the record its belief that the prosecutor had race-neutral reasons for challenging the prospective jurors.

The dissenting Justices parted ways with the majority on the third step of the *Batson* inquiry, pointing out that County Court did not state that it believed the race-neutral reasons offered by the People. Rather, by stating that it "believed there's a race-neutral reason . . . which would permit a . . . peremptory challenge by the People," the dissenting Justices said County Court only considered whether the People had given a race-neutral reason for the strike and not whether the race-neutral reason was pretextual as required under the third step of *Batson*.