

State of New York Court of Appeals

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

To be argued Tuesday, September 9, 2025

Matter of K.Y.Z. (228 AD3d 560 [AD1])

Court PASS Docket No. APL-2025-00071 ***case materials not available*

Family Court terminated father's parental rights to his child K.Y.Z. on the ground of permanent neglect.

The Appellate Division affirmed, stating that father failed to consistently "maintain contact with or plan for the future of the child for a period of one year after the child entered foster care," as required by Social Services Law. The Appellate Division stated that the agency made "diligent efforts" to encourage and strengthen father's relationship with the child by referring the father to a parenting skills class and therapy, scheduling regulation visitation, providing father with MetroCards to visit the child, helping father with housing, and regularly meeting with him.

Acknowledging that a language barrier existed between father and the agency, the Appellate Division said that the agency adequately addressed this issue by using Mandarin interpreters to communicate with father and referring him to therapy and a parenting skills class that were provided in Mandarin, which father understood. Although the child was placed in foster homes that spoke English and Spanish, there was no foster home available that could handle the child's extensive special needs and where Mandarin or Foochow were spoken. The agency urged the father to attend classes to learn English, but he refused to do so.

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To be argued Tuesday, September 9, 2025

People v James Everson (229 AD3d 1349 [AD4])

Court PASS Docket No. APL-2024-00135

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

In the early morning hours of July 13, 2019, a man was shot and killed in a park. A police investigation recovered casings from two types of guns and video footage of a car entering the park at the time of the shooting. The police concluded that three people were in the car at the time of the shooting—James Everson, Amir Bordies and Jimmy Ellerbie—and that Everson and Bordies were the shooters. By grand jury indictment, Everson and Bordies were charged with murder in the second degree and multiple counts of criminal possession of a weapon. The indictment alleged that Everson and Bordies acted in concert to intentionally cause the death of the man shot in the park. Ellerbie cooperated with police, was not charged with any crime and testified for the People at the joint trial of Everson and Bordies.

Before trial, defendant Everson moved to sever his trial from codefendant Bordies' trial, claiming that the People would use a statement by Bordies that was inculpatory to him. The trial court denied the motion.

During summation, Bordies' counsel said that there were two shooters, and Bordies was not one of them. The trial court denied Everson's renewed motion to sever the trials.

The trial court also denied Everson's motion to dismiss, rejecting Everson's arguments that Ellerbie's testimony was not credible, the evidence did not establish that Everson had a gun or fired a gun, and no evidence was presented to establish that Everson intentionally killed the victim. The jury found Everson and Bordies guilty of murder in the second degree and criminal possession of a weapon.

The Appellate Division, in a 4-1 vote, affirmed Everson's conviction. The majority found that the trial court did not abuse its discretion in denying the motion to sever, noting that joint trials are preferred where the same evidence will be used and the defendant and codefendant are charged with acting in concert, and severance is not required solely because of differences in trial strategies or inconsistencies in defenses. The majority also rejected Everson's argument that codefendant's counsel acted as a second prosecutor, reasoning that codefendant's counsel did not elicit any new evidence against Everson that his jury would not otherwise have heard had he been granted a separate trial.

The dissenter disagreed, finding that severance was required because the defenses—that defendant was not a shooter, and that defendant was a shooter—were in “irreconcilable conflict” and that conflict would lead the jury to infer defendant's guilt.

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1995 CAM LLC v West Side Advisors (221 AD3d 420 [AD1])
Court PASS Docket No. APL-2024-00161

1995 CAM LLC owns Suite 800 of 1995 Broadway in New York City. In 2004, CAM LLC leased the premises to West Side Advisors. CAM LLC and West Side modified the lease several times, including in 2016 by extending the lease through February 28, 2023, and increasing the monthly rent for certain years. The 2016 modification included a guaranty by Gary Lieberman, who agreed to pay for West Side's monetary obligations. Lieberman's liability was limited if West Side gave thirty days' notice of its intent to vacate, paid all rent up to the date of vacating, and completely vacated and surrendered the property pursuant to the terms of the lease.

West Side further agreed to pay for a variety of fees as additional rent, including a real estate tax escalation charge, freight elevator charges, water meter usage charges, cleaning services charges, trash removal services, and late fees.

In July 2020, West Side stopped paying rent and additional fees. On October 28, 2020, West Side notified CAM LLC that it would surrender the premises on or before November 30, 2020. West Side vacated the premises by that date and is no longer in business. There is no written agreement of CAM LLC accepting West Side's surrender.

CAM LLC sued West Side and Lieberman, seeking to recover rent before and after West Side vacated the property. As to the claim for rent after West Side vacated the premises, West Side and Lieberman argued the guaranty precluded that claim. CAM LLC asserted that Lieberman was responsible for rent after West LLC vacated the premises because West LLC did not obtain a written acceptance from it surrendering the premises, as required by the lease and the guaranty.

The trial court said CAM LLC was entitled to rent after West Side vacated the property. The Appellate Division affirmed, holding West Side and Lieberman could not rely on the "good guy" guaranty to avoid paying rent after West Side vacated the premises because the lease required a "written acceptance" of the surrender, and West Side did not obtain a written acceptance.

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Matter of Wagner v NYCDOE (222 AD3d 420 [AD1])
Court PASS Docket No. APL-2024-00061

In 2022, Jimmy Wagner submitted a FOIL request to the New York City Department of seeking “all emails between the DOE from April 2021 until August 2022 from the following domain: @scheinmanneutrals.com.”

DOE told Wagner that the request “was not reasonably described” and asked him to “provide names and/or titles of senders/receivers (including email addresses, if possible) beyond the domain provided and key terms to be searched.” DOE also suggested that Wagner narrow the timeframe.

Wagner administratively appealed and DOE denied the request, stating that it “attempted multiple electronic searches for emails within the specified time frame from @scheinmanneutrals.com to DOE’s domain name @nyc.schools.gov” and that search “commenced, persisted, and then timed out the next business day.” DOE noted that, in response to an opportunity to clarify or narrow the scope of the search, Wagner asked that the search be performed as requested.

Supreme Court rejected Wagner’s challenge to DOE’s denial. The court relied on Public Officers Law § 89 (3) (a), which provides, in part, that “when an agency has the ability to retrieve or extract a record or data maintained in a computer storage system with reasonable effort, it shall be required to do so.” Applying this provision, the court held that DOE acted reasonably to try and accommodate the request.

The Appellate Division affirmed DOE’s denial of the FOIL request on the grounds that it did not seek “a record reasonably described” (Public Officers Law § 89 [3] [a]). The court recounted that Wagner sought all emails during a 17-month period between any DOE email address and any email address from a neutral arbitrator’s firm, DOE maintains over 1 million email mailboxes, and DOE searched its database as requested and the searches timed out. The Appellate Division concluded “the descriptions provided are insufficient for purposes of extracting or retrieving the requested document[s] from the virtual files through an electronic word search . . . [by] name or other reasonable technological effort.” And the court pointed out that Wagner, when asked twice to provide a narrower timeframe, names or titles of DOE employees who might be custodians of the emails sought, and key terms to be searched, simply refused.

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Matter of NYCLU v OCA (224 AD3d 458 [AD1])
Court PASS Docket No. APL-2024-00143

In 2021, the New York Civil Liberties Union submitted a FOIL request to the Office of Court Administration seeking all documents directed to judges or their chambers staff from January 1, 2011 onward, where federal or state court decisions, statutes, regulations or ordinances are summarized, analyzed, interpreted, construed, explained, clarified, or applied. The Office of Court Administration denied the request and the administrative appeal on the grounds that the request was overbroad, did not reasonably describe the records to permit a search, and any such records were protected as an intra-agency communication and attorney-client work product.

Supreme Court directed the Office of Court Administration to provide the requested records to the NYCLU. The Appellate Division reversed, holding that the request sought information “not stored in any centralized manner, and responding to the FOIL request would involve manually reviewing files and making individual determinations as to each file” and the Office of Court Administration “made a particularized showing that attempting to comply with this broad request would be impracticable.” Alternatively, the Appellate Division found that the records were exempt under the attorney-client privilege and the attorney work product privilege, citing CPLR 4503(a)(1), CPLR 3101(c), and Public Officers Law § 87(2)(a).