

## CRIMINAL

### PRETRIAL

#### **Accusatory instruments**

##### *People v Colon-Colon*

169 AD3d 187 (4<sup>th</sup> Dept) (2/11/19 DOI).

Waiver of indictment lacked required information. Strict adherence to statute is required. SCI dismissed.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_01039.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_01039.htm)

##### *People v Titus*

171 AD3d 1256 (3<sup>rd</sup> Dept) (4/8/19 DOI).

Date and time missing from waiver of indictment. Issue survived plea. Reversal and dismissal of SCI.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_02588.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_02588.htm)

##### *People v Edwards*

171 AD3d 1402 (3<sup>rd</sup> Dept) (4/29/19 DOI).

Time of offense not set forth in waiver of indictment. No proof that the defendant signed it in open court. Dismissal of SCI.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_03108.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_03108.htm)

##### *People v Moseley*

172 AD3d 1461 (3<sup>rd</sup> Dept) (5/6/19 DOI).

Second superseding indictment was nullity, as was any action flowing from its filing. Reversal.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_03408.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_03408.htm)

##### *People v Diego*

172 AD3d 1766 (3<sup>rd</sup> Dept) (5/28/19 DOI).

Waiver of indictment and SCI defective, because they did not charge offense for which the defendant was held for action of grand jury.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_04054.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_04054.htm)

##### *People v Eggleston*

173 AD3d 1252 (3<sup>rd</sup> Dept) (6/10/19 DOI).

Waiver of indictment made after filing of indictment was defective. SCI was defective too, because crime named was not a lesser included offense of original charge.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_04497.htm](http://nycourts.gov/reporter/3dseries/2019/2019_04497.htm)

##### *People v Coss*

178 AD3d 25 (3<sup>rd</sup> Dept) (10/18/19 DOI).

The SCI was jurisdictionally defective, where it charged an offense greater than the felony charged in the felony complaint.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_07445.htm](http://nycourts.gov/reporter/3dseries/2019/2019_07445.htm)

##### *People v Walley*

176 AD3d 1513 (3<sup>rd</sup> Dept) (11/4/19 DOI).

Failure to state approximate time of offense made waiver of indictment invalid, and SCI was jurisdictionally defective.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_07816.htm](http://nycourts.gov/reporter/3dseries/2019/2019_07816.htm)

*People v Denis*

2019 NY Slip Op 08047 (4<sup>th</sup> Dept) (11/11/19 DOI).

See *Walley, supra*.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_08047.htm](http://nycourts.gov/reporter/3dseries/2019/2019_08047.htm)

**Grand jury**

*People v Arevalo*

172 AD3d 891 (2<sup>nd</sup> Dept) (5/13/19 DOI).

Error to grant motion to dismiss indictment. Integrity of proceeding not impaired. DA had no duty to present evidence that was not entirely exculpatory, and properly presented expert testimony.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_03610.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_03610.htm)

*People v Ballowe*

173 AD3d 1666 (4<sup>th</sup> Dept) (6/10/19 DOI).

Court erred in granting People leave to re-present case to second grand jury without figuring out if they presented the promised new evidence.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_04566.htm](http://nycourts.gov/reporter/3dseries/2019/2019_04566.htm)

*People v Carlin*

173 AD3d 1363 (3<sup>rd</sup> Dept) (6/17/19 DOI).

In drug possession/sale case, grand jury proof did not sufficiently establish that the substance was crack cocaine.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_04788.htm](http://nycourts.gov/reporter/3dseries/2019/2019_04788.htm)

*People v Monforte*

33 NY3d 1124 (9/6/19 DOI).

Accused was held for grand jury action upon a felony complaint charging him with 2<sup>nd</sup> degree murder, a class A felony, punishable by life in prison. Thus, he could not properly waive indictment and agree to be prosecuted for a lesser included offense—1<sup>st</sup> degree manslaughter—in order to facilitate the plea bargain.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_06451.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_06451.htm)

**Authority to prosecute**

*People v Hodgdon*

175 AD3d 65 (3<sup>rd</sup> Dept) (7/12/19 DOI).

Executive Law § 552 is facially unconstitutional in granting prosecutorial authority to officer other than AG or a DA—the Justice Center for the Protection of People with Special Needs. Its constitutionality may be preserved by construing it to require DA to consent to prosecution.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_05596.htm](http://nycourts.gov/reporter/3dseries/2019/2019_05596.htm)

*People v Abelove*

2019 NY Slip Op 08453 (3<sup>rd</sup> Dept) (11/25/19 DOI).

Based on the Executive Law and the Governor's Executive Orders, the AG had authority to investigate official misconduct and perjury by a DA in relation to the prosecution of a police officer who shot an unarmed citizen. Indictment against former Rensselaer County DA was reinstated.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_08453.htm](http://nycourts.gov/reporter/3dseries/2019/2019_08453.htm)

## **Suppression**

### **REVERSALS**

#### ***Standing***

##### *People v Dessasau*

168 AD3d 969 (2<sup>nd</sup> Dept) (1/28/19 DOI).

Appeal from judgment on plea brought up for review suppression issue. Error for court to sua sponte rule that the defendant car passenger lacked standing to challenge search of vehicle he used for job.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_00456.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_00456.htm)

##### *People v Costan*

169 AD3d 820 (2<sup>nd</sup> Dept) (2/15/19 DOI).

Error to deny adjournment for counsel to review voluminous discovery before suppression hearing.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_01089.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_01089.htm)

#### ***No consent***

##### *People v Hickey*

172 AD3d 745 (2<sup>nd</sup> Dept) (5/6/19 DOI).

Consent of the defendant's mother for police entry into home to speak to him did not encompass search of living room. Reversal, dismissal.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_03364.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_03364.htm)

##### *People v Butkiewicz*

175 AD3d 792 (3<sup>rd</sup> Dept) (8/9/19 DOI).

Evidence did not show wife's actual authority to consent to warrantless search of husband's cell phone.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_06118.htm](http://nycourts.gov/reporter/3dseries/2019/2019_06118.htm)

##### *People v Santiago*

176 AD3d 744 (2<sup>nd</sup> Dept) (10/7/19 DOI)

NYPD officers could not rely on the defendant's consent to searched by NJ parole officers to justify their search of his safe. UnMirandized statements were not voluntary.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_07099.htm](http://nycourts.gov/reporter/3dseries/2019/2019_07099.htm)

#### ***No reasonable suspicion***

##### *People v Bilal*

170 AD3d 83 (1<sup>st</sup> Dept) (3/11/19 DOI).

Police had no reason to suspect that the defendant was the gunman, where the description of the shooter was vague and generic, and area in question was not desolate. Pursuit improper.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_01673.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_01673.htm)

##### *People v Floyd*

171 AD3d 787 (2<sup>nd</sup> Dept) (4/8/19 DOI).

Police lacked reasonable suspicion to stop U-Haul truck based on anonymous tip.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_02546.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_02546.htm)

*People v Suttles*

171 AD3d 1454 (4<sup>th</sup> Dept) (4/29/19 DOI).

Blocking car was seizure, but reasonable suspicion was lacking. Suppression, reversal, dismissal.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_03158.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_03158.htm)

*People v Hill*

33 NY3d 990 (5/6/19 DOI).

People failed to preserve arguments regarding requisite justification under levels two and three.

Suppression granted. App Div reversed.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_03405.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_03405.htm)

*People v Brown*

172 AD3d 41 (1<sup>st</sup> Dept) (5/6/19 DOI).

Police lacked reasonable suspicion to frisk the D based on anonymous tip. Reversal, dismissal.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_03305.htm](http://nycourts.gov/reporter/3dseries/2019/2019_03305.htm)

*People v Turner*

178 AD3d 70 (3<sup>rd</sup> Dept) (10/18/19 DOI).

No reasonable suspicion that the D was concealing drugs under clothes so as to validate a strip search.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_07443.htm](http://nycourts.gov/reporter/3dseries/2019/2019_07443.htm)

*People v Williams*

2019 NY Slip Op 08048 (4<sup>th</sup> Dept) (11/11/19 DOI).

People did not make confirmatory observations of criminal conduct reported in anonymous 911 call and had at most founded suspicion.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_08048.htm](http://nycourts.gov/reporter/3dseries/2019/2019_08048.htm)

***No probable cause***

*People v Perez*

170 AD3d 496 (1<sup>st</sup> Dept) (3/18/19 DOI).

There was no probable cause, as needed to handcuff the defendant. Suppression and new trial granted.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_01822.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_01822.htm)

*People v Garcia*

175 AD3d 1319 (2<sup>nd</sup> Dept) (9/16/19 DOI).

There was no probable cause that vehicle contained contraband in the trunk.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_06509.htm](http://nycourts.gov/reporter/3dseries/2019/2019_06509.htm)

*People v Hightower*

176 AD3d 865 (2<sup>nd</sup> Dept) (10/15/19 DOI).

There was insufficient info. that police had probable cause to arrest the defendant.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_07280.htm](http://nycourts.gov/reporter/3dseries/2019/2019_07280.htm)

***No exigent circumstances***

*People v Grimes*

175 AD3d 712 (2<sup>nd</sup> Dept) (8/30/19 DOI).

No exigent circumstances. Bag in control of suspect at arrest may not be searched without warrant, unless police have reasonable belief suspect could grab a weapon or destroy evidence.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_06411.htm](http://nycourts.gov/reporter/3dseries/2019/2019_06411.htm)

### ***Incredible cops***

#### *People v Maiwandi*

170 AD3d 750 (2<sup>nd</sup> Dept) (3/11/19 DOI).

In drug case, detective could not possibly have observed what he claimed to have seen. Suppression, reversal, dismissal of indictment.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_01618.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_01618.htm)

### ***Darden hearing***

#### *People v Givans*

170 AD3d 1638 (4<sup>th</sup> Dept) (3/22/18 DOI).

People failed to prove the existence of the CI by extrinsic evidence. Reversal.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_02220.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_02220.htm)

#### *People v Nettles*

172 AD3d 1102 (2<sup>nd</sup> Dept) (5/20/19 DOI).

Error to deny *Darden* hearing where otherwise there was insufficient proof to show probable cause.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_03816.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_03816.htm)

### ***Custodial interrogation***

#### *People v Torres*

172 AD3d 758 (2<sup>nd</sup> Dept) (5/6/19 DOI).

Statements the defendant made to detectives were product of custodial interrogation without benefit of *Miranda* warnings. New trial ordered.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_03380.htm](http://nycourts.gov/reporter/3dseries/2019/2019_03380.htm)

#### *People v Hernandez*

174 AD3d 1352 (4<sup>th</sup> Dept) (8/5/19 DOI).

The D's statements to police should have been suppressed. He was ordered out of bedroom in middle of night, told to stay in vestibule, not *Mirandized*, but subjected to pointed questions for an hour.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_05844.htm](http://nycourts.gov/reporter/3dseries/2019/2019_05844.htm)

#### *People v Dorvil*

175 AD3d 708 (2<sup>nd</sup> Dept) (8/30/19 DOI).

Improper un-*Mirandized* custodial interrogation, including questions about employment, where defendant worked at same bar as cohort.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_06409.htm](http://nycourts.gov/reporter/3dseries/2019/2019_06409.htm)

### ***Identification***

#### *People v Jones*

173 AD3d 1062 (2<sup>nd</sup> Dept) (6/24/19 DOI).

Supreme Court erred in denying suppression of ID of the defendant from cell phone videos. Police arranged ID procedure, which was unduly suggestive.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_04966.htm](http://nycourts.gov/reporter/3dseries/2019/2019_04966.htm)

*People v Robles*

174 AD3d 653 (2<sup>nd</sup> Dept) (7/12/19 DOI).

Error under CPL 60.25 to allow People to elicit second ID witness's testimony that, during a lineup, she said that she would "lean toward" the defendant as the perpetrator. New trial.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_05572.htm](http://nycourts.gov/reporter/3dseries/2019/2019_05572.htm)

***Right to counsel***

*People v Roman*

175 AD3d 1198 (1<sup>st</sup> Dept) (9/30/19 DOI).

Defendant in custody in Las Vegas requested assistance of counsel. His later statements to police in NY, in the absence of counsel, were inadmissible.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_06719.htm](http://nycourts.gov/reporter/3dseries/2019/2019_06719.htm)

***Search warrant***

*People v Goldman*

171 AD3d 581 (1<sup>st</sup> Dept) (4/29/19 DOI).

Error to preclude counsel's review of People's search warrant application used to obtain saliva sample.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_02976.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_02976.htm)

*People v Lambey*

176 AD3d 1232 (2<sup>nd</sup> Dept) (11/4/19 DOI).

Remittal to require People to provide counsel with search warrant applications needed to resolve motion to controvert search warrant and suppress evidence found.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_07793.htm](http://nycourts.gov/reporter/3dseries/2019/2019_07793.htm)

*People v Thompson*

2019 NY Slip Op 08772 (1<sup>st</sup> Dept) (12/6/19)

Conviction of disseminating indecent material reversed. Search warrant failed to meet particularity requirements. One date was in question. But searching months of internet usage was authorized. The warrant also authorized a search of all data on the defendant's cell phones, without any time limitation.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_08772.htm](http://nycourts.gov/reporter/3dseries/2019/2019_08772.htm)

*People v Melamed*

2019 NY Slip Op 09295 (2<sup>nd</sup> Dept) (12/30/19 DOI).

App to controvert search warrant granted. Particularity requirement contravened. General exploratory search of computers and business files was verboten.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_09295.htm](http://nycourts.gov/reporter/3dseries/2019/2019_09295.htm)

***Abeyance***

*People v Green*

173 AD3d 1690 (4<sup>th</sup> Dept) (6/10/19 DOI).

The suppression court did not address whether officer's observations provided probable cause.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_04608.htm](http://nycourts.gov/reporter/3dseries/2019/2019_04608.htm)

***Other errors***

*People v Jackson*

171 AD3d 1458 (4<sup>th</sup> Dept) (4/29/19 DOI).

The defendant asked for lawyer. Error to refuse suppression.  
[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_03162.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_03162.htm)

*People v Dunbar*

2019 NY Slip Op 09018 (2<sup>nd</sup> Dept) (12/23/19 DOI).  
Error to deny app to reopen suppression hearing based on questions created about reliability of ID source.  
[http://nycourts.gov/reporter/3dseries/2019/2019\\_09018.htm](http://nycourts.gov/reporter/3dseries/2019/2019_09018.htm)

***Affirmances***

*People v Diaz*

33 NY3d 92 (2/22/19 DOI).  
Detainees informed of recording of non-privileged calls have no legitimate expectation of privacy. It was fine for DA to use incriminating statements made in calls in prosecution of the defendant. Two dissents.  
[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_01260.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_01260.htm)

*People v Simmon*

171 AD3d 557 (1<sup>st</sup> Dept) (4/19/19 DOI).  
Police deception was not so fundamentally unfair as to deny due process and undermine voluntariness of the defendant's actions. Denial of suppression upheld.  
[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_02952.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_02952.htm)

*People v Wade*

172 AD3d 1644 (3<sup>rd</sup> Dept) (5/20/19 DOI).  
Dissenters opined that search of parolee was not supported by reasonable suspicion.  
[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_03851.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_03851.htm)

*People v Cook*

2019 NY Slip Op 09059 (COA) (12/23/19 DOI).  
Supreme Court properly reopened suppression hearing upon People's application before suppression hearing was rendered in absence of concerns about finality, tailored testimony. Two-judge dissent.  
[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_09059.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_09059.htm)

**Lineups**

*People v Knox*

170 AD3d 1648 (4<sup>th</sup> Dept) (3/25/19 DOI).  
Show-up ID should have been suppressed. Error not harmless. New trial.  
[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_02230.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_02230.htm)

## GUILTY PLEAS

**Waivers of appeal**

*People v Francisco*

171 AD3d 536 (1<sup>st</sup> Dept) (4/19/19 DOI).  
Appeal waiver was ineffective as to suppression issue.  
[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_02821.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_02821.htm)

*People v Palmer*

172 AD3d 755 (2<sup>nd</sup> Dept) (5/6/19 DOI).

Waiver of right to appeal invalid. Failure to advise the defendant of nature of right to appeal and rights he was forgoing. Not clear the D read written waiver.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_03374.htm](http://nycourts.gov/reporter/3dseries/2019/2019_03374.htm)

*People v Pelige*

172 AD3d 1407 (2<sup>nd</sup> Dept) (5/28/19 DOI).

Waiver invalid where the defendant was inexperienced with criminal justice system, allocution was insufficient, he did not have interpreter when he signed written waiver.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_04204.htm](http://nycourts.gov/reporter/3dseries/2019/2019_04204.htm)

*People v Bakayoko*

174 AD3d 430 (2<sup>nd</sup> Dept) (7/19/19 DOI).

Waiver of right to appeal invalid. Terse colloquy. Twenty-year-old defendant with 11<sup>th</sup> grade education, mental health issues, limited experience in criminal justice system.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_05677.htm](http://nycourts.gov/reporter/3dseries/2019/2019_05677.htm)

*People v Ellison*

176 AD3d 969 (2<sup>nd</sup> Dept) (10/18/19 DOI).

Modification of material terms of original plea agreement vitiated waiver of right to appeal. Plea court failed to elicit D's continuing consent to waiver of appeal rights.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_07413.htm](http://nycourts.gov/reporter/3dseries/2019/2019_07413.htm)

*People v Bowden*

2019 NY Slip Op 07961 (3<sup>rd</sup> Dept) (11/11/19 DOI).

Court did not advise D of max possible sentence, so waiver of right to appeal did no preclude challenge to severity of sentence.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_07961.htm](http://nycourts.gov/reporter/3dseries/2019/2019_07961.htm)

*People v McDermid*

2019 NY Slip Op 08320 (4<sup>th</sup> Dept) (11/18/19 DOI).

Waiver of right to appeal from "conviction" did not encompass issue of harsh sentence.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_08340.htm](http://nycourts.gov/reporter/3dseries/2019/2019_08340.htm)

**Jurisdictional defect**

*People v Thiam*

2019 NY Slip Op 07712 (COA) (11/4/19 DOI).

Trial court could not accept plea to facially insufficient count where an equal or lesser misdemeanor count was facially sufficient. Lengthy concurring opinion by the Chief Judge.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_07712.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_07712.htm)

**Lopez preservation exception**

*People v Hector*

172 AD3d 1913 (4<sup>th</sup> Dept) (5/6/19 DOI).

The defendant said he was confused by plea proceedings, but court made no inquiry. Reversal, remittal.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_03504.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_03504.htm)

*People v Skyers*

173 AD3d 1565 (3<sup>rd</sup> Dept) (7/1/19 DOI).

Possibility of intoxication defense raised, triggering narrow preservation exception.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_05233.htm](http://nycourts.gov/reporter/3dseries/2019/2019_05233.htm)

*People v Steele-Warrick*

2019 NY Slip Op 08428 (2<sup>nd</sup> Dept) (11/25/19 DOI).

Plea of guilty to assault one vacated where D admitted to intent to cause physical injury and effectuating that result, but crime required serious physical injury.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_08428.htm](http://nycourts.gov/reporter/3dseries/2019/2019_08428.htm)

**Coercion**

*People v Hollmond*

170 AD3d 1193 (2<sup>nd</sup> Dept) (3/29/19 DOI).

DOCCS did not comply with court order to move the defendant to a facility closer to court. Plea was effectively coerced by violation of right to counsel.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_02354.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_02354.htm)

**Boykin error**

*People v Demkovich*

168 AD3d 1221 (3<sup>rd</sup> Dept) (1/19/19 DOI).

In interest of justice, appellate court found plea invalid, since plea court did not advise the defendant that he was waiving the right to a jury trial and the privilege against self-incrimination. Record did not show that he understood the constitutional rights being waived. Two dissents.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_00326.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_00326.htm)

*People v Glover*

168 AD3d 1217 (3<sup>rd</sup> Dept) (1/19/19 DOI).

Judgment on guilty plea affirmed. Two dissenters said the plea was defective for reasons set forth in *People v Demkovich, supra*. The majority noted the possibility that, upon vacatur of the plea, the defendant might be convicted of the original charge and serve more time. But the risk-benefit assessment was for the defendant to make.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_00325.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_00325.htm)

**Improper advice from counsel**

*People v Keller*

168 AD3d 1098 (2<sup>nd</sup> Dept) (2/4/19 DOI).

Erroneous advice about possible consecutive sentences invalidated plea.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_00620.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_00620.htm)

**Inadequate colloquy**

*People v Carrasco*

176 AD3d 503 (1<sup>st</sup> Dept) (10/18/19 DOI).

Plea vacated where court failed to explain that if the D violated plea agreement conditions, the enhanced sentence would include post-release supervision.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_07370.htm](http://nycourts.gov/reporter/3dseries/2019/2019_07370.htm)

*People v Hernandez*

176 AD3d 1100 (2<sup>nd</sup> Dept) (10/25/18 DOI).

Court erroneously told the defendant that speedy trial issue would survive guilty plea. D had right to withdraw his plea.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_07605.htm](http://nycourts.gov/reporter/3dseries/2019/2019_07605.htm)

**No Peque warnings**

*People v Griffith*

168 AD3d 760 (2<sup>nd</sup> Dept) (1/11/19 DOI).

Plea court failed to make statement on record about possibility of deportation. Remittal so the defendant could move to vacate the plea and seek to show prejudice.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_00141.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_00141.htm)

*People v Hor*

169 AD3d 713 (2<sup>nd</sup> Dept) (2/11/19 DOI).

Court failed to fulfill its *Peque* duty. The defendant was given the opportunity to move to withdraw plea.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_00899.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_00899.htm)

*People v Kostyk*

170 AD3d 1042 (2<sup>nd</sup> Dept) (3/25/19 DOI).

Court failed to fulfill its *Peque* duty. The defendant was given the opportunity to move to withdraw plea.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_02118.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_02118.htm)

*People v Arias*

170 AD3d 576 (1<sup>st</sup> Dept) (3/29/19 DOI).

Notice requirement met by notice served on counsel by the DA before the guilty plea.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_02270.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_02270.htm)

*People v Mohamed*

171 AD3d 796 (2<sup>nd</sup> Dept) (4/8/19 DOI).

Court failed in *Peque* duty. Remand. Thorough discussion of *Peque*, preservation, and prejudice analysis.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_02557.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_02557.htm)

*People v Bermudez*

173 AD 3d 579 (1<sup>st</sup> Dept) (7/1/19 DOI).

In remittal; hearing, court found reasonable possibility that the defendant would not have pleaded guilty if properly advised.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_05063.htm](http://nycourts.gov/reporter/3dseries/2019/2019_05063.htm)

**People v Suazo**

*People v Udeke*

2019 NY Slip Op 09057 (COA) (12/23/19 DOI).

While the D's leave application was pending, *People v Suazo* was decided. Plea colloquy misinformed the D instating he would not get a jury trial if prosecuted on reduced B charge. Majority upheld App Div order affirming conviction. Two-judge dissent.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_09057.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_09057.htm)

### **Catu violation**

#### *People v Mudd*

169 AD3d 1166 (3<sup>rd</sup> Dept) (2/22/19 DOI).

County Court failed to advise the defendant that sentence would include PRS. Reversal.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_01265.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_01265.htm)

#### *People v Watson*

2019 NY Slip Op 08230 (2<sup>nd</sup> Dept) (11/18/19 DOI).

D not told about PRS at plea proceedings violated condition by arrest before sentence, and enhanced sentence included PSR. Plea not knowing, voluntary, intelligent.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_08230.htm](http://nycourts.gov/reporter/3dseries/2019/2019_08230.htm)

### **Empty promises**

#### *People v Tchiyuka*

169 AD3d 1398 (4<sup>th</sup> Dept) (2/4/19 DOI).

Guilty plea was induced by unfulfillable promise of jail time credit. Remittal.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_00754.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_00754.htm)

#### *People v Golden*

170 AD3d 528 (1<sup>st</sup> Dept) (3/25/19 DOI).

Promise of shock could not be honored. Vacatur of plea.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_02027.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_02027.htm)

#### *People v Rodriguez*

33 NY3d 956 (4/8/19 DOI).

Sentence enhancement was proper based on the defendant's violation of cooperation agreement in not testifying in different case. Two judges dissented as to proper interpretation of agreement.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_02444.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_02444.htm)

#### *People v McCullen*

171 AD3d 1492 (4<sup>th</sup> Dept) (4/29/19 DOI).

Promise of credit for time served could not be fulfilled. Remittal.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_03180.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_03180.htm)

### **Right to counsel/IAC/conflict of interest**

#### *People v Jones*

171 AD3d 1249 (3<sup>rd</sup> Dept) (4/8/19 DOI).

Counsel was ineffective in not realizing that, at time of reversal and remittal, the defendant had served the maximum sentence. Plea vacated.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_02586.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_02586.htm)

#### *People v Hill*

172 AD3d 1095 (2<sup>nd</sup> Dept) (5/20/19 DOI).

Attorney who represented the defendant, and whose law office represented prosecution witness in one case, had conflict of interest. Reversal.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_03810.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_03810.htm)

*People v Marshall*

173 AD3d 1257 (3<sup>rd</sup> Dept) (6/10/19 DOI).

Reversal and remittal based on conflict of interest, where former clients of defense counsel might be witnesses against the defendant.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_04499.htm](http://nycourts.gov/reporter/3dseries/2019/2019_04499.htm)

*People v Jones*

173 AD3d 1628 (4<sup>th</sup> Dept) (6/10/19 DOI).

Reversal where plea court failed to inquire regarding the defendant's complaint that counsel provided defective representation.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_04543.htm](http://nycourts.gov/reporter/3dseries/2019/2019_04543.htm)

*People v Edwards*

173 AD3d 1615 (4<sup>th</sup> Dept) (6/10/19 DOI).

Same error as *People v Jones, supra*.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_04537.htm](http://nycourts.gov/reporter/3dseries/2019/2019_04537.htm)

*People v Palmer*

173 AD3d 1560 (3<sup>rd</sup> Dept) (7/1/19 DOI).

Conflict where PD's office represented the defendant and a confidential informant.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_05228.htm](http://nycourts.gov/reporter/3dseries/2019/2019_05228.htm)

*People v Bloodworth*

173 AD3d 1838 (4<sup>th</sup> Dept) (7/1/19 DOI).

Defense counsel failed to make meritorious speedy trial argument.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_05284.htm](http://nycourts.gov/reporter/3dseries/2019/2019_05284.htm)

*People v Johnson*

2019 NY Slip Op 08348 (1<sup>st</sup> Dept) (11/25/19 DOI).

Defendant pleaded guilty to aggravated felony. Counsel said he would "most likely" be deported. That was ineffective and entitled D to move to vacate the plea and seek to show prejudice.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_08348.htm](http://nycourts.gov/reporter/3dseries/2019/2019_08348.htm)

**Motions to withdraw guilty plea**

*People v Dorsey*

170 AD3d 1325 (3<sup>rd</sup> Dept) (3/18/19 DOI).

Denial of motion based on recantation upheld. Such statements are generally unreliable.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_01852.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_01852.htm)

**Other**

*People v Dimon*

174 AD3d 540 (2<sup>nd</sup> Dept) (7/8/19 DOI).

The defendant was entitled to hearing as to whether she violated plea conditions.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_05417.htm](http://nycourts.gov/reporter/3dseries/2019/2019_05417.htm)

# TRIALS

## **Cognizable crimes, duplicitous counts**

### *People v Dibble*

2019 NY Slip Op 07165 (4<sup>th</sup> Dept) (10/7/19 DOI).

There is no such crime as attempted menacing of an officer, since an attempt is already an element of the offense, under P.L. § 120.18.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_07165.htm](http://nycourts.gov/reporter/3dseries/2019/2019_07165.htm)

### *People v Kniffin*

176 AD3d 1584 (4<sup>th</sup> Dept) (10/7/19 DOI).

Defendant was charged in single-count indictment with criminal mischief. But the proof established two distinct offenses. The indictment was dismissed due to the duplicitous offenses.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_07176.htm](http://nycourts.gov/reporter/3dseries/2019/2019_07176.htm)

### *People v Delacruz*

2019 NY Slip Op 08498 (1<sup>st</sup> Dept) (11/25/19 DOI).

Conviction for attempted gang assault 2 vacated. Completed crime involves intent to cause physical injury but actually causing serious physical injury. Can't try to cause an unintended result.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_08498.htm](http://nycourts.gov/reporter/3dseries/2019/2019_08498.htm)

### *People v Baines*

2019 NY Slip Op 08794 (1<sup>st</sup> Dept) (12/13/19 DOI).

Second-degree promotion prostitution charge dismissed as duplicitous, because it spanned the same time period as sex trafficking counts and did not require proof of other facts.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_08794.htm](http://nycourts.gov/reporter/3dseries/2019/2019_08794.htm)

## **Speedy trial**

### *People v Stewart*

171 AD3d 625 (1<sup>st</sup> Dept) (4/29/19 DOI).

Failure to make proper, slam-dunk speedy trial motion constituted IAC. Indictment dismissed.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_03142.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_03142.htm)

### *People v Harrison*

171 AD3d 1481 (4<sup>th</sup> Dept) (4/29/19 DOI).

People did not show they were diligent in trying to secure witness's presence. Post-readiness time chargeable to them. Speedy trial violation and dismissal.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_03173.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_03173.htm)

### *People v Swails*

172 AD3d 579 (1<sup>st</sup> Dept) (5/28/19 DOI).

Constitutional speedy trial claim not preserved in CPL 30.30 motion.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_04031.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_04031.htm)

### *People v Coulibaly*

172 AD3d 647 (1<sup>st</sup> Dept) (5/28/19 DOI).

IAC where speedy trial relief would have been granted if includable time had been properly calculated.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_04289.htm](http://nycourts.gov/reporter/3dseries/2019/2019_04289.htm)

*People v Johnson*

174 AD3d 1510 (4<sup>th</sup> Dept) (8/5/19 DOI).

People should have been charged for post-readiness delay for period after they implicitly requested an adjournment to seek a superseding indictment.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_05920.htm](http://nycourts.gov/reporter/3dseries/2019/2019_05920.htm)

*People v Perkins*

175 AD3d 1327 (2<sup>nd</sup> Dept) (9/16/16 DOI)

Remittal needed. D made prima facie showing on CPL 30.30 app, but People did not prove exclusions.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_06516.htm](http://nycourts.gov/reporter/3dseries/2019/2019_06516.htm)

**Authority to prosecute**

*People v Wassell*

171 AD3d 1499 (4<sup>th</sup> Dept) (4/29/19 DOI).

No proof that superintendent of state police asked for AG to prosecute the case. Reversal, dismissal.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_03187.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_03187.htm)

**Severance**

*People v Colon*

2019 NY Slip Op 08449 (3<sup>rd</sup> Dept) (11/25/19 DOI).

Each defendant implicated the other for the cocaine found in the vehicle. Given the antagonistic, irreconcilable defenses, Supreme Court erred in denying motion to sever.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_08449.htm](http://nycourts.gov/reporter/3dseries/2019/2019_08449.htm)

**Jury issues**

***Challenges for cause***

*People v Clark*

171 AD3d 1530 (4<sup>th</sup> Dept) (4/29/19 DOI).

Prospective juror said the defendant's presence meant he did something bad. Another said she'd think about friend's stabbing in hearing evidence about the instant stabbing. Error to deny for-cause challenges.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_03231.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_03231.htm)

*People v Rodriguez*

172 AD3d 509 (1<sup>st</sup> Dept) (5/20/19 DOI).

Juror, not sure he could be impartial about sex offender's guilt, should have been struck. New trial.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_03734.htm](http://nycourts.gov/reporter/3dseries/2019/2019_03734.htm)

*People v Alvarez*

174 AD3d 638 (2<sup>nd</sup> Dept) (7/12/19 DOI).

Court failed to get assurances from three problem jurors. Relevant facts as to bias not set forth in decision.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_05555.htm](http://nycourts.gov/reporter/3dseries/2019/2019_05555.htm)

*People v Hernandez*

174 AD3d 1352 (4<sup>th</sup> Dept) (8/5/19 DOI).

Court should have granted challenge to prospective juror who insisted that officers were unlikely to lie under oath since that would endanger their pensions. Requisite assurances were not obtained.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_05844.htm](http://nycourts.gov/reporter/3dseries/2019/2019_05844.htm)

*People v Jackson*

176 AD3d 1312 (3<sup>rd</sup> Dept) (10/18/19 DOI).

Error to deny defense challenges to prospective juror who expressed sympathy for victim and another who was troubled by nature of crime.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_07442.htm](http://nycourts.gov/reporter/3dseries/2019/2019_07442.htm)

***Batson claims***

*People v Watson*

169 AD3d 81 (1<sup>st</sup> Dept) (1/11/19 DOI).

At *Batson* reconstruction hearing, People did not produce contemporaneous notes or testimony of ADA who did voir dire. Pretext for peremptory challenges found. Conviction reversed, indictment dismissed.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_00217.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_00217.htm)

*People v Alexander*

168 AD3d 755 (2<sup>nd</sup> Dept) (1/11/19 DOI).

Supreme Court should not have granted the prosecutor's peremptory challenge to a prospective black juror without ruling on the defendant's initial *Batson* challenge. New trial.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_00135.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_00135.htm)

*People v Johnson*

171 AD3d 1089 (2<sup>nd</sup> Dept) (4/19/19 DOI).

Young adults are not a cognizable group for a *Batson* challenge.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_02897.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_02897.htm)

*People v Teran*

172 AD3d 447 (1<sup>st</sup> Dept) (5/13/19 DOI).

Affirmance in reviewing denial of *Batson* challenge, but concurring opinion explored troubling stereotypes invoked by prosecutors.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_03532.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_03532.htm)

***Reverse Batson***

*People v Bloise*

169 AD3d 594 (1<sup>st</sup> Dept) (3/1/19 DOI).

No support for trial court's rejection of defense counsel's race-neutral reasons for striking two panelists.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_01363.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_01363.htm)

***Antommarchi***

*People v Geddis*

173 AD3d 1724 (4<sup>th</sup> Dept) (6/17/19 DOI).

Violation of D's right to be present when prospective juror advised court that her son was a convicted felon.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_04819.htm](http://nycourts.gov/reporter/3dseries/2019/2019_04819.htm)

***Other***

*People v Delvalle*

172 AD3d 1090 (2<sup>nd</sup> Dept) (5/20/19 DOI).

Affirmance, but disapproval of judicial shaming of prospective jurors for not being English-proficient.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_03806.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_03806.htm)

*People v Price*

175 AD3d 1436 (2<sup>nd</sup> Dept) (9/20/19 DOI)

Trial court should have granted defendant's only slightly belated peremptory challenge.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_06629.htm](http://nycourts.gov/reporter/3dseries/2019/2019_06629.htm)

**Quantum of evidence**

***Murder***

*People v Lendof-Gonzalez*

170 AD3d 1508 (4<sup>th</sup> Dept) (3/15/19 DOI).

Attempted murder not proven, where the defendant and the inmate he asked to kill his wife took no steps toward effectuating the crime.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_01904.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_01904.htm)

*People v McDonald*

172 AD3d 1900 (4<sup>th</sup> Dept) (5/6/19 DOI).

The defendant's presence at crime scene did not prove guilt. No motive shown. Reversal, dismissal.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_03494.htm](http://nycourts.gov/reporter/3dseries/2019/2019_03494.htm)

*People v Parris*

173 AD3d 1745 (4<sup>th</sup> Dept) (6/17/19 DOI).

The evidence established that the defendant intended to kill the victim, at whom he fired eight times, with six bullets striking him. Thus, the evidence was insufficient to support depraved indifference murder.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_04828.htm](http://nycourts.gov/reporter/3dseries/2019/2019_04828.htm)

*People v Hemphill*

173 AD3d 471 (1<sup>st</sup> Dept) (6/17/19 DOI).

Dissent persuasively explains why identity of shooter was not proven beyond a reasonable doubt or, in alternative, why new trial should have been ordered, given manner in which trial court allowed DA to grossly mislead jury about a witness's false statement that she never ID'd another man as the shooter.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_04646.htm](http://nycourts.gov/reporter/3dseries/2019/2019_04646.htm)

*People v Clavell*

176 AD3d 844 (2<sup>nd</sup> Dept) (10/15/19 DOI).

Motive and opportunity were not enough, where no direct evidence of guilt linked the defendant to the crime, and the inferences at most created a suspicion that the D killed the mother of his child over child support obligations.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_07271.htm](http://nycourts.gov/reporter/3dseries/2019/2019_07271.htm)

***Manslaughter***

*People v Gonzalez*

174 AD3d 1542 (4<sup>th</sup> Dept) (8/5/19 DOI)

Manslaughter 1 conviction was against the weight, where cross-examination of ME revealed that injuries to infant could have been sustained at a time when the D was not with the victim, but four other people—none of whom was interviewed by police—were there.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_05947.htm](http://nycourts.gov/reporter/3dseries/2019/2019_05947.htm)

## ***Robbery***

### *People v Allende*

168 AD3d 464 (1<sup>st</sup> Dept) (1/11/19 DOI).

There was no evidence that victim saw what appeared to be a firearm.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_00195.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_00195.htm)

### *People v Jones*

173 AD3d 1062 (2<sup>nd</sup> Dept) (6/24/19 DOI).

Robbery verdict against weight.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_04966.htm](http://nycourts.gov/reporter/3dseries/2019/2019_04966.htm)

## ***Assault***

### *People v Burman*

173 AD3d 1727 (4<sup>th</sup> Dept) (6/17/19 DOI).

No mens rea exists regarding age as to assault 2 of victim age 65 by defendant more than 10 years younger.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_04820.htm](http://nycourts.gov/reporter/3dseries/2019/2019_04820.htm)

### *People v Truluck*

173 AD3d 1070 (2<sup>nd</sup> Dept) (6/24/19 DOI).

People failed to meet burden set forth in consented to, erroneous, jury instruction regarding police officer engaging in lawful duty at time of assault.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_04969.htm](http://nycourts.gov/reporter/3dseries/2019/2019_04969.htm)

### *People v Palant*

176 AD3d 865 (2<sup>nd</sup> Dept) (10/15/19 DOI).

Jury was not justified in finding that victim sustained serious physical injury to eye. But he did suffer a physical injury, so convictions reduced from 1<sup>st</sup> and 2<sup>nd</sup> to 3<sup>rd</sup> degree assault.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_07280.htm](http://nycourts.gov/reporter/3dseries/2019/2019_07280.htm)

### *People v Nelson*

2019 NY Slip Op 09144 (4<sup>th</sup> Dept) (12/23/19 DOI).

Gang assault 1 reduced to 2. Proof did not show D shared co-D's intent to cause serious physical injury.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_09144.htm](http://nycourts.gov/reporter/3dseries/2019/2019_09144.htm)

## ***Burglary***

### *People v Degnan*

168 AD3d 1224 (3<sup>rd</sup> Dept) (1/19/19 DOI).

The People presented no proof that, at time of entry, the defendant had larcenous intent. Burglary 2 conviction reduced to criminal trespass two.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_00327.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_00327.htm)

## ***Kidnapping***

### *People v Mejia*

169 AD3d 715 (2<sup>nd</sup> Dept) (2/11/19 DOI).

Kidnapping count dismissed based on merger doctrine, where acts were so much part of another crime that the latter could not have been committed without the kidnapping acts.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_00903.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_00903.htm)

*People v Terry*

169 AD3d 938 (2<sup>nd</sup> Dept) (2/22/19 DOI).

The defendant was mad at his personal injury attorney, lingered in his parking lot, and later was found with a gun and handcuffs. That was a far cry from attempted kidnapping, the appellate court found in reversing the conviction.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_01243.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_01243.htm)

**CPW 3**

*People v Rodgers*

174 AD3d 924 (2<sup>nd</sup> Dept) (8/5/19 DOI).

People failed to establish that razor blade wrapped in black tape was meant to be used primarily as a weapon. Indictment dismissed.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_06002.htm](http://nycourts.gov/reporter/3dseries/2019/2019_06002.htm)

*People v Knowles*

2019 NY Slip Op 08770 (1<sup>st</sup> Dept) (12/6/19 DOI).

CPW 3 conviction against weight, where there was no proof that the D used, attempted to use, or threatened to use, the box cutter found on his person unlawfully against another person.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_08770.htm](http://nycourts.gov/reporter/3dseries/2019/2019_08770.htm)

**Sexual crimes**

*People v Madsen*

168 AD3d 1134 (3<sup>rd</sup> Dept) (1/4/19 DOI).

Numerous convictions of sexual offenses were reversed as against the weight of evidence. One victim did not remember how many times the defendant had oral sexual contact with him. Multiple counts were duplicitous. The jurors were not told to relate each count to a specific act and not use any single act to support guilt on more than one count.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_00003.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_00003.htm)

*People v Partridge*

173 AD3d 1769 (4<sup>th</sup> Dept) (6/17/19 DOI).

Legally insufficient evidence as to relevant time frame for predatory sexual assault against child.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_04848.htm](http://nycourts.gov/reporter/3dseries/2019/2019_04848.htm)

**Larceny**

*People v Gross*

169 AD3d 159 (2<sup>nd</sup> Dept) (1/28/19 DOI).

As to the defendant-broker for prescription drugs sold to pharmacy, People failed to prove the grand larceny element of making a false representation on which the pharmacy relied.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_00461.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_00461.htm)

*People v Deleon*

34 NY3d 965 (10/25/19 DOI).

Overcharging. No proof of value of monetary value of items fished out of mailbox.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_07522.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_07522.htm)

## ***Drug crimes***

### *People v Correa*

176 AD3d 411 (1<sup>st</sup> Dept) (10/7/19 DOI)

Verdict of guilty as to 3<sup>rd</sup> degree CSCS was against the weight of evidence, where officers did not observe the exchange of money or drugs.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_07017.htm](http://nycourts.gov/reporter/3dseries/2019/2019_07017.htm)

### *People v Cruz*

176 AD3d 852 (2<sup>nd</sup> Dept) (10/15/19 DOI).

People failed to disprove agency defense, where the panhandler D and undercover knew each other from prior transaction, D was promised no reward, and did nothing to suggest he was selling drugs.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_07273.htm](http://nycourts.gov/reporter/3dseries/2019/2019_07273.htm)

### *People v Gaworecki*

174 AD3d 1143 (3<sup>rd</sup> Dept) (7/19/19 DOI).

Dissenters opined that evidence was insufficient to support conviction of the defendant drug seller for the decedent's demise from acute heroin toxicity.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_05725.htm](http://nycourts.gov/reporter/3dseries/2019/2019_05725.htm)

### *People v Gillette*

2019 NY Slip Op 09323 (3<sup>rd</sup> Dept) (12/30/19).

Wrong place, wrong time. D's presence in apt. where meth was made was not enough to prove guilt. Neither actual nor constructive possession of illicit materials was shown.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_09323.htm](http://nycourts.gov/reporter/3dseries/2019/2019_09323.htm)

## ***Other crimes***

### *People v Kaplan*

168 AD3d 1229 (3<sup>rd</sup> Dept) (1/19/19 DOI).

Conviction for terroristic threat reversed. No evidence that the D intended to affect conduct of unit of gov't. Imprudent threat he blurted reflected only vented anger that Sheriff did not return his property to him.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_00329.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_00329.htm)

### *People v Tromans*

2019 NY Slip Op 08454 (3<sup>rd</sup> Dept) (11/25/19 DOI).

Conviction for tampering with physical evidence, in case involving car striking and killing pedestrian, was against the weight of evidence. Extensive proof showed that the defendant did not take obvious steps to conceal, alter, or destroy incriminating evidence.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_08454.htm](http://nycourts.gov/reporter/3dseries/2019/2019_08454.htm)

## **Evidentiary, etc. errors**

### ***Brady***

#### *People v Rong He*

34 NY3d 956 (10/18/18 DOI).

The People violated *Brady* by refusing to disclose contact information for witnesses who would have contradicted the People's theory of the case.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_07477.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_07477.htm)

## ***Confrontation clause***

### *People v Gonsalves*

170 AD3d 886 (2<sup>nd</sup> Dept) (3/18/19 DOI).

Trial court erred in admitting testimony about prejudicial post-crime actions not shown to be connected to the defendant. New trial.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_01792.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_01792.htm)

### *People v Wakefield*

175 AD3d 158 (3<sup>rd</sup> Dept) (8/16/19 DOI).

The defendant raised substantial questions regarding a violation of his right to confront witnesses, based on his not having had access to source code for TrueAllele. Report was testimonial in nature. In certain circumstances, an AI-type system could be a declarant.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_06143.htm](http://nycourts.gov/reporter/3dseries/2019/2019_06143.htm)

## ***Molineux/Ventimiglia***

### *People v Dunham*

170 AD3d 659 (1<sup>st</sup> Dept) (3/29/19 DOI).

*Molineux* identity exception was not limited to unique M.O.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_02265.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_02265.htm)

### *People v Saxe*

174 AD3d 958 (3<sup>rd</sup> Dept) (7/8/19 DOI).

Reversal where trial court let People present detailed testimony from two witnesses about sexual abuse by the defendant seven years before disclosure by instant victim.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_05345.htm](http://nycourts.gov/reporter/3dseries/2019/2019_05345.htm)

### *People v Calderon*

176 AD3d 594 (1<sup>st</sup> Dept) (10/25/19 DOI).

The defendant's absence from pretrial *Ventimiglia* hearing violated his right to be present at all material stages of trial.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_07707.htm](http://nycourts.gov/reporter/3dseries/2019/2019_07707.htm)

### *People v Hollander*

2019 NY Slip Op 07950 (2<sup>nd</sup> Dept) (11/11/19 DOI).

Probative value of proof regarding fraud and moral turpitude as to prior acts was outweighed by prejudice.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_07950.htm](http://nycourts.gov/reporter/3dseries/2019/2019_07950.htm)

## ***Sandoval***

### *People v Walters*

172 AD3d 916 (2<sup>nd</sup> Dept) (5/13/19 DOI).

Trial court prejudiced defendant by changing its *Sandoval* ruling. New trial.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_03632.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_03632.htm)

### *People v Moco*

176 AD3d 644 (1<sup>st</sup> Dept) (11/4/19 DOI).

People should not have been permitted to cross-examine D about underlying facts of two prior arrests that resulted in dismissals. But harmless error.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_07855.htm](http://nycourts.gov/reporter/3dseries/2019/2019_07855.htm)

### ***Cross-examination and redirect***

#### *People v Holmes*

170 AD3d 532 (1<sup>st</sup> Dept) (3/25/19 DOI).

Reversible error to preclude cross-exam on federal action against officer that settled.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_02033.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_02033.htm)

#### *People v Smith*

171 AD3d 523 (1<sup>st</sup> Dept) (4/15/19 DOI).

Error to preclude cross-exam of detective about lawsuit against him for fabricating evidence. Harmless.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_02803.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_02803.htm)

#### *People v Watts*

176 AD3d 981 (2<sup>nd</sup> Dept) (10/18/19 DOI).

Defense counsel cross-examined sex abuse complainants about civil suits to show financial motive for testimony. Defendant was deprived of fair trial by excessive redirect examination allowing proof of uncharged complaints by 10 other victims.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_07426.htm](http://nycourts.gov/reporter/3dseries/2019/2019_07426.htm)

#### *People v Kennedy*

2019 NY Slip Op 07899 (2<sup>nd</sup> Dept) (11/11/19 DOI).

Error to limit defense cross regarding DNA transfer, a relevant topic. Error was not harmless.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_07899.htm](http://nycourts.gov/reporter/3dseries/2019/2019_07899.htm)

#### *People v Burgess*

2019 NY Slip Op 09364 (1<sup>st</sup> Dept) (12/30/19 DOI).

Trial court erred in disallowing cross of cop accused of misconduct in civil lawsuit.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_09364.htm](http://nycourts.gov/reporter/3dseries/2019/2019_09364.htm)

### ***Uncharged theory***

#### *People v McLean*

170 AD3d 1196 (3<sup>rd</sup> Dept) (3/29/19 DOI).

Reversal where trial court erred in allowing prejudicial amendment to indictment.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_02356.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_02356.htm)

#### *People v Gentles*

171 AD3d 471 (1<sup>st</sup> Dept) (4/8/19 DOI).

Jury charge constructively amended indictment by presenting different theory of prosecution. Reversal and new trial in interest of justice.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_02623.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_02623.htm)

### ***Hearsay***

#### *People v Cartagena*

170 AD3d 1196 (1<sup>st</sup> Dept) (3/11/19 DOI).

Co-D's text and Facebook post exceeded proper bounds of state-of-mind proof. But errors were harmless.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_01652.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_01652.htm)

*People v Figueroa*

171 AD3d 549 (1<sup>st</sup> Dept) (4/19/19 DOI).

Victim's statements during 911 call did not qualify under present sense impression exception, because of time for reflection. But harmless error.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_02836.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_02836.htm)

*People v Smith*

171 AD3d 1102 (2<sup>nd</sup> Dept) (4/19/19 DOI).

Recording of 911 call by victim's father properly admitted as excited utterance or present sense impression, where it was made within seconds of shooting.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_02911.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_02911.htm)

***Other evidentiary issues***

*People v Robinson*

170 AD3d 893 (2<sup>nd</sup> Dept) (3/18/19 DOI).

Trial court erred in allowing admission of recordings of the defendant's call from Rikers Island, since they were likely about an unrelated crime, and could mislead the jury. New trial.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_01799.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_01799.htm)

*People v Tapia*

33 NY3d 257 (4/8/19 DOI).

Witness's grand jury testimony was properly admitted as a past recollection recorded, when he could not independently recall circumstances leading to arrest. Three-judge dissent.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_02442.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_02442.htm)

*People v Easley*

171 AD3d 785 (2<sup>nd</sup> Dept) (4/8/19 DOI).

Proper to deny request for *Frye* hearing as to software program used to evaluate likelihood that DNA mixture originated from defendant. Another court found that program was not novel technique.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_02545.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_02545.htm)

*People v Juarez*

172 AD3d 1231 (2<sup>nd</sup> Dept) (5/28/19 DOI).

Eyewitness said he felt intimidated by courtroom spectator who was allegedly in co-D's gang. Allowing such testimony was error, but harmless.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_03990.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_03990.htm)

*People v Shelley*

172 AD3d 1245 (2<sup>nd</sup> Dept) (5/28/19 DOI).

Ample evidence that witness was unavailable due to D's threats.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_04002.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_04002.htm)

*People v Folk*

173 AD3d 403 (6/10/19 DOI).

Trial court erred in admitting grand jury testimony of witness under past recollection recorded exception.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_04321.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_04321.htm)

*People v Cook*

173 AD3d 633 (1<sup>st</sup> Dept) (7/1/19 DOI).

New trial granted where trial court denied application to receive testimony indicating that robbery victim, who was unavailable to testify at trial, had failed to ID the defendant at a lineup.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_05210.htm](http://nycourts.gov/reporter/3dseries/2019/2019_05210.htm)

*People v Youngs*

175 AD3d 1604 (9/16/19 DOI).

County Court erred in precluding proof of reputation for being untruthful purported sexual abuse victim.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_06540.htm](http://nycourts.gov/reporter/3dseries/2019/2019_06540.htm)

**Other trial errors**

*People v Ortiz*

168 AD3d 482 (1<sup>st</sup> Dept) (1/19/19 DOI).

Multiple errors denied the defendant a fair trial: lay witness testimony about cell phone tower coverage; police testimony about a victim's prior ID; a jury charge highlighting pro-prosecution proof and the defendant's failure to testify; an absent missing witness charge; a non-resolution of a possibly grossly unqualified juror.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_00221.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_00221.htm)

*Matter of Pinney v Van Houten*

168 AD3d 1293 (3<sup>rd</sup> Dept) (1/28/19 DOI).

Prohibition denied to the defendant seeking to preclude prosecution by special DA. Appellate court cautioned that decision did not require recusal in all cases in which DA was called on to investigate a police officer.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_00509.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_00509.htm)

*People v Smith*

170 AD3d 1339 (3<sup>rd</sup> Dept) (3/18/19 DOI).

New trial ordered where trial was held in absentia, even though: the defendant was present at all prior appearances; counsel tried to find him; resentencing would have been easy; lost proof not an issue.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_01858.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_01858.htm)

*People v Towns*

33 NY3d 326 (5/13/19 DOI).

No fair trial where court entered into cooperation agreement with co-D requiring him to testify against the defendant in exchange for a more favorable sentence. Reversal of Fourth Department order, new trial. ordered, new judge too. *See also People v Lawhorn* (4<sup>th</sup> Dept) (12/23/19 DOI) (same error).

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_03527.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_03527.htm)

*People v Wager*

173 AD3d 1352 (3<sup>rd</sup> Dept) (6/17/19 DOI).

ATV is not a motor vehicle within meaning of Penal Law § 125.13 (1).

[http://nycourts.gov/reporter/3dseries/2019/2019\\_04786.htm](http://nycourts.gov/reporter/3dseries/2019/2019_04786.htm)

*People v Morris*

173 AD3d 1220 (2<sup>nd</sup> Dept) (7/1/19 DOI).

Trial court erred in not allowing the D to submit a late notice of intent to introduce psychiatric evidence.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_05160.htm](http://nycourts.gov/reporter/3dseries/2019/2019_05160.htm)

*People v Ramsey*

174 AD3d 651 (2<sup>nd</sup> Dept) (7/12/19 DOI).

Judge's excessive questioning made him appear to be an advocate for People and deprived the defendant of a fair trial. Reversal in interest of justice.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_05571.htm](http://nycourts.gov/reporter/3dseries/2019/2019_05571.htm)

*People v Ward*

175 AD3d 722 (2<sup>nd</sup> Dept) (8/30/19 DOI).

Fair trial denied by erroneous rulings relating to purported murder witness's refusal to take oath and her invocation of the Fifth.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_06419.htm](http://nycourts.gov/reporter/3dseries/2019/2019_06419.htm)

*People v Ruffin*

2019 NY Slip Op 08771 (1<sup>st</sup> Dept) (12/6/19).

Error to exclude D's family members from key courtroom during key testimony by undercover officer.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_08771.htm](http://nycourts.gov/reporter/3dseries/2019/2019_08771.htm)

*People v Lewis*

2019 NY Slip Op 09023 (2<sup>nd</sup> Dept) (12/23/19 DOI).

Error to admit photos of irrelevant photos of complainants private parts in sex abuse case. New trial in interest of justice.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_09023.htm](http://nycourts.gov/reporter/3dseries/2019/2019_09023.htm)

**Summation**

*People v Cunningham*

171 AD3d 1207 (2<sup>nd</sup> Dept) (4/29/19 DOI).

Prosecutor's remarks in summation were improper but did not require reversal. Basic principles revisited.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_03070.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_03070.htm)

*People v Hollander*

2019 NY Slip Op 07950 (2<sup>nd</sup> Dept) (11/11/19 DOI).

In summation, People misled jury by intimating prior crime was similar to prior one.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_07950.htm](http://nycourts.gov/reporter/3dseries/2019/2019_07950.htm)

*People v Dawson*

2019 NY Slip Op 08689 (2<sup>nd</sup> Dept)(12/6/19 DOI).

Prosecutor's summation was exemplar of what not to do in closing. Errors included denigrating defense, violating D's right to remain silent, and invoking sympathy for victim. Defense counsel failed to object. New trial in interest of justice.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_08689.htm](http://nycourts.gov/reporter/3dseries/2019/2019_08689.htm)

*People v Day*

2019 NY Slip Op (2<sup>nd</sup> Dept) (12/13/19 DOI).

In summation said the defendant's DNA was found on the weapon used to shoot the victim. That was untrue. Counsel objected. No curative instruction was given. Fair trial denied. Reversal.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_08858.htm](http://nycourts.gov/reporter/3dseries/2019/2019_08858.htm)

## **Jury charges/notes/deliberations**

### ***Definitions***

#### *People v Ataroua*

168 AD3d 466 (1<sup>st</sup> Dept) (1/11/19 DOI).

Trial court committed reversible error in failing to instruct jury on definition of “deprive” in connection with larceny element of attempted robbery—the offense underlying the felony murder charge.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_00197.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_00197.htm)

### ***Lesser included offenses***

#### *People v Camacho*

2019 NY Slip Op 08944 (1<sup>st</sup> Dept) (12/13/19 DOI).

Defense counsel provided ineffective assistance when he failed to make a timely request for submission of petit larceny as a lesser included offense of the robbery. A clear mistake, no strategic reason.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_08944.htm](http://nycourts.gov/reporter/3dseries/2019/2019_08944.htm)

### ***Justification***

#### *People v Brown*

169 AD3d 1488 (4<sup>th</sup> Dept) (2/11/19 DOI).

New trial where County Court erred in refusing to charge jury on defense of justification, based on purportedly unprovoked retaliatory attack by COs at prison against the defendant.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_01023.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_01023.htm)

#### *People v Brown*

33 NY3d 316 (5/13/19 DOI).

First Department erred in finding that justification instruction should have been given.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_03529.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_03529.htm)

#### *People v Vega*

33 NY3d 1002 (5/13/19 DOI).

Challenged jury instruction in assault case was proper.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_03530.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_03530.htm)

#### *People v Rkein*

33 NY3d 1001 (5/13/19 DOI).

Proper to deny request for justification instruction in assault case.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_03528.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_03528.htm)

### ***Acquittal/justification***

#### *People v Barnar*

168 AD3d 623 (1<sup>st</sup> Dept) (2/4/19 DOI).

Manslaughter one reduced in interest of justice, retroactively applying *People v Velez*, 131 AD3d 129 (acquittal on top homicide count, based on justification, precluded jury consideration of lesser offenses).

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_00673.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_00673.htm)

*People v Akbar*

169 AD3d 708 (2<sup>nd</sup> Dept) (2/11/19 DOI).

Jury erred in not instructing jury that, if they found the defendant not guilty of attempted murder based on justification, they could not consider the lesser accounts.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_00894.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_00894.htm)

*People v Rosario*

169 AD3d 1066 (2<sup>nd</sup> Dept) (3/1/19 DOI).

Jury charge failed to convey that, if the defendant was found not guilty of attempted murder based on justification, then deliberations must cease. New trial.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_01432.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_01432.htm)

*People v Wah*

171 AD3D 574 (1<sup>st</sup> Dept) (4/29/19 DOI).

Court violated principles set forth in *People v Velez*. Reversal.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_02973.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_02973.htm)

*People v Daniels*

174 AD3d 955 (3<sup>rd</sup> Dept) (7/8/19 DOI).

Court did not convey that if jury found the D not guilty of attempted murder based on justification, it was not to consider lesser counts to which defends applied. New trial.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_05343.htm](http://nycourts.gov/reporter/3dseries/2019/2019_05343.htm)

*People v Smith*

174 AD3d 928 (2<sup>nd</sup> Dept) (8/5/19 DOI).

D charged with five counts asserted justification defense. Verdict sheet did not mention justification, and instructed jurors to continue to following count if they found D not guilty of counts one to four. New trial.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_06004.htm](http://nycourts.gov/reporter/3dseries/2019/2019_06004.htm)

***Kidnapping***

*People v Vail*

174 AD3d 1365 (4<sup>th</sup> Dept) (8/5/19 DOI).

Trial court erred in charging that intent does not require advance planning, nor is it necessary that intent be in person's mind for particular period of time. Penal Law requires that illicit intent existed for more than 12 hours during period of restraint of victim. New trial ordered.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_05848.htm](http://nycourts.gov/reporter/3dseries/2019/2019_05848.htm)

***Cross-racial ID***

*People v Jiggetts*

168 AD3d 507 (1<sup>st</sup> Dept) (1/19/19 DOI).

Court erred in failing to give request cross-racial ID charge. But error was harmless.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_00348.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_00348.htm)

***Adverse inference***

*People v Torres*

169 AD3d 1068 (2<sup>nd</sup> Dept) (3/1/19 DOI).

Error to deny defense request for permissive adverse charge as to People's loss of tape recordings.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_01434.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_01434.htm)

## ***Coercion***

### *People v Muhammad*

171 AD3d 442 (1<sup>st</sup> Dept) (4/8/19 DOI).

Okay to tell deadlocked jurors to keep deliberating on a Friday afternoon, without addressing Monday travel plans of three jurors. Hours later, verdict reached. Two dissenters found coercion.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_02609.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_02609.htm)

## ***Missing witness***

### *People v Smith*

33 NY3d 454 (6/10/19 DOI).

The proponent of the missing witness charge does not bear the burden of negating cumulativeness to meet the prima facie burden.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_04447.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_04447.htm)

## ***O’Rama***

### *People v Meyers*

33 NY3d 1018 (5/13/19 DOI).

Purported jury note was mere draft. CPL 310.30 procedures not triggered.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_03658.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_03658.htm)

### *People v Henry*

173 AD3d 1470 (3<sup>rd</sup> Dept) (6/24/19 DOI).

Record did not indicate whether counsel was given notice of precise contents of note relating to jury count. Reversal.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_05024.htm](http://nycourts.gov/reporter/3dseries/2019/2019_05024.htm)

### *People v Johnson*

175 AD3d 14 (3<sup>rd</sup> Dept) (7/8/19 DOI).

Reconstruction hearing needed as to whether purported jury note was request within CPL 310.30.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_05344.htm](http://nycourts.gov/reporter/3dseries/2019/2019_05344.htm)

### *People v Grimes*

174 AD3d 1341 (4<sup>th</sup> Dept) (7/8/19 DOI).

Reconstruction hearing failed to show how court handled notes. New trial granted.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_05461.htm](http://nycourts.gov/reporter/3dseries/2019/2019_05461.htm)

### *People v Copeland*

175 AD3d 1316 (2<sup>nd</sup> Dept) (9/16/19 DOI)

New trial needed where trial court paraphrased two jury notes to counsel.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_06507.htm](http://nycourts.gov/reporter/3dseries/2019/2019_06507.htm)

## ***Other***

### *People v Peralta*

172 AD3d 457 (1<sup>st</sup> Dept) (5/13/19 DOI).

Trial court provided written instructions to jury over defendant’s objection. New trial.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_03539.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_03539.htm)

*People v Larman*

175 AD3d 509 (2<sup>nd</sup> Dept) (8/9/19 DOI).

The defendant did not give written consent to a regular juror being replaced by an alternate. New trial.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_06097.htm](http://nycourts.gov/reporter/3dseries/2019/2019_06097.htm)

*People v Rosario*

2019 NY Slip Op 08006 (1<sup>st</sup> Dept) (11/11/19 DOI).

Trial court properly turned to federal law to define “financial loss,” as element of identity theft one (P.L. § 190.80 [2]), in response to jury note.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_08006.htm](http://nycourts.gov/reporter/3dseries/2019/2019_08006.htm)

**Mistrials**

*People v Smith*

176 AD3d 1114 (2<sup>nd</sup> Dept) (10/25/19 DOI).

No manifest necessity to declare mistrial where, after discharge of problematical juror, defense consented to proceed with 11 jurors and asked court to poll jurors as to ability to render impartial verdict.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_07622.htm](http://nycourts.gov/reporter/3dseries/2019/2019_07622.htm)

**CPL 330.30 motions**

*People v Blunt*

174 AD3d 1504 (4<sup>th</sup> Dept) (8/5/19 DOI)

Hearing on CPL 330.30 motion needed, where juror may have had undisclosed, strained relationship with the defendant’s mother and may have known about the D’s criminal history.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_05917.htm](http://nycourts.gov/reporter/3dseries/2019/2019_05917.htm)

*People v Neulander*

34 NY3d 110 (10/25/19 DOI).

Juror 12 was out of control, causing grant of 330 motion and need for new murder trial. Juror exchanged hundreds of texts about the case during trial and lied about her actions.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_07521.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_07521.htm)

*People v McGregor*

2019 NY Slip Op 08283 (1<sup>st</sup> Dept) (11/18/19 DOI).

Error to deny CPL 330.30 motion where juror sought to start relationship with cooperating witness during jury deliberations.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_08283.htm](http://nycourts.gov/reporter/3dseries/2019/2019_08283.htm)

**RIGHT TO COUNSEL**

**Unrepresented**

*People v Stephans*

168 AD3d 990 (2<sup>nd</sup> Dept) (1/28/19 DOI).

Police improperly questioned the defendant in the absence of counsel, where they knew she was represented by counsel on a related charge. New trial was ordered.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_00473.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_00473.htm)

*People v Zi*

2019 NY Slip Op 09353 (1<sup>st</sup> Dept) (12/30/19 DOI).

Supreme Court failed to pay attention to red flags indicating that particularized assessment was needed of D's mental capacity to waive representation. Finding of fitness in 730 exam is not dispositive.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_09353.htm](http://nycourts.gov/reporter/3dseries/2019/2019_09353.htm)

**Substitute counsel**

*People v Fulgencio*

168 AD3d 1094 (2<sup>nd</sup> Dept) (2/4/19 DOI).

Right to counsel did not include right to choose attorney. Request for substitute counsel properly denied.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_00617.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_00617.htm)

**Adverse position**

*People v Faulkner*

168 AD3d 1317 (3<sup>rd</sup> Dept) (2/4/19 DOI).

Defense counsel insisted that there was no basis for the defendant's oral pro se motion to withdraw his guilty plea. Conflict arose. Court erred in failing to assign new counsel. Remittal.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_00645.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_00645.htm)

*People v Jeffery*

169 AD3d 924 (2<sup>nd</sup> Dept) (2/22/19 DOI).

Defense counsel opposed motion to withdraw guilty plea. Right to counsel violated. Remittal.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_01229.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_01229.htm)

*People v Lopez*

173 AD3d 1213 (2<sup>nd</sup> Dept) (7/1/19 DOI).

The defendant's RTC was violated when attorney took position adverse to him. Remittal for hearing on motion to withdraw guilty plea, with new defense counsel to be appointed.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_05153.htm](http://nycourts.gov/reporter/3dseries/2019/2019_05153.htm)

*People v Rose*

174 AD3d 743 (2<sup>nd</sup> Dept) (7/19/19 DOI).

The D's RTC was violated when counsel took adverse position to his as to pro se motion to withdraw his guilty plea.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_05696.htm](http://nycourts.gov/reporter/3dseries/2019/2019_05696.htm)

**IAC claims: reversals**

*People v Stephans*

168 AD3d 990 (2<sup>nd</sup> Dept) (1/28/19 DOI).

New trial warranted based on IAC. Counsel stipulated to admission of entire police-defendant interview and did not object to officer testimony about the interview.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_00473.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_00473.htm)

*People v Newman*

169 AD3d 1157 (3<sup>rd</sup> Dept) (2/22/19 DOI).

Reversal based on IAC, including not seeking redaction of prejudicial hearsay from search warrant; not objecting to improper closing statement; and bungling cross of detective.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_01263.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_01263.htm)

*People v Coulibaly*

172 AD3d 647 (1<sup>st</sup> Dept) (5/28/19 DOI).

IAC where speedy trial violation would have been found if he/she properly calculated includable time. Indictment dismissed.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_04289.htm](http://nycourts.gov/reporter/3dseries/2019/2019_04289.htm)

*People v Goondall*

173 AD3d 896 (2<sup>nd</sup> Dept) (6/17/19 DOI).

IAC where counsel changed course in middle of trial in defense pursued.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_04721.htm](http://nycourts.gov/reporter/3dseries/2019/2019_04721.htm)

*People v Disla*

173 AD3d 555 (1<sup>st</sup> Dept) (6/24/19 DOI).

Record on appeal was sufficient to review IAC claim, based on counsel's failure to advise the defendant about mandatory deportation. Appeal held in abeyance and the defendant given chance to show prejudice.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_04995.htm](http://nycourts.gov/reporter/3dseries/2019/2019_04995.htm)

*People v Corchado*

175 AD3d 705 (2<sup>nd</sup> Dept) (8/30/19 DOI).

Defense counsel was ineffective in failing to raise issue of whether weapons should have been suppressed as fruits of suppressed statements. New trial.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_06408.htm](http://nycourts.gov/reporter/3dseries/2019/2019_06408.htm)

**IAC claim: affirmances**

*People v Alvarez*

33 NY3d 286 (3/29/19 DOI).

Terrible brief did not argue for reduction in 66-year to life sentence and was authored by counsel who did not communicate with client. Yet meaningful appellate representation was provided, per the majority.

Dissenters Wilson and Rivera.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_02383.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_02383.htm)

*People v Lopez-Mendoza*

33 NY3d 565 (6/17/19 DOI).

Majority upheld conviction and said 440 motion was needed to raise IAC, but dissenter found record—showing that counsel did not view or understand critical video—was enough to prove IAC.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_04759.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_04759.htm)

*People v Mendoza*

33 NY3d 414 (6/17/19 DOI).

Conviction upheld. Unanimous court rejected arguments of IAC as to counsel's concession of guilty and pursuit of jury nullification defense.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_04758.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_04758.htm)

## SENTENCING/YO

### **Predicate felony: date**

#### *People v Thomas*

33 NY3d 1 (2/22/19 DOI).

Dates of original sentences, not resentences, used in determining predicate felony status. 4-3 decision.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_01167.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_01167.htm)

#### *People v Benjamin*

170 AD3d 566 (1<sup>st</sup> Dept) (3/29/19 DOI).

For predicate felonies, relevant date is when sentence was first imposed, not resentencing date.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_02261.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_02261.htm)

### **Predicate felony: out-of-state prior**

#### *People v Muhammad*

168 AD3d 549 (1<sup>st</sup> Dept) (1/28/19 DOI).

Florida predicate was not equivalent of NY felony under P.L. § 220.16.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_00386.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_00386.htm)

#### *People v Vasquez*

173 AD3d 1073 (2<sup>nd</sup> Dept) (6/24/19 DOI).

In interest of justice, sentence vacated, where Florida crime did not qualify as NY predicate felony.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_04970.htm](http://nycourts.gov/reporter/3dseries/2019/2019_04970.htm)

### **Other illegal sentences**

#### *People v Barr*

168 AD3d 1282 (3<sup>rd</sup> Dept) (1/28/19 DOI).

County Court erred in imposing consecutive terms on grand larceny and conspiracy counts which did not involve separate and distinct underlying acts.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_00500.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_00500.htm)

#### *People v Campagna*

172 AD3d 1904 (4<sup>th</sup> Dept) (5/6/19 DOI).

Mandatory probation with ignition interlock device did not apply to subject crimes. Term vacated.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_03495.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_03495.htm)

#### *People v King*

172 AD3d 1098 (2<sup>nd</sup> Dept) (5/20/19 DOI).

Sentence for CPW two had to run concurrently to murder term.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_03813.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_03813.htm)

#### *People v Taylor*

172 AD3d 1110 (2<sup>nd</sup> Dept) (5/20/19 DOI).

Sentences for criminal sexual act and criminal impersonation had to run concurrently.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_03823.htm](http://nycourts.gov/reporter/3dseries/2019/2019_03823.htm)

*People v Simpson*

173 AD3d 1617 (4<sup>th</sup> Dept) (6/10/19 DOI).

Court sua sponte modified sentence by reducing illegal minimum imposed, which applied for predicate, not first-time, felon.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_04538.htm](http://nycourts.gov/reporter/3dseries/2019/2019_04538.htm)

*People v Ferguson*

2019 NY Slip Op 08424 (2<sup>nd</sup> Dept) (11/25/19 DOI).

Probation for violent felony was illegal, but maybe defendant could get resentencing of time served. Protective order against non-victim/non-witness was improper.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_08424.htm](http://nycourts.gov/reporter/3dseries/2019/2019_08424.htm)

*People v Vamhuning*

2019 NY Slip Op 08451 (3<sup>rd</sup> Dept) (11/25/19 DOI).

Total of six years' probation was illegal as in excess of statutory maximum. Sentence vacated.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_08451.htm](http://nycourts.gov/reporter/3dseries/2019/2019_08451.htm)

*People v Devorce*

2019 NY Slip Op 08859 (2<sup>nd</sup> Dept) (12/13/19 DOI).

Sentence for CPW 2 had to run concurrently with terms for robbery and other crimes. The People did not prove that the defendant had an unlawful intent, separate and apart from the intent to commit robbery.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_08859.htm](http://nycourts.gov/reporter/3dseries/2019/2019_08859.htm)

*People v Robinson*

2019 NY Slip Op (2<sup>nd</sup> Dept) (12/13/19 DOI).

No facts adduced at the plea allocution demonstrated two separate acts of constructive possession, so imposition of consecutive sentences for two counts of attempted CPW 3 was illegal.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_08875.htm](http://nycourts.gov/reporter/3dseries/2019/2019_08875.htm)

**Sentence reductions explained**

*People v Allende*

168 AD3d 464 (1<sup>st</sup> Dept) (1/11/19 DOI).

Two dissenters opined that a term of eight years for robbery should be reduced to five years, since the defendant was only age 21 at the time of offense, his first felony; his mother had died when he was a teenager; he had struggled with mental health issues; the more culpable codefendant received a term of five years; and the harsh sentence appeared to punish the defendant for going to trial.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_00195.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_00195.htm)

*People v Mitchell*

168 AD3d 531 (1<sup>st</sup> Dept) (1/28/19 DOI).

Despite extensive criminal history, sentence of 4 to 8 years reduced to 3 to 6 years, where the defendant used a counterfeit bill to buy the basics and health issues. One dissent.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_00371.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_00371.htm)

*People v Robinson*

168 AD3d 605 (1<sup>st</sup> Dept) (2/4/19 DOI).

Kidnapping term reduced from 25 to 10 years. The defendant held young niece at motel to seek revenge against victim's mother.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_00565.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_00565.htm)

*People v Farrell*

169 AD3d 919 (2<sup>nd</sup> Dept) (2/22/19 DOI).

Sex crime sentence reduced from 20 to 15 years, where defendant was young, had no prior felonies, was not a culpable as the co-D, who received a 15-year term.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_01226.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_01226.htm)

*People v Garcia*

170 AD3d 883 (2<sup>nd</sup> Dept) (3/18/19 DOI).

Pursuant to DLRA, aggregate term reduced from 35 to 20 years, where the defendant had an outstanding institutional record.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_01791.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_01791.htm)

*People v Hamell*

170 AD3d 1647 (4<sup>th</sup> Dept) (3/25/19 DOI).

Enhanced sentence of 16 years was too harsh, despite criminal record and flight from justice. Reduction to 10 years.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_02229.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_02229.htm)

*People v Reid*

173 AD3d 1663(4<sup>th</sup> Dept) (6/10/19 DOI).

Sentence reduced from consecutive to concurrent terms for drug sale, where crimes were first felonies, the defendant was a small fish, and lenient plea deal had been offered before trial.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_04565.htm](http://nycourts.gov/reporter/3dseries/2019/2019_04565.htm)

*People v Brown*

174 AD3d 1329 (4<sup>th</sup> Dept) (7/8/19 DOI).

Sentence of 15 years to life for several convictions too harsh, given plea offer of 2½ to 5 years. Reduced to aggregate of 9 to 18 years.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_05454.htm](http://nycourts.gov/reporter/3dseries/2019/2019_05454.htm)

*People v Bakayoko*

174 AD3d 730 (2<sup>nd</sup> Dept) (7/19/19 DOI).

Although the defendant had served his sentences, the excessiveness argument was not academic, in light of potential immigration consequences. Modification to definite terms of 364 days.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_05677.htm](http://nycourts.gov/reporter/3dseries/2019/2019_05677.htm)

*People v McCoy*

174 AD3d 1379 (4<sup>th</sup> Dept) (8/5/19 DOI).

Burglary term cut from 12 to five years, where defendant had been offered probation and had serious mental health issues.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_05851.htm](http://nycourts.gov/reporter/3dseries/2019/2019_05851.htm)

*People v Boyd*

175 AD3d 1030 (4<sup>th</sup> Dept) (8/30/19 DOI).

Sentence for sex crimes cut from 50 to 25 years, where the D had no prior felonies, and nine years had been offered.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_06311.htm](http://nycourts.gov/reporter/3dseries/2019/2019_06311.htm)

*People v Murdock*

175 AD3d 1560 (2<sup>nd</sup> Dept) (9/30/19 DOI).

Enhanced sentence imposed after violation of conditions of interim probation was harsh, given tremendous progress he had made.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_06801.htm](http://nycourts.gov/reporter/3dseries/2019/2019_06801.htm)

**Enhanced sentence errors**

*People v Hunter*

173 AD3d 1249 (3<sup>rd</sup> Dept) (6/10/19 DOI).

Trial counsel was ineffective for failing to challenge enhanced sentence. Court did not give *Parker* warnings.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_04496.htm](http://nycourts.gov/reporter/3dseries/2019/2019_04496.htm)

*People v King*

2019 NY Slip Op 08729 (3<sup>rd</sup> Dept) (12/6/19 DOI).

*Parker* warnings did not alert D that if he violated terms, he could get greater sentence. Appeal not moot, though he had served enhanced sentence, since he was entitled to option of withdrawing guilty plea.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_08729.htm](http://nycourts.gov/reporter/3dseries/2019/2019_08729.htm)

**Restitution**

*People v Lugo*

170 AD3d 748 (2<sup>nd</sup> Dept) (3/11/19 DOI).

County Court should have ordered hearing to determine amount of victim's medical expenses. Restitution award vacated.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_01617.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_01617.htm)

*People v Richardson*

173 AD3d 1859 (4<sup>th</sup> Dept) (7/1/19 DOI).

Trial court erred in ordering restitution; it was not part of the plea deal.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_05310.htm](http://nycourts.gov/reporter/3dseries/2019/2019_05310.htm)

*People v Waldron*

2019 NY Slip Op 07116 (3<sup>rd</sup> Dept) 10/7/19 DOI).

Enhanced restitution not discussed at plea was improper, reviewing court held in interest of justice.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_07116.htm](http://nycourts.gov/reporter/3dseries/2019/2019_07116.htm)

*People v Grant*

2019 NY Slip Op (2<sup>nd</sup> Dept) (12/13/19 DOI).

Restitution of \$40,000 was impermissible, since it exceeded the statutory cap of \$15,000, and none of the enumerated exceptions applied.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_08864.htm](http://nycourts.gov/reporter/3dseries/2019/2019_08864.htm)

**Presentence report**

*People v Washington*

170 AD3d 1608 (4<sup>th</sup> Dept) (3/15/19 DOI).

Trial court should have redacted certain info. from PSR. Discussion of impact of PSR errors.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_01994.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_01994.htm)

*People v Pelige*

172 AD3d 1407 (2<sup>nd</sup> Dept) (5/28/19 DOI).

Remittal for resentencing where court did not inquire about mental status of the defendant who'd earlier been found unfit. Probation did not interview him for PSR when they could not secure interpreter.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_04204.htm](http://nycourts.gov/reporter/3dseries/2019/2019_04204.htm)

*People v Ferguson*

2019 NY Slip Op 08016 (4<sup>th</sup> Dept) (11/11/19 DOI).

Sentencing court did not specify which portions of presentence report should be redacted, pursuant to D's objections. Remittal.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_08016.htm](http://nycourts.gov/reporter/3dseries/2019/2019_08016.htm)

**Surcharge**

*People v Davis*

170 AD3d 745 (2<sup>nd</sup> Dept) (3/11/19 DOI).

Surcharge was imposed upon conviction of assault one. When victim later died, error to impose second mandatory surcharge on the defendant.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_01615.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_01615.htm)

**Other sentencing issues**

*People v Andre*

168 AD3d 757 (2<sup>nd</sup> Dept) (1/11/19 DOI).

It was error to order two sentences to run consecutively, where the plea court did not warn the defendant that a return to court for sentencing was a condition of the plea/sentence commitment.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_00136.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_00136.htm)

*People v Sumter*

169 AD3d 1275 (3<sup>rd</sup> Dept) (3/1/19 DOI).

The PD who represented the defendant at the resentencing hearing was the County Judge who had initially sentenced him. Reversal and remittal due to the conflict.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_01460.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_01460.htm)

*People v Fitch*

170 AD3d 1572 (4<sup>th</sup> Dept) (3/15/19 DOI).

Electronic monitoring condition or probation was erroneous. Sentencing court did not consider if the defendant posed a threat to the public.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_01973.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_01973.htm)

*People v Taylor*

171 AD3d 538 (1<sup>st</sup> Dept) (4/19/19).

Indictment dismissed due to unreasonable, one-year delay in sentencing.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_02822.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_02822.htm)

*People v Carpio*

171 AD3d 1206 (2<sup>nd</sup> Dept) (4/29/19 DOI).

Article 78 was proper vehicle to present argument that PRS component of sentence should be reduced because he was not credited with 11 months of time served.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_03068.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_03068.htm)

*People v Cutler*

173 AD3d 1269 (3<sup>rd</sup> Dept) (6/10/19 DOI).

Sentence vacated. Court did not grant adjournment when defendant was in hospital due to drug overdose.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_04504.htm](http://nycourts.gov/reporter/3dseries/2019/2019_04504.htm)

*People v Herrod*

174 AD3d 1322 (4<sup>th</sup> Dept) (7/8/19 DOI).

Persistent felony offender finding vacated. No history of violence, drugs, or serious offenses.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_05450.htm](http://nycourts.gov/reporter/3dseries/2019/2019_05450.htm)

*People v Ward*

175 AD3d 722 (2<sup>nd</sup> Dept) (8/30/19 DOI).

New trial held due to deprivation of fair trial would be held before different justice because, during sentencing, trial judge made nasty, intemperate remarks.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_06419.htm](http://nycourts.gov/reporter/3dseries/2019/2019_06419.htm)

**YO treatment not considered**

*People v Thomas*

169 AD3d 1451 (4<sup>th</sup> Dept) (2/4/19 DOI).

Lower court erred in failing to consider YO treatment. First, court had to decide if the defendant convicted of an armed felony was YO-eligible. Remittal.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_00795.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_00795.htm)

*People v Alleyne*

169 AD3d 710 (2<sup>nd</sup> Dept) (2/11/19 DOI).

Plea court failed to consider the defendant's YO eligibility. Remittal.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_00895.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_00895.htm)

*People v Ali-Williams*

172 AD3d 890 (2<sup>nd</sup> Dept) (5/13/19 DOI).

As to armed offense, court was required to discern if the defendant was eligible. Remittal.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_03609.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_03609.htm)

*People v Rodriguez*

172 AD3d 1240 (2<sup>nd</sup> Dept) (5/28/19 DOI).

Defendant who pleaded guilty was eligible for YO status, but court did not consider issue. Remittal.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_03999.htm](http://nycourts.gov/reporter/3dseries/2019/2019_03999.htm)

*People v Robertucci*

172 AD3d 1782 (3<sup>rd</sup> Dept) (5/28/19 DOI).

See *Rodriguez, supra*.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_04057.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_04057.htm)

*People v Colon*

173 AD3d 1255 (3<sup>rd</sup> Dept) (6/10/19 DOI).

Trial court did not determine whether defendant, who did armed felony, was eligible for YO treatment.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_04498.htm](http://nycourts.gov/reporter/3dseries/2019/2019_04498.htm)

*People v Ramirez*

173 AD3d 904 (2<sup>nd</sup> Dept) (6/17/19 DOI).

Court failed to consider YO treatment. Thus, vacatur of sentence and remitted.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_04727.htm](http://nycourts.gov/reporter/3dseries/2019/2019_04727.htm)

*People v Garcia*

175 AD3d 612 (2<sup>nd</sup> Dept) (8/23/19 DOI).

Court erred in failing to consider whether the D, age 18 at time of offense, should be afforded YO status.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_06205.htm](http://nycourts.gov/reporter/3dseries/2019/2019_06205.htm)

**YO granted**

*People v Sheldon O.*

169 AD3d 1062 (2<sup>nd</sup> Dept) (3/1/19 DOI).

Supreme Court should have granted YO status to the defendant, who was 18 at time of offense; played minor role; spent two years in pretrial detention; cooperated with authorities; had no prior record; had development delays.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_01430.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_01430.htm)

**Other YO cases**

*Matter of Samy F. v Fabrizio*

176 AD3d 44 (1<sup>st</sup> Dept) (8/30/19 DOI).

Article 78 granted. NYC DNA databank is subject to Executive Law. Supreme Court had authority to order expungement where DNA was collected during investigation that culminated in YO determination.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_06374.htm](http://nycourts.gov/reporter/3dseries/2019/2019_06374.htm)

## SORA

**Registration not required**

*People v Ellis*

33 NY3d 582 (7/1/19 DOI).

Facebook account is not an “internet identifier” that sex offender must disclose to DCJS. Conviction for failure to register could not stand.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_05183.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_05183.htm)

*People v Wright*

174 AD3d 547 (2<sup>nd</sup> Dept) (7/8/19 DOI).

The defendant who stayed at homeless shelter when possible may not have needed to report change in address. Plea of guilty to failure to register vacated.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_05428.htm](http://nycourts.gov/reporter/3dseries/2019/2019_05428.htm)

*People v Covington*

174 AD3d 548 (2<sup>nd</sup> Dept) (7/8/19 DOI).

The D, who had to register as sex offender in VA after murder conviction, based on nonsexual violent crime against minor, did not qualify as sex offender in NY, under *People v Diaz*.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_05429.htm](http://nycourts.gov/reporter/3dseries/2019/2019_05429.htm)

*People v Buyund*

2019 NY Slip Op 08207 (2<sup>nd</sup> Dept) (11/18/19 DOI).

Burglary one as sexually motivated felony was not a registerable sex offense.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_08207.htm](http://nycourts.gov/reporter/3dseries/2019/2019_08207.htm)

*People v Burden*

176 AD3d 524 (1<sup>st</sup> Dept) (10/18/19 DOI).

The defendant was not required to register in NY on basis of CT conviction for 4<sup>th</sup> degree sexual assault lacking helplessness element. Sex offender adjudication vacated.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_07497.htm](http://nycourts.gov/reporter/3dseries/2019/2019_07497.htm)

*People v Ramos*

2019 NY Slip Op 09153 (4<sup>th</sup> Dept) (12/23/19 DOI).

Board erred in relying on Spanish documents to prove sex offense in Puerto Rico. Determination that D was sex offender annulled.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_09153.htm](http://nycourts.gov/reporter/3dseries/2019/2019_09153.htm)

**Procedural and other errors**

*People v Barney*

168 AD3d 774 (2<sup>nd</sup> Dept) (1/11/19).

In interest of justice, reversal. The defendant did not waive his right to be present at the SORA hearing.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_00153.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_00153.htm)

*People v Dean*

169 AD3d 1414 (4<sup>th</sup> Dept) (2/4/19 DOI).

SORA court did not set forth its findings/conclusions. Remittal.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_00765.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_00765.htm)

*People v Soto*

169 AD3d 534 (1<sup>st</sup> Dept) (2/22/19 DOI).

SORA court failed to properly exercise its discretion regarding mitigating circumstances. Remand.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_01184.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_01184.htm)

*People v Chrisley*

172 AD3d 1914 (4<sup>th</sup> Dept) (5/6/19 DOI).

SORA court violated the defendant's due process rights by sua sponte assessing points based on a theory not raised by Board or People. Reversal in interest of justice. Remittal.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_03505.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_03505.htm)

*People v Briscoe*

172 AD3d 1788 (3<sup>rd</sup> Dept) (5/28/19 DOI).

Error to classify the defendant as a sexual predator; conviction did not fit statutory criteria.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_04061.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_04061.htm)

*People v Jones*

172 AD3d 1786 (3<sup>rd</sup> Dept) (5/28/19 DOI).

IAC where counsel thought presumptive classification was automatic.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_04060.htm](http://nycourts.gov/reporter/3dseries/2019/2019_04060.htm)

*People v Powell*

173 AD3d 1228 (2<sup>nd</sup> Dept) (7/1/19 DOI).

The SORA court erred in failing to address the merits of the defendant's request for a downward departure.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_05170.htm](http://nycourts.gov/reporter/3dseries/2019/2019_05170.htm)

*People v Smith*

175 AD3d 572 (2<sup>nd</sup> Dept) (8/23/19 DOI).

Trial court improperly designated D a predicate sex offender. Michigan crime not sex offense.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_06181.htm](http://nycourts.gov/reporter/3dseries/2019/2019_06181.htm)

**Level reduced or remittal**

*People v Logsdon*

169 AD3d 1466 (4<sup>th</sup> Dept) (2/11/19 DOI).

Risk level reduced from one to two. Sua sponte upward departure was error. No evidence that mental impairments were relevant to risk. Positive letter from treating therapist.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_00998.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_00998.htm)

*People v Hinson*

170 AD3d 1385 (3<sup>rd</sup> Dept) (3/25/19 DOI).

Error to assess points for continuing conduct of sexual misconduct. Reduction to level two.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_02184.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_02184.htm)

*People v Secor*

171 AD3d 1314 (3<sup>rd</sup> Dept) (4/15/19 DOI).

SORA court should have granted downward departure based on victim's consent to sex. Reduction from level two to one.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_02759.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_02759.htm)

*People v Leon*

172 AD3d 765 (2<sup>nd</sup> Dept) (5/6/19 DOI).

Risk level reduced from three to two. People did not establish factor 11 re drug/alcohol use.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_03388.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_03388.htm)

*People v Lewis*

173 AD3d 913 (2<sup>nd</sup> Dept) (6/17/19 DOI).

People failed to prove that aggravating circumstance, justifying upward departure, existed. Reduction from level three to two.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_04738.htm](http://nycourts.gov/reporter/3dseries/2019/2019_04738.htm)

*People v Spratley*

175 AD3d 962 (4<sup>th</sup> Dept) (8/30/19 DOI).

It was error to assess 30 points under risk factor 5, for a victim age 10 or younger. Reduction from level two to one.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_06283.htm](http://nycourts.gov/reporter/3dseries/2019/2019_06283.htm)

*People v Snyder*

175 AD3d 1331 (2<sup>nd</sup> Dept) (9/16/19 DOI)

Reduction from level two to one for defendant who was sex-trafficking victim.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_06521.htm](http://nycourts.gov/reporter/3dseries/2019/2019_06521.htm)

*People v Weber*

2019 NY Slip Op 07197 (4<sup>th</sup> Dept) (10/7/19 DOI).

SORA court erred in assessing points for forcible compulsion, not required for crime to which the defendant pleaded guilty.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_07197.htm](http://nycourts.gov/reporter/3dseries/2019/2019_07197.htm)

*People v Torres*

176 AD3d 1631 (2<sup>nd</sup> Dept) (10/25/19 DOI).

Upward departure was not warranted based on uncharged offense with sketchy proof as to victim's age. D designated a level two.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_07629.htm](http://nycourts.gov/reporter/3dseries/2019/2019_07629.htm)

*People v Fisher*

2019 NY Slip Op 07893 (2<sup>nd</sup> Dept) (11/11/19 DOI).

Level reduced from two to one. In statutory rape cases, strict application of Guidelines may result in risk overassessments, as occurred here.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_07893.htm](http://nycourts.gov/reporter/3dseries/2019/2019_07893.htm)

*People v Davis*

2019 NY Slip Op 08720 (2<sup>nd</sup> Dept) (12/6/19 DOI).

Reduction from level three to two was not enough. App Div designated D a level one, where he was sober two decades, did treatment programs, had steady job despite permanent disability, as well as marriage and family support, community involvement, and lack of criminal activity for decades.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_08720.htm](http://nycourts.gov/reporter/3dseries/2019/2019_08720.htm)

*People v Brown*

2019 NY Slip Op 08746 (2<sup>nd</sup> Dept) (12/6/19 DOI).

Error to assess 15 points for drug and alcohol abuse. No proof such abuse played role in crime. D only drank occasional. Use of drugs was remote. DOCCS screening resulted in no concern re drug use.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_08746.htm](http://nycourts.gov/reporter/3dseries/2019/2019_08746.htm)

*People v Jarama*

2019 NY Slip Op 09044 (2<sup>nd</sup> Dept) (12/23/19 DOI).

Level reduced from two to one, where points should not have been assessed under risk factor 4. People's proof did not indicate when several sexual offenses occurred 24 hours apart.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_09044.htm](http://nycourts.gov/reporter/3dseries/2019/2019_09044.htm)

*People v Lewis*

2019 NY Slip Op (2<sup>nd</sup> Dept) (12/23/19 DOI).

Points erroneously assessed under risk 9 for EWC: not a felony, sex offense, or actually endangering child. But remittal in case People now wanted to seek upward departure.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_09045.htm](http://nycourts.gov/reporter/3dseries/2019/2019_09045.htm)

**No appeal**

*People v Lavelle*

169 AD3d 1127 (3<sup>rd</sup> Dept) (2/11/19 DOI).

Appeal improperly taken from risk classification form sans findings/conclusions or "so ordered" language.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_00937.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_00937.htm)

*People v King*

2019 NY Slip Op 08743 (3<sup>rd</sup> Dept) (12/6/19 DOI).

Appeal dismissed. SORA decision was not appealable paper. It did not state “so ordered” or set forth findings/conclusions, and it was not entered.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_08743.htm](http://nycourts.gov/reporter/3dseries/2019/2019_08743.htm)

## POST-DISPOSITION

### **Probation and VOP**

#### *People v Hakes*

168 AD3d 1214 (3<sup>rd</sup> Dept) (1/19/19 DOI).

Reversal of order finding knowing violation of probation based on SCRAM bracelet the defendant could not afford to pay for. The defendant provided extensive proof as to inability to pay.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_00324.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_00324.htm)

#### *People v Vandegrift*

170 AD3d 1327 (3<sup>rd</sup> Dept) (3/18/19 DOI).

County Court should have held competence hearing before finding a VOP. Reconstruction ordered.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_01854.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_01854.htm)

#### *People v Johnson*

173 AD3d 1446 (3<sup>rd</sup> Dept) (6/24/19 DOI).

Improper to find VOP based on matter not alleged in court report. Insufficient proof of 2<sup>nd</sup> violation.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_05018.htm](http://nycourts.gov/reporter/3dseries/2019/2019_05018.htm)

#### *People v Ayotunji A.*

174 AD3d 1503 (4<sup>th</sup> Dept) (8/5/19 DOI).

County Court erred in finding a VOP without holding a hearing or securing and admission.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_05916.htm](http://nycourts.gov/reporter/3dseries/2019/2019_05916.htm)

#### *People v Roberts*

176 AD3d 1318 (3<sup>rd</sup> Dept) (10/18/19 DOI).

Revocation of probation and resentence was erroneous, where County Court abdicated duty to carefully consider all facts available at time of sentencing.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_07448.htm](http://nycourts.gov/reporter/3dseries/2019/2019_07448.htm)

#### *People v Herring*

2019 NY Slip Op 09287 (2<sup>nd</sup> Dept) (12/30/19 DOI).

Evidence that defendant committed attempted murder, in violation of condition of probation, was presented after close of evidence, so that violation did not count, but use of marijuana was unchallenged.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_09287.htm](http://nycourts.gov/reporter/3dseries/2019/2019_09287.htm)

### **SARA**

#### *People ex rel. Negrón v Superintendent*

170 AD3d 12 (3<sup>rd</sup> Dept) (2/22/19 DOI).

Parting company with the Fourth Department, the Third Department held that the school-ground condition applied only to defendants serving a sentence for an offense enumerated in the statute.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_01267.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_01267.htm)

*People ex rel. Johnson v Superintendent*  
174 AD3d 992 (3<sup>rd</sup> Dept) (7/8/19 DOI).

Concurrence delved into conundrums created by SRA restrictions, which may do more harm than good and should be reexamined by the legislature.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_05359.htm](http://nycourts.gov/reporter/3dseries/2019/2019_05359.htm)

## **CPL 440.10 motions**

### ***Immigration issues***

*People v Cabrera*

169 AD3d 435 (1<sup>st</sup> Dept) (2/11/19 DOI).

Affirmance of grant on ground of counsel's affirmative misadvice, in pre-*Padilla* guilty plea, about deportation consequences of guilty plea. See *People v McDonald*, 1 NY3d 109. Prejudice shown.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_00976.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_00976.htm)

*People v Richards*

2019 NY Slip Op 08268 (1<sup>st</sup> Dept) (11/18/19 DOI).

Defense counsel did not know what an aggravated felony was and did not seek immigration-friendly plea deal to which People would likely have been amenable.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_08268.htm](http://nycourts.gov/reporter/3dseries/2019/2019_08268.htm)

### ***Indictment dismissed***

*People v Stewart*

171 AD3d 625 (1<sup>st</sup> Dept) (4/29/19 DOI).

Failure to make proper, slam-dunk speedy trial motion constituted IAC. Indictment dismissed.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_03142.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_03142.htm)

### ***New trial/remittal***

*People v Ulett*

33 NY3d 512 (7/1/19 DOI).

The defendant was convicted of murder. A FOIL request yielded a surveillance video. A 440.10 motion based on a *Brady* violation was denied. The First Department affirmed, but the COA reversed and granted a new trial.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_05060.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_05060.htm)

*People v Valerio*

176 AD3d 1625 (4<sup>th</sup> Dept) (10/7/19 DOI).

When promise as to concurrent sentences was impossible to fulfill, plea vacated or promise honored.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_07192.htm](http://nycourts.gov/reporter/3dseries/2019/2019_07192.htm)

*People v McGhee*

2019 NY Slip Op 09116 (1<sup>st</sup> Dept) (12/23/19 DOI)

Failure to disclose witness statement that could have been used to impeach only eyewitness. New trial.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_09116.htm](http://nycourts.gov/reporter/3dseries/2019/2019_09116.htm)

### ***Hearing needed***

#### *People v Krivak*

168 AD3d 979 (2<sup>nd</sup> Dept) (1/28/19 DOI).

Motion court erred in summarily denying motion based on new evidence as to third-party's culpability.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_00464.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_00464.htm)

#### *People v Pendergraph*

170 AD3d 1630 (4<sup>th</sup> Dept) (3/25/19 DOI).

Hearing needed to determine if counsel was ineffective in telling the jury that the defendant would testify.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_02212.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_02212.htm)

#### *People v Brown*

33 NY3d 983 (5/6/19 DOI).

Hearing was needed to address allegations about possible conflict of interest. One dissent.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_03404.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_03404.htm)

#### *People v Lee*

172 AD3d 1925 (4<sup>th</sup> Dept) (5/6/19 DOI).

Hearing needed on whether the defendant was absent from the *Sandoval* hearing.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_03516.htm](http://nycourts.gov/reporter/3dseries/2019/2019_03516.htm)

#### *People v Nichtman*

173 AD3d 1261 (3<sup>rd</sup> Dept) (6/10/19 DOI).

Hearing needed on whether counsel failed to tell the defendant about good plea deal he might have accepted.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_04501.htm](http://nycourts.gov/reporter/3dseries/2019/2019_04501.htm)

#### *People v Adamo*

174 AD3d 1228 (3<sup>rd</sup> Dept) (7/26/19 DOI).

Hearing needed on 440 motion, based on multiple lapses by defense counsel, who said there was absolutely no defense, despite obvious possible defenses regarding involuntary intoxication or not being responsible by reason of mental defect; took a position adverse to client; and wrote coercive letter.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_05813.htm](http://nycourts.gov/reporter/3dseries/2019/2019_05813.htm)

#### *People v Williams*

174 AD3d 980 (4<sup>th</sup> Dept) (8/30/19 DOI).

Hearing needed as to whether defense counsel failed to file alibi notice or fully investigate potentially exculpatory witnesses.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_06293.htm](http://nycourts.gov/reporter/3dseries/2019/2019_06293.htm)

#### *People v Howard*

175 AD3d 1023 (4<sup>th</sup> Dept) (8/30/19 DOI).

Hearing needed as to whether counsel failed to investigate witnesses who could have corroborated alibi.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_06309.htm](http://nycourts.gov/reporter/3dseries/2019/2019_06309.htm)

## ***Other decisions***

### *People v Rosario*

170 AD3d 1275 (3<sup>rd</sup> Dept) (3/11/19 DOI).

Judge who denied 440 motion had worked at Legal Aid and had represented the defendant in the instant case. Statutory disqualification. Remittal.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_01679.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_01679.htm)

### *People v Rudolph*

170 AD3d 1258 (3<sup>rd</sup> Dept) (3/11/19 DOI).

ADA became defense counsel, but no harm from potential conflict. Denial of 440 upheld.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_01675.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_01675.htm)

### *People v Giuca*

33 NY3d 462 (6/17/19 DOI).

Second Department erred in reversing order denying CPL 440.10 motion based on a *Brady* violation. The jury could not have properly found a tacit understanding that a prosecution witness hoped to receive a benefit for his testimony. A witness's subjective hope was not enough.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_04642.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_04642.htm)

## **CPL 440.20 motions**

### *People v Montague*

171 AD3d 1306 (3<sup>rd</sup> Dept) (4/15/19 DOI).

Defendant wrongly sentenced as SFO. Date of original sentence, not resentence, controlled.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_02750.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_02750.htm)

## **CPL 440.30 motions**

### *People v Dorsey*

170 AD3d 417 (1<sup>st</sup> Dept) (3/11/19 DOI).

Motion for DNA testing properly denied. Subject evidence could not be located.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_01526.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_01526.htm)

## **Sealing**

### *Matter of James Q.*

32 NY3d 671 (2/22/19 DOI).

MHL § 33.13 did not require automatic sealing of court record involving insanity acquittees with dangerous mental disorders.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_01166.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_01166.htm)

## **Civil management**

### *MHLS v Sullivan*

32 NY3d 652 (2/15/19 DOI).

MHL does not mandate presence of assigned counsel at treatment planning meetings for Article 10 respondents placed in a sex offender treatment program at a secure treatment facility.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_01122.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_01122.htm)

*Matter of State of NY v Jerome A.*

172 AD3d 446 (1<sup>st</sup> Dept) (5/13/19 DOI).

Proof at *Frye* hearing satisfied State's burden as to unspecified paraphilic disorder to show mental abnormality.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_03531.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_03531.htm)

*Matter of State of NY v Ted B.*

174 AD3d 630 (2<sup>nd</sup> Dept) (7/12/19 DOI).

State failed to prove that respondent had inability to control behavior, thus requiring secure treatment facility.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_05550.htm](http://nycourts.gov/reporter/3dseries/2019/2019_05550.htm)

## **Parole**

*Matter of Piagentini v NYS Board of Parole*

176 AD3d 138 (3<sup>rd</sup> Dept) (8/23/19 DOI).

Widow of cop murder victim lacked standing to challenge grant of parole to the defendant. Her victim impact statement was properly considered. One dissent.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_06229.htm](http://nycourts.gov/reporter/3dseries/2019/2019_06229.htm)

*Matter of Cobb v DOCCS*

176 AD3d 507 (1<sup>st</sup> Dept) (10/18/19 DOI).

Parolee's release conditions implicating fundamental rights must be reasonable. Ban on travel in Queens was unreasonable.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_07480.htm](http://nycourts.gov/reporter/3dseries/2019/2019_07480.htm)

*Matter of Karimzada v NYS Board of Parole*

176 AD3d 1555 (3<sup>rd</sup> Dept) (11/4/19 DOI).

COMPAS assessment as to history of violence and risk of absconding was medium, not high as the Board thought. Remittal for proper administrative review.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_07830.htm](http://nycourts.gov/reporter/3dseries/2019/2019_07830.htm)