

CRIMINAL

PRETRIAL

Accusatory instruments

People v Colon-Colon

169 AD3d 187 (4th 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

People v Titus

171 AD3d 1256 (3rd 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

People v Edwards

171 AD3d 1402 (3rd 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

People v Moseley

172 AD3d 1461 (3rd 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

People v Diego

172 AD3d 1766 (3rd 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

People v Eggleston

173 AD3d 1252 (3rd 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

People v Coss

178 AD3d 25 (3rd 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

People v Walley

176 AD3d 1513 (3rd 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

People v Denis

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

See *Walley, supra*.

http://nycourts.gov/reporter/3dseries/2019/2019_08047.htm

Grand jury

People v Arevalo

172 AD3d 891 (2nd 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

People v Ballowe

173 AD3d 1666 (4th 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

People v Carlin

173 AD3d 1363 (3rd 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

People v Monforte

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

Accused was held for grand jury action upon a felony complaint charging him with 2nd 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—1st degree manslaughter—in order to facilitate the plea bargain.

http://www.nycourts.gov/reporter/3dseries/2019/2019_06451.htm

Authority to prosecute

People v Hodgdon

175 AD3d 65 (3rd 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

People v Abelove

2019 NY Slip Op 08453 (3rd 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

Suppression

REVERSALS

Standing

People v Dessasau

168 AD3d 969 (2nd 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

People v Costan

169 AD3d 820 (2nd 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

No consent

People v Hickey

172 AD3d 745 (2nd 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

People v Butkiewicz

175 AD3d 792 (3rd 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

People v Santiago

176 AD3d 744 (2nd 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

No reasonable suspicion

People v Bilal

170 AD3d 83 (1st 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

People v Floyd

171 AD3d 787 (2nd 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

People v Suttles

171 AD3d 1454 (4th 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

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

People v Brown

172 AD3d 41 (1st 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

People v Turner

178 AD3d 70 (3rd 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

People v Williams

2019 NY Slip Op 08048 (4th 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

No probable cause

People v Perez

170 AD3d 496 (1st 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

People v Garcia

175 AD3d 1319 (2nd 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

People v Hightower

176 AD3d 865 (2nd 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

No exigent circumstances

People v Grimes

175 AD3d 712 (2nd 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

Incredible cops

People v Maiwandi

170 AD3d 750 (2nd 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

Darden hearing

People v Givans

170 AD3d 1638 (4th 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

People v Nettles

172 AD3d 1102 (2nd 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

Custodial interrogation

People v Torres

172 AD3d 758 (2nd 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

People v Hernandez

174 AD3d 1352 (4th 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

People v Dorvil

175 AD3d 708 (2nd 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

Identification

People v Jones

173 AD3d 1062 (2nd 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

People v Robles

174 AD3d 653 (2nd 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

Right to counsel

People v Roman

175 AD3d 1198 (1st 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

Search warrant

People v Goldman

171 AD3d 581 (1st 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

People v Lambey

176 AD3d 1232 (2nd 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

People v Thompson

2019 NY Slip Op 08772 (1st 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

People v Melamed

2019 NY Slip Op 09295 (2nd 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

Abeyance

People v Green

173 AD3d 1690 (4th 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

Other errors

People v Jackson

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

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

People v Dunbar

2019 NY Slip Op 09018 (2nd 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

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

People v Simmon

171 AD3d 557 (1st 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

People v Wade

172 AD3d 1644 (3rd 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

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

Lineups

People v Knox

170 AD3d 1648 (4th 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

GUILTY PLEAS

Waivers of appeal

People v Francisco

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

People v Palmer

172 AD3d 755 (2nd 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

People v Pelige

172 AD3d 1407 (2nd 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

People v Bakayoko

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

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

http://nycourts.gov/reporter/3dseries/2019/2019_05677.htm

People v Ellison

176 AD3d 969 (2nd 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

People v Bowden

2019 NY Slip Op 07961 (3rd 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

People v McDermid

2019 NY Slip Op 08320 (4th 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

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

Lopez preservation exception

People v Hector

172 AD3d 1913 (4th 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

People v Skyers

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

Possibility of intoxication defense raised, triggering narrow preservation exception.

http://nycourts.gov/reporter/3dseries/2019/2019_05233.htm

People v Steele-Warrick

2019 NY Slip Op 08428 (2nd 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

Coercion

People v Hollmond

170 AD3d 1193 (2nd 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

Boykin error

People v Demkovich

168 AD3d 1221 (3rd 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

People v Glover

168 AD3d 1217 (3rd 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

Improper advice from counsel

People v Keller

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

Erroneous advice about possible consecutive sentences invalidated plea.

http://www.nycourts.gov/reporter/3dseries/2019/2019_00620.htm

Inadequate colloquy

People v Carrasco

176 AD3d 503 (1st 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

People v Hernandez

176 AD3d 1100 (2nd 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

No Peque warnings

People v Griffith

168 AD3d 760 (2nd 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

People v Hor

169 AD3d 713 (2nd 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

People v Kostyk

170 AD3d 1042 (2nd 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

People v Arias

170 AD3d 576 (1st 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

People v Mohamed

171 AD3d 796 (2nd 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

People v Bermudez

173 AD 3d 579 (1st 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

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

Catu violation

People v Mudd

169 AD3d 1166 (3rd 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

People v Watson

2019 NY Slip Op 08230 (2nd 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

Empty promises

People v Tchiyuka

169 AD3d 1398 (4th 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

People v Golden

170 AD3d 528 (1st 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

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

People v McCullen

171 AD3d 1492 (4th 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

Right to counsel/IAC/conflict of interest

People v Jones

171 AD3d 1249 (3rd 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

People v Hill

172 AD3d 1095 (2nd 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

People v Marshall

173 AD3d 1257 (3rd 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

People v Jones

173 AD3d 1628 (4th 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

People v Edwards

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

Same error as *People v Jones, supra*.

http://nycourts.gov/reporter/3dseries/2019/2019_04537.htm

People v Palmer

173 AD3d 1560 (3rd 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

People v Bloodworth

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

Defense counsel failed to make meritorious speedy trial argument.

http://nycourts.gov/reporter/3dseries/2019/2019_05284.htm

People v Johnson

2019 NY Slip Op 08348 (1st 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

Motions to withdraw guilty plea

People v Dorsey

170 AD3d 1325 (3rd 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

Other

People v Dimon

174 AD3d 540 (2nd 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

TRIALS

Cognizable crimes, duplicitous counts

People v Dibble

2019 NY Slip Op 07165 (4th 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

People v Kniffin

176 AD3d 1584 (4th 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

People v Delacruz

2019 NY Slip Op 08498 (1st 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

People v Baines

2019 NY Slip Op 08794 (1st 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

Speedy trial

People v Stewart

171 AD3d 625 (1st 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

People v Harrison

171 AD3d 1481 (4th 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

People v Swails

172 AD3d 579 (1st 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

People v Coulibaly

172 AD3d 647 (1st 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

People v Johnson

174 AD3d 1510 (4th 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

People v Perkins

175 AD3d 1327 (2nd 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

Authority to prosecute

People v Wassell

171 AD3d 1499 (4th 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

Severance

People v Colon

2019 NY Slip Op 08449 (3rd 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

Jury issues

Challenges for cause

People v Clark

171 AD3d 1530 (4th 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

People v Rodriguez

172 AD3d 509 (1st 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

People v Alvarez

174 AD3d 638 (2nd 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

People v Hernandez

174 AD3d 1352 (4th 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

People v Jackson

176 AD3d 1312 (3rd 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

Batson claims

People v Watson

169 AD3d 81 (1st 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

People v Alexander

168 AD3d 755 (2nd 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

People v Johnson

171 AD3d 1089 (2nd 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

People v Teran

172 AD3d 447 (1st 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

Reverse Batson

People v Bloise

169 AD3d 594 (1st 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

Antommarchi

People v Geddis

173 AD3d 1724 (4th 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

Other

People v Delvalle

172 AD3d 1090 (2nd 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

People v Price

175 AD3d 1436 (2nd 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

Quantum of evidence

Murder

People v Lendof-Gonzalez

170 AD3d 1508 (4th 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

People v McDonald

172 AD3d 1900 (4th 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

People v Parris

173 AD3d 1745 (4th 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

People v Hemphill

173 AD3d 471 (1st 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

People v Clavell

176 AD3d 844 (2nd 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

Manslaughter

People v Gonzalez

174 AD3d 1542 (4th 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

Robbery

People v Allende

168 AD3d 464 (1st 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

People v Jones

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

Robbery verdict against weight.

http://nycourts.gov/reporter/3dseries/2019/2019_04966.htm

Assault

People v Burman

173 AD3d 1727 (4th 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

People v Truluck

173 AD3d 1070 (2nd 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

People v Palant

176 AD3d 865 (2nd 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 1st and 2nd to 3rd degree assault.

http://nycourts.gov/reporter/3dseries/2019/2019_07280.htm

People v Nelson

2019 NY Slip Op 09144 (4th 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

Burglary

People v Degnan

168 AD3d 1224 (3rd 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

Kidnapping

People v Mejia

169 AD3d 715 (2nd 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

People v Terry

169 AD3d 938 (2nd 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

CPW 3

People v Rodgers

174 AD3d 924 (2nd 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

People v Knowles

2019 NY Slip Op 08770 (1st 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

Sexual crimes

People v Madsen

168 AD3d 1134 (3rd 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

People v Partridge

173 AD3d 1769 (4th 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

Larceny

People v Gross

169 AD3d 159 (2nd 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

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

Drug crimes

People v Correa

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

Verdict of guilty as to 3rd 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

People v Cruz

176 AD3d 852 (2nd 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

People v Gaworecki

174 AD3d 1143 (3rd 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

People v Gillette

2019 NY Slip Op 09323 (3rd 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

Other crimes

People v Kaplan

168 AD3d 1229 (3rd 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

People v Tromans

2019 NY Slip Op 08454 (3rd 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

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

Confrontation clause

People v Gonsalves

170 AD3d 886 (2nd 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

People v Wakefield

175 AD3d 158 (3rd 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

Molineux/Ventimiglia

People v Dunham

170 AD3d 659 (1st 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

People v Saxe

174 AD3d 958 (3rd 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

People v Calderon

176 AD3d 594 (1st 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

People v Hollander

2019 NY Slip Op 07950 (2nd 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

Sandoval

People v Walters

172 AD3d 916 (2nd 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

People v Moco

176 AD3d 644 (1st 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

Cross-examination and redirect

People v Holmes

170 AD3d 532 (1st 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

People v Smith

171 AD3d 523 (1st 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

People v Watts

176 AD3d 981 (2nd 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

People v Kennedy

2019 NY Slip Op 07899 (2nd 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

People v Burgess

2019 NY Slip Op 09364 (1st 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

Uncharged theory

People v McLean

170 AD3d 1196 (3rd 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

People v Gentles

171 AD3d 471 (1st 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

Hearsay

People v Cartagena

170 AD3d 1196 (1st 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

People v Figueroa

171 AD3d 549 (1st 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

People v Smith

171 AD3d 1102 (2nd 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

Other evidentiary issues

People v Robinson

170 AD3d 893 (2nd 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

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

People v Easley

171 AD3d 785 (2nd 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

People v Juarez

172 AD3d 1231 (2nd 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

People v Shelley

172 AD3d 1245 (2nd 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

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

People v Cook

173 AD3d 633 (1st 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

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

Other trial errors

People v Ortiz

168 AD3d 482 (1st 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

Matter of Pinney v Van Houten

168 AD3d 1293 (3rd 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

People v Smith

170 AD3d 1339 (3rd 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

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* (4th Dept) (12/23/19 DOI) (same error).

http://www.nycourts.gov/reporter/3dseries/2019/2019_03527.htm

People v Wager

173 AD3d 1352 (3rd 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

People v Morris

173 AD3d 1220 (2nd 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

People v Ramsey

174 AD3d 651 (2nd 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

People v Ward

175 AD3d 722 (2nd 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

People v Ruffin

2019 NY Slip Op 08771 (1st 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

People v Lewis

2019 NY Slip Op 09023 (2nd 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

Summation

People v Cunningham

171 AD3d 1207 (2nd 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

People v Hollander

2019 NY Slip Op 07950 (2nd 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

People v Dawson

2019 NY Slip Op 08689 (2nd 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

People v Day

2019 NY Slip Op (2nd 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

Jury charges/notes/deliberations

Definitions

People v Ataroua

168 AD3d 466 (1st 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

Lesser included offenses

People v Camacho

2019 NY Slip Op 08944 (1st 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

Justification

People v Brown

169 AD3d 1488 (4th 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

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

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

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

Acquittal/justification

People v Barnar

168 AD3d 623 (1st 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

People v Akbar

169 AD3d 708 (2nd 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

People v Rosario

169 AD3d 1066 (2nd 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

People v Wah

171 AD3D 574 (1st 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

People v Daniels

174 AD3d 955 (3rd 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

People v Smith

174 AD3d 928 (2nd 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

Kidnapping

People v Vail

174 AD3d 1365 (4th 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

Cross-racial ID

People v Jiggetts

168 AD3d 507 (1st 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

Adverse inference

People v Torres

169 AD3d 1068 (2nd 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

Coercion

People v Muhammad

171 AD3d 442 (1st 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

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

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

People v Henry

173 AD3d 1470 (3rd 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

People v Johnson

175 AD3d 14 (3rd 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

People v Grimes

174 AD3d 1341 (4th 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

People v Copeland

175 AD3d 1316 (2nd 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

Other

People v Peralta

172 AD3d 457 (1st 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

People v Larman

175 AD3d 509 (2nd 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

People v Rosario

2019 NY Slip Op 08006 (1st 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

Mistrials

People v Smith

176 AD3d 1114 (2nd 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

CPL 330.30 motions

People v Blunt

174 AD3d 1504 (4th 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

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

People v McGregor

2019 NY Slip Op 08283 (1st 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

RIGHT TO COUNSEL

Unrepresented

People v Stephans

168 AD3d 990 (2nd 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

People v Zi

2019 NY Slip Op 09353 (1st 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

Substitute counsel

People v Fulgencio

168 AD3d 1094 (2nd 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

Adverse position

People v Faulkner

168 AD3d 1317 (3rd 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

People v Jeffery

169 AD3d 924 (2nd 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

People v Lopez

173 AD3d 1213 (2nd 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

People v Rose

174 AD3d 743 (2nd 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

IAC claims: reversals

People v Stephans

168 AD3d 990 (2nd 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

People v Newman

169 AD3d 1157 (3rd 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

People v Coulibaly

172 AD3d 647 (1st 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

People v Goondall

173 AD3d 896 (2nd 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

People v Disla

173 AD3d 555 (1st 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

People v Corchado

175 AD3d 705 (2nd 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

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

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

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

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

People v Benjamin

170 AD3d 566 (1st 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

Predicate felony: out-of-state prior

People v Muhammad

168 AD3d 549 (1st 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

People v Vasquez

173 AD3d 1073 (2nd 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

Other illegal sentences

People v Barr

168 AD3d 1282 (3rd 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

People v Campagna

172 AD3d 1904 (4th 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

People v King

172 AD3d 1098 (2nd 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

People v Taylor

172 AD3d 1110 (2nd 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

People v Simpson

173 AD3d 1617 (4th 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

People v Ferguson

2019 NY Slip Op 08424 (2nd 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

People v Vamhuning

2019 NY Slip Op 08451 (3rd 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

People v Devorce

2019 NY Slip Op 08859 (2nd 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

People v Robinson

2019 NY Slip Op (2nd 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

Sentence reductions explained

People v Allende

168 AD3d 464 (1st 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

People v Mitchell

168 AD3d 531(1st 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

People v Robinson

168 AD3d 605 (1st 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

People v Farrell

169 AD3d 919 (2nd 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

People v Garcia

170 AD3d 883 (2nd 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

People v Hamell

170 AD3d 1647 (4th 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

People v Reid

173 AD3d 1663(4th 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

People v Brown

174 AD3d 1329 (4th 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

People v Bakayoko

174 AD3d 730 (2nd 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

People v McCoy

174 AD3d 1379 (4th 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

People v Boyd

175 AD3d 1030 (4th 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

People v Murdock

175 AD3d 1560 (2nd 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

Enhanced sentence errors

People v Hunter

173 AD3d 1249 (3rd 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

People v King

2019 NY Slip Op 08729 (3rd 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

Restitution

People v Lugo

170 AD3d 748 (2nd 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

People v Richardson

173 AD3d 1859 (4th 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

People v Waldron

2019 NY Slip Op 07116 (3rd 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

People v Grant

2019 NY Slip Op (2nd 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

Presentence report

People v Washington

170 AD3d 1608 (4th 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

People v Pelige

172 AD3d 1407 (2nd 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

People v Ferguson

2019 NY Slip Op 08016 (4th 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

Surcharge

People v Davis

170 AD3d 745 (2nd 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

Other sentencing issues

People v Andre

168 AD3d 757 (2nd 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

People v Sumter

169 AD3d 1275 (3rd 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

People v Fitch

170 AD3d 1572 (4th 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

People v Taylor

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

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

http://www.nycourts.gov/reporter/3dseries/2019/2019_02822.htm

People v Carpio

171 AD3d 1206 (2nd 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

People v Cutler

173 AD3d 1269 (3rd 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

People v Herrod

174 AD3d 1322 (4th 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

People v Ward

175 AD3d 722 (2nd 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

YO treatment not considered

People v Thomas

169 AD3d 1451 (4th 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

People v Alleyne

169 AD3d 710 (2nd 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

People v Ali-Williams

172 AD3d 890 (2nd 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

People v Rodriguez

172 AD3d 1240 (2nd 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

People v Robertucci

172 AD3d 1782 (3rd Dept) (5/28/19 DOI).

See *Rodriguez, supra*.

http://www.nycourts.gov/reporter/3dseries/2019/2019_04057.htm

People v Colon

173 AD3d 1255 (3rd 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

People v Ramirez

173 AD3d 904 (2nd 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

People v Garcia

175 AD3d 612 (2nd 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

YO granted

People v Sheldon O.

169 AD3d 1062 (2nd 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

Other YO cases

Matter of Samy F. v Fabrizio

176 AD3d 44 (1st 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

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

People v Wright

174 AD3d 547 (2nd 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

People v Covington

174 AD3d 548 (2nd 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

People v Buyund

2019 NY Slip Op 08207 (2nd 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

People v Burden

176 AD3d 524 (1st Dept) (10/18/19 DOI).

The defendant was not required to register in NY on basis of CT conviction for 4th degree sexual assault lacking helplessness element. Sex offender adjudication vacated.

http://nycourts.gov/reporter/3dseries/2019/2019_07497.htm

People v Ramos

2019 NY Slip Op 09153 (4th 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

Procedural and other errors

People v Barney

168 AD3d 774 (2nd 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

People v Dean

169 AD3d 1414 (4th 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

People v Soto

169 AD3d 534 (1st 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

People v Chrisley

172 AD3d 1914 (4th 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

People v Briscoe

172 AD3d 1788 (3rd 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

People v Jones

172 AD3d 1786 (3rd Dept) (5/28/19 DOI).

IAC where counsel thought presumptive classification was automatic.

http://nycourts.gov/reporter/3dseries/2019/2019_04060.htm

People v Powell

173 AD3d 1228 (2nd 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

People v Smith

175 AD3d 572 (2nd 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

Level reduced or remittal

People v Logsdon

169 AD3d 1466 (4th 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

People v Hinson

170 AD3d 1385 (3rd 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

People v Secor

171 AD3d 1314 (3rd 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

People v Leon

172 AD3d 765 (2nd 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

People v Lewis

173 AD3d 913 (2nd 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

People v Spratley

175 AD3d 962 (4th 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

People v Snyder

175 AD3d 1331 (2nd 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

People v Weber

2019 NY Slip Op 07197 (4th 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

People v Torres

176 AD3d 1631 (2nd 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

People v Fisher

2019 NY Slip Op 07893 (2nd 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

People v Davis

2019 NY Slip Op 08720 (2nd 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

People v Brown

2019 NY Slip Op 08746 (2nd 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

People v Jarama

2019 NY Slip Op 09044 (2nd 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

People v Lewis

2019 NY Slip Op (2nd 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

No appeal

People v Lavelle

169 AD3d 1127 (3rd 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

People v King

2019 NY Slip Op 08743 (3rd 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

POST-DISPOSITION

Probation and VOP

People v Hakes

168 AD3d 1214 (3rd 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

People v Vandegrift

170 AD3d 1327 (3rd 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

People v Johnson

173 AD3d 1446 (3rd Dept) (6/24/19 DOI).

Improper to find VOP based on matter not alleged in court report. Insufficient proof of 2nd violation.

http://nycourts.gov/reporter/3dseries/2019/2019_05018.htm

People v Ayotunji A.

174 AD3d 1503 (4th 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

People v Roberts

176 AD3d 1318 (3rd 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

People v Herring

2019 NY Slip Op 09287 (2nd 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

SARA

People ex rel. Negrón v Superintendent

170 AD3d 12 (3rd 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

People ex rel. Johnson v Superintendent
174 AD3d 992 (3rd 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

CPL 440.10 motions

Immigration issues

People v Cabrera

169 AD3d 435 (1st 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

People v Richards

2019 NY Slip Op 08268 (1st 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

Indictment dismissed

People v Stewart

171 AD3d 625 (1st 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

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

People v Valerio

176 AD3d 1625 (4th 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

People v McGhee

2019 NY Slip Op 09116 (1st 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

Hearing needed

People v Krivak

168 AD3d 979 (2nd 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

People v Pendergraph

170 AD3d 1630 (4th 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

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

People v Lee

172 AD3d 1925 (4th 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

People v Nichtman

173 AD3d 1261 (3rd 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

People v Adamo

174 AD3d 1228 (3rd 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

People v Williams

174 AD3d 980 (4th 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

People v Howard

175 AD3d 1023 (4th 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

Other decisions

People v Rosario

170 AD3d 1275 (3rd 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

People v Rudolph

170 AD3d 1258 (3rd 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

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

CPL 440.20 motions

People v Montague

171 AD3d 1306 (3rd 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

CPL 440.30 motions

People v Dorsey

170 AD3d 417 (1st 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

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

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

Matter of State of NY v Jerome A.

172 AD3d 446 (1st 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

Matter of State of NY v Ted B.

174 AD3d 630 (2nd 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

Parole

Matter of Piagentini v NYS Board of Parole

176 AD3d 138 (3rd 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

Matter of Cobb v DOCCS

176 AD3d 507 (1st 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

Matter of Karimzada v NYS Board of Parole

176 AD3d 1555 (3rd 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