

## CRIMINAL

### COURT OF APPEALS

***People v Middleton*, 4/30/20 – OFFICIAL MISCONDUCT / VALID INFORMATION**

The defendant was charged by information with official misconduct. In a Memorandum, the COA found that the information was jurisdictionally valid because it contained non-conclusory factual allegations addressing each element of the crime. The information alleged that, while working as a substance abuse treatment program aide at a correctional facility, the defendant disclosed information to an inmate regarding an unusual incident, in violation of the employee manual she signed. In a statement, the defendant admitted that she printed paperwork regarding the incident on a facility computer and allowed the inmate to take the document to his cell. One could infer that she committed the unauthorized disclosure with the intent to benefit herself or inmates.

[http://www.nycourts.gov/reporter/3dseries/2020/2020\\_02530.htm](http://www.nycourts.gov/reporter/3dseries/2020/2020_02530.htm)

### FIRST DEPARTMENT

***People v Lantigua*, 4/30/20 – 440 MOTION / HEARING ON IAC**

The defendant appealed from an order of NY County Supreme Court, which summarily denied his CPL 440.10 motion claiming the ineffective assistance of counsel in not advising him about mandatory deportation as a result of a guilty plea. The First Department reversed. In 1998, the defendant pleaded guilty to attempted 3<sup>rd</sup> degree criminal possession of a controlled substance and was sentenced to five years' probation. The defendant asserted that trial counsel erroneously advised him that he would not be deported if he pleaded guilty. Supporting the motion was an unsworn but signed letter from counsel, who admitted that he did not believe that a non-jail sentence would trigger negative immigration consequences. The defendant also included a copy of the transcript of the plea proceedings, which contained no advice by either counsel or the judge about the immigration consequences. The motion court erred in focusing on the likelihood that the defendant would have been convicted after trial. *Lee v United States*, 137 S Ct 1958, rejected the notion that a defendant who lacked a strong defense could not show prejudice. A likelihood of conviction at trial was but one factor. For some defendants, deportation could be functionally as severe as imprisonment. Thus, an IAC claim regarding a plea may succeed even where the likely outcome of a favorable trial is slim to none. The defendant explained that he faced only a relatively short sentence if convicted after trial. If properly advised, he would have gone to trial so that he could remain with his immediate family, all of whom resided lawfully in the U.S. That counsel's letter was not sworn was of no moment because the court did not always require an attorney affidavit on a CPL 440.10 motion. The record did not set forth how long the defendant had been in this country or his ties to his country of origin. However, he had made sufficient allegations to warrant an evidentiary hearing. One justice dissented.

[http://nycourts.gov/reporter/3dseries/2020/2020\\_02557.htm](http://nycourts.gov/reporter/3dseries/2020/2020_02557.htm)

## THIRD DEPARTMENT

### ***People v Edwards*, 4/30/20 – DRIVER / DEPRAVED INDIFFERENCE / DISSENT**

The People appealed from an order of Schenectady County Supreme Court, which partially granted the defendant's motion to dismiss the indictment. The Third Department modified by reinstating two counts of 1<sup>st</sup> degree assault. One justice dissented. In his view, Supreme Court correctly determined that the evidence before the grand jury was legally insufficient to support the assault charges, which were premised on the defendant's purported operation of a vehicle with depraved indifference. *See* Penal Law § 120.10 (3). The defendant did drive in an extremely reckless manner, but recklessness and depraved indifference are not the same. In automobile cases, the conscious avoidance of risk is the antithesis of a complete disregard for the safety of others, or depraved indifference. A collision reconstruction investigator testified that the defendant's vehicle was slowing for the five seconds before the crash, while the steering wheel was being turned to the right as the road curved. One of the two passengers—both of whom suffered serious injuries—testified that the defendant slammed on the brakes before the collision. Such proof showed that the defendant took steps, albeit unsuccessfully, to reduce his speed and mitigate the risk of his reckless driving. The People failed to present prima facie proof that he acted with depraved indifference.

[http://nycourts.gov/reporter/3dseries/2020/2020\\_02503.htm](http://nycourts.gov/reporter/3dseries/2020/2020_02503.htm)

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