CRIMINAL

FIRST DEPARTMENT

People v Angel, 5/11/21 – **SCI / DEFECTIVE**
The defendant appealed from a judgment of Bronx County Supreme Court. The First Department reversed and dismissed. The felony complaint charged 1st degree criminal contempt, 3rd degree assault, and 2nd degree harassment. The defendant agreed to waive prosecution by indictment and plead guilty to aggravated criminal contempt. The superior court information was jurisdictionally defective since it did not set forth an offense for which the defendant was held for grand jury action or a lesser included offense. Legal Aid Society, NYC (Heidi Bota, of counsel) represented the appellant.
http://nycourts.gov/reporter/3dseries/2021/2021_03001.htm

People v McGhee, 5/11/21 – **SUPPRESSION ERROR / HARMLESS**
The defendant appealed from a judgment of NY County Supreme Court, convicting him of 2nd degree murder and another crime. The First Department affirmed, while finding two errors. The trial court should have suppressed an identification of the defendant from a surveillance tape. The ID was unduly suggestive, because a detective directed the eyewitness to watch for someone wearing "all brown," thus singling out the defendant. Based on suppression hearing testimony, the "all brown" description was supplied by 911 callers, not the eyewitness. The trial court also erred in admitting as an excited utterance a detective's testimony that, when an eyewitness saw the defendant in a video, she exclaimed, "That's him. He shot the boy in the Polo Ground." The errors were harmless.
http://nycourts.gov/reporter/3dseries/2021/2021_03002.htm

People v Empire Bonding & Ins. Co., 5/13/21 – **BAIL FORFEITURE / VACATED**
A surety appealed from an order of NY County Supreme Court, which denied its CPLR 5015 motion to vacate a judgment of bail forfeiture in the amount of $100,000. The First Department reversed. The criminal defendant was released to the custody of the surety upon the posting of the bail bond. He failed to appear at his suppression hearing, and the case was adjourned to permit the surety to produce the defendant or an excuse for his nonappearance. But the defendant did not appear, and the surety did not offer an excuse. The People revealed that the defendant had been arrested and jailed in Maine. Although the court ordered forfeiture of bail, the People did not reduce the bond obligation to a judgment within 120 days, as statutorily required. The debt could not be enforced.
http://nycourts.gov/reporter/3dseries/2021/2021_03120.htm

SECOND DEPARTMENT

People v Burbridge, 5/12/21 – **SENTENCE / TOO ENHANCED**
The defendant appealed from an Orange County Court judgment, convicting him of 2nd degree CPW. The Second Department reduced the sentence from 13 to 8 years' imprisonment, followed by post-release supervision. The waiver of appeal was invalid where it was characterized as an absolute bar to appeal, and issues available for appellate

review were not explained. Since the defendant failed to comply with the conditions of the plea agreement, County Court had the right to impose a greater sentence. However, the appellate court had broad power to modify the enhanced sentence, which was found harsh and excessive. Kathy Manley represented the appellant.
http://nycourts.gov/reporter/3dseries/2021/2021_03045.htm

People v Argueta, 5/12/21 – **SENTENCE / CONCURRENT**
The defendant appealed from a judgment of Nassau County Supreme Court, convicting him of various offenses. The Second Department modified. Attempted 2nd degree assault was an inclusory concurrent count of attempted 1st degree assault; guilt of the greater count required dismissal of the lesser count. The consecutive sentence term for 1st degree criminal use of a firearm was improper, where the conviction did not involve display of a loaded operable weapon, and criminal liability was based on conduct of another. *See* Penal Law § 265.09 (2). All terms would run concurrently. Joseph DeFelice represented the appellant.
http://nycourts.gov/reporter/3dseries/2021/2021_03067.htm

THIRD DEPARTMENT

People v McCall, 5/13/21 – **SCI / DEFECTIVE**
The defendant appealed from a judgment of Albany County Supreme Court. The Third Department reversed. He was charged in a felony complaint with 1st degree robbery and held for grand jury action. Pursuant to a plea agreement, he waived indictment and was prosecuted by a superior court information charging him with attempted 2nd degree robbery. The waiver of indictment and SCI were jurisdictionally defective because they did not charge an offense for which the defendant was held for action of a grand jury or a lesser included offense of the original charge. The 2nd degree crime required an element not required by the 1st degree crime—that the defendant be aided by another person actually present. Martin McGuinness represented the appellant.
http://nycourts.gov/reporter/3dseries/2021/2021_03083.htm

People v Gaylord, 5/13/21 – **RAPE SHIELD / EXCEPTION NOT APT**
The defendant appealed from a Broome County Court judgment, convicting him of predatory sexual assault against a child. The Third Department affirmed, rejecting the defendant's objection to a ruling under the Rape Shield Law exception allowing proof of prior sexual conduct deemed relevant and admissible in the interests of justice. Here the alleged prior conduct was the victim having sex with her cousin and being inappropriately touched by another man—conduct that the defendant argued was relevant to motive to fabricate and age-inappropriate knowledge. It was error to allow the victim's testimony that the defendant punched her in the stomach when fearing she was pregnant, since he had no notice of the *Molineux* proof. But the error was harmless.
http://nycourts.gov/reporter/3dseries/2021/2021_03080.htm

FAMILY

FIRST DEPARTMENT

M/O Renner v OCFS, 5/13/21 – **INDICATED REPORT / CONFIRMED**
In an Article 78 proceeding, the petitioner appealed from a determination of the Office of Children and Family Services, which denied her request to amend as unfounded, and to seal, an indicated report finding maltreatment of her daughter. The First Department confirmed the determination, which was supported by substantial evidence that the petitioner pulled her 11-year-old daughter by the arms out of a parked car, causing the child to fall to the ground, in harm's way. OCFS rationally found the report relevant to childcare work or adoption. There was no basis to overturn the credibility determinations; and the petitioner did not support allegations of bias. Maintaining the indicated report in the Central Register was not a penalty that shocked the conscience.
http://nycourts.gov/reporter/3dseries/2021/2021_03006.htm

SECOND DEPARTMENT

M/O Williams v Worthington, 5/12/21 – **DEFAULT / VACATED**
The mother appealed from an order of Suffolk County Family Court, which denied her motion to vacate a custody order. The Second Department reversed. Upon the mother's failure to appear for a court date, Family Court conducted an inquest in her absence and granted the father custody. The law favored resolution on the merits in custody proceedings, so defaults were liberally vacated. The mother showed a reasonable excuse and meritorious cause. Abbe Shapiro represented the appellant.
http://nycourts.gov/reporter/3dseries/2021/2021_03040.htm

M/O Jonathan N., 5/12/21 – **DEFAULT / VACATED**
The father appealed from an order of Queens County Family Court, which denied his motion to vacate an order finding that he abandoned the child. The Second Department reversed. When the father did not timely appear at a hearing, Family Court proceeded with an inquest. The father showed a reasonable excuse and did appear on the hearing date, but after the proceedings had concluded. At that first appearance, he was unrepresented by counsel and was not offered assigned counsel, even though he had a right to representation when facing potential termination of his parental rights. *See Matter of Ella B.*, 30 NY2d 352. Further, the father established a potentially meritorious defense: his allegations about attempts to contact the agency and visit the child potentially extended into the relevant six-month pre-petition period. Barbara Caravello represented the appellant.
http://nycourts.gov/reporter/3dseries/2021/2021_03034.htm

M/O Rosa M. M.-G. v Dimas A., 5/12/21 – **SIJS / REVERSED**
The mother appealed from an order of Nassau County Family Court, which denied her motion for specific findings that reunification of the child with his birth father was not viable due to parental abandonment and that it would not be in the child's best interests to be returned to Nicaragua. The Second Department reversed. The father had never met nor

supported his son. No one was available to care for the child in Nicaragua. If sent there, he would be separated from his mother; and his maternal grandparents were too elderly to protect him. Further, the child would face gang violence in Nicaragua, where he had previously been threatened and kidnapped. Alex Castro represented the appellant.
http://nycourts.gov/reporter/3dseries/2021/2021_03033.htm