

CRIMINAL

FIRST DEPARTMENT

***People v Singh*, 5/28/20 – PEQUE / NO PREJUDICE**

The defendant appealed from a judgment of NY County Supreme Court, convicting him of 3rd and 4th degree criminal possession of stolen property. The First Department affirmed. In 2009, the plea court did not advise the defendant that, if he was not a U.S. citizen, he could be deported as a result of his plea, as subsequently required in *People v Peque* 22 NY3d 168. The question of whether a defendant was prejudiced by the lack of such advice is generally determined via a hearing. In this case, however, the appellate court found no reasonable possibility that the defendant could show prejudice. When he pleaded guilty in 2009, he had previously been convicted for grand larceny, which rendered him deportable. http://nycourts.gov/reporter/3dseries/2020/2020_03087.htm

***People v Urena*, 5/28/20 – DETECTIVE OPINION / HARMLESS ERROR**

The defendant appealed from a judgment of NY County Supreme Court, convicting him of 2nd degree murder and 1st degree gang assault. The First Department affirmed. The trial court erroneously received a detective's opinion testimony that the object the defendant appeared to be holding in surveillance videos was a knife. However, there was no reasonable probability that the error contributed to the verdict, where the jurors—who were properly instructed about their role as triers of fact—were able to see and evaluate the videotapes for themselves. The defendant also objected to leading questions by the prosecutor, and to allegedly improper evidence of his gang activity. The reviewing court found nothing so egregious or prejudicial as to warrant reversal. Other claims of prosecutorial error were unpreserved: the defendant did not object, made only generalized objections or objections that did not articulate the grounds asserted on appeal, or did not request further relief after the court took curative actions.

http://nycourts.gov/reporter/3dseries/2020/2020_03073.htm

***People v Ifill*, 5/28/20 – DETECTIVE TESTIMONY / HARMLESS ERROR**

The defendant appealed from a judgment of NY County Supreme Court, convicting him of 2nd degree kidnapping and other crimes. The First Department affirmed. The hearing court properly denied the defendant's motion to suppress a lineup identification. Even if the defendant was the only lineup participant who appeared to be completely bald, his baldness was not mentioned by the victim, who described his assailant as wearing a hat, making it less likely that he noticed any baldness. A detective's testimony that the victim stated that he would be able to identify the older of the two assailants (whom he later identified as the defendant) was not necessary to help the jury understand the complainant's testimony and therefore was improperly allowed. But the error was harmless; the defendant was linked to the crime by significant DNA evidence.

http://nycourts.gov/reporter/3dseries/2020/2020_03078.htm

SECOND DEPARTMENT

***People v Sonds*, 5/27/20 – ADVERSE POSITION / REMITTED**

The defendant appealed from a judgment of Kings County Supreme Court, convicting him of 1st degree assault. The Second Department remitted for further proceedings on the merits of the defendant's CPL 330.30 motion, with the defendant to be represented by appellate counsel. The appeal was held in abeyance. Prior to sentencing, the defendant pro se made the motion to set aside the verdict. Defense counsel said that he would not adopt the motion because it was not "viable," and it presented matters not "for the purview of the court." Supreme Court declined to review the motion. By taking a position adverse to the defendant, counsel deprived him of effective assistance. Appellate Advocates (Joshua Levine, of counsel) represented the appellant.

http://nycourts.gov/reporter/3dseries/2020/2020_03036.htm

***People v Tyrek M.*, 5/27/20 – YO / SENTENCE VACATED**

The defendant appealed from a judgment of Kings County Supreme Court, adjudicating him a youthful offender, upon his plea of guilty to attempted 1st degree gang assault, and imposing a split sentence of five months' imprisonment and an unspecified term of probation. The Second Department vacated the sentence and remitted for resentencing. The lower court neglected to recite the term of probation. Under CPL 380.20, courts must pronounce sentence in every case where a conviction is entered. A violation of the statute may be addressed on direct appeal, notwithstanding a valid waiver of the right to appeal or the failure to preserve the issue. Appellate Advocates (Sam Feldman, of counsel) represented the appellant.

http://nycourts.gov/reporter/3dseries/2020/2020_03031.htm

***People v Brown*, 5/27/20 – CPL 440.10 DENIAL / AFFIRMED**

The defendant appealed from an order of Westchester County Court, which summarily denied his CPL 440.10 motion to vacate a judgment convicting him of 1st degree assault and 3rd degree CPW, upon a jury verdict. The Second Department affirmed, finding no *Brady* violation by virtue of the People's failure to disclose a fingerprint comparison report. *Brady* does not require a prosecutor to supply exculpatory evidence about which the defendant should reasonably have known. Pretrial disclosures in the instant case included supplementary incident reports and a receipt stating that police had recovered and submitted for analysis of 17 latent fingerprints from a car. Trial witnesses testified that the defendant obtained the weapon from the car. So he should have known of the possibility that analysis revealed that the latent fingerprints did not match his.

http://nycourts.gov/reporter/3dseries/2020/2020_03021.htm

THIRD DEPARTMENT

***People v Lee*, 5/28/20 – MURDER / SUPPLEMENTAL INSTRUCTION**

The defendant appealed from a judgment of Broome County Court, convicting him of 2nd degree murder and other crimes in connection with an incident in which he hit Seth West in the head with a bottle and shortly thereafter shot Scott Wright in the abdomen, causing his death. The Third Department affirmed. The defendant testified that he had been drinking heavily at a party before striking West, and then he briefly left. Upon his return to the party, the defendant purportedly had no intention of shooting anyone. Instead, he waved a gun around to provoke a reaction, but the weapon went off unexpectedly and struck Wright as he left the party, exiting an apartment door. The indictment charged that the defendant acted with the intent to cause Wright's death. On appeal, the defendant contended that the court gave an improper supplemental instruction about intent. When the jury asked if the murder charge was specific to the killing of Wright, the court said yes. The jury thereafter wondered whether intent could go to the fact that the defendant intentionally fired the gun at whomever walked out the door, and the court said yes. The People had argued that they were not bound by the indictment, because the victim's identity was not an element of the crime. The reviewing court rejected the defendant's argument that the supplemental instruction impermissibly altered the theory of the prosecution.

http://nycourts.gov/reporter/3dseries/2020/2020_03049.htm

***People v Morehouse*, 5/28/20 – SEARCH / SYNTHETIC CANNABINOIDS**

The defendant appealed from a judgment of Washington County Court, convicting him upon his plea of guilty of 3rd degree criminal possession of a controlled substance and 3rd degree CPW. On appeal, he urged that: (1) the trial court erred in denying a hearing on his motion to suppress evidence; and (2) the warrant was issued without probable cause, because the application was based on possession of synthetic cannabinoids, which is not illegal under the Penal Law. The appellate court found that the issue regarding the hearing was unreserved; and in any event, the defendant failed to support his request with sworn factual allegations. *See* CPL 710.60 (3). While the Penal Law did not prohibit the possession of synthetic cannabinoids, the State Sanitary Code did (10 NYCRR 9-1.2), and a violation was punishable by a fine and/or 15 days' incarceration (Public Health Law § 229). The search warrant was supported by probable cause that the defendant possessed and sold both marijuana and synthetic cannabinoids.

http://nycourts.gov/reporter/3dseries/2020/2020_03048.htm

FAMILY

FIRST DEPARTMENT

Matter of Shiloh M.J. (Jamesina M.J.), 5/28/20 – ADOPTION / NO CONSENT

Bronx County Family Court found that the mother permanently neglected the subject children, terminated her parental rights, and committed custody and guardianship of the children to the petitioner agency and ACS for the purpose of adoption. The First Department vacated the order that terminated parental rights as to the child Cobey and freed him for adoption. The matter was remanded for a new dispositional hearing regarding best interests. Although the record supported the conclusion that adoption by the foster parents was in the children's best interests, Cobey was no longer in the same pre-adoptive home, was now age 16, and did not consent to being adopted.

http://nycourts.gov/reporter/3dseries/2020/2020_03080.htm

Matter of A.P. (M.P.), 5/28/20 – NOTICE OF APPEAL / INTERTWINED CASES

The father appealed from an order of disposition of Bronx County Family Court, which brought up for review a fact-finding order determining that he sexually abused child B.P. and derivatively abused children A.P. and M.P. *See* CPLR 5501 (a) (1). The First Department affirmed. With respect to B.P., the father failed to file a timely notice of appeal from a prior order of disposition. However, he timely appealed from the final order regarding A.P. and M.P., which brought up for review the fact-finding order as to all three children. The appellate court reviewed the fact-finding determination as to B.P., finding inextricably intertwined the issues of whether the father derivatively abused A.P. and M.P. and sexually abused B.P. Family Court correctly excluded the petitioner agency's progress notes on a prior unfounded case against the father with respect to another child, B.P.'s half-sister. *See* Social Services Law § 422 (5) (b). In any event, the father's counsel extensively cross-examined the witness about her allegations that the father sexually abused her when she was a child.

http://nycourts.gov/reporter/3dseries/2020/2020_03074.htm

THIRD DEPARTMENT

Jennifer VV. v Lawrence WW., 5/28/20 – OBJECTIONS / DE NOVO REVIEW

The father appealed from an order of Saratoga County Family Court, which granted the mother's petition to modify child support. In affirming, the Third Department rejected the father's contention that, under an abuse of discretion standard, Family Court's review of the Support Magistrate's order was limited to whether the statutory factors justified a deviation from his support obligation. Instead, upon written objections and rebuttal, Family Court was empowered to make its own findings of fact, with or without a new hearing. *See* Family Ct Act § 439 (d) (ii).

http://nycourts.gov/reporter/3dseries/2020/2020_03053.htm