

CRIMINAL

FIRST DEPARTMENT

***People v Jackson*, 3/11/21 – PARAPHRASED NOTE / NO O’RAMA ERROR**

The defendant appealed from a judgment of NY County Supreme Court, convicting him of two counts of 2nd degree CPW. The First Department affirmed. The trial court’s paraphrasing of part of a jury note from the deliberating jury did not constitute a mode of proceedings error (*People v O’Rama*, 78 NY2d 270). The relevant portion simply and unambiguously asked for a rereading of a specific part of the original jury charge. Although the court should have read the entire note into the record verbatim, the paraphrasing did not undermine defense counsel’s ability to provide input regarding the court’s response to the note. Supreme Court properly denied the defendant’s mistrial motion, made when cross-examination of the defendant went beyond the *Sandoval* ruling. Any potential prejudice was prevented by the court’s action in promptly sustaining an objection before the errant question was answered. The defendant expressly waived any curative instruction.

http://nycourts.gov/reporter/3dseries/2021/2021_01488.htm

SECOND DEPARTMENT

***People v Swain*, 3/10/21 – PLEA WITHDRAWAL / ABEYANCE**

The defendant appealed from an Orange County Court judgment, convicting him of 1st degree vehicular assault and DWI. The Second Department remitted for a hearing on the defendant’s motion to withdraw his plea of guilty and held the appeal in abeyance. The record presented a question as to whether the defendant understood that the court’s purportedly forthcoming bail decision was contingent on the acceptance of the plea offer. The defendant claimed that he was under the impression that, if he did not plead guilty, the court was going to significantly increase bail. When a defendant asks about bail, the court should advise him that such matter will be addressed only after plea negotiations are completed. Walter Storey represented the appellant.

http://nycourts.gov/reporter/3dseries/2021/2021_01430.htm

***People v Ramirez*, 3/10/21 – PREDICATE FELONY / NOT EQUIVALENT**

The defendant appealed from a judgment of Queens County Supreme Court, convicting him of 1st degree stalking and other crimes. The Second Department modified, vacating the defendant’s adjudication as a second felony offender and the sentence. The unpreserved issue was reached in the interest of justice. As the People correctly conceded on appeal, the defendant’s armed robbery conviction in Florida could not be used as a predicate felony in NY. Appellate Advocates (David Goodwin, of counsel) represented the appellant.

http://nycourts.gov/reporter/3dseries/2021/2021_01429.htm

THIRD DEPARTMENT

People v Brown, 3/11/21 – SENTENCE / REDUCED

The defendant appealed from a Sullivan County Court judgment, convicting him of 2nd degree burglary, 4th degree grand larceny, 4th degree conspiracy, and other offenses, in connection with a home break-in to steal items. The Third Department modified, finding the sentence harsh and excessive. The plea agreement failed to mention the possibility of consecutive sentences. Further, the resulting aggregate term of 13½ to 16 years exceeded the People's promise of a maximum of 12 years in prison. Thus, all sentences were ordered to run concurrently. The defendant represented himself on appeal.

http://nycourts.gov/reporter/3dseries/2021/2021_01442.htm

FAMILY

SECOND DEPARTMENT

M/O Clezidor v Lexune, 3/10/21 – PARENTAL ACCESS / TEEN IN CHARGE

The mother appealed from an order of Kings County Family Court insofar as it awarded her only such parental access as she and her teenage son agreed to. The Second Department reversed. A court may not delegate authority to determine parental access to a parent or child. The challenged provision, conditioning the mother's access on the child's desires, defeated the right of parental access. There was a potential for influence of the child by the stepmother. She had been awarded guardianship of the boy and was married to the father, who had been arrested for murdering his ex-girlfriend and was opposed to parental access for the mother. The matter was remitted for issuance of an appropriate schedule of parental access. Jeffrey Bluth represented the appellant.

http://nycourts.gov/reporter/3dseries/2021/2021_01409.htm

M/O Ofori v St. Louis, 3/10/21 – CUSTODY / REVERSED

The father appealed from an order of Kings County Family Court, which denied his custody petition and awarded custody to the mother. The Second Department reversed. After several years of shared custody, the father relocated to Rochester, while the mother lived in Brooklyn. Family Court gave too little weight to relevant factors, including the preferences of the children, and too much weight to the mother's lack of transportation, even though the father could provide rides for her periods of parental access. Custody was transferred to him, and the matter was remitted to set an access schedule for the mother. Larry Bachner represented the appellant.

http://nycourts.gov/reporter/3dseries/2021/2021_01417.htm