CRIMINAL

SECOND DEPARTMENT

DECISION OF THE WEEK

People v Mortel, 7/21/21 – **NO WARRANT / NO EXCUSE**
The defendant appealed from a Rockland County Court judgment, convicting her of 1st degree criminal possession of a controlled substance. The appeal brought up for review the denial of suppression. The Fourth Department reversed and dismissed. By intercepting thousands of communications, law enforcement learned that a specified vehicle would be transporting narcotics at a specified location and time. Troopers made a warrantless stop, search, and seizure. The search was unjustified. The fellow officer rule did not apply, because the subject officer and his basis of knowledge were not identified. The suppression court findings notwithstanding, Troopers did not testify that they smelled marijuana emanating from the vehicle. Further, they did not do an inventory search pursuant to a proper procedure—they rummaged for incriminating evidence. There was no excuse for not getting a warrant. Dean Atwell represented the appellant.
https://nycourts.gov/reporter/3dseries/2021/2021_04498.htm

People v Dyshawn B., 7/21/21 – **FEES AMENDMENT/ RETROACTIVE**
The defendant appealed from a judgment of Queens County Supreme Court, finding him a youthful offender, upon his plea of guilty to 2nd degree robbery and other crimes. The Second Department vacated the mandatory surcharges and crime victim assistance fees. Juveniles should benefit from amendments enacted when their direct appeals were pending. *See* CPL 420.35 (2-a) (authorizing court to waive certain surcharges/fees for some defendants under age 21). Such retroactivity would remove unreasonable financial burdens on juveniles and enhance their chances for successful rehabilitation, and would not cause unfairness since the fees were merely a revenue-raising measure. Appellate Advocates (Lynn Fahey, of counsel) represented the appellant.
https://nycourts.gov/reporter/3dseries/2021/2021_04487.htm

People v Melendez, 7/21/21 – **INAUDIBLE RECORDING / NEW TRIAL**
The defendant appealed from a judgment of Richmond County Supreme Court, convicting him of 2nd degree criminal sexual act. Supreme Court erred in admitting a largely inaudible recording of a controlled meeting. The jury must have speculated as to the contents. The error was compounded when the jury was given a purported transcript of the recording. Legal Aid Society of NYC (Tomoeh Murakami Tse, of counsel) represented the appellant.
https://nycourts.gov/reporter/3dseries/2021/2021_04497.htm

People v Maldonado-Escobar, 7/21/21 – **SORA / REVERSED**
The defendant appealed from a SORA order rendered by Rockland County Court. In the interest of justice, the Second Department reduced the risk level from two to one because strict application of the Guidelines to this statutory rape case resulted in an overassessment. The instant offense was the defendant's only sex crime, and he accepted responsibility. A downward departure was warranted. Lois Cappelletti represented the appellant.

People v Daniel, 7/21/21 – **SORA / HARMLESS ERROR**
The defendant appealed from a SORA order of Kings County Supreme Court, designating him a level-two risk. The Second Department affirmed but found that the SORA court had erred in imposing points for the defendant's history of drug/alcohol abuse. His alleged marijuana use occurred long before the offense. At the time of the hearing, the defendant had abstained for 19 years. There was no proof that he was under the influence when the offense occurred. But the point deduction did not alter his presumptive risk level.
https://nycourts.gov/reporter/3dseries/2021/2021_04501.htm

FAMILY

SECOND DEPARTMENT

M/O Santana v Pena, 7/21/21 – **PROTECTIVE ORDER / VACATED**
The petitioner appealed from an order of Orange County Family Court, which dismissed her family offense petition and vacated a temporary order of protection. The Second Department affirmed. Family Court did not possess subject matter jurisdiction. Another state had exclusive continuing jurisdiction over custody, and the protective order would have affected the respondent's parental access. Family Ct Act § 154-e allowed the petitioner to enforce in NY an order of protection entered in another state.
https://nycourts.gov/reporter/3dseries/2021/2021_04486.htm

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