

Decisions of Interest

AUGUST 6, 2021

CRIMINAL

FIRST DEPARTMENT

People v Marte | August 5, 2021

DISSENT | UNTIMELY MOTION

The defendant appealed from a judgment of NY County Supreme Court, convicting him of operating a motor vehicle while under the influence of alcohol. The First Department affirmed. One justice dissented, opining that the trial court improperly rejected the defendant's mid-trial motion to suppress an Intoxilyzer test result. The merits should have been reviewed based on good cause and the interests of justice. The defendant expressly consented to the test only after expiration of the statutory two-hour period and an inaccurate warning. The test result was subject to suppression as a matter of law. Counsel did not timely act because he did not understand the law—an omission that may have constituted ineffective assistance. The dissenter would have remanded for a hearing on the voluntariness of the Intoxilyzer test.

https://nycourts.gov/reporter/3dseries/2021/2021_04648.htm

THIRD DEPARTMENT

People v Crosse | August 5, 2021

WARRANTLESS | NO EXIGENCY

The defendant appealed from a Clinton County Court judgment, convicting him of criminal possession of forgery devices. The Third Department reversed and remitted. The lower court erred in admitting a skimmer (device to read, decode, store data from magnetic strips) seized in a warrantless search. The cooperative defendant was pat-frisked and handcuffed. He was incapable of grabbing the seized fanny pack and backpack. No exigent circumstances existed, and there was no indication that the packs contained a weapon or dangerous instrument. Mark Schneider represented the appellant.

https://nycourts.gov/reporter/3dseries/2021/2021_04636.htm

THIRD DEPARTMENT

M/O Aiden J. (Armando K.) | August 5, 2021

NEGLECT | REVERSED

The respondent appealed from an order of Ulster County Family Court finding neglect. The Third Department reversed. Separate petitions were filed against the mother. Prior to the respondent's hearing, the mother admitted neglect. In reaching the challenged determination, Family Court improperly relied on hearsay—i.e. what the mother told the caseworker. The error was not harmless. The nonhearsay evidence did not establish that the respondent placed the children at risk of harm. While not ideal, his conduct did not fall below a minimum degree of care. MariAnn Connolly represented the appellant, and Michelle Rosien was the AFC.

https://nycourts.gov/reporter/3dseries/2021/2021_04637.htm