

## CRIMINAL

### SECOND DEPARTMENT

***People v Veeney*** | August 11, 2021

SUMMATION | MISCONDUCT

The defendant appealed from a judgment of Kings County Supreme Court, convicting him of several crimes. In the interest of justice, the Second Department vacated the conviction of attempted 1<sup>st</sup> degree assault and remitted for a new trial on that count. The prosecutor made numerous improper comments in summation. For example, she misrepresented the evidence in explaining why no shell casings were recovered, and referred to stricken testimony indicating that the defendant could have shot a witness. Further, the People's misconduct included erroneously advising the jury that credibility determinations should be based in part on what they "felt" and that the criminal history of a prosecution witness was not relevant to credibility. The errors were not harmless, because proof of guilt was not overwhelming. Legal Aid Society, NYC (Ellen Dille, of counsel) represented the appellant.

[https://nycourts.gov/reporter/3dseries/2021/2021\\_04673.htm](https://nycourts.gov/reporter/3dseries/2021/2021_04673.htm)

***People v Jamison*** | August 11, 2021

PREDICATE | HEARING

The defendant appealed from a Dutchess County Court judgment, convicting him of 2<sup>nd</sup> degree CPW upon his plea of guilty. The Second Department vacated the second violent felony offender adjudication and remitted. Under the circumstances of the case, resort to the Florida accusatory instrument, among other things, would be needed to ascertain the particular acts underlying the defendant's convictions for robbery and possession of a weapon by a felon to determine whether those acts were equivalent to a violent felony in New York. The matter was remitted for a hearing. Salvatore Adamo represented the appellant.

[https://nycourts.gov/reporter/3dseries/2021/2021\\_04668.htm](https://nycourts.gov/reporter/3dseries/2021/2021_04668.htm)

***People v Juin*** | August 11, 2021

DRUG TERM CUT | DISSENT

The defendant appealed from a sentence imposed by Rockland County Court upon his convictions for drug sale and possession. The Second Department reduced the periods of imprisonment, while two justices would have affirmed. Trial evidence belied the claim that the defendant sold drugs only to support his cocaine habit. Further, he had several recent drug-related misdemeanor convictions, the dissenters noted. The Second Department decision also affirmed the defendant's appeal from a conviction of 2<sup>nd</sup> degree criminal possession of a forged instrument. The appellate court reached the merits of the excessive sentence argument because the purported waiver of the right to appeal was invalid. County Court's oral colloquy and the written document mischaracterized the waiver as an absolute bar to taking a direct appeal and a forfeiture of the right to counsel and poor person

relief. The sentence was upheld. The periods of post-release supervision merged by operation of law. Warren Hecht represented the appellant.

[https://nycourts.gov/reporter/3dseries/2021/2021\\_04669.htm](https://nycourts.gov/reporter/3dseries/2021/2021_04669.htm)

## APPELLATE TERM

***People v Elmaskeny*** | 2021 NY Slip Op 50766 (U)

GRAVITY KNIFE | DISMISSED

The defendant appealed from a Kings County Criminal Court judgment, convicting him of 4<sup>th</sup> degree CPW. Appellate Term, Second Department reversed in the interest of justice and dismissed the accusatory instrument. Penal Law § 265.01 (1) was amended to decriminalize possession of a gravity knife. The defendant pleaded guilty 16 days prior to the effective date of the revised statute. While the amendment did not apply retroactively, the People did not oppose reversal. Appellate Advocates (Chelsea Lopez, of counsel) represented the appellant.

[https://nycourts.gov/reporter/3dseries/2021/2021\\_50766.htm](https://nycourts.gov/reporter/3dseries/2021/2021_50766.htm)

***People v Lagano*** | 2021 NY Slip Op 50767 (U)

OUTBURST | HARASSMENT

The defendant appealed from a judgment of Richmond County Criminal Court, convicting him of 2<sup>nd</sup> degree harassment. The evidence was legally insufficient. While genuine threats of physical harm fell within the scope of the statute, without more, an outburst did not constitute a violation. Unless speech presented a clear and present danger of some serious substantive evil, it could not be forbidden or penalized. *See People v Dietze*, 75 NY2d 47. The defendant's speech did not fit that description. Peter Brill represented the appellant.

[https://nycourts.gov/reporter/3dseries/2021/2021\\_50767.htm](https://nycourts.gov/reporter/3dseries/2021/2021_50767.htm)

## FAMILY

## THIRD DEPARTMENT

***Matter of Kait G. (Amanda G.)*** | August 12, 2021

SUMMARY JUDGMENT | ERROR

The parents appealed from an order of Schenectady County Family Court, which granted summary judgment motions, finding the six subject children abused and neglected. The Third Department modified and remitted. Two weeks before her 12<sup>th</sup> birthday, the eldest child gave birth to the youngest child. The petition alleged that the father had impregnated the eldest child; that the mother knew, or should have known, that he had sexual intercourse with the child; and that the mother failed to provide the eldest child and the baby with necessary medical care. A DNA report submitted at a § 1028 hearing found a 99.99% probability of the father's paternity. The appellate court sustained summary relief as against him, but reversed as to the mother. The non-hearsay § 1028 hearing evidence did not conclusively establish that she should have known about sexual abuse or that she allowed the children to live in a "sexually charged household." The mother said that she believed the eldest child's claim that a teenage boy had impregnated her. Material factual issues also existed regarding medical neglect. Veronica Reed represented the mother.

[https://nycourts.gov/reporter/3dseries/2021/2021\\_04682.htm](https://nycourts.gov/reporter/3dseries/2021/2021_04682.htm)