

## CRIMINAL

### COURT OF APPEALS

#### ***People v Walls*** | September 2, 2021

SUPPRESSION | GRANTED

The defendant appealed from a Fourth Department order affirming a judgment convicting him of 2<sup>nd</sup> degree CPW. The Court of Appeals reversed and dismissed the indictment, finding error in the denial of suppression of a firearm. The People failed to justify the vehicle stop. They relied on the testimony of the police officer who identified the van using information from the dispatcher (the license plate and travel direction) and who did not observe traffic infractions or conduct suggestive of criminality. The officer's only justification for the stop was the dispatcher's report that a 911 caller asserted that a van occupant possessed a "long gun." The reliability of the tip was not shown; there was no relevant information as to circumstances surrounding the call. The People erroneously argued that an appellate court could consider evidence admitted at trial to justify the denial of suppression. The Monroe County Public Defender's Office (A. Vincent Buzard, of counsel) represented the appellant.

[https://www.nycourts.gov/reporter/3dseries/2021/2021\\_04949.htm](https://www.nycourts.gov/reporter/3dseries/2021/2021_04949.htm)

### SECOND DEPARTMENT

#### ***People v Crispino*** | September 1, 2021

PRO SE | REQUISITE INQUIRY

The defendant appealed from a judgment of Kings County Supreme Court, convicting him of 2<sup>nd</sup> degree larceny and other crimes. The Second Department reversed and ordered a new trial. The charges against the defendant, a disbarred attorney, arose from several fraudulent financial schemes. Before trial, assigned counsel informed Supreme Court that the defendant wished to represent himself at trial. Since the lower court did not conduct the requisite inquiry before allowing the defendant to proceed pro se, the purported waiver of the right to counsel was invalid. Appellate Advocates (Melissa Horlick, of counsel) represented the appellant.

[https://nycourts.gov/reporter/3dseries/2021/2021\\_04918.htm](https://nycourts.gov/reporter/3dseries/2021/2021_04918.htm)

#### ***People ex rel. Ferro v Brann*** | August 27, 2021

WRIT | REDUCED BAIL OR RECOGNIZANCE

The Second Department sustained a writ of habeas corpus to set reasonable bail or to release the defendant and remitted to Queens County Supreme Court. The Certificate of Compliance

could not be deemed complete until all material and information identified as subject to discovery and electronically shared with the defendant were produced, pursuant to CPL 245.50. The substitution of a different ADA was not an exceptional circumstance that would render certain time excludable. Since more than 90 days were chargeable to the People, CPL 30.30 (2) (a) required the defendant's release on bail or upon his own recognizance. Shane Ferro represented the defendant/petitioner.

[https://nycourts.gov/reporter/3dseries/2021/2021\\_04897.htm](https://nycourts.gov/reporter/3dseries/2021/2021_04897.htm)

## THIRD DEPARTMENT

***People v Kwiatkowski*** | September 2, 2021

SORA | REVERSED

The defendant appealed from an Albany County Court order, which classified him as a level-two sex offender. The Third Department reversed. The Board found the defendant to be a presumptive level-one risk. The SORA court credited the People's proof and classified the defendant as a level-two offender. The challenged written order and hearing transcript failed to set forth the required findings of fact and conclusions of law. The scant record was not sufficiently developed for the appellate court to make its own findings/conclusions. Bruce Knoll represented the appellant. The matter was remitted.

[https://nycourts.gov/reporter/3dseries/2021/2021\\_04934.htm](https://nycourts.gov/reporter/3dseries/2021/2021_04934.htm)

## FAMILY

## SECOND DEPARTMENT

***D'Ablemont v D'Ablemont*** | September 1, 2021

REARGUMENT | COUNSEL FEES

In a matrimonial action, the plaintiff appealed from an order of Westchester County Supreme Court which granted the defendant's motion for reargument and awarded certain attorney's fees. The Second Department modified. A motion for leave to reargue must be based on matters of fact or law allegedly overlooked or misapprehended by the court in determining the prior motion but must not include any matters of fact not offered on the prior motion. CPLR 2221 (d) (2). Such an application is addressed to the sound discretion of the motion court. In this case, Supreme Court properly granted leave to reargue, as the prior order overlooked the fact that the defendant had prevailed on all substantive relief sought in the underlying motion for reimbursement of certain expenses. Thus, under the stipulation of settlement, as the successful party, the defendant was entitled to reasonable counsel fees. However, he only established his right to fees for representation by substitute counsel, not for services provided by prior counsel. Annette Hasapidis represented the appellant.

[https://nycourts.gov/reporter/3dseries/2021/2021\\_04905.htm](https://nycourts.gov/reporter/3dseries/2021/2021_04905.htm)

# THIRD DEPARTMENT

***Matter of Josiah P. (Peggy P.*** | September 2, 2021

NEGLECT | REVERSED

The respondent parents appealed from orders of Greene County Family Court, which adjudicated the subject children to be neglected. The Third Department reversed. The challenged orders were not supported by the record. The petitioner did not prove that the children were present during one incident, and all the children except the oldest were asleep during another incident. There was no proof that the oldest child was upset or frightened by the domestic violence witnessed. Further, that child's out-of-court statements, that the father gave her alcohol, were not corroborated by other evidence. Dana Salazar and Michelle Rosien represented the appellants.

[https://nycourts.gov/reporter/3dseries/2021/2021\\_04936.htm](https://nycourts.gov/reporter/3dseries/2021/2021_04936.htm)