

Defendants (and former defendants) won 75 % of their cases in September...

NYS Court of Appeals Criminal Decisions; September 2, 2021

People v. Walls

This is a unanimous memorandum, reversing the Fourth Department. The suppression motion regarding Mr. Walls' firearm is granted and the indictment is dismissed. The defendant was a passenger in a vehicle. A police officer testified as the sole suppression hearing witness, indicating that a 911 call reported the vehicle's occupants being armed with a "long gun." An automobile stop in New York is legal when there is reasonable suspicion to believe the driver or occupants have committed or are about to commit a crime. See, *People v. Bushey*, 29 NY3d 158, 164 (2017); see also, *People v. Hinshaw*, 35 NY3d 427, 430 (2020) (though not cited by the Court here; lively discussion of the automobile stop standard for investigating a crime, as opposed to a traffic violation). Here, the 911 call recording was not produced. Nor was there evidence of the caller being an identified citizen informer. Indeed, no relevant circumstances surrounding the call were provided. Pursuant to the *Aguilar-Spinelli* framework, the reliability of the tip was not established.

NYS Court of Appeals Criminal-related Decisions; September 9, 2021

People v. Guevara

This is a unanimous memorandum, reversing the AD. A new trial is ordered regarding this manslaughter prosecution. Defendant filed a timely notice pursuant to CPL 250.10 of his intent to present psychiatric evidence. The deprivation of the defendant's constitutional right to counsel during his second psychiatric examination was not harmless. *People v. Crimmins*, 36 NY3d 230, 237 (1975). The presence of counsel at this critical stage of the proceedings was necessary to preserve the defendant's general right to a fair trial, to meaningfully cross-examine the witnesses against him and to have the effective assistance of counsel at the trial. Here, the People failed to establish there was no reasonable possibility that the court's admission of this particular expert testimony based on an uncounseled examination affected the jury's verdict.

Matter of Miller v. Annucci, et al.

This is a unanimous reversal of the Second Department secured by a *pro se* Greenhaven Correctional Facility inmate who filed a late notice of appeal. This litigation involved an Article 78 proceeding and an inmate's disciplinary determination. The notice was accompanied by an affidavit indicating it had been provided to a prison employee prior to the document being due. The notice ultimately was not timely "filed" with (or actually received by) the clerks' office. In contravention of CPLR 5515(1), CPLR 2102(a) and CPLR 2103(b)(2), the defendant argued for a *pro se* inmate mailbox rule, as the federal system recognizes. See, Fed. R. App. P. 4(c). The court concluded this was our *state* legislature's domain. However, CPLR 5520 gives courts authority to excuse an untimely filing of a civil notice of appeal under certain circumstances. As the AD did not provide its reasons for dismissing this appeal, the matter is remanded for the AD to explain whether it considered its discretionary powers under the CPLR in denying this *pro se* litigant access to the appellate system.

NYS Court of Appeals Criminal Decisions; September 14, 2021

People v. Dogan

This is a unanimous memorandum, affirming the Fourth Department. County Court did not abuse its discretion in denying this CPL 440 motion without conducting an evidentiary hearing. CPL 440.30(4). The defendant failed to sufficiently allege a reasonable probability that but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. It was further not established that the nonrecord facts sought to be established would entitle him to relief.