

Decisions of Interest

JANUARY 16, 2024

CRIMINAL

COURT OF APPEALS

People v Messano | January 11, 2024

SUPPRESSION | NO REASONABLE SUSPICION | REVERSED

The appellant appealed from a Fourth Department order affirming his 2nd degree CPW conviction. The Court of Appeals reversed and dismissed the indictment. The appellant and another driver pulled into an empty parking lot to talk. An officer approached after a third driver, who was known to police from prior drug arrests, arrived. The appellant got out his car. The officer frisked him for weapons, found none, and told him to stand at the rear of the car. The officer looked in the car and saw a rolled-up dollar bill and white substance on the driver's seat. The appellant was arrested, and police found a handgun in the back seat. The appellant's behavior was susceptible of an innocent interpretation; police never saw any hand-to-hand transaction and the third driver's arrival did not provide reasonable suspicion. "[G]uilt by association" has no place in search and seizure jurisprudence. Without the appellant's unjustified detention, police had no lawful vantage point to view the items on his driver's seat. Hiscock Legal Aid Society (Sara A. Goldfarb, of counsel) represented the appellant.

[People v Messano \(2024 NY Slip Op 00097\)](#)

People v Greene | January 11, 2024

MULTIPLICITOUS COUNT | CONCURRENCE | RESTORATIVE JUSTICE

The appellant appealed from a First Department order affirming his conviction for 4th degree grand larceny and 1st degree perjury (two counts). The Court of Appeals vacated one of the perjury convictions as multiplicitous and otherwise affirmed. Chief Judge Wilson wrote separately about the "wholly disproportionate result" in this case. The appellant and the complainant got into a "dumb argument" about whether the complainant (a jaywalker) or the appellant (a wrong-way cyclist) had caused their near collision. When the complainant tried to take the appellant's picture, he grabbed the phone and rode off. Police found him nearby, and the complainant got the phone back within minutes. The appellant needed mental health services, not 4 to 8 years in prison. Using incarceration as a default response ultimately makes our communities less safe. Restorative justice is an alternative approach worth pursuing; the complainant explicitly stated that she wished the criminal justice system had not become involved. The Office of the Appellate Defender (Margaret E. Knight, of counsel) represented the appellant.

[People v Greene \(2024 NY Slip Op 00096\)](#)

TRIAL COURTS

People v Carrasco | 2024 WL 105564

MEDICAL RECORDS | COC/SOR INVALID | DISMISSED

Carrasco moved to dismiss assault charges on speedy trial grounds based on the People's failure to comply with their discovery obligations. Queens County Criminal Court granted the motion. The People failed to provide the complainant's medical records, arguing that hospital records are not within their possession, custody, or control. Since the circumstances of the case suggested that law enforcement may have been involved in requesting or arranging medical treatment for the complainant, the People's failure to make any effort to ascertain the existence of the complainant's medical records rendered their COC/SOR invalid and illusory. The Legal Aid Society of NYC (Pauloma Martinez, of counsel) represented Carrasco.

[People v Carrasco \(2024 NY Slip Op 50011\[U\]\)](#)

People v Lawrence | 2023 WL 9184667

FACIAL INSUFFICIENCY | COC/SOR ILLUSORY | DISMISSED

Lawrence moved to dismiss EWOC and related charges on speedy trial grounds. Kings County Criminal Court granted the motion. The EWOC charge was facially insufficient because the complainant was over 17 years old on the date of the alleged assault. This defect rendered the People's COC/SOR illusory because not all charges contained in the accusatory instrument met the requirements of CPL 100.15 and 100.40, as required by CPL 30.30 (5-a). The People's act of filing a superseding misdemeanor information without removing the offending charge belied their assertion that they acted in good faith and with due diligence. The Legal Aid Society of NYC (Leila Selchaif, of counsel) represented Lawrence.

[People v Lawrence \(2023 NY Slip Op 23415\)](#)

MASSACHUSETTS

Commonwealth v Mattis | January 11, 2024

LIFE WITHOUT PAROLE | CRUEL & UNUSUAL | UNDER 21 YEARS OLD

The appellant appealed from a Superior Court judgment convicting him of 1st degree murder and related charges and sentencing him to a mandatory term of life in prison without the possibility of parole. The Massachusetts Supreme Judicial Court held that it was unconstitutionally cruel and unusual punishment to impose a sentence of life without parole on an individual under 21 years old and remitted for resentencing. The appellant's case had been remanded during the appeal to the Superior Court for a hearing on the neuroscience of emerging adult brains. The opinions of four expert witnesses—a neuroscientist, two forensic psychologists, and a developmental psychologist—were admitted at the hearing. Numerous scientific studies on adolescence and neurobiological maturity were also submitted. The evidence showed that the brains of emerging adults (18 to 20-year-olds) were more neurobiologically similar to those of 16 and 17-year-olds (for whom sentences of life without parole are unconstitutional) in areas related to

impulsivity and risk-taking behavior than to those of older adults. Due to the plasticity of their brains, emerging adults also have greater capacity for change than older adults.

[Commonwealth v Mattis \(SJC-11693\)](#)

FAMILY

SECOND DEPARTMENT

Matter of Pedicini v Hull | January 10, 2024

MODIFICATION/VIOLATION | HEARING REQUIRED | REVERSED

The mother appealed from Orange County Family Court orders that summarily dismissed her modification and violation petitions. The Second Department reversed and remitted for a hearing. The parties shared joint legal custody; the father had primary physical custody and the mother had parental access as the parties agreed. The mother alleged that the father had entirely cut off her parental access for over a month. Family Court did not have sufficient information to make an informed decision about the child's best interests based only on the prior custody proceedings between the parties, and there was a factual dispute about whether the father denied the mother parental access in violation of the consent order. Alex Smith represented the mother.

[Matter of Pedicini v Hall \(2024 NY Slip Op 00076\)](#)

TRIAL COURTS

Matter of Danna T. (Miguel T.) | 2024 WL 133860

NEGLECT | CUSTODIAL NONRESPONDENT PARENT | NO JURISDICTION

ACS filed a neglect petition against the father alleging that he committed acts of DV against the mother at her home. ACS requested a temporary order releasing the child to the mother with court ordered supervision and an order of protection against the father. Kings County Family Court denied the request for court ordered supervision of the mother, as it had no authority to require the mother to submit to its jurisdiction. The child lived exclusively with the mother, and there were no allegations of neglect or abuse against her. The child's custodial status remained unchanged; a limitation on a non-custodial parent's visitation is not a removal (see Family Court Act § 1017). Allegations that the father harmed the child did not give the State authority to make demands of the mother. Emmanuel Ntiamoah represented the mother.

[Matter of Danna T. \(Miguel T.\) \(2024 NY Slip Op 24008\)](#)

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