

Decisions of Interest

JANUARY 2, 2024

CRIMINAL

SECOND DEPARTMENT

People v Leon | December 27, 2023

SUPPRESSION | INCREDIBLE OFFICER TESTIMONY | REVERSED

The appellant appealed from a Kings County Supreme Court judgment convicting him of attempted 2nd degree CPW based on his guilty plea. The Second Department reversed, granted suppression, and dismissed the indictment. The arresting officer's testimony was incredible as a matter of law. The officer testified that he saw an L-shaped object in the appellant's sweatpants while riding in a car traveling in the opposite direction that the appellant was walking. The officer's view of the appellant was partially blocked by parked cars and a pedestrian walking alongside the appellant. Further, the officer did not follow police protocol by activating his body-worn camera as he approached, nor did he canvass the area for surveillance video of the arrest. Moreover, even if true, the officer's observations did not provide reasonable suspicion of criminal activity. The Legal Aid Society of NYC (Anju Alexander, of counsel) represented the appellant.

[People v Leon \(2023 NY Slip Op 06754\)](#)

People v Fulton | December 27, 2023

NON-JUDICIAL COMMUNICATION | NOT ADMINISTRIAL

The appellant appealed from a Kings County Supreme Court judgment convicting him of 2nd degree CPW, 3rd degree AUO, and operating a motor vehicle with defective taillights. The Second Department reversed and ordered a new trial. The verdict sheet indicated that if the jury found the appellant guilty of count one (2nd degree CPW), it should not consider the lesser included count two (3rd degree CPW). After reviewing the verdict sheet, the court advised the parties that it contained a mistake (the jury had marked the appellant guilty of all counts) and directed a court officer to tell the jury to correct the mistake and initial their correction. Under the circumstances, the court's rejection of the verdict sheet and direction to correct it was an instruction regarding the jury's deliberation. Thus, the defendant was absent at a critical stage, and the court improperly delegated a judicial duty to a nonjudicial staff member. Appellate Advocates (Anna Jouravleva, of counsel) represented the appellant.

[People v Fulton \(2023 NY Slip Op 06750\)](#)

People v Vera | December 27, 2023

BATSON | PRETEXTUAL REASONS | REVERSED

The appellant appealed from a Queens County Supreme Court judgment convicting him of 2nd degree robbery and 5th degree CPSP. The Second Department reversed and ordered a new trial. Supreme Court erred in denying the appellant's challenge to the prosecutor's peremptory strikes of three Black prospective jurors. The race neutral reasons provided were pretextual. The prosecutor said that he had religious/sympathy concerns about one prospective juror because she lived on church grounds; but she was never asked about her religious affiliation. Further, the prosecutor misstated that the juror's nephew had been involved in a drug case when it was actually her friend's son. The prosecutor sought to strike two other prospective jurors because of their work with the criminally insane and individuals with mental health issues and criminal cases. But he offered no explanation for how their prior employment related to this case or their qualifications to serve, and the jurors said they could remain fair. Appellate Advocates (Martin B. Sawyer, of counsel) represented the appellant.

[People v Vera \(2023 NY Slip Op 06758\)](#)

People v Hernandez | December 27, 2023

PEQUE | HEARING REQUIRED | HELD AND REMITTED

The appellant appealed from a Suffolk County Court judgment convicting him of 2nd degree assault (two counts) and EWC (two counts) based on his guilty plea. The Second Department held the appeal and remitted for a hearing on the appellant's motion to vacate the guilty plea. The appellant immigrated to the US when he was 17, resided here for about 26 years, and was employed and had two children here. These allegations were sufficient to raise an issue of fact warranting a hearing on whether the appellant would not have pleaded guilty had he been warned of the possibility of deportation. The Legal Aid Society of Suffolk County (Amanda E. Schaefer, of counsel) represented the appellant.

[People v Hernandez \(2023 NY Slip Op 06752\)](#)

People v Odom | December 27, 2023

NOT SECOND FELONY OFFENDER | MODIFIED

The appellant appealed from a Kings County Supreme Court judgment convicting him of attempted 1st degree reckless endangerment based on his guilty plea. The Second Department vacated the appellant's second felony offender adjudication in the interest of justice and otherwise affirmed. The appellant's federal conviction of assault with a dangerous weapon in aid of racketeering did not constitute a felony in NY because it does not require actual injury as an element. Appellate Advocates (Michael Arthus, of counsel) represented the appellant.

[People v Odom \(2023 NY Slip Op 06756\)](#)

THIRD DEPARTMENT

People v Rubadue | December 28, 2023

CONFLICT OF INTEREST | 440 HEARING REQUIRED | HELD AND REMITTED

The appellant appealed from a St. Lawrence County Court judgment convicting her of 2nd degree CPCS and from an order of that court denying her CPL 440.10 motion. The Third Department held the appeal and remitted for a CPL 440 hearing as to whether assigned trial counsel's interest in pursuing a sexual relationship with the appellant constituted a conflict of interest. The appellant produced sexually charged text messages to corroborate her claim and averred that she rejected favorable plea offers and went to trial based on his erroneous advice that her case was winnable. She argued that trial counsel's conduct raised a substantial question as to his motivation because it should have been obvious that there was more than enough evidence to convict her. But there was also evidence that the appellant rejected plea offers against the advice of counsel. It was unclear from the record how counsel's pursuit of a sexual relationship unfolded and whether it gave rise to a potential or actual conflict of interest. Edward S. Graves represented the appellant.

[People v Rubadue \(2023 NY Slip Op 06774\)](#)

People v Oates | December 28, 2023

LESSER INCLUDED JURY CHARGE REQUIRED | REVERSED

The appellant appealed from an Otsego County Court judgment convicting him of 3rd degree CPCS. The Third Department reversed and ordered a new trial. County Court erred in denying the appellant's request to instruct the jury on the lesser included offense of 7th degree CPCS. Although the verdict was not against the weight of the evidence, a reasonable view of the evidence could have supported that the appellant did not intend to sell the drugs at issue—the only element differentiating the two charges. Police found 10 grams of cocaine, a scale, two cell phones, and \$1,200 in the appellant's possession during a traffic stop. The appellant testified that his codefendant had placed the cocaine in his backpack without his knowledge but admitted that they were going to the codefendant's mother's house to buy cocaine. He explained that he used the scale to weigh drugs he was buying, and the cash was a loan from his sister. The Rural Law Center (Keith F. Schockmel, of counsel) represented the appellant.

[People v Oates \(2023 NY Slip Op 06775\)](#)

TRIAL COURTS

People v Ramirez-Luna | 2023 WL 8902171

COC/SOR INVALID | SERVICE INEFFECTIVE | WRONG ATTORNEY

Ramirez-Luna moved to dismiss charges against him on speedy trial grounds because the People served their COC/SOR on the wrong attorney. Queens County Criminal Court granted the motion. Ramirez-Luna was represented at his arraignment by a Legal Aid Society staff attorney. He later retained new counsel, who appeared with him at his next scheduled court date and filed a detailed notice of appearance in the presence of the ADA. The People then served Ramirez-Luna's prior attorney with their COC/SOR and

discovery. Four months later, after repeated statements that he had not received any discovery material, the People served new counsel with the COC/SOR for the first time. Because the People were clearly on notice that there was new counsel of record, service of their COC/SOR on the prior attorney was ineffective and did not stop the speedy trial clock. Michael Paul represented Ramirez-Luna.

[People v Ramirez-Luna \(2023 NY Slip Op 51433\[U\]\)](#)

People v Solomonidis | 2023 WL 9053162

PEOPLE'S APPEAL | 30.30 DISMISSAL | AFFIRMED

The People appealed from a Batavia City Court order that granted Solomonidis' motion to dismiss DWI charges on CPL 30.30 grounds. Genesee County Court affirmed. City Court erred by deeming the People's COC invalid because they indicated that 911 recordings existed and provided instructions to request them but did not provide copies of the recordings with their initial COC. Nonetheless, the COC was invalid because the People failed to exercise due diligence to obtain records related to a police officer's resignation based on his violation of department policy. No information about the incident had been disclosed prior to a *Huntley* hearing, and the prosecutor seemed unaware of the incident until the officer mentioned it during cross-examination by defense counsel. The People made no effort to obtain the information until three months after the hearing and, four weeks after that, they provided only a letter from the Village Clerk—not the police department—indicating that no records were found. The Legal Aid Bureau of Buffalo (Leah Farwell, of counsel) represented Solomonidis.

[People v Solomonidis \(2023 NY Slip Op 51438\[U\]\)](#)

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