

Decisions of Interest

OCTOBER 2, 2023

CRIMINAL

FIRST DEPARTMENT

People v Hernandez-Molina | September 26, 2023

REQUEST NEW COUNSEL | INQUIRY REQUIRED | REVERSED

The defendant appealed from a Bronx County Supreme Court judgment convicting him of 2nd degree CPW and 2nd degree reckless endangerment. The First Department reversed and remanded for a new trial. Supreme Court should not have denied the defendant's request for new counsel without inquiring about the basis for the application. While the request was made shortly before jury selection and may have been a delay tactic, the court should not have denied the application without allowing the defendant to explain his reasons for the request. The Office of the Appellate Defender (Karen Brill, of counsel) represented the defendant.

[People v Hernandez-Molina \(2023 NY Slip Op 04732\)](#)

FOURTH DEPARTMENT

People v Currington | September 29, 2023

SORA | SUBSTANCE ABUSE HISTORY | INSUFFICIENT PROOF

The defendant appealed from a Wayne County Court order adjudicating him a level two sex offender. The Fourth Department modified by reducing to a level one. County Court erred when it assessed 15 points for a history of substance abuse based on the defendant's purported abuse of steroids. His conviction under the Uniform Code of Military Justice, which was based on his possession of testosterone and use of anabolic steroids, was insufficient to establish a history of abuse without other proof, such as a substance abuse screening. The only other evidence of his alleged drug abuse was a conclusory, unsubstantiated hearsay statement made by a correctional treatment specialist. The Wayne County Public Defender (Bridget L. Field, of counsel) represented the appellant.

[People v Currington \(2023 NY Slip Op 04874\)](#)

People v Coley | September 29, 2023

CONFRONTATION CLAUSE VIOLATION | HARMLESS ERROR

The defendant appealed from a Monroe County Supreme Court judgment convicting him of 2nd degree murder, attempted 2nd degree murder, 2nd degree assault, and 2nd degree CPW after a jury trial. The Fourth Department affirmed. Supreme Court erroneously

denied the defendant's motion to preclude the admission of a codefendant's statements. The court admitted the statements for the nonhearsay purpose of showing the state of mind of investigators—but the investigators' states of mind were not relevant to any issue in the case. However, the error was harmless in light of the overwhelming proof of guilt. [People v Coley \(2023 NY Slip Op 04855\)](#)

TRIAL COURTS

People v Chimborazo | 2023 WL 6318565

PROTECTIVE ORDER | IAB RECORDS | MOTION DENIED

The People moved for a protective order allowing them to withhold disclosure of unredacted IAB records. Bronx County Criminal Court denied the motion. The NYPD Discovery Compliance Bureau refused to provide the People with the unredacted IAB records. Among other things, they told the People that they needed to move for a protective order before they could receive the records. The NYPD cannot hinder the disclosure of discoverable material deemed by statute to be in the People's possession. IAB logs are automatically discoverable pursuant to CPL 245.20 (1), and the motion did not constitute a good-cause showing. The Bronx Defenders (Rachna Agarwal, of counsel) represented the defendant.

[People v Chimborazo \(2023 NY Slip Op 23290\)](#)

People v Mendoza | 2023 WL 6302290

SEARCH WARRANT | MOTION TO CONTROVERT | EVIDENCE SUPPRESSED

The defendant challenged a search warrant authorizing the search of his apartment. Queens County Supreme Court granted the motion and suppressed the firearms found during the search. The search warrant affidavit stated that a detective observed on two occasions Snapchat videos of the defendant holding what appeared to be a firearm. This did not demonstrate an ongoing or continuous pattern of criminal activity. It did not establish that the defendant possessed the firearm or that the firearm was in the apartment at the time of the search warrant application.

[People v Mendoza \(2023 NY Slip Op 23291\)](#)

People v Johnson | 2023 WL 6303099

440.10 MOTION | INEFFECTIVE ASSISTANCE OF COUNSEL | CONVICTION VACATED

The defendant moved to vacate his conviction for 2nd degree murder and 2nd degree CPW based on ineffective assistance of counsel. New York County Supreme Court granted the motion. Trial counsel was ineffective for failing to: present significant evidence that another individual committed the murder and of a possible retaliatory murder of that individual; investigate phone records contradicting the claim that the defendant was the only person in contact with the victim on the morning of the murder; challenge a search warrant for the defendant's cell phone; and impeach the only witness who identified the defendant. Trial counsel testified that he had no strategic reason for his admitted failure to pursue evidence that another person committed the shooting. Center for Appellate Litigation (Allison Haupt and V. Marika Meis, of counsel) represented the defendant.

[People v Johnson \(2023 NY Slip Op 51015\[U\]\)](#)

FAMILY

FOURTH DEPARTMENT

Matter of Geremski v Berardi | September 29, 2023

FAMILY OFFENSE | NEGATIVE SOCIAL MEDIA POSTS | INSUFFICIENT PROOF

The respondent appealed from an order of protection entered by Onondaga County Family Court in a family offense proceeding. The Fourth Department reversed and dismissed the petition. The petitioner's testimony that the respondent made "negative posts and stuff" about him on social media, including two posts about an unnamed "ex" that he believed referred to him, did not establish that the respondent committed 2nd degree harassment. The Hiscock Legal Aid Society (Kristen N. McDermott, of counsel) represented the appellant.

[Matter of Geremski v Berardi \(2023 NY Slip Op 04883\)](#)

CIVIL

SECOND DEPARTMENT

Matter of Berisha v Fufidio | September 27, 2023

ARTICLE 78 | PROPER CAUSE | REMITTED

The petitioner sought Article 78 review of a Westchester County Court determination that denied his application to amend his pistol permit from target shooting to sportsperson with restricted carry. The Second Department granted the petition, annulled the determination, and remitted. The respondent denied the application because the petitioner did not establish "proper cause" pursuant to former Penal Law § 400.00 (2) (f). In light of the *Bruen* Court's determination that the "proper cause" standard is unconstitutional, remittal was required. Amy L. Bellantoni represented the petitioner.

[Matter of Berisha v Fufidio \(2023 NY Slip Op 04766\)](#)

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80 S Swan St, Ste 1147, Albany, NY 12210 | www.ils.ny.gov

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