

# Decisions of Interest

NOVEMBER 6, 2023

## CRIMINAL

### FIRST DEPARTMENT

#### ***People v Hodgson*** | October 31, 2023

HANDCUFFS AND PRISON GARB | HARMLESS ERROR | UNPRESERVED

The appellant appealed from a New York County Supreme Court judgment convicting him of attempted 2<sup>nd</sup> degree murder and 1<sup>st</sup> degree assault after a jury trial. The First Department affirmed. Handcuffing the appellant during the reading of the verdict and polling of the jury did not violate his constitutional rights because the court had security concerns specific to the case. Regardless, any error was harmless in light of the overwhelming evidence of guilt. The appellant waived his claim that he was deprived of a fair trial by appearing in front of the jury in prison-issued clothing by failing to object or request a remedy; the claim was likewise unpreserved for appellate review.

[People v Hodgson \(2023 NY Slip Op 05476\)](#)

#### ***People v Randolph*** | October 31, 2023

CURTAILED CROSS-EXAMINATION | HARMLESS ERROR

The appellant appealed from New York County Supreme Court judgments convicting him of 3<sup>rd</sup> degree robbery and 4<sup>th</sup> degree grand larceny based on his guilty plea, and of 3<sup>rd</sup> degree robbery after a jury trial. The First Department affirmed. Supreme Court erred by curtailing the appellant's cross-examination of a detective about two prior judicial findings that he had testified incredibly, but the error was harmless beyond a reasonable doubt.

[People v Randolph \(2023 NY Slip Op 05474\)](#)

### SECOND DEPARTMENT

#### ***People v Huginnie*** | November 1, 2023

DARDEN HEARING REQUIRED | HELD AND REMITTED

The appellant appealed from a Queens County Supreme Court judgment convicting him of disorderly conduct based on his guilty plea. The Second Department held the appeal in abeyance and remitted to the trial court for a *Darden* hearing. The appellant was indicted for 3<sup>rd</sup> degree CPCS and 2<sup>nd</sup> degree CPW based upon evidence discovered during the execution of a search warrant. A detective averred in the search warrant application that a CI made two controlled buys from the defendant at the subject apartment. The detective's on-the-scene observations could not establish probable cause without information provided by the CI; he saw the CI walk toward the building and return

with drugs, but he did not see the CI purchase narcotics from the subject apartment. Appellate Advocates (Victoria L. Benton, of counsel) represented the appellant.

[People v Huggins \(2023 NY Slip Op 05516\)](#)

***People v Neustadt*** | November 1, 2023

REBUTTAL DEFENSE EXPERT | REVERSED

The appellant appealed from a Kings County Supreme Court judgment convicting him of 1<sup>st</sup> degree course of sexual conduct against a child. The Second Department reversed and remitted for a new trial. The trial court improperly precluded a defense expert from testifying in rebuttal to the People's expert in the field of child psychology and child sex abuse. The rebuttal expert was central to the defense case; the People were not prejudiced by the late notice; and the delay was not willful (the People had disclosed their expert only one week prior). Barket Epstein Kearon Aldea & LoTurco, LLP (Donna Aldea and Michael Keller, of counsel) represented the appellant.

[People v Neustadt \(2023 NY Slip Op 05519\)](#)

***People v Perez*** | November 1, 2023

SORA | CONTINUING COURSE OF SEXUAL CONDUCT | REVERSED

The appellant appealed from a Kings County Supreme Court order designating him a level two sex offender. The Second Department reversed and designated him a level one offender. Supreme Court should not have assessed 20 points under risk factor four. The People failed to establish that two acts of sexual conduct against the same victim were separated in time by at least 24 hours. Appellate Advocates (Patty C. Walton, of counsel) represented the appellant.

[People v Perez \(2023 NY Slip Op 05526\)](#)

***People v Cutting*** | November 1, 2023

SORA | GROUNDS NOT RAISED | REVERSED

The appellant appealed from a Kings County Supreme Court order designating him a level three sex offender. The Second Department reversed and remitted for a new hearing. The People sought an upward departure based on the appellant's subsequent convictions. Supreme Court granted the upward departure based on the subsequent convictions and other factors not raised by the People, including his criminal history and parole and probation violations. Supreme Court erred in basing its decision on grounds not raised by the People, of which the defendant had no notice or opportunity to contest. The error was not harmless. The People provided no factual basis underlying the appellant's subsequent convictions that could otherwise have justified the departure. Appellate Advocates (Anna Boksenbaum, of counsel) represented the appellant.

[People v Cutting \(2023 NY Slip Op 05524\)](#)

## THIRD DEPARTMENT

***People v Cox*** | November 2, 2023

MISSING PLEA MINUTES | RECONSTRUCTION REQUIRED

The appellant appealed from an Ulster County Court judgment convicting him of 2<sup>nd</sup> degree strangulation and attempted 3<sup>rd</sup> degree rape based on his guilty plea, and from an order of that court denying his motion for a reconstruction hearing. The Third

Department held the appeal in abeyance and remitted for a reconstruction hearing. The transcript of the plea proceeding could not be obtained, impeding appellate review of the claim that the appellant's plea was involuntary and a determination whether the issues had been preserved. Eric M. Galarneau represented the appellant.

[People v Cox \(2023 NY Slip Op 05552\)](#)

### ***People v Fleshman*** | November 2, 2023

PEOPLE'S APPEAL | NO APPEAL AS OF RIGHT | DISMISSED

The appellant and the People appealed from an Albany County Supreme Court judgment convicting the appellant of 1<sup>st</sup> degree sexual abuse, attempted 2<sup>nd</sup> degree rape, and promoting a sexual performance by a child as a sexually motivated felony based on his guilty plea. The Third Department dismissed the People's appeal and otherwise affirmed. At sentencing, Supreme Court indicated that it intended to deviate from the agreed-upon sentence based on information in the PSI. The People moved to withdraw their consent to the plea, but the court denied the motion. Although Supreme Court should have granted the People's motion, the People had no right to appeal because the sentence imposed was otherwise legal.

[People v Fleshman \(2023 NY Slip Op 05557\)](#)

## APPELLATE TERM

### ***People v Brower*** | October 26, 2023

COERCED GUILTY PLEA | REMITTED | DIFFERENT JUDGE

The appellant appealed from two Long Beach City Court judgments convicting him of petit larceny based on his guilty pleas. The Appellate Term, Second Department reversed, vacated the appellant's guilty pleas, and remitted for further proceedings in front of a different judge. The City Court judge's insistence that the appellant had to plead guilty to both charges if he wanted to be released from jail, combined with the judge's stated personal beliefs about the seriousness of the crime—including that certain people would "want [him] to hang" for stealing a bike and a motor scooter—unduly coerced the appellant's guilty plea. The Legal Aid Society of Nassau County (Tammy Feman, Rachel Rambo, and Daniel Schumeister, of counsel) represented the appellant.

## TRIAL COURTS

### ***People v Breedlove*** | 2023 WL 7121440

HEARSAY ALLEGATIONS | ACCUSATORY INSTRUMENT DISMISSED

Breedlove moved to dismiss charges against him based on the People's failure to file a valid COC and properly convert the accusatory instrument within the speedy trial period. Kings County Criminal Court granted the motion. Breedlove was charged with 3<sup>rd</sup> degree AUO and other traffic-related offenses. The accusatory instrument contained only hearsay allegations about his license suspension and knowledge thereof. A DMV abstract cured the defect as to the suspension, but not the notice element. The accusatory instrument stated that the DMV mails suspension letters when an individual fails to answer or appear on a traffic summons, but the suspension here was for failure to pay a

driver responsibility assessment. The Legal Aid Society of NYC (Nichole Schill, of counsel) represented Breedlove.

[People v Breedlove \(2023 NY Slip Op 51146\[U\]\)](#)

### ***People v K.B.*** | 2023 WL 9059850

DVSJA | SENTENCE REDUCED

K.B. pleaded guilty to 1<sup>st</sup> degree manslaughter and was sentenced to 10 years' incarceration and 5 years of PRS. She later moved for resentencing under the DVSJA (CPL 440.47). Erie County Supreme Court granted the motion and reduced her sentence by half. K.B. demonstrated that, at the time she stabbed her partner, she was the victim of substantial physical, sexual, and psychological abuse. Her claims were sufficiently corroborated by her own statements in the PSI; her post-arrest statements to police; and affidavits of individuals with personal knowledge of the DV history, including a high school teacher and friends who attested to the decedent's coercive control and jealous behavior. Professor Alexandra Harrington of the University at Buffalo School of Law's Criminal Justice Advocacy Clinic represented K.B.

[People v K.B. \(2023 NY Slip Op 51440\[U\]\)](#)

## FAMILY

## SECOND DEPARTMENT

### ***Matter of Benzaquen v Abraham*** | November 1, 2023

UNTIMELY FILED PROOF OF SERVICE | REVERSED

The mother appealed from a Nassau County Family Court order denying her objections to an order of disposition which partially granted her child support enforcement petition. The Second Department reversed. Family Court improperly denied her objections on the ground that she failed to timely file proof of service. The mother timely filed and served her objections but filed proof of service two weeks later. The father submitted a rebuttal and did not raise the proof of service issue. The Law Office of Nancy T. Sherman, P.C. represented the appellant.

[Matter of Benzaquen v Abraham \(2023 NY Slip Op 05498\)](#)

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