

Decisions of Interest

DECEMBER 30, 2022

CRIMINAL

FIRST DEPARTMENT

People v Perez-Castellanos | Dec. 29, 2022

PRIOR CONSISTENT STATEMENTS | AFFIRMED

The defendant appealed from a judgment of New York County Supreme Court convicting him of predatory sexual assault against a child and a related crime. The First Department affirmed. Supreme Court properly admitted proof of uncharged acts of sexual abuse against the same victims which occurred outside the times charged in the indictment. These acts were inextricably interwoven with the charged crimes and provided necessary background information. The court also properly permitted the victims to testify about how they disclosed the abuse to others and permitted those nonvictims to testify about the disclosures. The prior consistent statements were admissible to explain the investigative process and complete the narrative of the arrest. Any error was harmless.

[People v Perez-Castellanos \(2022 NY Slip Op 07514\)](#)

APPELLATE TERM

People v Rodriguez | 2022 WL 17983211

DEFECTIVE COC | 30.30 DISMISSAL

The People appealed from an order of the Bronx County Criminal Court granting the defendant's motion to declare their COC invalid and dismissing the accusatory instrument pursuant to CPL 30.30. Appellate Term, First Department affirmed. A COC filed by the People on the 83rd day of a 90-day time limit was invalid and did not stop the speedy trial clock. Defense counsel notified the People that the COC was defective because they had not disclosed certain impeachment material. When Criminal Court tried to inquire into the People's actual readiness, they did not respond to counsel's specific objections. Instead, they insisted that defense objections must be made in writing. Later the People filed a supplemental COC including the impeachment information. The People's first COC was invalid because they did not turn over the impeachment material, challenge the defendant's claim that the certificate was improper, or seek a protective order.

[People v Rodriguez \(2022 NY Slip Op 22393\)](#)

SECOND DEPARTMENT

People v Vargas | Dec. 28, 2022

TESTIMONIAL HEARSAY | NEW TRIAL

The defendant appealed from a judgment of Queens County Supreme Court convicting him of 1st degree assault. The Second Department reversed and ordered a new trial. The defendant allegedly stabbed his wife in the chest in the presence of their adult daughter. At trial, the People relied on purported excited utterances and present sense impressions. The daughter did not take the stand, but a police officer testified about statements she made to him 20 to 40 minutes after the stabbing. Since there was no emergency, the daughter did not need assistance, and the questioning was directed toward investigating a possible crime, the officer's statements made at trial constituted testimonial hearsay—in violation of the defendant's constitutional right to confront witnesses against him. The error was not harmless. The daughter's comments refuted a remark by the victim that was helpful to the defense on intent. There was a reasonable possibility that the error might have contributed to the conviction—regardless of whether properly admitted proof was sufficient to establish intent. One justice dissented. Appellate Advocates (Anna Jouravleva, of counsel) represented the appellant.

[People v Vargas \(2022 NY Slip Op 07460\)](#)

People v Rodriguez | Dec. 28, 2022

COURT HAD DNA WITNESS | DEFENSE HAD NO EXPERT

The People appealed from an order of Richmond County Supreme Court. After a hearing, the lower court had granted the defendant's CPL 440.10 motion to vacate a judgment convicting him of attempted 1st degree rape and other crimes and had ordered a new trial. The Second Department affirmed. Supreme Court properly called its own expert witness. Adhering to *People v Arnold* (98 NY2d 63) protocols, the trial court explained that it needed help to understand the DNA evidence, and the top expert named by both parties was chosen as the witness. Further, Supreme Court properly found that the defendant was denied effective assistance of counsel. Without any legitimate reason, counsel failed to consult a DNA expert to scrutinize voluminous and complex scientific documents and to challenge that evidence.

[People v Rodriguez \(2022 NY Slip Op 07456\)](#)

People v Howell | Dec. 28, 2022

SUPPRESSION | IAC

The defendant appealed from a judgment of Kings County Supreme Court convicting him of 2nd degree strangulation and other crimes, upon a jury verdict. The Second Department held the appeal in abeyance and ordered a new suppression hearing. The defendant received ineffective assistance when counsel failed to use surveillance video to contest whether a search of his jacket was incident to arrest. Appellate Advocates (Kathleen Whooley, Marissa Cohen, Ned Schefer, of counsel) represented the appellant.

[People v Howell \(2022 NY Slip Op 07452\)](#)

People v Vazquez | Dec. 28, 2022

SUPPRESSION | NO BASIS FOR STOP

The defendant appealed from a judgment of Queens County Supreme Court convicting him of 2nd degree robbery, upon his plea of guilty. The appeal brought up for review the denial of suppression. The Second Department reversed, vacating the plea, granting suppression, and remitting. At the hearing, the People did not present proof to establish the basis for the initial stop of the defendant. Ronald Zapata represented the appellant.

[People v Vazquez \(2022 NY Slip Op 07461\)](#)

THIRD DEPARTMENT

People v Hardie | Dec. 29, 2022

ELEMENT NEGATED | INQUIRY DUTY

The defendant appealed from an Albany County Court judgment convicting him of 2nd degree burglary and from an order denying his CPL 440.10 motion to vacate that judgment. The Third Department affirmed. By making statements negating an element of the crime in the plea allocution, the defendant triggered the narrow exception to the preservation rule, thus triggering a judicial duty of inquiry to ensure that the plea was knowing, intelligent, and voluntary. The court fulfilled its duty, which did not extend to a presentence report notation indicating that the defendant intended to withdraw his guilty plea; and the sentencing court had no duty to delve into such statement. The defendant's criticisms of counsel were belied by the record. Counsel's failure to facilitate the defendant's testimony before the grand jury was not per se IAC. The defendant did not show how his testimony would have changed the outcome, and counsel secured a favorable plea deal. Finally, the defendant did not submit an affidavit from counsel or explain its absence.

[People v Hardie \(2022 NY Slip Op 07480\)](#)

Marxuach v DOCCS | Dec. 29, 2022

SARA | NO MOOTNESS EXCEPTION

The defendant appealed from a judgment of Albany County Supreme Court, which partially granted his application in a CPLR Article 78 proceeding to annul a Board of Parole determination imposing the SARA school grounds prohibition as a condition of release following his attempted burglary conviction. Supreme Court annulled the finding that the prohibition was mandatory and remitted for a discretionary decision. During the pendency of the appeal, the petitioner was released to SARA-compliant housing and post-release supervision expired. The appeal was thus moot and the exception did not apply since the issue would not typically evade review. An incarcerated person could initiate a habeas corpus proceeding to argue that a condition imposed upon parole release violated substantive due process rights.

[Marxuach v DOCCS \(2022 NY Slip Op 07488\)](#)

FAMILY

FIRST DEPARTMENT

Everett v ACS | Dec. 29, 2022

NEGLECT | REVERSED

The father appealed from an order of Bronx County Family Court, which found that he committed neglect based on domestic violence against the mother in the child's presence and on excessive corporal punishment. The First Department reversed the latter finding. The child's statement to the mother that the father had slapped him was not sufficiently corroborated. Although the mother testified that the child was yelling during the incident, it appeared that he was distraught because his parents were arguing—not because the father struck him. There was no evidence of prior corporal punishment by the father or serious injury to the child. Thomas Villecco represented the father.

[Everett v ACS \(2022 NY Slip Op 07506\)](#)

Eriseldo C. v Dashmir C. | Dec. 29, 2022

SJIS | GRANTED

The petitioner appealed from a Bronx County Family Court order denying a motion seeking an order of special findings enabling the child to petition for Special Immigrant Juvenile Status. The First Department reversed and granted the motion. The proof showed that the child was under age 21, not married, and dependent on a juvenile court at the time of the order. His reunification with his parents was not feasible, and returning him to Albania was not in his best interests. Because of his family's political affiliation, the child had been the target of assaults; and his parents had abandoned him. Natraj Bhushan represented the appellant.

[Eriseldo C. v Dashmir C. \(2022 NY Slip Op 07523\)](#)



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