New York State Office of Indigent Legal Services

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SELECTED 2023 TRIAL COURT DECISIONS

Accusatory Instrument – Facial Sufficiency

People v Holiday
New York County Criminal Court dismissed as facially insufficient a misdemeanor information charging the defendant with two counts of forcible touching. The information provided the incorrect date of the offense. Although the defendant did not raise this specific issue, the facial sufficiency of a charging instrument is nonwaivable and jurisdictional and can be raised sua sponte by the court. The People could have corrected their error by filing a superseding information. Since they failed to do so before filing the initial COC/SOR, dismissal was required.
People v Holiday (78 Misc 3d 1217[A])

Bail Reform

People ex rel. Bradley v Baxter
The petitioner was arraigned in Rochester City Court on several non-qualifying offenses (*see* CPL 510.10). After City Court remanded him under the double predicate rule based on his four prior felonies (*see* CPL 530.20 [2] [a]), the petitioner commenced this matter in the Fourth Department as a habeas corpus proceeding. He contended that his pretrial detention was illegal under the reformed bail law. Thereafter the petitioner was released, rendering the proceeding moot. The Fourth Department held that the exception to the mootness doctrine applied; converted the matter to a declaratory judgment action; and transferred it to Monroe County Supreme Court for further proceedings. Supreme Court granted the petition and declared that the double predicate rule only applies to qualifying offenses under the reformed bail law (*see* CPL 530.20 [1] [b] and 510.10 [4]).
People ex rel. Bradley v Baxter (2023 NY Slip Op 23145)

Bruen

People v Frazzini
The defendant moved to dismiss an indictment charging her with 2nd degree CPW, contending that Penal Law § 265.03 (3) was unconstitutional. Erie County Supreme Court denied the motion. The defendant lacked standing to challenge New York's pistol permit statute as she never applied for a permit and did not suffer the actual harm of a denial. Her challenge to the CPW statute, based primarily on *NYS Rifle & Pistol Assn. v Bruen* (142 S Ct 2111 [2022]), was insufficient to declare the statute unconstitutional. *Bruen* did not invalidate NY's ability to implement pistol permit licensing rules and regulations—only NY's discretionary "proper cause" standard was affected. The defendant's inability to obtain a permit based on her prior conviction for a serious offense was statutory, not discretionary. Restrictions on the exercise of rights conferred by the Second Amendment have not rendered it "second class" compared to other constitutional rights.
People v Frazzini (78 Misc 3d 1233[A])

CPL 730

People v E.A.
The defendant sought dismissal of felony complaints against him because he was in custody at a psychiatric facility when the temporary court order of observation expired. New York City Criminal Court denied the application. The facility filed a "Notification of Fitness to Proceed" before the observation order expired. The dismissal provision of CPL 730.40 (2) is only triggered when the facility files a certificate of custody, which did not happen here. The defendant's detention at the facility beyond the expiration of the temporary order was precautionary, allowed for time to arrange for his transfer to DOCCS, and did not constitute custody for statutory purposes.
People v E.A. (78 Misc 3d 515)

People v B.D.
The State Office of Mental Health (OMH) moved to convert the defendant's criminal confinement to civil confinement, pursuant to *Jackson v Indiana* (406 US 715 [1972]). New York County Supreme Court denied the motion. There is no procedural mechanism for OMH to intervene in a criminal proceeding, nor did the agency have a basis to seek relief under *Jackson.* The relief sought would deny the defendant his remedy for release under CPL 730.50 and result in him becoming financially responsible for his own care.
People v B.D. (2023 NY Slip Op 23141)

Crawford v Ally

People v P.D.
At a *Crawford* hearing, the defendant objected to the admission of two domestic incident reports related to criminal charges that were ultimately dismissed. Kings County Criminal Court found the DIRs admissible. Pursuant to CPL 160.50, the reports were not sealed upon the termination of a prosecution in favor of the defendant because they were not official records relating to an arrest or prosecution. They contained extensive information unrelated to criminal prosecution and contact information for resources to assist the complainants; and the data collected was used to inform policies and government reports. Further, CPL 140.10 mandated that DIRs be retained by the law enforcement agency for at least four years.
People v P.D. (78 Misc 3d 352)

People v Riley
At arraignment, Bronx County Criminal Court issued a temporary, stay-away order of protection against the defendant. He requested a *Crawford* hearing to determine if the scope of the order was appropriate. The court modified the order. The stay-away provisions deprived the defendant of a significant property interest, and the People failed to establish an articulable reasonable basis for the restriction. The complainant was uncooperative and did not want a stay-away order, and the People's other proof was not sufficiently reliable.
People v Riley (78 Misc 3d 327)

Depraved indifference murder

People v Baldner
Ulster County Supreme Court granted the defendant's motion to dismiss the top count of an indictment charging him with 2nd degree murder (depraved indifference). According to grand jury proof, the defendant—a State trooper—stopped a vehicle on the Thruway for speeding. During the ensuing interview, the trooper pepper-sprayed the confrontational driver. The driver sped away and a chase ensued, with both vehicles speeding at more than 120 mph. Allegedly, the defendant twice rammed the fleeing vehicle. After the first impact and just before the second impact, the defendant applied a hard brake. The fleeing vehicle rolled over, and the driver's 11-year-old daughter was partially ejected and killed. The defendant acted with extremely poor judgment and contravened agency protocols. However, the grand jury proof did not demonstrate that the trooper acted with wantonness akin to a desire to kill the decedent or the other occupants of the vehicle so as to support the murder charge. (Unpublished)

DVSJA

People v Theresa G.
Kings County Supreme Court granted the defendant's DVSJA petition and resentenced her to 4 years plus 1½ years of PRS. In 2018, the defendant pleaded guilty to 1st degree assault and was sentenced to 8 years plus 5 years of PRS. The defendant was undisputedly a victim of extreme domestic violence. She had no criminal history and did have steady employment, family/community support, and a clean prison record. The People argued that she was ineligible for resentencing because she stabbed her boyfriend from behind due to anger and excessive drinking. But, even if that was true, the history of domestic violence was still a significant contributing factor to incident.
People v Theresa G. (78 Misc 3d 1139)

ERPO

G.W. v C.N.
The respondent moved to quash a Temporary Extreme Risk Protection Order (TERPO) issued by Monroe County Supreme Court and to prevent issuance of an ERPO. Supreme Court vacated the TERPO, dismissed the petition, and declared that CPLR article 63-a was unconstitutional because it allowed the infringement of a fundamental constitutional right without adequate due process protections. Article 63-a permitted the entry of a TERPO and ERPO against an individual who was "likely to engage in conduct that would result in serious harm to himself, herself, or others." Such an order impacted the right to bear arms. Mental Health Law (MHL) used the same definition of "likelihood to result in serious harm" to justify involuntary hospitalization of a patient for treatment. However, the MHL required the opinion of a physician that the individual presented a serious risk of harm, whereas the ERPO law allowed a court to deprive an individual of Second Amendment rights based on lay opinion.
G.W. v C.N. (78 Misc 3d 289)

R.M. v C.M.
Orange County Supreme Court declared the ERPO statute unconstitutional and dismissed the petition. Under the statute, the court is required to determine whether the respondent is likely to cause serious harm to himself or others. But unlike the procedure set forth in Mental Hygiene Law § 9.39, an ERPO court is expected to make this determination without input from a mental health professional. The court joined the Monroe County Supreme Court in holding that, to pass constitutional muster, the ERPO statute must provide further procedural guarantees, such as a physician's determination that the respondent poses a risk to self or others.
R.M. v C.M. (79 Misc 3d 250)

***Matter of J.B. v K.S.G*.**
The respondent challenged the constitutionality of CPLR article 63-a, arguing that it improperly infringed on the Second Amendment right to possess firearms. Cortland County Supreme Court denied the motion. The Monroe County decision in *G.W. v C.N.* overstated the role of physicians in MHL article 9 proceedings and incorrectly concluded that ERPO requires proof of mental illness. ERPO only incorporated the MHL definition of "likelihood to result in serious harm"—not any provisions related to mental illness. The ERPO analysis is a fact-based inquiry as to whether the respondent's conduct evinces the likelihood of harm. ERPO provides ample procedural protections against improper deprivation of Second Amendment rights.
Matter of J.B. v K.S.G. (79 Misc 3d 296)

Fraud

People v Morgan
The People moved pursuant to CPL 420.45 to have declared void ab initio a deed that was fraudulently executed in connection with the defendant's conviction of 2nd degree offering a false instrument for filing. Following a hearing, Queens County Supreme Court granted the motion. The hearing proof did not rebut the statutory presumption that the deed was void ab initio based on the defendant's related conviction (*see* CPL 420.45 [3]). The statute does not require a forgery conviction—only a conviction for 1st or 2nd degree offering a false instrument for filing triggers the right to seek relief. The duped purchaser and lending agent had other avenues to seek compensation for their losses. But if the court declined to grant relief, the true owner would face costly civil litigation to undo the fraudulent conveyance.
People v Morgan (78 Misc 3d 1122)

FOIL

M/O Legal Aid Socy. v N.Y. City Police Dept.
New York County Supreme Court granted the petitioner's CPLR article 78 petition challenging the denial of its FOIL request for documents relating to substantiated allegations of misconduct against NYPD officers. The respondent failed to turn over any documents, despite the petitioner's good faith attempts to narrow the scope of the request. Notwithstanding the repeal of Civil Rights Law § 50-a, the respondent invoked

the personal privacy exemption under Public Officers Law § 87 (2) (b). That the respondent's databases and software programs were slow and overly complicated was not a valid excuse and there was a clear public interest in the information sought.
Matter of Legal Aid Socy. v N.Y. City Police Dept. (2023 NY Slip Op 31283[U])

Matter of McDevitt v Suffolk County
In this CPLR article 78 proceeding, the petitioner challenged the partial denial of his FOIL request seeking disclosure of certain police personnel records. Suffolk County Supreme Court partially granted the petition and directed the respondents to provide the requested records of unsubstantiated claims of police misconduct, subject to redaction of any personal, private information. In denying the petitioner's FOIL request, the respondents relied on two advisory opinions from the Committee on Open Government, which directed that records of unsubstantiated complaints of officer misconduct could be withheld under the personal privacy exemption of Public Officers Law § 87 (2) (b). But the First and Fourth Departments had since held that such provision does not categorically exempt documents related to unsubstantiated claims of misconduct (*see Matter of New York Civ. Liberties Union v New York City Dept. of Corr.*, 213 AD3d 530 [1st Dept 2023]; *Matter of New York Civ. Liberties Union v City of Syracuse*, 210 AD3d 1401 [4th Dept 2022]).
Matter of McDevitt v Suffolk County (78 Misc 3d 1239[A])

Garrity

People v Morrissey
The defendant moved to dismiss, and Cayuga County Court denied the motion after a hearing. The defendant, an Auburn Police school resource officer, was charged with 1st degree sexual abuse, 1st degree disseminating indecent material to minors, official misconduct, and EWC based on his alleged sexual relationship with a 14-year-old student. The defendant argued that the indictment must be dismissed because the prosecution was the product of compelled statements he made during a *Garrity* interview But there were independent sources for all the proof provided during the interview. The *Garrity* statements were not improperly used; and the evidence before the grand jury was legally sufficient.
People v Morrissey (2023 NY Slip Op 23165)

Grand jury

People v Lincoln-Lynch
The defendant moved to dismiss an indictment charging him with one count of leaving the scene of an incident without reporting. Saratoga County Court granted the motion. The prosecutor failed to instruct the grand jury on CPL 60.50's corroboration requirement. Much of the testimony was hearsay, and there was no instruction about exceptions to the hearsay rule. Further, the prosecutor elicited testimony about the defendant's prior medical treatment that was irrelevant and unduly prejudicial and invited speculation that he was using pain medication during the incident. The cumulative effect of these errors impaired the integrity of the grand jury proceeding.
People v Lincoln-Lynch (77 Misc 3d 1224[A])

People v Gibson
The defendant moved for inspection of the grand jury minutes and dismissal of the indictment charging him with robbery. Queens County Supreme Court found the evidence submitted to the grand jury legally insufficient. The only evidence placing the defendant at the scene was his own statement. But he never admitted to the robbery, and the People failed to provide the requisite CPL 60.50 instruction. Under these circumstances, the grand jury may have indicted based on the defendant's statements alone.
People v Gibson (77 Misc 3d 1237[A])

Identification

People v Brown
The People sought permission to have the complainant identify the defendant in court and to introduce video surveillance at trial that was used in an ID procedure with the complainant. After reviewing the videos, the court denied the motion. The complainant's ID of the defendant while viewing a video of the defendant at a time other than that of the offense constituted an ID procedure requiring CPL 710.30 notice.
People v Brown (2023 NY Slip Op 50555[U])

Parole: Less Is More

Matter of Lopez
Rochester City Court rendered a decision providing guidance regarding new procedures for parole revocation appeals under the "Less is More" statute. Executive Law § 259-i (4-a) (L. 2021, c. 427, § 7, eff. March 1, 2022) provides that administrative appeals of decisions revoking parole based on technical violations are still heard by the Board of Parole; but revocations based on non-technical violations (for conduct constituting a crime) may be appealed either to the Board or to a specified criminal court. The latter appeals are commenced by filing a notice of appeal (NOA) "in the same manner as an appeal to the appellate division," as set forth in CPL 460.10 (NOA filed in "criminal court" in which sentence was imposed). In this case, a contested hearing was held, an ALJ revoked appellant's parole, and his parole counsel filed—with the Board of Parole—a NOA which did not identify Rochester City Court as the appeal forum. Appellate counsel then filed a motion seeking to transfer that pending administrative appeal to City Court or for certain alternative relief. City Court held that: (1) the appellant was a nontechnical violator since the substance of a sustained charge constituted a misdemeanor or felony, so he could indeed appeal to criminal court; (2) the NOA was properly filed with the Board; (3) and no law permitted transferring the appeal or amending the NOA. But, based on initial counsel's improper conduct in failing to fully advise the appellant of his appeal options, the court granted his CPL 460.30 motion to file a late notice of appeal designating City Court as the appellate court.
Matter of Lopez (2023 NY Slip Op 23149)

SORA

People v Melchiorre
The People contended that the defendant should be designated a risk-level-two sex offender and sought the assessment of points on factors 2 (sexual contact with victim), 6 (other victim characteristics), and 7 (relationship with victim). They alternatively sought an upward departure. Queens County Criminal Court adjudicated the defendant to be a level-one risk and denied the upward departure. He was convicted of sexually abusing a dog, and the RAI factors cannot be directly applied in cases involving sexual abuse of an animal. Among other things, the RAI was not calibrated to determine how an offender's abuse of an animal might correlate to the risk of reoffense against a person.
People v Melchiorre (78 Misc 3d 1215[A])

People v N.F.
Richmond County Supreme Court designated the defendant a presumptive level-two sex offender but granted his request for a downward departure to level one. In this internet child pornography case, several mitigating factors tended to establish a lower likelihood of re-offense or danger to the community but were not considered by the Guidelines. First, the defendant received points pursuant to risk factor 8 for being under age 20 when he committed his first sex crime. But not recognized was the fact that he was a child sexual abuse victim himself. Second, the RAI did not account for measures taken to preclude the defendant from accessing the internet. Third, he willingly and successfully engaged in extensive treatment for sex offenders and for substance abuse, and he took responsibility for his actions. Finally, rehabilitation based on the totality of the record was a mitigating factor not reflected in the Guidelines or the RAI.
People v N.F. (77 Misc 3d 1220[A])

Suppression/search warrants

People v Caisaguano
Following a *Dunaway/Johnson* hearing, Queens County Criminal Court suppressed all evidence flowing from the unlawful seizure of the defendant. Two police officers approached his illegally parked car after receiving a report of an accident. He was awake and in the driver's seat. The officers told him to exit and hand over his keys. The defendant spoke clearly and showed no signs of impairment. While these circumstances gave police reason to approach the car and request information (*De Bour* level 1), the officers were not justified in ordering the defendant out of his car and seizing his keys (*De Bour* level 3). Further, one officer's testimony was contradicted at times by his body cam footage—notably as to whether the defendant smelled like alcohol.
People v Caisaguano (78 Misc 3d 1215[A])

People v Jeffcoat
The Nassau County District Court suppressed the defendant's statements and all physical evidence. The defendant was charged with DWI after a car crashed into a building. Police found the car inside the building, unoccupied. When the defendant exited the building, police stopped him and questioned him. He had watery/bloodshot eyes, smelled of

alcohol, and his leg was bloodied. No one else was in the building. The defendant was arrested and searched; a key fob for his vehicle model was found in his pocket. At the hospital, the defendant submitted to a blood test. He was *Mirandized* for the first time and invoked his right to remain silent. The defendant was in custody from his first interaction with police. There was no probable cause for his arrest; no one observed him in or operating the vehicle.
People v Jeffcoat (78 Misc 3d 1220[A])

People v Williams
The defendant moved to suppress cell phone records and data seized pursuant to a search warrant. Albany County Supreme Court partially granted the motion. The complainant's statement passed the *Aguiliar-Spinelli* test and provided probable cause for the warrant. But the stated period—from the week before through the week after the alleged incident—was overly broad. The overbroad portion of the warrant could be severed, and probable cause supported seizure of records of the cell phone's location during an eight-hour period covering the incident. The warrant was executed by fax from New York to AT&T in Florida, but any technical violation of CPL 690.20 (2) did not violate the defendant's constitutional rights; and exclusion of the records was not warranted.
People v Williams (2023 NY Slip Op 23137)

People v Nurse
The defendant controverted five search warrants authorizing the search of a flash drive, computers, cellphones, and a sim card seized from his home. Kings County Supreme Court granted the motion. The warrants were valid, but they were not executed within 10 days of issuance. The People applied for and obtained a search warrant to conduct a forensic examination of the items seized—therefore the warrants were not executed until the data was extracted from the items. Although the devices were seized and delivered to the Digital Evidence Lab within the requisite period, the data was not extracted until more than 10 days after the warrants were issued.
People v Nurse (2023 NY Slip Op 23167)

People v Dennis
The defendant moved to controvert a search warrant authorizing the search of his apartment for clothes worn by another individual when that person discharged a firearm and to suppress the pistol found in the defendant's private bedroom. Kings County Supreme Court granted the motion. The supporting affidavit submitted by an officer on the NYPD Warrants Squad did not satisfy the second prong of the *Aguilar-Spinelli* test; it failed to establish how the officer learned or knew that the shooter resided at the apartment. The fact that the Warrants Squad arrested the shooter at the defendant's apartment did not alone support a reasonable inference that he also resided there.
People v Dennis (2023 NY Slip Op 50561[U])

M/O People of State of NY for a Search Warrant
Bronx County Criminal Court denied the People's ex parte search warrant application to extract data from a cell phone. The supporting affidavit indicated that the target, who was previously involved in firearms possession, used his phone to record an arrest that

resulted in the seizure of firearms. Due to technological limitations, police would need to extract all the cell phone's data to examine it for relevant evidence. The application lacked sufficient, particularized reasonable cause to believe that the evidence sought would be found in the broad areas of the phone. While it was possible that the phone contained evidence of the specified offenses, there were no specific allegations to that effect. A valid search warrant request for cell phone data must set forth reasonable date and time restrictions on the data to be searched to minimize the invasion of an owner's privacy interest in his cell phone
People of the State of N.Y. for a Search Warrant (2023 NY Slip Op 50589[U])

Family Court

Matter of Anonymous II. (Kimberly D.)
Following a trial in this permanent neglect proceeding, Sullivan County Family Court found that Department of Family Services (DFS) had failed to make diligent efforts to strengthen the parent-child relationship and dismissed the petition. DFS did not demonstrate its efforts to assist the mother with housing. She had consistently availed herself of the meager visitation offered; had participated in mental health counseling, substance abuse treatment, and DV counseling; and was employed. DFS was fixated on the mother completing long-term DV counseling. However, requiring DV victims to complete counseling to prevent further abuse reinforced the stereotype that victims are somehow responsible for their own abuse.
Matter of Anonymous II. (Kimberly D.) (77 Misc 3d 1232[A])

Matter of Caleb S. (Gina R.)
The respondent parents requested a § 1028 hearing after ACS filed a neglect/abuse petition alleging that the mother abused the 3-month-old subject child and derivatively abused her older daughter, based on the discovery of retinal hemorrhages and a subdural hematoma in the infant when he was hospitalized for seizures. Bronx County Family Court granted the § 1028 motion and temporarily released both children to the parents. The parents' expert witness had examined the infant twice; reviewed his hospital medical records and imaging; and explained how the injuries were most likely the result of dehydration, inflammation, and infection—not head trauma. ACS's expert's conclusion that the child was abused lacked a connection with the actual findings on the imaging and the child's symptoms and did not explain why the bleeding could not have been caused by a systemic issue.
Matter of Caleb S. (Gina R.) (78 Misc 3d 1215[A])

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