

Decisions of Interest

MARCH 11, 2024

CRIMINAL

FIRST DEPARTMENT

People v Burgos | March 7, 2024

BURGLARY | SEXUALLY MOTIVATED | NOT REGISTERABLE

The appellant appealed from a New York County Supreme Court judgment convicting him of 2nd degree burglary as a sexually motivated felony and public lewdness, and an order denying his CPL 440.20 motion to set aside his sex offender certification. The First Department vacated the sex offender certification and registration requirement, otherwise affirmed the conviction, and dismissed the 440 appeal. Burglary as a sexually motivated felony is not a registrable sex offense. Although the issue was rendered academic, CPL 440.20 is an improper vehicle for challenging the sex offender registration; it is part of the judgment of conviction and not the sentence. The Center for Appellate Litigation (Nicole P. Geoglis, of counsel) represented the appellant.

[People v Burgos \(2024 NY Slip Op 01255\)](#)

SECOND DEPARTMENT

People v Bryant | March 6, 2024

ERROR CORAM NOBIS | CONCURRENT SENTENCES REQUIRED

The appellant sought a writ of error coram nobis to vacate a Second Department order affirming his conviction for 1st degree robbery, 2nd degree murder (two counts), and tampering with evidence. The Second Department vacated its prior order, imposed concurrent sentences on the robbery and murder counts, and otherwise affirmed. Former appellate counsel was ineffective for failing to argue that the appellant's use of a dangerous instrument under the robbery charge was not separate and distinct from the act which caused the victim's death under the murder charge. The sentence on the robbery conviction must run concurrently with the sentence imposed on the murder conviction. Barket Epstein Kearon Aldea & LoTurco LLP (Donna Aldea and Danielle Muscatello, of counsel) represented the appellant.

[People v Bryant \(2024 NY Slip Op 01194\)](#)

People v Galvez-Marin | March 6, 2024

MIRANDA | INVOLUNTARY WAIVER | REVERSED

The appellant appealed from a Queens County Supreme Court judgment convicting him of 2nd degree murder, attempted 1st degree robbery (two counts), and 4th degree CPW.

The Second Department reversed, suppressed the appellant's statements to police, and remitted for a new trial. The record did not support Supreme Court's finding that the appellant understood the import of waiving his *Miranda* rights. Before reading the *Miranda* warnings, a detective told the appellant that they did not "mean anything" and were "just part of the process," and the appellant appeared confused about whether he could answer the detective's questions. The appellant did not have a full awareness of the nature of the right being waived and the consequences of the waiver. Appellate Advocates (Alice R. B. Cullina, of counsel) represented the appellant.

[People v Galvez-Marin \(2024 NY Slip Op 01196\)](#)

TRIAL COURTS

People v Li | 2024 WL 998048

DISCOVERY | NO DUE DILIGENCE | INVALID COC

Li moved to invalidate the People's COC. Richmond County Supreme Court applied the *Bay* factors and granted the motion. The prosecutor did nothing more than ask police for certain items of discovery and rely on the word of the case detectives that they did not exist. A review of the NYPD file would have revealed many more discoverable items, in addition to those flagged by the defense. Although this was a complex financial crime, any prosecutor exercising due diligence would have known that obvious discoverable items were missing. And, when advised of the missing discovery, the People stood by their invalid COC and told the defense to file the instant motion. They made no efforts to work with the defense and invited unnecessary motion practice. Eric W. Siegle represented Li.

[People v Li \(2024 NY Slip Op 50238\[U\]\)](#)

FAMILY

SECOND DEPARTMENT

Matter of Watson v Brown | March 6, 2024

FAMILY OFFENSE | NO INTIMATE RELATIONSHIP | REVERSED

The respondent appealed from an Orange County Family Court order that found she committed a family offense and entered an order of protection against her. The Second Department reversed and dismissed the proceeding. The petitioner commenced a family offense proceeding seeking an order of protection in favor of her four children. The respondent had no direct relationship with the petitioner's children; three of them are her children's half-siblings. The respondent and the petitioner's children did not reside together or have any direct interactions. Because there was no intimate relationship between the respondent and the petitioner's children, Family Court was without subject matter jurisdiction and dismissal was required. Samuel S. Coe represented the respondent.

[Matter of Watson v Brown \(2024 NY Slip Op 01191\)](#)

Matter of Melendez-Emmanuel v Emmanuel | March 6, 2024

FAMILY OFFENSE | RIGHT TO COUNSEL | REVERSED

The respondent appealed from an Orange County Family Court order that found he committed family offenses and entered an order of protection against him. The Second Department reversed and remitted. The record did not show that the respondent validly waived his right to counsel. Reversal was required, regardless of the merits of the respondent's position. Kevin T. Conway represented the respondent.

[Matter of Melendez-Emmanuel v Emmanuel \(2024 NY Slip Op 01180\)](#)

TRIAL COURTS

Matter of Danasia L. | 2023 WL 10222714

JD | DISCOVERY VIOLATION | ADVERSE INFERENCE

The respondent was charged with 2nd degree assault, 3rd degree assault, OGA, and resisting arrest. Kings County Family Court entered a finding on the OGA charge and dismissed the remaining counts. The respondent tried to return to a Target store after being escorted off the property. An officer approached and the respondent pushed the officer. It was discovered after the officer's cross-examination that the petitioner had failed to turn over a photograph of the alleged injury. Given the prejudice to the respondent, Family Court drew an adverse inference that the photo would not have supported the element of physical injury or even the existence of a bruise. As the proof of physical injury was already weak—a bruised arm caused by one push that required no medical treatment or missed work—the petitioner failed to carry its burden. Brooklyn Defender Services (Danielle Ribaud, Esq., of counsel) represented the respondent.

[Matter of Danasia L. \(2024 NY Slip Op 51481\[U\]\)](#)

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