

Decisions of Interest

MARCH 13, 2023

CRIMINAL

FIRST DEPARTMENT

People v Estrella | March 9, 2023

1ST DEGREE MURDER | TORTURE | MODIFIED

The defendant appealed from a Bronx County Supreme Court judgment convicting him of 1st and 2nd degree murder, 2nd degree conspiracy, and 2nd degree gang assault after a jury trial. The First Department vacated the 1st degree murder conviction, dismissed that count, and remanded for resentencing. The defendant fatally stabbed the victim in the neck during a gang assault. While this was “an extremely heinous second-degree murder,” the evidence did not support a 1st degree murder conviction. The defendant and his accomplices did not engage in a “course of conduct” of torturing the victim, and the defendant did not “relish” inflicting extreme physical pain. Steven N. Feinman represented the appellant.

[People v Estrella \(2023 NY Slip Op 01240\)](#)

THIRD DEPARTMENT

People v Rice | March 9, 2023

CPL 440.10 | HODGDON DEFENSE | REMITTED

The defendant appealed from a Franklin County Court order that summarily denied her CPL 440.10 motion. The Third Department reversed and remitted. County Court should have conducted a hearing to allow the defendant to create a record as to whether she was entitled to assert the “*Hodgdon* defense” to show that the DA’s Office did not grant the Justice Center authority to prosecute her and did not retain ultimate responsibility over her prosecution after declining to prosecute her. *People v Hodgdon* was decided after the Third Department affirmed her conviction, but before the Court of Appeals denied her leave application. Because *Hodgdon* announced a new rule after the defendant’s direct appeal was decided, her failure to raise the issue on appeal was justified. Noreen McCarthy represented the appellant.

[People v Rice \(2023 NY Slip Op 01211\)](#)

TRIAL COURTS

People v Harris | 2023 WL 2418118

30.30 | POST-READINESS DELAY | DISMISSED

The defendant moved to dismiss the misdemeanor charges pending against him on speedy trial grounds. Queens County Criminal Court granted the motion and dismissed the case. The People were ready for trial 84 days after arraignment, but they failed to respond to the defendant's 30.30 motion for 43 days after the court-ordered response date. A total of 127 days of delay were therefore attributable to the People. The Legal Aid Society (Diana Sidakis, of counsel) represented the defendant.

[People v Harris \(2023 NY Slip Op 50167\[U\]\)](#)

People v Mueller | 2023 WL 2418132

30.30 | COC/SOR | FACIAL SUFFICIENCY | DISMISSED

The defendant moved to dismiss a two-count information, charging one misdemeanor and one violation, on speedy trial grounds based on the People's failure to timely file an information that was facially sufficient as to each count. Queens County Criminal Court granted the motion and dismissed the charges. The information was facially insufficient as to the violation, rendering invalid the People's SOR in its entirety (see CPL 30.30 [5-a] [abrogating partial conversion doctrine]). The Legal Aid Society (Shane Ferro of counsel) represented the defendant.

[People v Mueller \(2023 NY Slip Op 50168\[U\]\)](#)

FAMILY

FIRST DEPARTMENT

Matter of Agustin F. v Stephanie F. | March 9, 2023

VISITATION | APPEAL AS OF RIGHT | MOOTNESS | AFFIRMED

The mother appealed from a Bronx County Family Court order denying her motion to suspend the father's visits with the child. The First Department affirmed. The order was not appealable as of right, but the First Department treated the appeal as an application for leave to appeal and granted the application nunc pro tunc. The appeal was not rendered moot by the father's withdrawal of the underlying modification petition—a live controversy remained since the mother had not obtained the relief sought. But Family Court's determination to deny the motion was supported by the record.

[Matter of Agustin F. v Stephanie F. \(2023 NY Slip Op 01233\)](#)

SECOND DEPARTMENT

Matter of Kenneth H. v. Dawn P. | March 8, 2023

CHILD SUPPORT | CONSTRUCTIVE EMANCIPATION | REVERSED

The parties' child (born in 2003) and the mother separately appealed from a Suffolk County Family Court order that terminated the father's support obligation for the appellant child based on constructive emancipation. The Second Department reversed. The father did not establish that the child actively abandoned him without justification; the father's conduct was the primary cause of the breakdown in their relationship. Glen Gucciardo represented the child, and Thomas Butler represented the mother.

[Matter of Kenneth H. v Dawn P. \(2023 NY Slip Op 01191\)](#)

Matter of Lew v Lew | March 8, 2023

CHILD SUPPORT | PARENTAL ALIENATION | MODIFIED

The mother appealed from a Nassau County Family Court order that summarily dismissed with prejudice that part of the father's petition seeking to suspend his basic child support obligation based on parental alienation. The Second Department modified. Dismissal without a hearing was proper under the circumstances. But it was an error to dismiss with prejudice; the court has continuing jurisdiction to modify, set aside, or vacate a prior order of child support pursuant to Family Court Act § 451.

[Matter of Lew v Lew \(2023 NY Slip Op 01192\)](#)

FEDERAL

ELEVENTH CIRCUIT

NRA v Bondi | March 9, 2023

FL GUN LAW | HISTORICAL ANALOGUE | AFFIRMED

The NRA challenged the Marjory Stoneman Douglas High School Public Safety Act, which bans the sale of firearms to 18-to-20-year-olds, as unconstitutional. The District Court ruled in Florida's favor and the NRA appealed. The U.S. Court of Appeals for the 11th Circuit affirmed. To determine whether the law comports with longstanding traditions, the relevant historical analogue is the ratification of the 14th amendment, which made the 2nd amendment applicable against the states—not the adoption of the 2nd amendment, which was understood to apply only to the federal government. Prior to and after the ratification of the 14th amendment, many states restricted 18-to-20-year-olds' access to firearms and other weapons to enhance public safety. These laws were even more restrictive than FL's law, as they prohibited selling, giving, or loaning handguns to minors. Thus, the FL law does not violate the 2nd amendment.

[NRA v Bondi \(2023 WL 2416683\)](#)

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