

Decisions of Interest

APRIL 1, 2024

CRIMINAL

FIRST DEPARTMENT

People v Acosta | March 26, 2024

SORA | LACK OF 10-DAY NOTICE | AFFIRMED

The appellant appealed from a New York County Supreme Court judgment adjudicating him a level three sexually violent predicate sex offender. The First Department affirmed. Supreme Court improperly assessed 20 points under factor 7 for having a professional relationship with the victim because the People failed to provide the appellant 10 days' notice of the basis for seeking those points. But the appellant's presumptive risk level remained the same due to his prior felony sex crime conviction.

[People v Acosta \(2024 NY Slip Op 01684\)](#)

People v Archibald | March 26, 2024

WOA INVALID | SECOND AMENDMENT CHALLENGES

The appellant appealed from a Bronx County Supreme Court judgment convicting him of attempted 3rd degree CPW based on his guilty plea. The First Department affirmed but found the waiver of appeal was invalid. Supreme Court did not discuss the rights being forfeited, ensure that the appellant had signed the written waiver and was aware of its contents, or explain that the right to appeal was separate and distinct from the rights forfeited automatically by pleading guilty. The appellant's Second Amendment challenge to New York's prohibition of firearm possession by convicted felons is moot because he possessed a large capacity ammunition feeding device that is prohibited even with a gun license. His challenge to the ban on this device is unpreserved. Alternatively, while he has standing because his device is subject to a complete ban and not a licensing scheme, he failed to prove that the ban is unconstitutional.

[People v Archibald \(2024 NY Slip Op 01680\)](#)

SECOND DEPARTMENT

People v Lewis | March 27, 2024

AUTOMOBILE PRESUMPTION | INAPPLICABLE | NEW TRIAL

The appellant appealed from a Queens County Supreme Court judgment convicting him of 2nd degree CPW and unlawful possession of pistol ammunition after a jury trial. The Second Department reversed and ordered a new trial. Supreme Court erred by instructing the jury on the automobile presumption because the People failed to establish that the

appellant occupied the SUV in which a gun was found. A surveillance video showed that the appellant leaned into the rear passenger-side door of the SUV while standing on its running board—but his feet never left the running board to climb inside the vehicle. Appellate Advocates (Anna Jouravleva, of counsel) represented the appellant.

[Oral Argument \(starts at 0:10:22\)](#)

[People v Lewis \(2024 NY Slip Op 01728\)](#)

People v Rivers | March 27, 2024

MOLINEUX | HEARSAY INADMISSIBLE | NEW TRIAL

The appellant appealed from a Queens County Supreme Court judgment convicting him of 2nd degree murder and 2nd degree criminal contempt after a jury trial. The Second Department reversed the murder conviction and ordered a new trial on that count. Prior statements by the victim about domestic violence involving the appellant were hearsay, and they were improperly admitted to establish the appellant's state of mind. Even if evidence is admissible under *Molineux*, it must be proffered in admissible form. Appellate Advocates (De Nice Powell, of counsel) represented the appellant.

[Oral Argument \(starts at 1:07:36\)](#)

[People v Rivers \(2024 NY Slip Op 01731\)](#)

People v Ford | March 27, 2024

WOA | INVALID | FIRST MENTION AFTER PLEA

The appellant appealed from a Kings County Supreme Court sentence imposed based on his guilty plea. The Second Department found the appellant's waiver of appeal invalid but affirmed the sentence. Supreme Court did not address the waiver with the appellant until after he had admitted his guilt. Combined with the appellant's limited contact with the criminal justice system, the record did not show that he understood the nature of the rights being waived.

[People v Ford \(2024 NY Slip Op 01725\)](#)

TRIAL COURTS

People v Rivera | 2024 WL 1247039

DISCOVERY VIOLATION | IDENTIFICATION AT ISSUE | VACATED

Rivera moved to vacate his conviction for 2nd degree CPW and 1st degree reckless endangerment based on a discovery violation. New York County Supreme Court granted the motion. The People disclosed during jury deliberations that a detective, their only identifying witness, had interacted with Rivera for several minutes approximately six months after his arrest. Body worn camera footage of the interaction existed but had not been turned over. At trial, the detective had testified briefly and inaccurately about the interaction and claimed that he had not documented it. The belated disclosure concerned the accuracy of the one-witness identification which was the only seriously contested issue in the case and warranted the extreme remedy of vacatur. Brian Hutchinson represented Rivera.

[People v Rivera \(2024 NY Slip Op 50309\[U\]\)](#)

People v Peters | 2024 WL 1319619

PASSENGERS | NO REASONABLE SUSPICION | EVIDENCE SUPPRESSED

Peters and his co-defendant, Benjamin, sought suppression of a gun and statements related to their arrests for weapon possession. Kings County Supreme Court suppressed the evidence after a hearing. Peters and Benjamin were passengers who fled from a vehicle that was stopped by police. The officers only pursued them because they fled—there was no testimony suggesting that either of them possessed or tried to conceal a weapon. Nor was there unequivocal testimony that either one deliberately discarded incriminating evidence. Although their statements were spontaneous, they were a direct consequence of unlawful police conduct. Douglas Rankin represented Peters and Benjamin.

[People v Peters \(2024 NY Slip Op 50323\[U\]\)](#)

People v Rivera | 2024 WL 1337691

SPEEDY TRIAL | PEOPLE'S UNTIMELY RESPONSE | DISMISSED

Rivera moved to dismiss misdemeanor charges on speedy trial grounds. Bronx County Criminal Court granted the motion. At a discovery conference, Rivera requested a motion schedule to challenge the validity of the prosecution's COC. The People did not file their opposition papers until two months after they were due and gave no explanation for the delay. Although the court declined to invalidate the People's COC, it charged the People with the 60-day delay in opposing the motion—which, combined with the time chargeable to them before they declared readiness, exceeded the prescribed speedy trial time. Shannon Griffin represented Rivera.

[People v Rivera \(2024 NY Slip Op 50328\[U\]\)](#)

CIVIL

FIRST DEPARTMENT

Matter of People of the State of N.Y. v Annucci | March 26, 2024

LESS IS MORE | DOCCS APPEAL | AFFIRMED

DOCCS appealed from a Bronx County Supreme Court judgment granting the petitioner's habeas petition. The First Department affirmed. DOCCS did not conduct a timely preliminary hearing under the Less is More Act. DOCCS issued and lodged a parole warrant against the petitioner after he was charged with new crimes. A recognizance hearing was held five days later—well beyond the 24-hour period mandated by law—and a preliminary hearing was held two days after that. Contrary to DOCCS' regulations, the five-day preliminary hearing deadline runs from the warrant's execution date. DOCCS' interpretation that the preliminary hearing must be held within five days after the recognizance hearing would negate their duty to ensure that recognizance hearings are held within 24 hours of a warrant's execution. The Legal Aid Society NYC (Michelle McGrath, Steven Demarest and Kerry Elgarten, of counsel) represented the petitioner.

[Oral Argument \(starts at 1:02:36\)](#)

[Matter of the People of the State of N.Y. v Annucci \(2024 NY Slip Op 01685\)](#)

TRIAL COURTS

McMorris v Michael W. | 2024 WL 1263447

ERPO | RIGHT TO COUNSEL

The respondent, who was represented by a public defender in a related criminal case, requested assigned counsel to represent him at an ERPO hearing. Dutchess County Supreme Court granted the motion, holding that there is a federal and state constitutional right to counsel at an ERPO hearing when there are pending related criminal proceedings. ERPO proceedings implicate significant private interests protected by the Second Amendment and, while several procedural safeguards are designed to reduce the risk of an erroneous ERPO decision, that risk is increased by the statute's permission of certain hearsay evidence. While these concerns do not weigh heavily enough in a stand-alone ERPO proceeding to require the right to counsel, their weight increases exponentially when related criminal charges are pending. Further, representing a client in a related ERPO proceeding is consistent with a criminal defense attorney's professional responsibility to protect the rights of the client and provide quality representation.

[McMorris v Michael W. \(2024 NY Slip Op 24093\)](#)

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