

Decisions of Interest

APRIL 15, 2024

CRIMINAL

SECOND DEPARTMENT

People v Andrews | April 10, 2024

EED DEFENSE | CONVICTION REDUCED | DISSENT

The appellant appealed from a Kings County Supreme Court judgment convicting him of 2nd degree murder after a jury trial. The Second Department reduced the conviction to 1st degree manslaughter, vacated the sentence, and remanded for resentencing. One justice dissented. The jury's rejection of the appellant's extreme emotional disturbance defense was against the weight of the evidence. The appellant had been involuntarily admitted to a psychiatric unit one day before the incident and was suffering from delusions, agitated behavior, and a primary psychotic illness. The dissent would have suppressed the appellant's statements to police, reversed, and remanded for a new suppression hearing and trial. Defense counsel's errors, including his failure to present any proof about the appellant's mental state to show that he was unable to validly waive his *Miranda* rights, deprived the appellant of meaningful representation. Appellate Advocates (Benjamin Welikson, of counsel) represented the appellant.

[Oral Argument \(starts at 0:17:46\)](#)

[People v Andrews \(2024 NY Slip Op 01935\)](#)

People v Deas | April 10, 2024

OOP | DURATION | REMANDED

The appellant appealed from a Westchester County Supreme Court judgment convicting him of 1st and 2nd degree burglary, 2nd degree robbery, and 2nd degree assault after a jury trial. The Second Department affirmed the conviction but vacated an order of protection in the interest of justice and remanded for a new determination of its duration. Supreme Court's inclusion of a formula to calculate the duration of the order of protection did not constitute a definite end date. Mark Diamond represented the appellant.

[People v Deas \(2024 NY Slip Op 01937\)](#)

People v Santiago | April 10, 2024

CPL 160.59 | ELIGIBLE OFFENSE | HEARING REQUIRED

The appellant appealed from a Kings County Supreme Court order that summarily denied his motion to seal a conviction pursuant to CPL 160.59. The Second Department reversed and remitted for a hearing. The appellant's attempted 3rd degree CPW conviction was an eligible offense, and the statute requires a hearing where there is an eligible offense and

the People oppose the motion, as they did here. Appellate Advocates (Lisa Napoli, of counsel) represented the appellant.

[Oral Argument \(starts at 0:23:00\)](#)

[People v Santiago \(2024 NY Slip Op 01939\)](#)

People v Zhen C. Li | April 10, 2024

LESSER INCLUDED CHARGE REQUIRED | CONVICTION REDUCED

The appellant appealed from a Kings County Supreme Court judgment convicting him of 1st degree manslaughter and 2nd degree CPW after a jury trial. The Second Department reduced the manslaughter conviction to 2nd degree and remitted for resentencing on that count. Supreme Court erroneously denied the appellant's request for a jury charge on 2nd degree manslaughter. The jury reasonably could have found that the appellant did not intend to fire the lethal shot, and the People consented to forgo a new trial to correct the error. Appellate Advocates (Lynn W. L. Fahey and Martin Sawyer, of counsel) represented the appellant.

[Oral Argument \(starts at 0:07:48\)](#)

[People v Zhen C. Li \(2024 NY Slip Op 01940\)](#)

THIRD DEPARTMENT

People v Lopez | April 11, 2024

SORA | NEW CONVICTIONS | NOT MOOT

The appellant appealed from a Washington County Court order adjudicating him a level three sex offender. The Third Department affirmed. The People argued that the appeal was moot because the appellant was subsequently convicted of two sex offenses, which independently triggered an automatic override to a risk level three. But an override results in a presumptive risk level three. A court may depart from the presumption based on the evidence presented; it is not mandatory.

[Oral Argument](#)

[People v Lopez \(2024 NY Slip Op 01954\)](#)

APPELLATE TERM

People v Louis | 2024 WL 1540602

CRIMINAL TRESPASS | FACIALLY INSUFFICIENT | CHARGE DISMISSED

The appellant appealed from a New York County Criminal Court judgment convicting her of 3rd degree criminal trespass and trespass. The Appellate Term, First Department dismissed the 3rd degree criminal trespass charge and otherwise affirmed. The information charging criminal trespass was facially insufficient. It failed to allege facts establishing that the property—the Port Authority Bus Terminal “Ticketed Waiting Area”—was fenced or otherwise enclosed to exclude intruders.

[People v Louis \(2024 NY Slip Op 50379\[U\]\)](#)

People v Morton | 2024 WL 1540613

FORGED INSTRUMENT | BENT METRO CARDS | AFFIRMED

The appellant appealed from a New York County Criminal Court judgment convicting him of 3rd degree criminal possession of a forged instrument. The Appellate Term, First Department affirmed. The accusatory instrument was jurisdictionally valid. It alleged that the appellant sold subway access to people for \$2 by swiping them through the turnstiles with MetroCards that were bent along the magnetic strip. The deponent officer averred that, based on his training and experience, bending Metrocards in this way can alter cards with a zero balance to provide another ride. This provided reasonable cause to believe that the Metrocards had been “falsely altered” so as to constitute forged instruments.

[People v Morton \(2024 NY Slip Op 50381\[U\]\)](#)

TRIAL COURTS

People v Gonzalez | 2024 WL 1517759

SPEEDY TRIAL | TIME CALCULATION | DISMISSED

Gonzalez moved to dismiss misdemeanor charges on speedy trial grounds. Nassau County District Court granted the motion. The accusatory instruments were filed on the day of Gonzalez’ arrest but, because he refused to be fingerprinted, he was issued a desk appearance ticket to be arraigned at a later date. The People’s speedy trial clock began running on the date the accusatory instruments were filed; it was not tolled by the delay in his arraignment. His fingerprint response was not a prerequisite to arraignment, and the People did not make a record of the refusal. John S. Campo represented Gonzalez.

[People v Gonzalez \(2024 NY Slip Op 24105\)](#)

People v Bartley | 2024 WL 1501975

BAIL REVIEW | POST-CERTIFICATE OF INDICTMENT | LOCAL COURT

Bartley moved to review and reduce his bail based on a probation plea offer. Kings County Criminal Court denied the motion. The People had filed a certificate of indictment on three of the four pending charges but had not yet filed an indictment. A local criminal court may modify bail during the period between the filing of a certificate of indictment and an indictment because the filing of a certificate neither divests local criminal court of its preliminary jurisdiction nor vests a superior court with trial jurisdiction. However, Bartley did not file any financial documents to support his request, and bail modification was better left to the superior court because it will have access to the grand jury minutes and more information available to determine the appropriate bail.

[People v Bartley \(2024 NY Slip Op 24103\)](#)

SECOND DEPARTMENT

Matter of Brandon v Brady | April 10, 2024

DISMISSAL | LACK OF JURISDICTION | HEARING REQUIRED

The mother appealed from an Orange County Family Court order that dismissed her petitions to enforce and modify a custody order based on lack of jurisdiction without a hearing. The Second Department reversed and remitted. Family Court rendered the initial custody determination, giving it exclusive, continuing jurisdiction until a determination was made that it should relinquish jurisdiction. Even though the child and the father had moved out of state, Family Court erred by dismissing the petitions without giving the mother a chance to present evidence on the issue of whether it had exclusive, continuing jurisdiction under DRL § 76-a (1). Samuel S. Coe represented the mother.

[Matter of Brandon v Brady \(2024 NY Slip Op 01916\)](#)

Matter of Joseph v Granderson | April 10, 2024

CHILD SUPPORT | JURISDICTION | ESTOPPEL

The mother appealed from a Queens County Family Court order denying her objections to the summary dismissal of her child support petition. The Second Department vacated the dismissal, reinstated the petition, and remitted. Family Court erred by summarily dismissing for lack of jurisdiction on the basis that the parties were never married and there was no acknowledgment of paternity or order of filiation. Family Court has jurisdiction to determine whether an individual is responsible for the support of child. Based on the proof the mother submitted with her petition—including a birth certificate listing the respondent as the child’s father, a DNA report showing a 99.99% probability that the respondent was the father, and a custody stipulation giving the respondent weekly parenting time with the child—Family Court should have granted her objections and precluded the respondent from contesting paternity for child support purposes. Ruth Chung represented the mother.

[Matter of Joseph v Granderson \(2024 NY Slip Op 01921\)](#)

Matter of Koska v Koska | April 10, 2024

VIOLATION PETITION DISMISSED | NO IMPAIRMENT OF RIGHTS

The father appealed from a Suffolk County Family Court order that summarily dismissed his violation petition against the mother. The Second Department affirmed. The father alleged that the mother violated an order directing that their children not be left alone together, which was entered because one of the children had injured the other. However, a party can only be punished for civil contempt if the violation prejudiced the rights of the other party. Here, even if the father could establish that the mother violated the order, he did not allege that her conduct impaired or prejudiced his rights.

[Matter of Koska v Koska \(2024 NY Slip Op 01922\)](#)

FIRST DEPARTMENT

Matter of Woodley v Poole | April 9, 2024

ARTICLE 78 | INDICATED REPORT | AMENDMENTS NOT RETROACTIVE

The petitioner appealed from a New York County Supreme Court judgment that denied her petition to annul OCFS’s denial of her request to amend and seal her Central Register record. The First Department dismissed the petition as against ACS and otherwise affirmed. The Social Services Law was amended in 2022 to require that OCFS stay administrative appeals challenging indicated or substantiated reports of abuse or maltreatment pending resolution of any article 10 proceedings based on the same allegations. A favorable resolution of the article 10 creates an irrebuttable presumption in favor of the respondent at the administrative fair hearing. But the agency here completed its initial administrative review before the amendment’s effective date. OCFS’s determination to not apply the irrebuttable presumption at petitioner’s fair hearing was not irrational and was consistent with the directive to stay the entire administrative appeals process pending resolution of the article 10.

[Oral Argument \(starts at 0:20:16\)](#)

[Matter of Woodley v Poole \(2024 NY Slip Op 01899\)](#)

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