Indigent Legal Services

Decisions of Interest

APRIL 29, 2022

CRIMINAL

COURT OF APPEALS

People v Easley | April 26, 2022

DNA |HARMLESS ERROR | DISSENTERS

The defendant appealed from a Second Department order upholding his convictions of 2nd and 3rd degree CPW. The Court of Appeals affirmed. It was an abuse of discretion for the trial court to admit the results of DNA analysis conducted using the Forensic Statistical Tool without first holding a *Frye* hearing. However, the error was harmless. Judge Rivera dissented, joined by Judges Wilson and Troutman. Evidence of guilt was underwhelming, the FST evidence was the strongest proof, and there was a significant probability that the error here infected the verdict. No eyewitness saw the defendant in possession of the gun; no video showed him holding the weapon during the incident; and no fingerprints were recovered from the gun.

People v Easley (2022 NY Slip Op 02770) (nycourts.gov)

People v Wakefield | April 26, 2022

DNA | HARMLESS ERROR | CONCURRENCE

The defendant appealed from a Third Department order sustaining his convictions of 1st degree murder and 1st degree robbery. The Court of Appeals affirmed. *Frye* hearing evidence established that the relevant scientific community generally accepted TrueAllele's DNA interpretation process. The defendant and the concurrence raised a valid concern that the software development firm was involved in many validation studies, but there was empirical evidence of reliability. Disclosure of the TrueAllele source code was not needed; and the defendant was not deprived of his Sixth Amendment right to confront witnesses against him. Judge Rivera concurred in the result, in an opinion in which Judges Wilson and Troutman concurred. Admitting the challenged evidence was error, but the error was harmless. TrueAllele's algorithm was not generally accepted because its source code had not been assessed as reliable by independent third parties. The software developer's involvement in most validation studies constituted a conflict of interest. The DNA proof was testimonial, and the defendant was denied access to the source code needed for effective cross-examination of the declarant software developer. It was an open question in the COA as to whether a defendant should be given access to a proprietary source code under a protective order to safeguard both the right to present a defense and commercial interests. In an appropriate future case, a court could grant such an order.

People v Wakefield (2022 NY Slip Op 02771) (nycourts.gov)

People v Dawson | April 26, 2022

RIGHT TO COUNSEL | DISSENTERS

The defendant appealed from a Third Department order sustaining his conviction of 1st degree sexual abuse. The Court of Appeals affirmed. The record supported the finding that the defendant did not unequivocally invoke his right to counsel while in custody. Judge Wilson authored a dissent, in which Judge Rivera concurred. Upon being read his *Miranda* rights, the defendant said, "I just wish that I'd memorized my lawyer's number. He's in my phone. Is it possible for me to like call him or something." In continuing to ask the defendant if he wanted a lawyer, police intimated that he would be better off without his attorney. Condoning the denial of his clearly articulated desire for counsel damaged the integrity of the justice system.

People v Dawson (2022 NY Slip Op 02772) (nycourts.gov)

FIRST DEPARTMENT

People v Ferguson | April 28, 2022

BURGLARY | AGAINST WEIGHT

The defendant appealed from a judgment of Bronx County Supreme Court, convicting him of attempted 2nd degree murder and 1st degree burglary. The First Department dismissed the burglary count, finding the conviction against the weight of the evidence. The People failed to prove that the entry into the victim's apartment was unlawful. Their theory was that the victim's estranged wife allowed the defendant to enter the premises to kill the victim. Given that the victim's wife co-owned the building and had a key to the apartment, the People failed to prove that the defendant did not obtain the owner's consent to enter. The Center for Appellate Litigation (Alexandra Mitter, of counsel) represented the appellant.

People v Ferguson (2022 NY Slip Op 02878) (nycourts.gov)

People v Novas | April 28, 2022

LEAVING SCENE | CONVICTION REINSTATED

The People appealed from an order of New York County Supreme Court, which granted the defendant's CPL 330.30 (1) motion to set aside a jury verdict convicting him of leaving the scene of an incident without reporting and dismissed the indictment. The First Department reinstated the verdict. The conviction was supported by legally sufficient evidence that, when leaving the scene, the defendant had cause to know that his car caused personal injury. As the victim ran into the street, the front bumper struck him on the leg. He hit the side-view mirror and front bumper and then fell to the ground. Medical records showed that the pedestrian sustained fractures caused by a significant force. Shortly after the accident, the defendant asked a passenger "to push back out" the side-view mirror. Photographs showed damage to the car and marks on the front bumper.

People v Novas (2022 NY Slip Op 02877) (nycourts.gov)

People v Jagnandan | April 28, 2022

NO CONFLICT | NOT SAME FIRM

The defendant appealed from an order of Bronx County Supreme Court, which denied his CPL 440.10 motion to vacate a judgment of conviction, after a hearing. The First Department affirmed. The defendant claimed that the attorney who represented him at trial had a conflict of interest because he was a member of the same de facto law firm as codefendant's counsel. While the attorneys—a father and son—may have held themselves out as members of the same firm and they did share some expenses, they were separately incorporated, had separate offices in the same complex, did not share client confidences, and in virtually all respects operated independently of each other.
People v Jagnandan (2022 NY Slip Op 02880) (nycourts.gov)

People v Cooper | April 26, 2022

COP OPINION | HARMLESS ERROR

The defendant appealed from a judgment of New York County Supreme Court, convicting him of 3rd degree grand larceny. The First Department affirmed. Police testimony identifying the defendant in video footage should have been excluded. *See People v Challenger*, 200 AD3d 500 (jury just as able as officer to determine whether defendant was seen on video; probative value of detective's testimony did not outweigh prejudice). However, the error was harmless.
People v Cooper (2022 NY Slip Op 02763) (nycourts.gov)

SECOND DEPARTMENT

People v Aponte | April 27, 2022

JUDGE AS ADVOCATE | UNFAIR TRIAL

The defendant appealed from a judgment of Kings County Supreme Court, convicting him of 2nd degree murder and other crimes. The Second Department reversed and ordered a new trial. The judge took on the appearance of an advocate and impeded the pursuit of a defense of third-party (the codefendant) culpability by limiting cross-examination of an officer about unfair lineup procedures. Further, the trial judge erred in informing the jury that he had determined that the identification procedure was fair, erroneously intimating that those facts were not within the jury's province to determine. The lower court also impaired the defendant's right to make an effective closing argument by its sua sponte admonishments regarding identification procedures and other matters. Moreover, the defense should have been allowed to introduce photographs of the defendant and the alleged shooter (the codefendant) to allow the jury to compare their likenesses. In the interest of justice, the reviewing court held that the cumulative effect of the errors deprived the defendant of a fair trial. Appellate Advocates (Cynthia Colt, of counsel) represented the appellant.
People v Aponte (2022 NY Slip Op 02813) (nycourts.gov)

People v Burgess | April 27, 2022

SENTENCES | CONSECUTIVE

The defendant appealed from a judgment of Kings County Supreme Court, convicting him of various crimes. The Second Department modified. The sentence imposed on the conviction of 2nd degree CPW should not run consecutively to the concurrent sentences imposed for 1st degree manslaughter and attempted 2nd degree murder. The evidence did not establish that the defendant's possession of a gun was separate and distinct from his shooting at the two victims. Thus, all the sentences must run concurrently. Appellate Advocates (Melissa Lee, of counsel) represented the appellant.
People v Burgess (2022 NY Slip Op 02814) (nycourts.gov)

People v Gardner | April 27, 2022

CONSTITUTIONAL SPEEDY TRIAL | 21 YEARS

The defendant appealed from a judgment of Kings County Supreme Court, convicting him of 1st degree rape upon his plea of guilty. The Second Department affirmed. Supreme Court properly denied the defendant's statutory speedy trial motion. A recent amendment to CPL 30.30 did not affect forfeiture of his claim, as the amendment was not retroactive and did not go into effect until after the judgment was entered. Although the defendant's constitutional speedy trial claim was reviewable, it lacked merit. The 21-year delay between crime and arrest was substantial. However, there was good cause for most of the delay, since the defendant's DNA profile was not developed and uploaded to law enforcement databases until 19 years after the crime.
People v Gardner (2022 NY Slip Op 02816) (nycourts.gov)

FAMILY

SECOND DEPARTMENT

Matter of Skylar P.J. | April 27, 2022

TPR | IAC

The mother appealed from an order of Suffolk County Court, which summarily denied her motion to vacate an order terminating her parental rights. The Second Department reversed and remitted. In her direct appeal, the mother had contended that defense counsel was ineffective for allowing her to admit permanent neglect and failing to present exculpatory evidence at the dispositional hearing. After the challenged order of disposition was affirmed, the mother moved pursuant to CPLR 5015 to vacate, based on facts not appearing on the face of the record. The right to counsel under Family Ct Act § 262 afforded protections equivalent to those for criminal defendants. The record revealed that Family Court did not advise the mother about possible consequences of an admission. She purportedly took blame because counsel said that doing so was necessary to have the children returned. A hearing was needed to delve into off-the-record communications between the mother and counsel and see if the IAC claim was viable.
Matter of Skylar P. J. (Kerry M. T.) (2022 NY Slip Op 02793) (nycourts.gov)

THIRD DEPARTMENT

Joshua KK. v Jaime LL. | April 28, 2022

VISITATION | NO CHANGE

The AFC appealed from an order of Tioga County Family Court, which granted the father's modification petition and awarded him additional parenting time. The Third Department reversed. The father sought expanded time with the child so they could enjoy additional activities together. Family Court found that a change in circumstances existed—namely that existing parental access was inadequate for the father to develop a closer relationship with the child. But mere dissatisfaction with parenting time did not constitute a change in circumstances. Thus, the modification petition should have been dismissed. Carman Garufi represented the child.
https://nycourts.gov/reporter/3dseries/2022/2022_02847.htm

Jereline Z. v Joseph AA. | April 28, 2022

TRANSCRIPT | INADEQUATE

The father appealed from an order of Rensselaer County Family Court, which granted the mother's Article 8 application, finding that he committed family offenses and issuing an order of protection. The Third Department reversed. The hearing was recorded by an electronic recording system. The transcript, prepared seven months later by a commercial service, reflected that counsel posed more than 80 questions to a witness but set forth only four answers, with the rest marked "inaudible." Without the missing testimony, the reviewing court could not assess the father's appellate arguments. Since meaningful appellate review was impossible, the matter was remitted for a new hearing, at which a court reporter was to be used. David Siegal represented the appellant.
https://nycourts.gov/reporter/3dseries/2022/2022_02848.htm

Matter of Frank Q. | April 28, 2022

AGENCY APPEAL | TPR

The Department of Social Services appealed from an order of Delaware County Family Court, which dismissed a permanent neglect petition on the ground that the child had not been in the care of an authorized agency for one year prior to the filing of the petition. The Third Department reversed. During the pendency of the appeal, the mother's parental rights were terminated based on abandonment, but the exception to the mootness doctrine applied. The issue presented—regarding Family Court's authority to find a child in a direct placement to be under the care of an authorized agency—raised a substantial and novel issue that was likely to recur yet evade review. Direct placement with a suitable person under Family Ct Act § 1055 fell within the purview of Social Services Law § 384-b. Further, the agency proved permanent neglect by clear and convincing evidence.
https://nycourts.gov/reporter/3dseries/2022/2022_02843.htm