

Decisions of Interest

APRIL 8, 2024

CRIMINAL

FIRST DEPARTMENT

People v Rodriguez | April 4, 2024

SORA | FORCIBLE COMPULSION | LEVEL REDUCED

The appellant appealed from a New York County Supreme Court order adjudicating him a level two sexually violent predicate sex offender. The First Department reduced the adjudication to a level one. The court should not have assessed 10 points under risk factor 1 for forcible compulsion. The act of thrusting his groin into the victim's back and hip did not constitute a use of force separate from the sexual contact itself. Further, the People did not establish that the appellant would be subject to regular supervision rather than "specialized" supervision to justify assessing 5 points on risk factor 14. The Legal Aid Society of NYC (Rebecca D. Martin, of counsel) represented the appellant.

[Oral Argument \(starts at 6:15\)](#)

[People v Rodriguez \(2024 NY Slip Op 01878\)](#)

SECOND DEPARTMENT

People v Volpe | April 3, 2024

ATTEMPTED COERCION | *OUTLEY* | REMITTED

The appellant appealed from an Orange County Court judgment convicting him of attempted 1st degree coercion based on his guilty plea. The Second Department vacated the sentence and remitted. County Court imposed an enhanced sentence after the appellant allegedly denied having committed the crime to which he pleaded guilty during his presentence interview. But the probation officer never questioned the appellant about the crime of conviction; she questioned him generally about his arrest and the resulting charges. The appellant's purported statement that he "didn't do anything" was consistent with his denial of having committed the crimes for which he was charged but had not pleaded guilty. Larkin Ingrassia, LLP (John Ingrassia, of counsel) represented the appellant.

[Oral Argument \(starts at 49:20\)](#)

[People v Volpe \(2024 NY Slip Op 01825\)](#)

People v Gordon | April 3, 2024

HARSH AND EXCESSIVE | SENTENCE REDUCED

The appellant appealed from a Kings County Supreme Court judgment that convicted him of 2nd degree burglary (eight counts), 2nd degree criminal trespass, and 5th degree CPSP and sentenced him as a persistent violent felony offender to an aggregate 40 years to life.

The Second Department reduced the aggregate sentence to 20 years to life and otherwise affirmed. The appellant argued that the sentence was harsh and excessive because it was effectively a life sentence; he had targeted locations where no one was present, committed no violence, and had a history of drug addiction. Appellate Advocates (Cynthia Colt, of counsel) represented the appellant.

[Oral Argument \(starts at 25:10\)](#)

[People v Gordon \(2024 NY Slip Op 01819\)](#)

THIRD DEPARTMENT

People v Chase | April 4, 2024

BODY CAVITY SEARCH | UNLAWFUL | INDICTMENT DISMISSED

The appellant appealed from an Otsego County Court judgment convicting him of 3rd degree CPCS (two counts) after a jury trial, a judgment resentencing him, and an order denying his CPL 440.10 and 440.20 motion. The Third Department reversed and dismissed the indictment. The appellant was subjected to an unlawful body cavity search when officers removed a bundle of drugs from his buttocks. Police had obtained a search warrant for the appellant's person, but the warrant application did not seek a manual body cavity search and the warrant did not authorize one. There were no exigent circumstances to justify the search, and the drugs should have been suppressed. The Rural Law Center of New York (Kristin A. Bluvas, of counsel) represented the appellant.

[People v Chase \(2024 NY Slip Op 01837\)](#)

People v Heidrich | April 4, 2024

ANONYMOUS JURY SELECTION | IMPERMISSIBLE | REVERSED

The appellant appealed from a Saratoga County Court judgment convicting him of 1st degree kidnapping (eight counts), 1st degree rape, and related offenses after a jury trial. The Third Department reversed and ordered a new trial. County Court erred by refusing to disclose the identities of potential jurors to the parties. There is no statutory authority to withhold the names of prospective jurors and, while doing so may be warranted if there is a clear threat to the safety or integrity of the jury, no such danger was shown here. County Court withheld the jurors' names based only on anecdotal accounts from jurors in unrelated cases. Paul J. Connolly represented the appellant.

[Oral Argument](#)

[People v Heidrich \(2024 NY Slip Op 01841\)](#)

People v Faison | April 4, 2024

SPECIAL PROSECUTOR | DISQUALIFIED DA'S OFFICE | INDICTMENT DISMISSED

The appellant appealed from an Otsego County Court judgment convicting him of 1st degree robbery after a jury trial. The Third Department reversed and dismissed the indictment. A special prosecutor was appointed before the appellant's preliminary hearing based on the District Attorney's office's (DA's office) request in which they affirmed that their office had a conflict prosecuting the case. Less than two months later, the special prosecutor sought to be relieved of the assignment and the case was returned to the DA's office. The appellant moved to disqualify the DA's office, but County Court denied the motion. The DA's office indicted and tried the case. County Court erred by returning the case to the DA's office—no record was made why disqualification was no longer

necessary. Dismissal of the indictment was required, without prejudice to a new special prosecutor re-presenting the charges to another grand jury. The Rural Law Center of New York (Keith F. Schockmel, of counsel) represented the appellant.

[People v Faison \(2024 NY Slip Op 01836\)](#)

People v Harries | April 4, 2024

CPL 440 MOTION | *BRADY* VIOLATION | HEARING REQUIRED

The appellant appealed from an Ulster County Court judgment convicting him of 2nd degree CPW based on his guilty plea and from an order denying his CPL 440.10 motion without a hearing. The Third Department affirmed the conviction but reversed the order and remanded for a hearing on the CPL 440.10 motion. The appellant alleged that the People misrepresented certain details about the incident and failed to provide *Brady* material to defense counsel. County Court determined that the information had no impact on the 2nd degree CPW charge to which the appellant pleaded guilty and summarily denied the motion. However, the court ignored the information's potential impact on other charges—class B violent armed felony offenses—that limited the parameters of any plea bargain (see CPL 220.10 [5] [d] [i]). Under these circumstances, a hearing was required on the CPL 440 motion. Clifford Gordon represented the appellant.

[Oral Argument](#)

[People v Harries \(2024 NY Slip Op 01843\)](#)

TRIAL COURTS

People v Serafino | 2024 WL 1453065

SOR ILLUSORY | NO DUE DILIGENCE | DISMISSED

Serafino moved to dismiss DWI charges based on speedy trial grounds. Queens County Criminal Court granted the motion. Despite filing a COC and stating readiness for trial, the People failed to disclose the body-worn camera footage of the arresting officer's partner. The People knew this officer was involved in the incident and the body-worn camera index indicated that the footage existed. The People's silence about their efforts to comply with their discovery obligations deprived the court of the necessary factual basis to analyze their diligence. The Legal Aid Society of NYC (Felipe Garcia, of counsel) represented Serafino.

[People v Serafino \(2024 NY Slip Op 50356\[U\]\)](#)

People v Abisdid | 2024 WL 1396132

COC INVALID | NO DUE DILIGENCE | DISMISSED

Abisdid moved to dismiss misdemeanor charges based on speedy trial grounds. Kings County Criminal Court granted the motion. The People failed to disclose unredacted CCRB materials for a testifying detective and did not apply for a protective order to allow redaction. The People also failed to disclose *Giglio* records and CCRB materials for five non-testifying law enforcement officials. Though not imputed with possession of CCRB records, the People must still make diligent efforts to produce them for discovery. Here, the People made no showing of any such efforts. Brooklyn Defender Services (Sophie Whitin, of counsel) represented Abisdid

[People v Abisdid \(2024 NY Slip Op 24102\)](#)

FAMILY

SECOND DEPARTMENT

Matter of Wright v Burke | April 3, 2024

CUSTODY | RELOCATION | REVERSED

The mother appealed from a Kings County Family Court order that conditioned its award of sole legal and physical custody to her on her relocating from Binghamton to NYC and enrolling the child in school near the father. The Second Department reversed and remitted. The mother's past performance in caring for the child and the child's academic performance, success at making friends in Binghamton, need for stability, and stated wishes supported granting sole legal and physical custody to the mother. The record did not support the finding that relocating to Binghamton threatened the child's relationship with the father and a liberal parenting schedule would allow continuation of a meaningful relationship. Yonatan S. Levoritz represented the mother.

[Oral Argument \(starts at 34:15\)](#)

[Matter of Wright v Burke \(2024 NY Slip Op 01815\)](#)

THIRD DEPARTMENT

Matter of Savanna II. v Joshua JJ. | April 4, 2024

DEFAULT ORDER | VACATED | REMITTED

The father appealed from a Cortland County Family Court order that denied his motion to vacate a default order. The Third Department reversed, vacated the default, and remitted. Both parties were present at the first appearance on the mother's petition seeking to suspend the father's overnight parenting time and at a settlement conference. When the father did not appear at a follow-up settlement conference, the mother moved for a default order. Family Court granted the motion and, without holding a hearing, eliminated the father's overnight parenting time. Family Court erred by denying the father's prompt motion to vacate. He proffered a reasonable excuse for his absence—he experienced car trouble the morning of the missed conference, called the court clerk about the issue, went to the courthouse once his car started and served and filed his answer to the petition. Family Court's failure to take sworn testimony, find a change in circumstances, or consider the child's best interest before reducing the father's parenting time established a meritorious defense to the petition. Karen A. Leahy represented the father.

[Matter of Savanna II. v Joshua JJ. \(2024 NY Slip Op 01853\)](#)

TRIAL COURTS

L.T. v C.C. | 2024 WL 1453513

PATERNITY | EQUITABLE ESTOPPEL | DISMISSED

The mother moved to dismiss a paternity petition based on equitable estoppel. Erie County Family court granted the motion after a hearing. Throughout the child's life, she knew another man to be her father. Though he is now deceased, that man consented to an Order of Filiation, lived with the child, had a close, loving relationship with her, and acted as her father in every way. In contrast, the petitioner made no efforts to seek access

to the child, despite being present for her birth. Nor did he take timely steps to establish his paternity. It was not in the child’s best interests to allow the petitioner to dispute paternity and disrupt her close relationship with an established father figure. Michael H. Ranzenhofer represented the mother.

[L.T. v C.C. \(2024 NY Slip Op 50359\[U\]\)](#)

CIVIL

People v L.G. and OMH | 2024 WL 1396086

OMH COMMITMENT | UNTIMELY TRANSFER | CIVIL CONTEMPT

L.G. moved to hold OMH in civil and criminal contempt for failing to timely comply with a court order. New York County Supreme Court held OMH in civil contempt, imposed a \$1,000 fine to be paid to L.G., and otherwise denied the motion. After L.G. was found unfit to stand trial, Supreme Court issued an order committing her to OMH care and directing that she be placed in an appropriate facility “forthwith.” L.G. remained at Rikers Island for another six months before being transferred. There was no credible argument that L.G. was transferred “forthwith”; OMH was clearly on notice of the court’s order; and L.G. was prejudiced by OMH’s failure to comply—Rikers Island is in a state of crisis and individuals suffering from acute mental illness are at an even greater risk. However, the record did not show that OMH acted in bad faith or willfully ignored the court’s order to support a criminal contempt finding. The Legal Aid Society of NYC (Jennifer Hose, of counsel) represented L.G.

[People v L.G. \(2024 NY Slip Op 24101\)](#)

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80 S Swan St, Ste 1147, Albany, NY 12210 | www.ils.ny.gov

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