

Decisions of Interest

MAY 20, 2022

CRIMINAL

COURT OF APPEALS

People v Rodriguez | May 19, 2022

SEXTING | AUTHENTICATION

Upon the defendant's appeal from a judgment convicting him of attempted use of a child in a sexual performance and 1st degree disseminating indecent material to a minor, the Second Department reversed. The People appealed, and the Court of Appeals reversed and remitted. There was no abuse of discretion as a matter of law in the determination that screenshots purporting to depict selected portions of text messages with sexual content between the defendant coach and a 15-year-old athlete were sufficiently authenticated. For digital photographs, the proper foundation may be established through testimony that the photographs accurately represented the subject matter depicted. Testimony of the victim sufficed to authenticate the screenshots taken by her boyfriend. Even if the best evidence rule applied in this context, the trial court properly admitted the screenshots. Upon remittal, the Appellate Division was to consider arguments raised by the defendant but not previously determined on appeal.

https://www.nycourts.gov/reporter/3dseries/2022/2022_03307.htm

https://www.nycourts.gov/JUDGES/evidence/10-BEST-EVIDENCE/10.03_Best_Evidence_Rule.pdf

FIRST DEPARTMENT

People v Carleto | May 19, 2022

COUNSEL | NOT ADVERSE

The defendant appealed from a judgment of Bronx County Supreme Court, convicting him of attempted 2nd degree CPW. The First Department affirmed. Defense counsel's remarks indicating that there were no legal grounds for the defendant's pro se motion to withdraw his plea did not rise to the level of taking an adverse position to the client, and therefore appointment of a new attorney was not required. In any event, the claims made in the motion were patently insufficient.

[People v Carleto \(2022 NY Slip Op 03331\) \(nycourts.gov\)](https://www.nycourts.gov/People_v_Carleto_(2022_NY_Slip_Op_03331).pdf)

***People v Matias* | May 19, 2022**

440.20 | DENIED

The defendant appealed from an order of Bronx County Supreme Court, which denied his CPL 440.20 motion. The First Department affirmed. The defendant's sentence of 50 years to life, imposed for a double murder committed at age 16, was constitutional. In a case involving an individual who was under age 18 when he committed a homicide, a state's discretionary sentencing system was constitutionally necessary and sufficient. Unlike the situation where life without parole was mandatory, this sentencing court was not precluded from considering the defendant's age and the attendant circumstances. The sentence imposed was individualized. Recent developments in juvenile psychology and mitigating factors presented by the defendant were outweighed by the egregiousness of the crime, the absence of remorse or rehabilitation, and the defendant's prison disciplinary history.

[People v Matias \(2022 NY Slip Op 03332\) \(nycourts.gov\)](#)

***People v Torres* | May 17, 2022**

COC | SPEEDY TRIAL

The defendant appealed from a judgment of New York County Supreme Court, convicting him of attempted 2nd degree murder and other crimes. The First Department affirmed. The appeal brought up for review the denial of speedy trial motions. The period December 12, 2019 to January 8, 2020 was properly excluded. On January 1, 2020, during the first adjournment, new discovery laws went into effect. A Certificate of Compliance was required to confirm that the People had provided required discovery. The trial court properly excluded the entire period. The defendant argued that January 1-8 was chargeable because the People did not immediately comply with the new law. But where, as here, a defendant previously consented to an adjournment, the entire period was excluded, regardless of the new law taking effect during that period. January 8-14 was also excludable. The COC filed January 8 was not proper because the People had not obtained a ruling on their motion for a protective order. However, the ensuing period, when the People obtained a ruling and filed a second certificate, was excludable. The second certificate was proper, and the People complied with the court order, including by disclosing the criminal history of certain prosecution witnesses.

[People v Torres \(2022 NY Slip Op 03214\) \(nycourts.gov\)](#)

SECOND DEPARTMENT

***People v Williams* | May 18, 2022**

LESSER INCLUDED | MANSLAUGHTER 2

The defendant appealed from a judgment of Kings County Supreme Court, convicting him of 1st degree manslaughter and 2nd degree CPW. The Second Department granted reargument, recalled a prior decision, and vacated the conviction, without prejudice to the People re-presenting any appropriate charges to another grand jury. The appellate court found that the trial court erred in refusing to charge 2nd degree manslaughter as a lesser included offense of 2nd degree murder, since a reasonable view of the evidence would support the conclusion that the defendant acted recklessly rather than intentionally when he shot a man who pulled a machete on him. Appellate Advocates (De Nice Powell, of counsel) represented the appellant.

[People v Williams \(2022 NY Slip Op 03257\) \(nycourts.gov\)](#)

People v Jensen | May 18, 2022

RESTITUTION | VACATED

The defendant appealed from an Orange County Court judgment, convicting him of 2nd degree criminal mischief, upon his plea of guilty. The Second Department vacated an order directing payment of \$7,630 in restitution. The defendant's appeal waiver did not preclude review since the amount of restitution was not part of the plea agreement. At sentencing, the only information presented was a contractor's estimate, unsigned by the complainant, indicating the cost to repair damages caused by the defendant throwing a rock through a window. The defendant objected, and the record was insufficient to determine the proper amount, so he was entitled to a hearing. Gary Eisenberg represented the appellant.

[People v Jensen \(2022 NY Slip Op 03250\) \(nycourts.gov\)](#)

People v Wahhab | May 18, 2022

PEOPLE'S APPEAL | 440.20

The People appealed from an order of Nassau County Supreme Court, which granted the defendant's CPL 440.20 motion to set aside a sentence imposed upon his conviction of 2nd degree robbery. The Second Department affirmed. The defendant was adjudicated a second felony offender based on a prior federal bank robbery offense. The motion court properly found that such offense was not equivalent to a New York felony.

[People v Wahhab \(2022 NY Slip Op 03256\) \(nycourts.gov\)](#)

THIRD DEPARTMENT

People v Simon | May 19, 2022

RUDOLPH | REMITTAL

The defendant appealed from a 2012 Sullivan County Court judgment, convicting him of 2nd degree burglary (two counts) and other crimes, upon his plea of guilty. The Third Department modified. The charges stemmed from the defendant engaging in criminal conduct when he was aged 17 and 18. *People v Rudolph*, 21 NY3d 497, was decided after the defendant was sentenced but before the appellate process was complete. County Court was required to decide whether the defendant should be adjudicated a YO. The matter was remitted for such a determination after the parties fully set forth their positions. Clea Weiss represented the appellant.

https://nycourts.gov/reporter/3dseries/2022/2022_03277.htm

People v Stephenson | May 19, 2022

PLEA BARGAINING | MODE OF PROCEEDINGS

The defendant appealed from a judgment of Schenectady County Court, convicting him of attempted 1st degree assault and another crime, upon his plea of guilty. The Third Department affirmed. No mode-of-proceedings error occurred. That narrow exception to the preservation rule addressed fundamental flaws implicating rights of constitutional dimension that went to the heart of the process. While the doctrine was sometimes

applied to plea bargaining (see e.g. *People v Wright* , 119 AD3d 372), it did not apply to the instant facts. The record did not support the assertion that the plea was inherently coercive where certain suppression hearings were waived in exchange for continuing plea negotiations.

https://nycourts.gov/reporter/3dseries/2022/2022_03281.htm

FAMILY

SECOND DEPARTMENT

Pape v Pape | May 18, 2022

STIPULATION | COLLEGE COSTS

The wife appealed from a post-divorce order, rendered by Suffolk County Supreme Court, denying her petition to enforce a stipulation regarding college expenses. The Second Department reversed. Absent a voluntary agreement, a parent may not be directed to contribute to the college education of a child aged 21 or more. The stipulation at bar did require the husband to pay 50% of such costs for each child for four years and did not impose an age restriction. Quatela Chimeri, PLLC represented the appellant.

[Pape v Pape \(2022 NY Slip Op 03246\) \(nycourts.gov\)](#)

M/O Abbygail H. M. G. | May 18, 2022

TPR | AFFIRMED

The father appealed from an Orange County Family Court order, which found that he permanently neglected the subject child and terminated his parental rights. The Second Department affirmed. The father did complete a parenting class, but he failed to adequately plan for the child's future, including by failing to take steps to acquire appropriate housing. To the extent that he was in partial compliance with the court-ordered programs, such compliance was insufficient to preclude a finding of permanent neglect. Contrary to the father's contention, a suspended judgment would not be in the best interests of the child, as such a disposition would only prolong the delay of stability and permanency for the child. The best interests of the child would be served by freeing her for adoption by her foster mother, with whom the child had lived and bonded over a prolonged period.

[Matter of Abbygail H. M. G. \(Eddie G.\) \(2022 NY Slip Op 03241\) \(nycourts.gov\)](#)