

# Decisions of Interest

JUNE 5, 2023

## CRIMINAL

### FIRST DEPARTMENT

#### ***People v Skeeter*** | June 1, 2023

JUSTIFICATION DEFENSE | INTEREST OF JUSTICE | REVERSED

The defendant appealed from a Bronx County Supreme Court judgment convicting him of 1<sup>st</sup> degree manslaughter and 2<sup>nd</sup> degree CPW. The First Department invoked its interest of justice jurisdiction, vacated the manslaughter conviction, and dismissed that count. The People did not meet their burden of disproving the defendant's justification defense. The defendant and the deceased were engaged in a gun fight, with shots fired by both sides. It was unclear who first displayed a firearm or initiated the gunfire. The mere fact that the deceased was shot in the back did not establish that the defendant was the initial aggressor or that he did not reasonably believe deadly force was still being used. The Office of the Appellate Defender (Victorien Wu, of counsel) represented the appellant.

[People v Skeeter \(2023 NY Slip Op 02946\)](#)

### TRIAL COURTS

#### ***People v Nurse*** | 2023 WL 3731300

SEARCH WARRANTS | DATA EXTRACTED OUTSIDE OF 10 DAYS

The defendant controverted five search warrants that authorized the search of a flash drive, computers, cellphones, and a sim card which were seized from his home, and sought suppression of the evidence obtained pursuant to the warrants. Kings County Supreme Court granted the motion. The warrants were valid, but they were not executed within 10 days of issuance. The People applied for and obtained a search warrant to conduct a forensic examination of the items seized—therefore the warrants were not executed until the data was extracted from the items. Although the devices were seized and delivered to the Digital Evidence Lab within 10 days of the issuance of the warrants, the data was not extracted by the lab until more than 10 days after warrants were issued. The Legal Aid Society of NYC (Laurel Dick, of counsel) represented the defendant.

[People v Nurse \(2023 NY Slip Op 23167\)](#)

### ***People v Torres*** | 2023 WL 3769386

DISCOVERY | LACK OF DILIGENCE AND GOOD FAITH

The defendant moved to dismiss the charges against him pursuant to CPL 30.30. Queens County Criminal Court granted the motion. Defense counsel notified the People that bodycam audit logs stored on Evidence.com were missing from the discovery provided. In response, the People asserted that they did not have log in credentials for the website. The court ordered a hearing on the issue. Prior to the hearing, the People conceded that their office had access to Evidence.com, but line-level ADAs did not. The logs were in the People's possession, and their policy of denying line-level ADAs access to Evidence.com did not show due diligence. The logs were discoverable information related to the case, and the succession of reasons the People proffered for not disclosing them demonstrated their lack of good faith in certifying compliance with their discovery obligations. The Legal Aid Society of NYC (Shane Ferro, of counsel) represented the defendant.

[People v Torres \(2023 NY Slip Op 50532\[U\]\)](#)

### ***People v Morrissey*** | 2023 WL 3727747

GARRITY | INDEPENDENT SOURCES | DENIED

The defendant moved to dismiss based on a legal impediment to conviction. Cayuga County Court denied the motion after a hearing. The defendant, an Auburn Police school resource officer, was charged with 1<sup>st</sup> degree sexual abuse, 1<sup>st</sup> degree disseminating indecent material to minors, official misconduct, and EWC based on his alleged sexual relationship with a 14-year-old student. The defendant argued that the indictment must be dismissed because the prosecution was the product of compelled statements he gave during a *Garrity* interview. But there were independent sources for all the proof provided during the interview; his *Garrity* statements were not improperly used during the investigation or at grand jury. Further, the evidence before the grand jury was legally sufficient. However, the court was compelled to “yet again” caution the prosecutor about her ethical obligations to not elicit narrative witness testimony editorializing the video evidence.

[People v Morrissey \(2023 NY Slip Op 23165\)](#)

## FAMILY

### SECOND DEPARTMENT

#### ***Matter of Rosamae M. v Regina Cheyenne G.*** | May 31, 2023

NON-PARENT CUSTODY | ADOPTION | FOSTER PARENT | AFFIRMED

The appellant appealed from two Richmond County Family Court orders that: (1) transferred custody and guardianship to a private, non-profit foster care agency and the NYC Commissioner of Social Services for purpose of adoption; and (2) dismissed the appellant's custody petition. The Second Department affirmed. The appellant, an extended family member of the subject child, had cared for the child until the child was removed from her custody. Social Services Law § 383 (3) gives preference for adoption to a foster parent who cared for the child in the preceding 12 months, while extended,

biological family members are given no special preference regarding custody. It was in the child's best interests to remain in the foster mother's stable, pre-adoptive home.

[Matter of Rosamae M. v Regina Cheyenne G. \(2023 NY Slip Op 02878\)](#)

***Matter of Joel A.A.R. (Eddy A.A.G.)*** | May 31, 2023

GUARDIANSHIP | SPECIAL IMMIGRANT JUVENILE STATUS | REVERSED

The mother appealed from Nassau County Family Court orders that: (1) dismissed her petition to be appointed the subject child's guardian; (2) denied her motion to dispense with service on the father in Honduras; and (3) denied her motion for findings that would enable the child to petition for special immigrant juvenile status (SIJS). The Second Department reversed. Family Court Act § 661 (a) permits Family Court to appoint a guardian for a youth between the ages of 18 and 21 to establish that the youth is dependent on a juvenile court for purposes of an SIJS application. There is no express requirement for certified copies of birth certificates or any other particular evidence to establish the juvenile's age. Although Family Court had discretion to issue process to a relative domiciled in another country, the record supported dispensing with service on the father. Because the child was under 21 and unmarried and the mother should have been appointed guardian, the child was dependent on a juvenile court within the meaning of 8 USC § 1101 (a) (27) (J) (i). Reunification with the father was not a viable option due to parental abandonment, and it would not be in the child's best interests to return to Honduras.

[Matter of Joel A.A.R. \(Eddy A.A.G.\) \(2023 NY Slip Op 02881\)](#)

## TRIAL COURTS

***Matter of M.P. v F.E.*** | 2023 WL 3732909

FORENSIC EXAMINER | INAPPROPRIATE COMMUNICATIONS | MISTRIAL

Westchester County Family Court sua sponte declared a mistrial in this custody modification proceeding. In the middle of the forensic evaluator's testimony, the court's chambers staff and counsel received an unsolicited email from the evaluator. The email contravened the court's explicit prohibition on communications between the evaluator and counsel. The evaluator inappropriately criticized counsel and the court's handling of the proceeding, attempted to direct counsel on how to question the evaluator, and admonished one attorney for prior "inappropriate questioning." The evaluator had been "curt, defensive, and somewhat condescending" toward that attorney at the most recent trial date. The evaluator's actions and statements raised serious concerns regarding the evaluator's credibility and the existence of potentially successful appealable issues. Under the circumstances, the court felt constrained to declare a mistrial.

[Matter of M.P. v F.E. \(2023 NY Slip Op 50525\[U\]\)](#)

## SUPREME COURT

### ***Matter of Puig v New York State Police*** | 2023 WL 3575973

FOIL | MISCONDUCT RECORDS | NOT UNDULY BURDENSOME

In an article 78 proceeding, the petitioner challenged the denial of a FOIL request seeking disclosure of “police disciplinary/misconduct records of active New York State Police Troopers assigned to Orange, Dutchess, and Ulster counties.” It was not unduly burdensome for the respondent to search its records to determine which of the 579 active officers assigned to these regions were subject to discipline, review and redact the those records, and provide them on a rolling basis (*see also The Legal Aid Soc. v New York City Police Dept.*, 2023 NY Slip Op 31283[U], \*4 [Sup Ct, NY County 2023]; *NYP Holdings, Inc. v New York City Police Dept.*, 77 Misc 3d 1211[A] [Sup Ct, NY County 2022]). Given the litany of cases surrounding the disclosure of police disciplinary records following the repeal of Civil Rights Law § 50-a, attorney’s fees were not warranted. The Law Offices of Kenneth Puig represented the petitioner.

[Matter of Pruig v New York State Police \(2023 NY Slip Op 23158\)](#)

### ***Matter of JE*** | 2023 WL 3727565

NAME AND SEX DESIGNATION CHANGE | SORA

The petitioner, a transgender man, sought an order changing his name and sex designation and sealing the records of the proceeding. Albany County Supreme Court granted the petition, except to the extent that it directed DCJS be provided a certified copy of the order to be used only in connection with its oversight of the petitioner as a registered, level-one sex offender. Under the recently amended Civil Rights Law, the court was precluded from giving DCJS any pre-hearing notice of the proposed name and sex designation change, and none of the statutory post-order notice provisions applied. To deny the petition based on the shortcomings of the statute would be contrary to the spirit of the amendments, which were intended to facilitate gender-based name changes. But the effects of the name and sex designation change on the petitioner’s registration status were unknown. Thus, notice to DCJS for the limited purpose of oversight of the registration process was warranted.

[Matter of JE \(2023 NY Slip Op 23163\)](#)

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