

Decisions of Interest

JULY 17, 2023

CRIMINAL

SECOND DEPARTMENT

People v Rhames | July 12, 2023

PEOPLE'S APPEAL | SUPPRESSION | AFFIRMED

The People appealed from a Queens County Supreme Court order granting the defendant's motion to suppress physical evidence after a hearing. The Second Department affirmed. A police officer noticed the defendant cross the street wearing a sweatshirt with an "almost like . . . V shaped" item weighing down the front pocket, which he believed to be consistent with the shape of a firearm. A second officer approached the defendant, identified himself and asked to talk to him. The defendant ran, and the officers pursued. As the officers apprehended the defendant, he slid a firearm under a nearby vehicle. The officers were not authorized to pursue the defendant; the observation of a V-shaped object weighing down his sweatshirt did not provide reasonable suspicion that he was engaged in criminal activity. Appellate Advocates (Anna Kou, of counsel) represented the respondent.

[People v Rhames \(2023 NY Slip Op 03805\)](#)

People v Cabassa | July 12, 2023

EXCESSIVE RESENTENCE | REDUCED

The defendant appealed from a Queens County Supreme Court resentencing of an aggregate term of 5 to 15 years. The Second Department reduced the resentencing, as harsh and excessive, to an aggregate term of 2½ to 7 years. The defendant had initially been sentenced as a second felony offender to an aggregate term of 6 to 12 years. On appeal, the Second Department vacated the second felony offender adjudication and remitted for resentencing. The defendant was resentenced by a different judge to an aggregate term of 5 to 15 years—the maximum sentence. While the resentencing court was not bound by the minimum or maximum limits of the original sentence, the imposition of the statutory maximum was an improvident exercise of discretion. Supreme Court cited no reasons for the longer term, and the defendant's criminal history involved no violent offenses. Appellate Advocates (Anders Nelson, of counsel) represented the appellant.

[People v Cabassa \(2023 NY Slip Op 03801\)](#)

People v Vincent | July 12, 2023

SEARCH WARRANT | CI NOT RELIABLE | EVIDENCE SUPPRESSED

The defendant appealed from a Queens County Supreme Court judgment convicting him of 2nd degree CPW based on his guilty plea. The Second Department vacated the plea, granted the defendant's motion to controvert a search warrant, suppressed the resulting

physical evidence, and remitted for further proceedings. The police failed to establish the reliability of information obtained from a confidential informant (CI) that was submitted in support of the search warrant application. The CI had not demonstrated a proven track record of providing reliable information, the statements were not under oath or against penal interests, and the only information independently corroborated was the defendant's residence at the subject apartment and the description of the premises. Appellate Advocates (Ryan Miller and Anders Nelson, of counsel) represented the appellant. [People v Vincent \(2023 NY Slip Op 03808\)](#)

THIRD DEPARTMENT

People v Gentry | July 13, 2023

SUPERSEDING INDICTMENT | NULLITY

The defendant appealed from an Albany County Court judgment convicting him of 3rd degree CPCS (three counts) after a jury trial. The Third Department reversed and dismissed one count of the indictment in the interest of justice. A 2016 trial, where the defendant was charged with 3rd degree CPCS (two counts) and one count of 4th degree CPCS, ended in a mistrial. The People obtained a superseding indictment that charged three counts of 3rd degree CPCS, and the defendant was convicted of all three counts after a second trial. However, after the mistrial, County Court neither dismissed the indictment nor gave the People permission to represent the case to a new grand jury. Thus, the superseding indictment was a nullity. Dismissal of only one count of the superseding indictment was warranted, because the other counts were identical to counts charged in the original indictment. Matthew C. Hug represented the appellant. [People v Gentry \(2023 NY Slip Op 03818\)](#)

People v Hadlock | July 13, 2023

PROTECTIVE SWEEP | NOT AUTHORIZED | EVIDENCE SUPPRESSED

The defendant appealed from a Madison County Court judgment convicting him of menacing a police officer, resisting arrest, 2nd degree OGA, and unlicensed growing of cannabis (Public Health Law § 3382) after a jury trial. The Third Department dismissed the cannabis charge and otherwise affirmed. Police went to the defendant's home to execute a warrant for his arrest. After the encounter escalated to an armed standoff, the defendant was arrested outside his home. Police then conducted a warrantless protective sweep of the home, where they found a rifle, ammunition, and marijuana. County Court should have suppressed the ammunition and marijuana, which were only observed during the protective sweep. There were no articulable facts that anyone was present in the house who posed a danger. The introduction of the ammunition at trial was harmless error but the admission of the marijuana was not. Further, Public Health Law § 3382 has since been repealed. John A. Cirando represented the appellant. [People v Hadlock \(2023 NY Slip Op 03819\)](#)

FOURTH DEPARTMENT

People v Susan C. | June 30, 2023

DVSJA | MEANINGFUL REPRESENTATION

The defendant appealed from an order denying her application for resentencing pursuant to the DVSJA. The Fourth Department affirmed. The defendant argued that she was

denied effective assistance of counsel at the DVSJA hearing. The appellate court “conclude[d] that defense counsel provided defendant with meaningful representation” and cited *People v Baldi*, 54 NY2d 137, 147 (1981). [NOTE: To our knowledge, this is the first time any Appellate Division Department has indicated that there is a right to the effective assistance of counsel in DVSJA proceedings.]

[People v Susan C. \(2023 NY Slip Op 03643\)](#)

FAMILY

SECOND DEPARTMENT

Matter of Kashai E. (Kashif R.E.) | July 12, 2023

NEGLECT | UNCORROBORATED HEARSAY | REVERSED

The father appealed from Kings County Family Court orders finding that he neglected the subject children and releasing them to the custody of the nonrespondent mother with supervision. The Second Department reversed and dismissed the proceedings. The children’s hearsay statements were insufficient to permit a finding of neglect. One child’s statement that the father attacked the mother in the bedroom lacked detail and was not corroborated by any other proof of domestic violence. The children’s statements that the father yelled and “grabbed at” one child—which caused the children discomfort and slight anxiety—did not establish that their physical, mental, or emotional condition was impaired or in imminent danger of becoming impaired. The children’s knowledge that the father legally possessed a firearm in another state was similarly insufficient; there was no evidence that he had threatened anyone with a firearm. Jill M. Zuccardy represented the father.

[Matter of Kashai E. \(Kashif R.E.\) \(2023 NY Slip Op 03784\)](#)

Matter of Yacere D. | July 12, 2023

JUVENILE DELINQUENT | JURISDICTIONALLY DEFECTIVE COUNT

The respondent appealed from a Suffolk County Family Court order finding that he committed acts constituting 2nd degree manslaughter, 3rd degree assault, 2nd degree reckless endangerment, and reckless driving and adjudicating him a juvenile delinquent. The Second Department dismissed the count regarding 3rd degree assault and otherwise affirmed. That count was jurisdictionally defective. Neither the petition nor the supporting depositions provided sworn, nonhearsay allegations as to a physical injury sustained by the complainant. Jordan M. Freundlich represented the appellant.

[Matter of Yacere D. \(2023 NY Slip Op 03781\)](#)

THIRD DEPARTMENT

Matter of John M. v Tashina N. | July 13, 2023

LINCOLN HEARING | CONFIDENTIAL

The mother appealed from a Chemung County Family Court order that transferred sole legal and primary physical custody from the mother to the father and granted her visitation. The Third Department affirmed but again advised Family Court not to disclose information shared by a child during a *Lincoln* hearing (see *Matter of Cramer v Cramer*,

163 AD3d 1077, 1081 n 6 [3d Dept 2018]). While courts should consider such information to corroborate other proof or to determine the child’s feelings about a custodial arrangement, the information must remain confidential. This protects the child from having to openly choose between parents or divulge private details about the parent-child relationship.

[Matter of John M. v Tashina N. \(2023 NY Slip Op 03822\)](#)

TRIAL COURTS

People v Infante | 2023 WL 4483714

AFTER MIDNIGHT | DISCOVERY | TWO MINUTES LATE

The defendant moved for CPL 30.30 dismissal of misdemeanor and violation charges based on the People’s failure to timely comply with their discovery obligations. Bronx County Criminal Court granted the motion. The People filed their COC and SOR at 11:57 p.m. on the 90th day of their 30.30 time but served their disclosure on defense counsel five minutes later—at 12:02 a.m. on the 91st day. While the People are not required to file documents by 5 p.m. for them to be deemed filed that day, midnight marks the end of the business day. The Bronx Defenders (Grace Powell, of counsel) represented the defendant.

[People v Infante \(2023 NY Slip Op 50705\[U\]\)](#)

People v Shurgot | 2023 WL 4414769

INFORMATION | FACIALLY INSUFFICIENT | DISMISSED

The defendant moved to dismiss an information charging him with 3rd degree assault as facially insufficient. The Webster Town Justice Court dismissed the charge. The complaint, which was signed by the arresting officer, alleged that the source of information was the complainant’s supporting deposition. However, in the deposition, the complainant alleged that he woke up in an ambulance with injuries but did not remember what had happened. Because there was no first-hand information about the source of the complainant’s injuries, the information was facially insufficient. Christopher A. Schiano represented the defendant.

[People v Shurgot \(2023 NY Slip Op 50673\[U\]\)](#)

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