

# Decisions of Interest

AUGUST 14, 2023

## CRIMINAL

### FIRST DEPARTMENT

***People v Williams*** | August 10, 2023

HARSH AND EXCESSIVE | SENTENCE REDUCED | DISSENT

The defendant appealed from two NY County Supreme Court judgments convicting him of: (1) 2<sup>nd</sup> degree attempted murder and 2<sup>nd</sup> degree conspiracy; and (2) 1<sup>st</sup> degree burglary and sentencing him to an aggregate 11-year term, based on his guilty plea. The First Department modified by running the sentences concurrently, resulting in a six-year sentence. One justice dissented. The defendant admitted to shooting at a crowd of people, striking one person in the leg, and to participating in a gang assault at the jail. In the dissent's view, these gang-related violent offenses outweighed mitigating factors, which included the defendant's relative youth, lack of prior convictions, favorable reputation in school and community, strong family background, positive school and employment record, personal stressors, potential for rehabilitation, and a favorable prison record. The Center for Appellate Litigation (Elizabeth Vasily, of counsel) represented the appellant.

[People v Williams \(2023 NY Slip Op 04260\)](#)

### SECOND DEPARTMENT

***People v Joyette*** | August 9, 2023

PEOPLE'S APPEAL | SUPPRESSION | AFFIRMED

The People appealed from a Queens County Supreme Court order granting the defendants' motions to suppress physical evidence after a hearing. The Second Department affirmed. Officers were looking for defendant Stewart at a location in Queens. According to an intelligence flyer, Stewart had an extradition warrant, might be at that location, and might be armed. There was no indication the warrant was active or the source of the information that he might be armed. The officers saw Stewart in the front passenger seat of a black Audi parked in the driveway and blocked the Audi in with a police car. As they approached the car, they could smell marijuana. They searched the car and found marijuana and a firearm under the passenger seat. Blocking the driveway constituted a stop requiring reasonable suspicion of criminal activity or danger to the police. The smell of marijuana would have provided reasonable suspicion, but the officers did not smell anything until after the stop occurred. John S. Campo represented

respondent Joyette, Kathleen Clifford Gallo represented respondent Stewart, and Appellate Advocates (Hannah Kon, of counsel) represented respondent Wallace.

[People v Joyette \(2023 NY Slip Op 04216\)](#)

### ***People v Parkins*** | August 9, 2023

SORA | INSUFFICIENT NOTICE | REVERSED

The defendant appealed from an Orange County Court order designating him a level two sexually violent offender. The Second Department reversed and designated him a level one sexually violent offender. The People conceded that the defendant did not receive the required 10-day statutory notice of their intent to seek a different determination than the Board. The Board assessed a total of 65 points under risk factors 2, 5, and 7, but did not assess points under risk factor 12 for lack of acceptance of responsibility. At the hearing, the People requested for the first time that 10 points be assessed under risk factor 12. The court granted the request, assessed the defendant 75 total points, and designated him a level two sex offender. The People failed to prove that the defendant did not accept responsibility for his conduct. Without the 10 points assessed under risk factor 12, the defendant was a presumptive risk level one offender; there was no basis for granting an upward departure. Alex Smith represented the appellant.

[People v Parkins \(2023 NY Slip Op 04221\)](#)

## FOURTH DEPARTMENT

### ***People v Saeli*** | August 11, 2023

INVALID SEARCH WARRANT | CRIME NOT REFERENCED

The defendant appealed from a Chautauqua County Court judgment convicting him of 2<sup>nd</sup> degree kidnapping and 2<sup>nd</sup> degree kidnapping as a sexually motivated felony after a jury trial. The Fourth Department reversed, granted the defendant's suppression motion, and ordered a new trial. A search warrant for the defendant's cellphone lacked sufficient particularity. The warrant did not restrict the search of the phone by reference to any particular crime and left discretion to the executing police officers. The search warrant application contained information about the defendant's possession of the phone during the crime. But the application was not incorporated into the search warrant, so it could not save the warrant from facially invalidity. John A. Cirando represented the appellant.

[People v Saeli \(2023 NY Slip Op 04268\)](#)

## TRIAL COURTS

### ***People v Lucas*** | 2023 WL 5073923

SUPPRESSION DENIED | SPOUSAL PRIVILEGE EXTINGUISHED | TEXT MESSAGES

The defendant moved to suppress text messages to his wife in which he admitted sexually abusing a child, based on spousal privilege. Albany County Supreme Court denied the motion. The sexual assault of the child constituted adultery against the defendant's wife within the meaning of Penal Law § 255.17. The text messages therefore announced criminal activity aimed at the defendant's wife and extinguished the spousal privilege.

[People v Lucas \(2023 NY Slip Op 23246\)](#)

***People v McBride*** | 2023 WL 5026028

SUPPRESSION GRANTED | NO REASONABLE SUSPICION

Nassau County Supreme Court granted the defendant's motion to suppress physical evidence and statements after a hearing. Officers stopped the defendant's vehicle after seeing him sitting in the car in an area known for drug and gang activity. The interior light was on, and the defendant was looking toward his lap and "manipulating an object." The officers' testimony did not establish reasonable suspicion of criminal activity to justify the search of the defendant and his vehicle. Police cannot approach and request information of a person simply because the person is in a high crime area. Christopher Graziano represented the defendant.

[People v McBride \(2023 NY Slip Op 50827\[U\]\)](#)

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