

Decisions of Interest

AUGUST 28, 2022

CRIMINAL

SECOND DEPARTMENT

People v Palma | Aug. 24, 2022

GRAND JURY | DEFECTIVE

The People appealed from an order of Nassau County Supreme Court, which granted the defendant's motion to dismiss the indictment (with leave to re-present the matter to a new grand jury). The Second Department affirmed. The charges against the defendant arose from an incident in which a speedboat he operated collided with a jet skier, who sustained fatal injuries. The grand jury proceeding was defective because it failed to conform to the requirements of CPL Article 190 to such a degree that the integrity of the proceeding was impaired and the defendant may have been prejudiced. The People failed to provide complete information regarding the navigational laws and rules that potentially bore upon the defendant's culpability, and they improperly introduced opinion testimony from a lay witness employed by a jet ski tour company without providing any limiting instruction.

[People v Palma \(2022 NY Slip Op 05044\)](#)

People v Potter | Aug. 24, 2022

ODOR OF POT | PROBABLE CAUSE

The defendant appealed from an Orange County Court judgment, convicting him of various crimes. The Second Department affirmed. The appeal brought up for review the denial of suppression. As the law existed in 2018, the odor of marijuana emanating from a vehicle, when detected by an officer qualified in training and experience to recognize it, was alone sufficient to constitute probable cause to search the vehicle and its occupants. *Cf.* Penal Law § 222.05 (3).

[People v Potter \(2022 NY Slip Op 05045\)](#)

FAMILY

SECOND DEPARTMENT

Matter of Elizabeth W. | Aug. 24, 2022

SURRENDERS | STANDING

Child Elizabeth W. appealed from an order of Suffolk County Family Court, which denied her petition to vacate the parents' judicial surrenders of her sisters, based on the failure of a material condition (adoption of the children by the foster parents). The Second Department dismissed the

appeal. The appellant child was not a party to, nor the subject of, the judicial surrenders of her sisters. Thus, she was not authorized by statute to file the instant petition. She had standing, though, to apply for sibling visitation pursuant to DRL § 71.

[Matter of Elizabeth W. \(2022 NY Slip Op 05039\)](#)



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