

Decisions of Interest

AUGUST 8, 2022

CRIMINAL

FIRST DEPARTMENT

People v Krull | August 2, 2022

SORA | 5th AMENDMENT

The defendant appealed from a Bronx County Supreme Court order, which adjudicated him a level-two sex offender. The First Department reduced the adjudication to that of a level-one offender. Supreme Court erred in assessing 10 points under risk factor 12 for the defendant's refusal to accept responsibility for his criminal conduct, thus raising his risk level. That assessment constituted an adverse consequence of such severity that the defendant was, in effect, compelled to provide incriminating testimony in violation of his Fifth Amendment rights. He could not admit to the underlying conduct without facing a potential perjury prosecution, given his trial testimony and his pending direct appeal. If his conviction were reversed, his admissions would be detrimental in any potential retrial. The Center for Appellate Litigation (Alexandra Mitter) represented the appellant.

[People v Krull \(2022 NY Slip Op 04783\)](#)

SECOND DEPARTMENT

People v Lloyd-Douglas | August 3, 2022

COLLATERAL ESTOPPEL | NO IDENTITY OF ISSUE

The defendant appealed from a judgment of Queens County Supreme Court, convicting him of 1st degree assault and 3rd degree CPW. The Second Department affirmed. After the first trial, the defendant was acquitted of 1st degree robbery. Upon the prior appeal, a new trial was ordered. At the second trial, the prosecution elicited evidence that the complainant asked for her cell phone to summon help after the defendant struck her in the head with a hammer, but he took the phone upon leaving the apartment. On appeal, the defendant contended that, considering the robbery acquittal, collateral estoppel precluded such evidence. But the acquittal did not mean that the jury necessarily decided that the defendant did not take the phone. The proof might have permitted an inference that the property was not taken by force or that the complainant was not injured during the robbery or flight therefrom.

[People v Lloyd-Douglas \(2022 NY Slip Op 04821\)](#)

People v Edwards | August 3, 2022

O'RAMA | NO MODE-OF-PROCEEDINGS ERROR

The defendant appealed from a judgment of Kings County Supreme Court, convicting him of 1st degree criminal sexual act. The Second Department affirmed. The jury sent 11 notes to the trial judge. The appellate court rejected the contention that, as to three notes, mode-of-proceedings (MOP) errors occurred. The distinction between substantive and ministerial inquiries defied easy categorization. Courts should be wary about expanding the MOP doctrine. Here one jury note, conveying that the jurors were continuing to deliberate on all charges and were nearing a verdict on the first count, required no court action. In two other notes, the jury asked to see certain exhibits. However, at the start of deliberations, defense counsel had agreed that the court could furnish the jury with exhibits upon request, without the parties reconvening.

[People v Edwards \(2022 NY Slip Op 04818\)](#)

COUNTY COURT

People v Morissette | 2022 NY Slip Op 50701 (U)

CPL 30.30 | OPPORTUNITY TO BE HEARD

The defendant appealed from a judgment of a Justice Court in Monroe County, convicting him of DWI. County Court reversed and remanded. The waiver of appeal executed after sentencing was unenforceable. The defendant contended that Justice Court erred in denying his CPL 30.30 motion to dismiss, based on the People's failure to timely provide *Giglio* information, thus invalidating the COC and SOR. The trial court denied the motion on submissions—without giving the defendant a reasonable opportunity to be heard—and failed to explain the decision. Upon remand, those errors were to be rectified. James Riotto represented the appellant.

[People v Morissette \(2022 NY Slip Op 50701 U\)](#)



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