

Decisions of Interest

SEPTEMBER 11, 2023

CRIMINAL

FOURTH DEPARTMENT

People v Johnson | September 8, 2023

ILLEGAL STOP | GUN SUPPRESSED | INDICTMENT DISMISSED

The defendant appealed from a Monroe County Supreme Court judgment convicting him of 2nd degree CPW based on his guilty plea. The Fourth Department reversed, granted the defendant's motion to suppress, and dismissed the indictment. The police did not have reasonable suspicion to stop the defendant based on a tip from an anonymous 911 caller. The caller only identified himself by first name and stated that a Black man wearing an orange jacket threatened him with a gun at a specified location. There was no indication that the event occurred contemporaneously with the 911 call, and the caller was not at the location when the police arrived. The Monroe County Public Defender (Tonya Plank, of counsel) represented the appellant.

[People v Johnson \(2023 NY Slip Op 04493\)](#)

SECOND CIRCUIT

United States v Minter | September 6, 2023

GOVERNMENT'S APPEAL | NOT A CAREER OFFENDER | AFFIRMED

The government appealed from a District Court—SDNY judgment convicting the defendant of being a felon in possession of a firearm and declining to sentence him as a career offender under the Armed Career Criminal Act (ACCA). The Second Circuit affirmed. The defendant's NY conviction for the sale of cocaine (Penal Law § 220.39 [1]) did not qualify as a predicate "serious drug offense" under the ACCA. The NY definition of cocaine is categorically broader than its counterpart under the federal Controlled Substances Act (CSA). Unlike the CSA, NY prohibits the sale of all cocaine isomers—not just optical or geometric isomers. Walden Macht & Haran (Derek A. Cohen and Brian Mogck, of counsel) represented the defendant-appellee.

[United States v Minter \(21-3102\)](#)

TRIAL COURTS

People v Canady | 2023 WL 5734635

UNLAWFUL SEARCH | GUN SUPPRESSED | INDICTMENT DISMISSED

The defendant, charged with 2nd degree CPW, sought suppression of the gun. Kings County Supreme Court granted the motion and dismissed the indictment. A uniformed police officer saw the defendant throw an item into a car as she approached him to investigate a loud music complaint. The officer testified that she heard the sound of a heavy, metal object hitting the floor, which she identified as being a gun. The defendant tried to throw the car keys to a friend, but the officer intercepted them. She unlocked and searched the vehicle, finding a handgun. The mere sound of a metal object hitting the floor of the car did not establish reasonable suspicion for the search. The defendant did not forfeit his expectation of privacy in the subject vehicle by trying to give the keys to his friend. The Legal Aid Society of NYC (Luke Christopher Schram, of counsel) represented the defendant.

[People v Canady \(2023 NY Slip Op 50936\[U\]\)](#)

People v Coumbassa | 2023 WL 5763406

GRAND JURY | LEGALLY INSUFFICIENT EVIDENCE

The defendant moved to inspect grand jury minutes and dismiss an indictment charging him with 2nd degree CPW, Criminal Possession of a Firearm, and 7th degree CPCS. Kings County Supreme Court found the evidence legally insufficient as to the CPW charge and dismissed that count. The People failed to demonstrate that the bodega where the defendant was found with a loaded firearm was not his place of business. Brooklyn Defender Services (Alexander McHugh, of counsel) represented the defendant.

[People v Coumbassa \(2023 NY Slip Op 50940\[U\]\)](#)

DOCCS v Sasser | 2023 WL 576340

RECOGNIZANCE HEARING | DOCCS ATTORNEY REQUIRED

The respondent sought to be released based upon DOCCS' failure to appear through counsel at a scheduled recognizance hearing. Albany County Supreme Court granted the motion and ordered the respondent's release pending the administrative parole revocation proceeding. DOCCS sent a parole officer as its sole representative at the recognizance hearing. This violated the prohibition against the unauthorized practice of law, as it would require the parole officer to demonstrate that the executed warrant was properly issued and served—a legal question requiring a licensed attorney. The Albany County Public Defender (James Bartosik, of counsel) represented the respondent.

[DOCCS v Sasser \(2023 NY Slip Op 23268\)](#)

TRIAL COURTS

Matter of V.M. v C.M. | 2023 WL 5763557

FAMILY OFFENSE | INSUFFICIENT ALLEGATIONS | NO MINIMUM AGE

The petitioner filed family offense petitions on behalf of her minor children against the children's father, the father's girlfriend, and the girlfriend's 8-year-old child, G.B. The petitions alleged that the father and his girlfriend committed reckless endangerment by failing to supervise or control G.B., who allegedly engaged in inappropriate sexual behavior with one of the petitioner's children. Nassau County Family Court dismissed the petitions against the father and girlfriend but denied G.B.'s motion to dismiss. The allegations were insufficient to establish the elements of reckless endangerment, or any other family offense, as to the father and his girlfriend. However, while an 8-year-old may not be held criminally responsible for his conduct, the Family Court Act does not dictate a minimum age for a respondent in a family offense proceeding.

[Matter of V.M. v C.M. \(2023 NY Slip Op 50942\[U\]\)](#)

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