

Decisions of Interest

SEPTEMBER 5, 2023

CRIMINAL

THIRD DEPARTMENT

People ex rel. Lotze v Annucci | August 31, 2023

HABEAS CORPUS | LESS IS MORE | AFFIRMED

The petitioner appealed from a Schenectady County Supreme Court order denying his writ of habeas corpus. The Third Department affirmed. While on parole, the petitioner was arraigned on new charges and released on bail. A parole warrant was then issued. After a recognizance hearing, County Court ordered his detention pending resolution of the parole violation charges. Although the petitioner's appeal was rendered moot, the exception to the mootness doctrine applied. The petitioner was not unlawfully detained based solely on the parole warrant; he was detained based on the court's securing order issued after a recognizance hearing. A court's securing order is not equivalent to a parole warrant issued by DOCCS. Had the Legislature intended that a parolee released on bail on new charges not be detained on a court order after a hearing, it could have said so.

[People ex rel. Lotze v Annucci \(2023 NY Slip Op 04471\)](#)

SECOND CIRCUIT

United States v Hagood | August 30, 2023

SUPPRESSION | AFFIRMED | DISSENT

The defendant appealed from a District Court—SDNY judgment convicting him of possessing a firearm as a convicted felon based on his guilty plea. The Second Circuit affirmed, with one justice dissenting. In the dissent's view, an officer's brief observation of the defendant, while driving by at night from 30 feet away, provided only a hunch that the defendant was "up to no good"—not reasonable suspicion justifying a *Terry* stop. The officer testified that the defendant was in a high-crime neighborhood late at night, visibly nervous, and wearing a fanny pack slung over his shoulder and across his chest. A straight, rigid bulge along the top of the pack appeared similar in shape to the slide of a handgun. But the officer was uncertain whether the bulge was a gun, cell phone, wallet, or something else. Under the circumstances, it was questionable whether the officer could see any sort of outline in the pack and, contrary to the officer's claim, a photo of its contents showed that the slide of the gun was at the bottom of the pack.

[United States v Hagood \(22-588\)](#)

APPELLATE TERM

People v Carter | 2023 WL 5539121

COC INVALID | DISCOVERY NONCOMPLIANCE | CHARGES DISMISSED

The defendant appealed from a Kings County Criminal Court judgment convicting him of driving while ability impaired based on his guilty plea. The Appellate Term, Second Department reversed and dismissed the charges. The People failed to certify the facial sufficiency of the accusatory instrument before the statutory speedy trial time expired. Their COC listed the discovery items that had been provided; but many of the items were not actually produced until two weeks later. Any technological difficulties the People experienced uploading the information to a discovery portal were not “special circumstances” under CPL 245.50 (3). The COC was therefore invalid, and the People were not ready for trial before the speedy trial clock expired. Brooklyn Defender Services (Jeremy Ravinsky, of counsel) represented the defendant.

[People v Carter \(2023 NY Slip Op 50889\[U\]\)](#)

People v Rivera | 2023 WL 5539128

PEOPLE’S APPEAL | DISMISSAL | AFFIRMED

The People appealed from a Queens County Criminal Court order that granted the defendant’s motion to dismiss based on statutory speedy trial grounds. The Appellate Term, Second Department affirmed. The People did not certify the facial sufficiency of the accusatory instrument before filing their COC, rendering the COC invalid. While the COC was filed pre-COVID and substantial speedy trial time was tolled by the Governor’s executive order, 100 days elapsed after the tolling period ended. The People sought to exclude this time as a sanction for the defendant’s discovery noncompliance, but they did not establish that the time was excludable. The Legal Aid Society of NYC (Hilary Dowling, of counsel) represented the defendant.

[People v Rivera \(2023 NY Slip Op 50888\[U\]\)](#)

People v Amrit KC | 2023 WL 5539709

People v Gutierrez | 2023 WL 5539688

People v Scott | 2023 WL 5539715

CPL 30.30 DISMISSALS | PEOPLE’S APPEALS | REVERSED

The People appealed from Queens County Criminal Court orders dismissing accusatory instruments pursuant to CPL 30.30. The Appellate Term, Second Department reversed the dismissal of any traffic infraction and otherwise affirmed. The accusatory instruments were filed before CPL 30.30 was modified to apply to traffic infractions, and the newly enacted CPL 30.30 is not retroactive. The defendants’ motions, to the extent that they sought to dismiss traffic infractions based on statutory speedy trial violations, should have been denied.

[People v Amrit KC \(2023 NY Slip Op 50887\[U\]\)](#)

[People v Gutierrez \(2023 NY Slip Op 50885\[U\]\)](#)

[People v Scott \(2023 NY Slip Op 50886\[U\]\)](#)

TRIAL COURTS

Matter of K.M. | 2023 WL 5539689

JD REMOVAL | NO DEADLY WEAPON OR SIGNIFICANT PHYSICAL INJURY

The People sought to prevent removal of the adolescent offender's (AO) case to Family Court. Sullivan County Youth Part denied the motion. The AO was charged with 2nd degree assault and 4th degree CPW. The People failed to establish that the AO displayed a deadly weapon. A box cutter is a utility knife designed for opening cardboard boxes, whereas a dagger is universally understood to be a weapon. The People also failed to establish that the AO caused significant physical injury to the victim. There was no evidence that the victim suffered anything other than superficial lacerations or required any form of extended treatment. Lisa Swift represented the adolescent offender.

[Matter of K.M. \(2023 NY Slip Op 50910\[U\]\)](#)

People v R.B. | 2023 WL 5618817

JD REMOVAL | CURFEW VIOLATIONS

The People sought to prevent removal of the adolescent offender's (AO) case to Family Court. Erie County Youth Part denied the motion. The AO was charged with 3rd degree CPW. The People did not allege that the AO displayed the firearm or that he injured or threatened to injure anyone. Furthermore, although the AO violated curfew 15 out of the 27 days following arraignment, the court could not consider his curfew violations in determining whether to remove the matter to Family Court. Daniel Schaus represented the adolescent offender.

[People v R.B. \(2023 NY Slip Op 50917\[U\]\)](#)

People v A.P. | 2023 WL 5620648

JD REMOVAL | DRUGS AND WEAPONS POSSESSION

The People sought to prevent removal of two adolescent offenders' (AO) cases to the JD part of Family Court. Erie County Youth Part denied the motion with respect to one AO and granted it with respect to the other. Both AOs were charged with weapons and drug possession. The People did not allege that either possessed or handled the weapons or acted as a ringleader with respect to the drug possession. However, one AO was in possession of a felony weight of fentanyl. The potency and danger of fentanyl constituted extraordinary circumstances requiring that his case remain in the Youth Part.

[People v A.P. \(2023 NY Slip Op 50918\[U\]\)](#)

The Legal Aid Society v New York Police Department | 2023 WL 5531759

FOIL | ARTICLE 78 | HEARING ORDERED

The Legal Aid Society challenged the NYPD's denial of its FOIL request related to a 1980s murder investigation. New York County Supreme Court ordered a due diligence hearing before a Special Referee. While the NYPD produced certain records, it failed to provide any of its older microfiche-based records stored within the Criminal Review Unit. It also failed to provide other records known to exist, including wiretapped conversations and statements to police that were mentioned in the District Attorney's file.

[Legal Aid Society v New York Police Department \(2023 NY Slip Op 32969\[U\]\)](#)

FAMILY

THIRD DEPARTMENT

Matter of Tyler I. (Shawn I.) | August 31, 2023

PERMANENCY ORDER | MOOT | DISMISSED

The father appealed from a Schoharie County Family Court order that modified the children's permanency plan from return to parent to adoption. The Third Department dismissed the appeal as moot based upon Family Court's order continuing the permanency goal of adoption after a subsequent permanency hearing. Although a subsequently issued permanency order effectively supersedes prior orders, an appeal from a prior order is not moot when the order modified the permanency goal. Here, however, Family Court's decision underlying the subsequent order reflected that the father had consented to the modified permanency goal of placement for adoption. Under these circumstances, the exception to the mootness doctrine did not apply.

[Matter of Tyler I. \(Shawn I.\) \(2023 NY Slip Op 04469\)](#)

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