

NEW YORK APPELLATE DIGEST, LLC

A Succinct Collection of the Salient Issues Addressed in the Criminal Law Decisions Released by our New York State Appellate Courts in January 2021. The Citations Link to the Decisions on the Official New York Courts Website. The Full Decision-Summaries Are Available in the January 2021 Criminal Law Update Pamphlet.
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Criminal Law
Practice Newsletter
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APPEALS (GROUNDS FOR SUPPRESSION NOT RULED ON).

THE EVIDENCE DID NOT SUPPORT THE GROUND FOR SUPPRESSION OF A SHOTGUN AND SHOTGUN SHELL RELIED ON BY COUNTY COURT; ALTHOUGH THE PEOPLE RAISED OTHER GROUNDS FOR JUSTIFICATION OF THE SEARCH AND SEIZURE, THOSE GROUNDS CANNOT BE ADDRESSED ON APPEAL BECAUSE COUNTY COURT DID NOT RULE ON THEM; MATTER REMITTED FOR CONSIDERATION OF THE PEOPLE’S OTHER ARGUMENTS (THIRD DEPT).

People v Kabia, 2021 NY Slip Op 00209, Third Dept 1-14-21

Practice Point: An appellate court cannot consider a ground for suppression which was not ruled on by the motion court. However the appellate court may hold the appeal in abeyance and remit to allow the motion court to consider the other grounds for suppression which were raised but not ruled on.

APPEALS, SPEEDY TRIAL, GUILTY PLEAS.

THE 2020 AMENDMENT TO CPL 30.30 WHICH ALLOWS AN APPEAL ALLEGING A VIOLATION OF THE SPEEDY TRIAL STATUTE AFTER A GUILTY PLEA DOES NOT APPLY RETROACTIVELY (THIRD DEPT).

People v Duggins, 2021 NY Slip Op 00336, Third Dept 1-21-21

Practice Point: The January 2020 amendment which allows an appeal of the denial of a speedy trial motion after a guilty plea is not applied retroactively.

BURGLARY, UNCHARGED THEORY.

THE JURY WAS ERRONEOUSLY ALLOWED TO CONSIDER A THEORY OF BURGLARY WITH WHICH DEFENDANT WAS NOT CHARGED; BURGLARY CONVICTIONS REVERSED (SECOND DEPT).

People v Petersen, 2021 NY Slip Op 00193, Second Dept 1-13-21

Practice Point: The jury cannot consider a burglary theory which was not charged. Here defendant was charged with burglary with the intent to damage property but the jury was allowed to consider burglary with the intent to commit assault.

JUROR AS UNSWORN EXPERT, MOLINEUX (LOOKING AT PORNOGRAPHY).

A JUROR WHO WAS A RETIRED DETECTIVE ACTED AS AN UNSWORN EXPERT WITNESS IN THE DELIBERATIONS; “MOLINEUX” EVIDENCE DEFENDANT LOOKED AT PORNOGRAPHY BEFORE ALLEGEDLY COMMITTING THE SEX-RELATED OFFENSES SHOULD NOT HAVE BEEN ADMITTED (FIRST DEPT).

People v Alvarez, 2021 NY Slip Op 00092, First Dept 1-7-21

Practice Point: Reversal was required because a juror who was a retired detective acted as an unsworn expert witness in deliberations. Evidence that defendant looked at pornography before allegedly committing burglary and a sex offense was highly prejudicial and was not probative of identity. The evidence therefore should not have been admitted under Molineux.

SEVERANCE.

DEFENDANT’S MOTION TO SEVER THE TWO OFFENSES, WHICH OCCURRED ON DIFFERENT DATES AND WERE UNRELATED, SHOULD HAVE BEEN GRANTED (FIRST DEPT).

People v Santiago, 2021 NY Slip Op 00130, First Dept 1-12-21

Practice Point: Where none of the evidence necessary for each offense is material to the other, the two offenses should not be tried together.

SUPPRESSION HEARING (REOPENING), MOLINEUX (“BACKGROUND” EVIDENCE).

THE SUPPRESSION HEARING SHOULD NOT HAVE BEEN REOPENED; EVIDENCE OF UNCHARGED DRUG TRAFFICKING AS BACKGROUND FOR POSSESSION OF A WEAPON SHOULD NOT HAVE BEEN ADMITTED (FIRST DEPT).

People v Nunez, 2021 NY Slip Op 00266, First Dept 1-19-21

Practice Point: Where the prosecution has had a full opportunity to present its evidence and witnesses in a suppression hearing and the court has ruled on the suppression motion, the hearing should not be reopened. Evidence of uncharged drug trafficking was too prejudicial for admission under Molineux as proof of possession of a weapon.

TERRORISM.

THE EVIDENCE DID NOT SUPPORT FINDING THE APPELLANT IN THIS JUVENILE DELINQUENCY PROCEEDING MADE A TERRORISTIC THREAT IN VIOLATION OF PENAL LAW 490.20; THERE WAS NO EVIDENCE OF AN INTENT TO INTIMIDATE THE CIVILIAN POPULATION (SECOND DEPT).

Matter of Jaydin R., 2021 NY Slip Op 00176, Second Dept 1-13-21

Practice Point: To constitute a terroristic threat there must be an intent to intimidate a civilian population.

TERRORISM.

THE THREAT MADE BY DEFENDANT WAS PERSONAL IN NATURE AND WAS NOT DIRECTED AT THE CIVILIAN POPULATION WITHIN THE MEANING OF THE TERRORISM STATUTE (PENAL LAW 490.20); THE CONVICTION WAS NOT SUPPORTED BY LEGALLY SUFFICIENT EVIDENCE AND WAS AGAINST THE WEIGHT OF THE EVIDENCE (FIRST DEPT).

People v DeBlasio, 2021 NY Slip Op 00376, First Dept 1-21-21

Practice Point: Again, a terroristic threat must be made with the intent to intimidate the civilian population.

TRAFFIC STOPS, CANINE SEARCHES.

THE TRAFFIC STOP AND CANINE SEARCH WERE JUSTIFIED; THE DISSENT ARGUED THE CANINE SEARCH WAS NOT (THIRD DEPT).

People v Blandford, 2021 NY Slip Op 00058, Third Dept 1-7-21

Practice Point: Even though the traffic stop was based on minor traffic infractions, behavior which was deemed consistent with drug transactions in an area known for drug activity justified the canine search.

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