NEW YORK APPELLATE DIGEST, LLC

Criminal Law Reversal Newsletter
March 2022

An Organized Compilation of the Summaries of the Most Significant Decisions Addressing Criminal Law, Mostly Reversals, Released by Our New York State Appellate Courts and Posted on the New York Appellate Digest Website in March 2022, Distilled to Practice Points, One or Two Sentences Each. The Entries in the Table of Contents Link to the Practice Points Which Link to the Decisions on the Official New York Courts Website. Click on "Table of Contents" in the Header on Any Page to Return There. Right Click on the Citations to Keep Your Place in the Reversal Newsletter.

Contents

Table of Contents

APPEALS, STATUTORY GROUNDS FOR APPEAL.

THE CRIMINAL PROCEDURE LAW SPELLS OUT THE ONLY GROUNDS FOR APPEAL IN A CRIMINAL PROCEEDING; NO APPEAL LIES FROM THE DENIAL OF A MOTION TO CORRECT, AMEND OR SETTLE THE SENTENCING TRANSCRIPT; AND NO APPEAL LIES FROM ADDING A MANDATORY SURCHARGE, WHICH IS NOT PART OF A SENTENCE (THIRD DEPT).

People v Johnson, 2022 NY Slip Op 01844, Third Dept 3-17-22

Practice Point: The Criminal Procedure Law lays out all the allowed grounds for appeal in a criminal case. The denial of a motion to correct, amend or settle a sentencing transcript is not appealable. The adding of a mandatory surcharge is not part of a sentence and therefore is not appealable.

APPEALS, WAIVER OF APPEAL, JUDGES.

DEFENDANT'S WAIVER OF APPEAL WAS NOT VALID; THE COURT'S TERSE INQUIRY ABOUT THE APPEAL WAIVER WAS NOT CURED BY DEFENDANT'S EXECUTION OF A MORE DETAILED WRITTEN WAIVER AFTER SHE WAS SENTENCED AND MORE THAN A YEAR AFTER THE PLEA (THIRD DEPT).

People v Crispell, 2022 NY Slip Op 01843, Third Dept 3-17-22

Practice Point: The court did not explain the separate and distinct nature of an appeal waiver, as opposed to the waiver of the right to a trial. The inadequacy of the court's explanation was not cured by the more detailed written waiver which was executed after defendant was sentenced and more than a year after the plea.

BENCH TRIALS, HEARSAY EXCEPTIONS.

IN A RARE REVERSAL OF A BENCH TRIAL ON EVIDENTIARY GROUNDS, THE 1ST DEPT DETERMINED FOUR OUT-OF-COURT STATEMENTS ALLEGEDLY MADE BY THE VICTIM IN THIS SEXUAL-OFFENSE CASE SHOULD NOT HAVE BEEN ADMITTED UNDER THE "EXCITED UTTERANCE" OR "PROMPT OUTCRY" THEORIES; THE COURT NOTED THAT ONLY THE FACT OF THE COMPLAINT, NOT THE ACCOMPANYING DETAILS, ARE ADMISSIBLE AS A "PROMPT OUTCRY" (FIRST DEPT).

People v Gideon, 2022 NY Slip Op 01746, First Dept 3-15-22

Practice Point: In this nonjury sexual-offense prosecution the court erred by admitting out-of-court statements by the alleged victim under the "prompt outcry" theory. Only the fact of the complaint is admissible, not the accompanying details.

BURGLARY, HOSPITAL NOT A "DWELLING."

THE HOSPITAL FROM WHICH LAPTOPS WERE STOLEN WAS NOT A "DWELLING" WITHIN THE MEANING OF THE BURGLARY STATUTE (FIRST DEPT).

People v Brown, 2022 NY Slip Op 02205, First Dept 3-31-22

Practice Point: Here a hospital from which laptops had been stolen was not a "dwelling" as that term is used in the burglary statutes.

CELL SITE LOCATION INFORMATION (CSLI) WARRANT.

PURSUANT TO A US SUPREME COURT DECISION WHICH CAME DOWN AFTER DEFENDANT'S CONVICTION, DEFENDANT HAS STANDING TO CHALLENGE THE CELL SITE LOCATION INFORMATION (CSLI) WARRANT, MATTER REMITTED (FOURTH DEPT).

People v Ozkaynak, 2022 NY Slip Op 01700, Fourth Dept 3-11-22

Practice Point: The US Supreme Court ruling that defendants have standing to challenge a cell site location information (CDLI) warrant came down after defendant's conviction in this case. The matter was remitted for a determination of defendant's suppression motion.

CONSTRUCTIVE POSSESSION.

THERE WAS NO PROOF DEFENDANT EXERCISED DOMINION AND CONTROL OVER THE AREA WHERE THE DRUGS WERE FOUND; DEFENDANT'S MERE PRESENCE IN THE VICINITY OF THE DRUGS DID NOT PROVE HIS POSSESSION OF THE DRUGS (FOURTH DEPT).

People v Mighty, 2022 NY Slip Op 01923, Fourth Dept 3-18-18

Practice Point: If a defendant does not physically possess the drugs, to prove constructive possession, the People must demonstrate the defendant exercised dominion and control over the area where the drugs were found, perhaps by proving defendant resided there, for example.

DNA, FRYE HEARING.

AT THE FRYE HEARING, THE PEOPLE DEMONSTRATED THE ADMISSIBILITY OF THE RESULTS OF DNA ANALYSIS USING THE STRMIX DNA ANALYSIS PROGRAM (FOURTH DEPT).

People v Bullard-Daniel, 2022 NY Slip Op 01707, Fourth Dept 3-11-22

Practice Point: The Frye hearing in this case demonstrated the results of the DNA analysis done using the STRmix DNA analysis program constituted admissible evidence.

EMPLOYMENT LAW, CRIMINAL LAW, CORRECTION LAW, ADMINISTRATIVE LAW.

THE DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION (DOCCS) DID NOT ADEQUATELY EXPLAIN THE STATUTORY FACTORS SUPPORTING ITS DENIAL OF PETITIONER'S REQUEST FOR A CERTIFICATE OF GOOD STANDING, WHICH WOULD ALLOW THE FORMER INMATE TO WORK AS A SCHOOL BUS DRIVER; THEREFORE THE DENIAL WAS ARBITRARY; MATTER REMITTED FOR FURTHER PROCEEDINGS (THIRD DEPT).

Matter of Streety v Annucci, 2022 NY Slip Op 02170, Third Dept 3-31-22

Practice Point: If an administrative agency issues a ruling which does adequately explain the statutory factors upon which the ruling is based, making a review of the bases of the ruling impossible, the ruling may be characterized as "arbitrary" and annulled.

INDICTMENTS, AMENDMENT OF INDICTMENT.

THE INDICTMENT CHARGED DEFENDANT WITH ASSAULT SECOND AND ATTEMPTED ASSAULT SECOND BUT DID NOT ALLEGE THE USE OF A DEADLY WEAPON OR A DANGEROUS INSTRUMENT; THE PEOPLE'S THEORY AT TRIAL WAS DEFENDANT USED A PVC PIPE AS A DEADLY WEAPON OR A DANGEROUS INSTRUMENT; BUT, TO CORRECT THE FLAWED INDICTMENT, THE JUDGE, A DAY BEFORE THE END OF THE TRIAL, AMENDED THE INDICTMENT TO CHARGE ASSAULT THIRD AND ATTEMPTED ASSUALT THIRD; THE AMENDMENT PREJUDICED THE DEFENDANT (FIRST DEPT).

People v Winston, 2022 NY Slip Op 02080, First Dept 3-24-22

Practice Point: Here the indictment was flawed because it charged assault second but did not allege use of a deadly weapon or a dangerous instrument. The People's theory at trial was that defendant used a PVC pipe as a deadly weapon or a dangerous instrument. A day before the end of the trial, the judge amended the indictment to charge assault third. The amendment was improper and prejudiced the defendant.

INDICTMENTS, SUPERIOR COUNT INFORMATIONS, JURISDICTIONAL DEFECTS.

BOTH THE INDICTMENT AND THE SUPERIOR COURT INFORMATION CHARGED CRIMES WITH THE ELEMENT THAT THE VICTIM WAS LESS THAN 17; BOTH HAD THE WRONG BIRTH DATE FOR THE VICTIM WHICH THEREBY ALLEGED THE VICTIM WAS MORE THAN 17; THAT IS A JURISDICTIONAL DEFECT WHICH CANNOT BE CORRECTED BY AMENDMENT (THIRD DEPT).

People v Solomon, 2022 NY Slip Op 02158, Third Dept 3-31-22

Practice Point: If an element of the crime is that the victim is less than 17, and the indictment and the superior court information have the wrong birth date which puts the victim’s age at more than 17, the indictment and the superior court information are jurisdictionally defective and cannot be amended.

JAIL PHONE CALLS.

A JAIL PHONE CALL IN WHICH DEFENDANT SAID HE MIGHT PLEAD GUILTY SHOULD NOT HAVE BEEN ADMITTED BECAUSE ITS PREJUDICIAL EFFECT OUTWEIGHED ANY PROBATIVE VALUE; THE PROSECUTOR'S SUMMATION REFERENCE TO THE PORTION OF THE PHONE CALL IN WHICH DEFENDANT SAID HE NEEDED A "PAID LAWYER" WAS AN IMPROPER USE OF THE RIGHT TO COUNSEL AGAINST THE DEFENDANT; NEW TRIAL ORDERED (THIRD DEPT).

People v Roberts, 2022 NY Slip Op 02157, Third Dept 3-31-22

Practice Point: Defendant, in a jail phone call, said he might plead guilty and he needed a "paid lawyer." The "might plead guilty" statement should not have been admitted because it was highly prejudicial but had little probative value. The prosecutor's reference in summation to the "need a paid lawyer" statement improperly used defendant's right to counsel against him. These were deemed reversible errors.

JUDGES, CURTAILED CROSS-EXAMINATION.

THE CROSS-EXAMINATION OF A DETECTIVE ABOUT STATEMENTS ATTRIBUTED TO THE VICTIM IN THIS SEXUAL-OFFENSE PROSECUTION SHOULD NOT HAVE BEEN CURTAILED BY THE JUDGE; THE ERROR WAS NOT HARMLESS WITH RESPECT TO SEVERAL COUNTS, BUT WAS DEEMED HARMLESS WITH RESPECT TO OTHER COUNTS (FOURTH DEPT).

People v Kilgore, 2022 NY Slip Op 01709, Fourth Dept 3-11-22

Practice Point: It was error for the judge to curtail the cross-examination of a detective about statements attributed to the victim in this sexual offense prosecution. The error was deemed reversible with respect to some counts, and harmless with respect to others.

JURORS, BATSON.

IN RESPONSE TO A BATSON INQUIRY, THE PROSECUTOR'S REASON FOR STRIKING THE PROSPECTIVE JUROR IN FACT RELATED TO ANOTHER PROSPECTIVE JUROR FOR WHOM DEFENDANT HAD EXERCISED A PEREMPTORY CHALLENGE; NEW TRIAL ORDERED (FOURTH DEPT).

People v Douglas, 2022 NY Slip Op 01919, Fourth Dept 3-18-22

Practice Point: If, pursuant to a Batson inquiry, the prosecutor refers to answers given by the wrong prospective juror, a new trial will be ordered.

POLL OF THE JURY, BRADY MATERIAL, CROSS-EXAMINATION.

BRADY MATERIAL WAS WITHHELD, CROSS-EXAMINATION ABOUT A COMPLAINANT'S INCOSISTENT STATEMENTS WAS NOT ALLOWED; THE INQUIRY AFTER A POLLED JUROR INDICATED SHE MAY NOT HAVE AGREED WITH THE VERDICT WAS INSUFFICIENT (SECOND DEPT).

People v Ramunni, 2022 NY Slip Op 02022, Second Dept 3-23-22

Practice Point: Here Brady material, the identity of a 911 caller, was withheld, cross-examination about inconsistent statements attributed to a complainant was not allowed, and a juror who, when polled, said she may not have agreed with verdict was not sufficiently questioned by the judge. One count of the indictment was dismissed, and a new trial was ordered on the gang assault and assault first counts.

PROBATION, CONSENT-TO-SEARCH.

THE CONSENT-TO-SEARCH PROBATION CONDITION WAS NOT INDIVIDUALLY TAILORED TO THE OFFENSE AND SHOULD NOT HAVE BEEN IMPOSED; IT WAS NOT NECESSARY TO PRESERVE THE ERROR FOR APPEAL AND APPEAL WAS NOT PROHIBITED BY THE DEFENDANT'S WAIVER OF HIS RIGHT TO APPEAL (SECOND DEPT).

People v Dranchuk, 2022 NY Slip Op 01312, Second Dept 3-2-22

Practice Point: A probation-condition must be reasonably related to the defendant's rehabilitation. Here there was no reasonable relation between the consent-to-search condition and the defendant, a first-time offender who was not armed at the time of the offense and for whom no alcohol or substance abuse treatment was recommended.

RESTITUTION, LOST WAGES.

RESTITUTION IN EXCESS OF THE STATUTORY CAP FOR LOST WAGES WAS IMPROPERLY AWARDED BECAUSE "LOST WAGES" DOES NOT FIT ANY OF THE EXCEPTIONS TO THE CAP RESTRICTION (FOURTH DEPT).

People v Witherow, 2022 NY Slip Op 01691, Fourth Dept 3-11-22

Practice Point: Restitution for lost wages was improperly awarded because "lost wages" does not fit any of the statutory exceptions to the restitution-cap restriction.

SENTENCING, OFF-THE-RECORD "CONDITION.

COUNTY COURT SHOULD NOT HAVE ACCORDED ANY WEIGHT TO AN OFF-THE-RECORD "CONDITION" THAT THE PEOPLE WOULD WITHDRAW THEIR CONSENT TO THE PLEA OFFER IF YOUTHFUL OFFENDER STATUS WERE GRANTED; ALTHOUGH THE PEOPLE CAN BARGAIN FOR SUCH A CONDITION, THERE WAS NOTHING ON THE RECORD ABOUT IT; SENTENCE VACATED AND MATTER REMITTED FOR CONSIDERATION OF THE FACTORS FOR A YOUTHFUL OFFENDER ADJUDICATION (THIRD DEPT).

People v Irizarry, 2022 NY Slip Op 02159, Third Dept 3-31-22

Practice Point: Here County Court did not consider the factors for adjudicating whether defendant should be afforded youthful offender status based upon on an off-the-record "condition," i.e., that the People would withdraw their consent to the plea offer if the defendant were granted youthful offender status. Although the People can bargain for such a condition, there was nothing on the record about it. Therefore the judge should not have given it any weight and should have considered the factors for a youthful offender adjudication.

SENTENCING, PENALIZED FOR REJECTING PLEA OFFER.

DEFENDANT WAS DEPRIVED OF HIS RIGHT TO CONFRONT A WITNESS AGAINST HIM AND WAS PENALIZED FOR REJECTING THE JUDGE'S PLEA OFFER AND GOING TO TRIAL; THE ISSUES WERE NOT PRESERVED BUT WERE CONSIDERED IN THE INTEREST OF JUSTICE (SECOND DEPT).

People v Ellerbee, 2022 NY Slip Op 02016, Second Dept 3-23-22

Practice Point: Here the DMV employee who had personal knowledge of the mailing of the license suspension notice to defendant and the defendant's driving record apparently was not called as a witness. Therefore defendant was deprived of

his right to confront the witness about an essential element of the offense. In addition, the judge imposed a much harsher sentence than that offered as part of a plea bargain. The judge thereby penalized the defendant because he chose to go the trial. Both of these errors were not preserved for appeal but were considered in the interest of justice.

SENTENCING, PLEA AGREEMENTS.

DEFENDANT, AT THE TIME OF THE PLEA, AGREED TO A SENTENCE OF 20 DAYS OF COMMUNITY SERVICE; AT SENTENCING, AFTER DEFENDANT HAD COMPLETED THE COMMUNITY SERVICE, THE PROSECUTOR AND DEFENSE COUNSEL ACKNOWLEDGED THAT THE BARGAINED-FOR SENTENCE WAS A ONE-YEAR CONDITIONAL DISCHARGE; ON APPEAL DEFENDANT ARGUED HE NEVER AGREED TO THE CONDITIONAL DISCHARGE AND HIS GUILTY PLEA WAS THEREFORE NOT VOLUNTARY; THE MAJORITY HELD THE ISSUE WAS NOT PRESERVED FOR APPEAL (CT APP).

People v Bush, 2022 NY Slip Op 01956, Ct App 3-22-22

Practice Point: Here defense counsel, at the outset of sentencing, acknowledged that the bargained-for sentence was a one-year conditional discharge. On appeal, the defendant argued that, at the time of the plea, he agreed only to a sentence of 20 days of community service, rendering his guilty plea involuntary. The majority held the issue was not preserved for appeal because defendant was alerted to the conditional-discharge sentence at the time of sentencing and did not move to withdraw his plea. The three-judge dissent agreed with defendant's argument that his plea was involuntary.

SENTENCING, VICTIM IMPACT STATEMENT.

IN THIS SEX-OFFENSE CASE, THE SENTENCING JUDGE VIOLATED THE CRIMINAL PROCEDURE LAW BY REFUSING TO DISCLOSE THE VICTIM IMPACT STATEMENT TO THE DEFENDANT WITHOUT PLACING THE REASONS FOR NONDISCLOSURE ON THE RECORD; THE ISSUE SURVIVED THE WAIVER OF APPEAL (THIRD DEPT).

People v Ortiz, 2022 NY Slip Op 02041, Third Dept 3-24-22

Practice Point: If a sentencing judge wishes to withhold a victim impact statement from the defendant, the reasons for nondisclosure must be placed on the record (CPL 390.50). This issue survives a waiver of appeal.

SENTENCING, RESTITUTION.

THE CRITERIA FOR IMPOSING THE MAXIMUM RESTITUTION SURCHARGE OF 10% WERE NOT MET (FOURTH DEPT).

The Fourth Department, reversing (modifying) County Court, determined the criteria for imposing the maximum restitution surcharge of 10% were not met:

People v Webber, 2022 NY Slip Op 01904, Fourth Dept 3-18-22

Practice Point: Before the maximum restitution surcharge of 10% can be imposed, an affidavit must be filed demonstrating the actual cost of collection.

SENTENCING.

THE DEFENDANT WAS NOT PRODUCED FOR SENTENCING; HIS RIGHT TO BE PRESENT AT SENTENCING WAS THEREFORE VIOLATED, REQUIRING REMITTAL FOR RESENTENCING (SECOND DEPT).

People v Umar, 2022 NY Slip Op 01818, Second Dept 3-16-22

Practice Point: A defendant has a fundamental right to be personally present at sentencing. Violation of that right requires remittal and resentencing.

SENTENCING.

THE JUDGE'S FAILURE TO PRONOUNCE THE DEFINITE TERM COMPONENT OF DEFENDANT'S SENTENCE REQUIRED VACATION OF THE SENTENCE AND REMITTAL FOR RESENTENCING; THE ISSUE SURVIVES A WAIVER OF APPEAL (FOURTH DEPT).

People v Adams, 2022 NY Slip Op 01921, Fourth Dept 3-18-22

Practice Point: Every component of a sentence must be "pronounced" by the judge in open court or the sentence will be vacated.

SEX OFFENDER REGISTRATION ACT (SORA), ACCEPTANCE OF RESPONSIBILITY.

THE JUDGE SHOULD NOT HAVE, SUA SPONTE, WITHOUT NOTICE TO THE DEFENDANT, ASSESSED 12 POINTS FOR FAILURE TO ACCEPT RESPONSIBILITY; DEFENDANT ACCEPTED RESPONSIBILITY BY PLEADING GUILTY (FOURTH DEPT).

People v Ritchie, 2022 NY Slip Op 01635, Fourth Dept 3-10-22

Practice Point: In a SORA risk assessment proceeding, the judge cannot, sua sponte, without notice to the defendant, assess points in a category not recommended by the board.

Practice Point: In a SORA risk assessment proceeding, where a defendant has pled guilty, an assessment of 12 points for failure to accept responsibility is not warranted.

SEX OFFENDER REGISTRATION ACT (SORA), RESIDENTIAL RESTRICTIONS.

THE SEXUAL ASSAULT REFORM ACT (SARA), PROHIIBITING CERTAIN SEX OFFENDERS FROM RESIDING WITHIN 1000 FEET OF A SCHOOL, APPLIES TO SEX OFFENDERS WHO ARE UNDER POSTRELEASE SUPERVISION (PRS); THE DISSENT ARGUED SARA, BY ITS TERMS, APPLIES ONLY TO THOSE ON PAROLE OR CONDITIONALLY RELEASED (CT APP).

Matter of Alvarez v Annucci, 2022 NY Slip Op 01957 Ct App 3-22-22

Practice Point: The Court of Appeals rejected the argument that the Sexual Assault Reform Act (SARA), which prohibits certain sex offenders from residing within 1000 feet of a school, does not apply to those under postrelease supervision (PRS).

SEX OFFENDER REGISTRATION ACT (SORA), UPWARD DEPARTURE.

THE PEOPLE'S APPLICATION FOR AN UPWARD DEPARTURE IN THIS SORA RISK ASSESSMENT PROCEEDING WAS NOT SUPPORTED BY CLEAR AND CONVINCING EVIDENCE (SECOND DEPT).

People v Paterno, 2022 NY Slip Op 01470, Second Dept 3-9-22

Practice Point: Any application by the People for an upward departure in a SORA risk assessment proceeding must be supported by clear and convincing evidence. Here the People's upward departure application alleged defendant had unprotected

sex with the 15-year-old victim. The appellate court determined the allegation was not supported by clear and convincing evidence.

SEX OFFENDER REGISTRATION ACT (SORA).

A SEX OFFENDER CERTIFICATION IS NOT PART OF A DEFENDANT'S SENTENCE; THEREFORE THE CERTIFICATION CANNOT BE SET ASIDE PURSUANT TO A MOTION TO SET ASIDE THE SENTENCE (SECOND DEPT).

People v David, 2022 NY Slip Op 01310, Second Dept 3-2-22

Practice Point: A defendant's certification as a sex offender under SORA is not part of the sentence. Therefore the certification is not a proper subject for a motion to set aside a sentence.

SIROIS HEARING, RIGHT TO CONFRONT WITNESSES.

THE JUDGE SHOULD NOT HAVE RELIED ON EVIDENCE GIVEN AT A MATERIAL WITNESS HEARING, FROM WHICH DEFENDANT WAS PROPERLY EXCLUDED, AT A SUBSEQUENT SIROIS HEARING AT WHICH THE WITNESS DID NOT TESTIFY (FOURTH DEPT).

People v Phillips, 2022 NY Slip Op 01710, Fourth Dept 3-11-22

Practice Point: The judge relied on the witness's testimony at a material witness hearing, at which defendant was not present, for his ruling in a Sirois hearing, at which the witness did not testify. Defendant was thereby deprived of his right to confront the witnesses against him at the Sirois hearing. New trial ordered.

SPEEDY TRIAL.

THE SIX-YEAR DELAY, DURING WHICH DEFENDANT WAS INCARCERATED, DEPRIVED DEFENDANT OF HIS RIGHT TO A SPEEDY TRIAL; THE MURDER AND ASSAULT CONVICTIONS AFTER TRIAL REVERSED (FIRST DEPT).

People v McDonald, 2022 NY Slip Op 02099, First Dept 3-29-22

Practice Point: Here the defendant's murder and assault convictions after trial were reversed because defendant was deprived of his right to a speedy trial. Defendant was incarcerated during the six-year delay, which raised the presumption the defense was prejudiced by the delay. In addition the People were not able to show a good cause for the delay. The People claimed a detective's poor health precluded him from testifying, but the detective's testimony was not necessary.

SUPPRESSION.

CONFLICTING ACCOUNTS OF WHAT THE POLICE OFFICERS SAW WHEN THEY APPROACHED THE VAN IN WHICH DEFENDANT WAS A PASSENGER FAILED TO DEMONSTRATE PROBABLE CAUSE FOR THE SEARCH OF THE VAN; THE WEAPON SEIZED FROM THE VAN SHOULD HAVE BEEN SUPPRESSED; DEFENDANT'S POSSESSION OF A WEAPON CONVICTION REVERSED (SECOND DEPT).

People v Austin, 2022 NY Slip Op 01306, Second Dept 3-2-22

Practice Point: Here the two arresting officers' conflicting accounts of what they saw as they approached the van in which defendant was a passenger precluded the People from demonstrating the legality of the search of the van.

SUPPRESSION.

THE PEOPLE DID NOT MEET THEIR BURDEN TO SHOW THE LEGALITY OF THE SEIZURE OF DEFENDANT'S CLOTHES BY A DETECTIVE AT THE HOSPITAL WHERE DEFENDANT WAS BEING TREATED FOR A GUNSHOT WOUND; THE CLOTHES AND THE DNA EVIDENCE TAKEN FROM THE CLOTHES SHOULD HAVE BEEN SUPPRESSED; THE ERROR WAS HARMLESS HOWEVER (SECOND DEPT).

People v Gough, 2022 NY Slip Op 01317, Second Dept 3-2-22

Practice Point: Here a detective seized defendant's clothes which were in a bag at the hospital where defendant was being treated for a gunshot wound. The clothes and the related DNA evidence should have been suppressed.

SURVEILLANCE VIDEO, CROSS-EXAMINATION.

A DETECTIVE WAS PROPERLY ALLOWED TO IDENTIFY DEFENDANT IN A SURVEILLANCE VIDEO; TESTIMONY ABOUT THE "BLINDED" PHOTO ARRAY IDENTIFICATION PROCEDURE WAS PROPERLY ALLOWED; THE DEFENSE CROSS-EXAMINATION ABOUT A WITNESS'S CRIMINAL HISTORY SHOULD NOT HAVE BEEN CURTAILED; ANY ERRORS DEEMED HARMLESS (FOURTH DEPT).

People v Griffin, 2022 NY Slip Op 01698, Fourth Dept 3-11-22

Practice Point: Because the detective had prior contact with the defendant, the detective was properly allowed to identify defendant in a surveillance video.

Practice Point: Testimony about the "blinded" photo array identification procedure was properly allowed.

Practice Point: The defense cross-examination about the witness's criminal history should not have been curtailed.

TRAFFIC STOPS, ANONYMOUS TIP.

THE PEOPLE DID NOT DEMONSTRATE THE ANONYMOUS TIP PROVIDED PROBABLE CAUSE TO BELIEVE DEFENDANT WAS IN THE VEHICLE PURSUED AND STOPPED BY THE POLICE (FOURTH DEPT).

People v Ponce, 2022 NY Slip Op 01706, Fourth Dept 3-11-22

Practice Point: An anonymous tip can provide probable cause for a street stop if accompanied by sufficient indicia of reliability, both as to illegality and the identity of the person. Here the People did not demonstrate the anonymous tip was sufficiently reliable.

TRAFFIC STOPS.

AFTER A VALID TRAFFIC STOP BASED ON THE LICENSE PLATES NOT MATCHING THE VEHICLE, DEFENDANT PRESENTED HIS TEMPORARY REGISTRATION AND EXPLAINED THE PLATES HAD BEEN TRANSFERRED FROM A DIFFERENT VEHICLE; AT THAT POINT THE AUTHORIZATION TO DETAIN DEFENDANT CEASED; THE SEIZED DRUGS SHOULD HAVE BEEN SUPPRESSED (FOURTH DEPT).

People v Betsey-Jones, 2022 NY Slip Op 01924, Fourth Dept 3-18-22

Practice Point: Here the police stopped defendant because the license plates did not match the color and make of defendant's vehicle in the DMV database. Once the the defendant showed the officer his temporary registration and explained the license plates had been transferred from a different vehicle, the justification for the detention of the defendant ceased. Any statements made and evidence seized after that point should have been suppressed.

TRAFFIC STOPS.

THE POLICE MISTAKENLY BELIEVED THE MAN IN A MOTEL ROOM (DEFENDANT) WAS A SUSPECT IN A SHOOTING; AN INFORMANT HAD TOLD THE POLICE THE MAN IN THE ROOM WAS FROM ROCHESTER, HIS NICKNAME WAS "JAY" AND HE "HAD A WARRANT;" WHEN THE MAN LEFT THE ROOM, THE POLICE STOPPED HIS TAXI; THE PEOPLE DID NOT DEMONSTRATE THE LEGALITY OF THE STOP (FOURTH DEPT).

People v Singleton, 2022 NY Slip Op 01893, Fourth Dept 3-18-22

Practice Point: The police mistakenly thought the man in a motel room (defendant) was a shooting suspect based upon vague and general allegations made by an informant. When he left the motel room, the defendant's taxi was stopped and he was subsequently charged with possession of a controlled substance. The People did not demonstrate the legality of the stop.

VOIR DIRE, JUDGES.

THE JUDGE SHOULD HAVE INQUIRED FURTHER WHEN A PROSPECTIVE JUROR SAID TRAVEL PLANS PROHIBITED HER FROM SERVING BEYOND THE PROJECTED LAST DAY OF THE TRIAL, CONVICTION REVERSED (FIRST DEPT).

People v Bowman, 2022 NY Slip Op 02208, First Dept 3-31-22

Practice Point: Here a prospective juror had firm travel plans and therefore could not serve beyond the projected last day of the trial. The judge should have inquired further when defense counsel suggested she may have difficulty focusing on the trial. The juror may have been biased in favor of a quick verdict. Defense counsel used a peremptory challenge; new trial ordered.

YOUTHFUL OFFENDERS.

SUPREME COURT DID NOT MAKE THE REQUIRED FINDINGS RE: WHETHER DEFENDANT SHOULD BE AFFORDED YOUTHFUL OFFENDER STATUS; MATTER REMITTED (SECOND DEPT).

People v Hunter, 2022 NY Slip Op 01320, Second Dept 3-2-22

Practice Point: Even where an "armed felony" is involved, a sentencing judge must make findings on the record re: whether an eligible youth should be afforded youthful offender status.