

# NEW YORK APPELLATE DIGEST, LLC

An Organized Compilation of Summaries of Selected Decisions, Mostly Reversals, Released by Our New York State Court of Appeals and Posted on the New York Appellate Digest Website in December 2022, Distilled to Practice Points, One or Two Sentences Each. The Entries in the Table of Contents Link to the Summaries Which Link to the Full 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. Copyright 2023 New York Appellate Digest, LLC

Criminal Law  
Reversal Newsletter  
December 2022

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ASSAULT, PEPPER SPRAY BY LAW ENFORCEMENT, JUSTIFICATION DEFENSE.

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[People v Heiserman, 2022 NY Slip Op 07024, CtApp 12-12-22](#)

Practice Point: Jail personnel ordered defendant to take off his shoes. He refused and continued to refuse after he was warned he would be pepper-sprayed. He assaulted the officer five seconds after being sprayed. The Court of Appeals, reversing the appellate division, determined the use of pepper spray was not excessive force and the defendant was not entitled to a jury instruction on the justification defense.

DECEMBER 13, 2022

ASSAULT, SERIOUS OR PROTRACTED DISFIGUREMENT.

THE PROOF THE VICTIM SUFFERED “SERIOUS OR PROTRACTED DISFIGUREMENT” IN THIS ASSAULT FIRST CASE WAS INSUFFICIENT; CONVICTION REDUCED TO ATTEMPTED ASSAULT FIRST (FIRST DEPT).

[People v McBride, 2022 NY Slip Op 07034, First Dept 12-13-22](#)

Practice Point: Here defendant was charged with assault first for causing “serious and protracted disfigurement” to the victim. Although two photos of the scar were introduced in evidence and the treating doctor testified, the victim did not testify. It appears that the jury’s inability to see the victim at the time of trial rendered the proof legally insufficient.

DECEMBER 13, 2022

ATTORNEYS, INEFFECTIVE ASSISTANCE.

DEFENDANT'S COUNSEL WAS INEFFECTIVE FOR FAILING TO FILE A VALID MOTION TO WITHDRAW THE PLEA; THE MOTION WAS MISCHARACTERIZED AS A MOTION TO VACATE THE CONVICTION AND WAS NOT SUPPORTED BY NECESSARY AFFIDAVITS; DEFENDANT'S SENTENCE WAS VACATED (THIRD DEPT).

[People v Williams, 2022 NY Slip Op 07265, Third Dept 12-22-22](#)

Practice Point: Defense counsel was ineffective for failure to file a proper motion to withdraw the plea. The motion was mischaracterized as a motion to vacate the conviction and was not supported by necessary affidavits based upon first-hand knowledge.

DECEMBER 22, 2022

ATTORNEYS, CONFLICT OF INTEREST, FEE PAID BY ANOTHER.

THE EVIDENCE AT THE HEARING ON DEFENDANT'S MOTION TO VACATE HIS CONVICTION DID NOT SUPPORT THE ALLEGATION DEFENDANT'S FRIEND PAID DEFENDANT'S LEGAL FEES CREATING A CONFLICT OF INTEREST FOR DEFENDANT'S ATTORNEY (FIRST DEPT).

[People v Brown, 2022 NY Slip Op 06889, First Dept 12-6-22](#)

Practice Point: Defendant alleged his friend paid his legal fees. Defendant's friend had been represented in another criminal matter by defendant's attorney and was a suspect in the murder of which defendant was convicted. The evidence at the hearing on defendant's motion to vacate his conviction did not support the allegation defendant's friend was the source of the funds paid to defendant's

attorney. Therefore defendant's argument he was deprived of effective assistance because of his attorney's conflict of interest was not supported by the evidence.

DECEMBER 6, 2022

ATTORNEYS, RIGHT TO COUNSEL AT LINEUP.

DEFENSE COUNSEL DID NOT WAIVE HIS CLIENT'S RIGHT TO HAVE HIM ATTEND THE LINEUP IDENTIFICATION BY SENDING HIS PARALEGAL, WHO WAS TURNED AWAY; DEFENSE COUNSEL SHOULD HAVE BEEN TOLD HIS PRESENCE WAS REQUIRED (FIRST DEPT).

[People v Bennett, 2022 NY Slip Op 07007, First Dept 12-8-22](#)

Practice Point; Defense counsel sent his paralegal to attend his client's lineup, but the police sent the paralegal away. The police should have informed counsel his presence was required before going ahead with the lineup. Counsel's failure to attend did not waive his client's right to have his attorney present.

DECEMBER 8, 2022

## CIRCUMSTANTIAL EVIDENCE.

ALTHOUGH THERE WAS DIRECT EVIDENCE DEFENDANT OWNED THE CAMERA WHICH WAS SET UP TO VIEW THE VICTIM'S BEDROOM, THERE WAS NO DIRECT EVIDENCE IT WAS THE DEFENDANT WHO ACTUALLY PLACED THE CAMERA ON THE NEIGHBOR'S PROPERTY; THEREFORE THE CIRCUMSTANTIAL EVIDENCE JURY INSTRUCTION SHOULD HAVE BEEN GIVEN; CONVICTION REVERSED (THIRD DEPT).

[People v Lamb, 2022 NY Slip Op 07267, Third Dept 12-22-22](#)

Practice Point: Even though there was direct evidence of an element of an offense, the circumstantial evidence jury instruction should have been in this case. Defendant was charged with setting up a camera to view the victim in the victim's bedroom. There was direct evidence defendant owned the camera but no direct evidence it was defendant who placed the camera on the neighbor's property.

DECEMBER 22, 2022

## CONCURRENT INCLUSORY COUNTS.

IN REVIEWING THE GRAND JURY MINUTES, COUNTY COURT SHOULD NOT HAVE DISMISSED THE CONCURRENT INCLUSORY COUNTS; RATHER THOSE COUNTS SHOULD BE SENT TO THE JURY IN THE ALTERNATIVE (THIRD DEPT).

[People v Provost, 2022 NY Slip Op 06966, Third Dept 12-8-22](#)

Practice Point: Conclusory concurrent counts should be allowed to go to the jury in the alternative.

DECEMBER 8, 2022

CONTEMPT.

PHONE CALLS TO THE PROTECTED PERSON SUPPORTED CRIMINAL CONTEMPT SECOND DEGREE BUT NOT CRIMINAL CONTEMPT FIRST DEGREE (FOURTH DEPT).

[People v Caldwell, 2022 NY Slip Op 07325, Fourth Dept 12-23-22](#)

Practice Point: Here criminal contempt first degree required proof defendant failed to “stay away” from the protected person. That portion of the order was not violated by defendant’s phone calls to the protected person (which supported convictions for criminal contempt second degree).

DECEMBER 23, 2022

DISCIPLINARY HEARINGS (INMATES), EVIDENCE.

THE RECORD DOES NOT REFLECT THE MEASURES TAKEN BY THE HEARING OFFICER TO DETERMINE THE BODY CAMERA FOOTAGE REQUESTED BY THE PETITIONER DID NOT EXIST; DETERMINATION ANNULLED AND NEW HEARING ORDERED (THIRD DEPT).

[Matter of Dorcinvil v Miller, 2022 NY Slip Op 06972, Third Dept 12-8-22](#)

Practice Point: Here the petitioner-inmate requested body camera footage. The hearing officer denied the request, saying that the body camera had been turned off. Because the record did not reflect the steps taken by the hearing officer to determine the footage didn’t exist, the determination was annulled and a new hearing was ordered.

DECEMBER 8, 2022

FAMILY LAW, NEGLECT, MARIHUANA.

THE AMENDED STATUTE CHANGING THE CRITERIA FOR NEGLECT BASED ON MARIHUANA USE WENT INTO EFFECT TWO DAYS BEFORE THE HEARING AND WAS NOT APPLIED TO THE FACTS; MATTER REMITTED (FOURTH DEPT).

[Matter of Gina R. \(Christina R.\), 2022 NY Slip Op 07321, Fourth Dept 12-23-22](#)

Practice Point: The Family Court Act was amended to prohibit a finding of neglect based solely on marihuana use unless there is a finding the child’s physical, mental or emotional condition was impaired or in danger of being impaired by the marihuana use.

DECEMBER 23, 2022

FAMILY LAW, NEGLECT, MARIJUANA.

THE AMENDMENT TO THE FAMILY COURT ACT WHICH PRECLUDES A FINDING OF NEGLECT BASED SOLELY ON MARIJUANA USE SHOULD BE APPLIED RETROACTIVELY; HOWEVER HERE THERE WAS SUFFICIENT EVIDENCE OF MOTHER’S NEGLECT OF THE CHILD BASED UPON HER “ABUSE” (AS OPPOSED TO “USE”) OF MARIJUANA (SECOND DEPT).

[Matter of Mia S. \(Michelle C.\), 2022 NY Slip Op 06932, Second Dept 12-7-22](#)

Practice Point: The amendment of the Family Court Act to preclude a finding of neglect based solely on use of marijuana should be applied retroactively. But the amendment does not preclude a finding of neglect based on the “abuse,” as opposed to “use,” of marijuana.

DECEMBER 7, 2022

FAMILY LAW, JUVENILE DELINQUENCY.

THE ADMISSION ALLOCUTION IN THIS JUVENILE DELINQUENCY PROCEEDING, WHICH REQUIRES THAT THE JUDGE QUESTION THE JUVENILE AND A PARENT, FELL SHORT OF THE STATUTORY REQUIREMENTS IN THE FAMILY COURT ACT; PETITION DISMISSED (THIRD DEPT).

[Matter of Christian VV. \(Christian VV.\), 2022 NY Slip Op 07275, Third Dept 12-22-22](#)

**Practice Point:** The Family Court Act requires that the admission allocution in a juvenile delinquency proceeding involve both the juvenile and a parent. Here the allocution of respondent and his mother fell short of the statutory requirements and the juvenile delinquent petition was dismissed. Although the respondent had already completed his placement, the issue was not moot because of the possible collateral consequences of the delinquency determination.

DECEMBER 22, 2022

HABEAS CORPUS.

WHEN A DEFENDANT MUST BE RELEASED BECAUSE HE OR SHE IS NOT CHARGED WITH A BAIL-ELIGIBLE OFFENSE, A COMPETENCY EXAMINATION MUST BE CONDUCTED AS AN OUT-PATIENT OR IN A HOSPITAL; THE DEFENDANT CANNOT BE ORDERED TO JAIL PENDING THE EXAMINATION; THE HABEAS CORPUS PETITION WAS PROPERLY GRANTED; THE APPEAL WAS HEARD AS AN EXCEPTION TO THE MOOTNESS DOCTRINE (CT APP).

[People v Warden, Rikers Is., 2022 NY Slip Op 07093, CtApp 12-15-22](#)

**Practice Point:** A defendant who is not charged with a bail-eligible offense cannot be ordered to jail pending a competency examination. The defendant must be

examined as an out-patient or, upon the recommendation of a medical official, in a hospital.

DECEMBER 15, 2022

HARASSMENT.

THE DEFENDANT POLICE OFFICER'S THREATS MADE TO HIS FORMER GIRLFRIEND WERE NOT MERELY ANGRY WORDS; THE EVIDENCE SUPPORTED DEFENDANT'S HARASSMENT CONVICTION (CT APP).

[People v Lagano, 2022 NY Slip Op 07021, CtApp 12-13-22](#)

Practice Point: Here the line between a mere angry outburst and harassment was crossed by defendant police officer's threats to kill his ex-girlfriend and her children.

DECEMBER 13, 2022

PROBABLE CAUSE TO ARREST.

AT THE TIME DEFENDANT RAN AS THE POLICE APPROACHED THERE WAS NO INDICATION THE POLICE WERE GOING TO CITE DEFENDANT FOR TRESPASS OR VIOLATION OF AN OPEN-CONTAINER LAW; DEFENDANT THEREFORE COULD NOT HAVE INTENDED TO OBSTRUCT GOVERNMENTAL ADMINISTRATION BY RUNNING; DEFENDANT'S RUNNING DID NOT PROVIDE PROBABLE CAUSE TO ARREST; THE PEOPLE'S ALTERNATIVE PROBABLE CAUSE ARGUMENT (TRESPASS AND OPEN-CONTAINER VIOLATION), ALTHOUGH PRESENTED TO THE SUPPRESSION COURT, WAS NOT RULED ON AND THEREFORE COULD NOT BE CONSIDERED ON APPEAL (FOURTH DEPT).

[People v Tubbins, 2022 NY Slip Op 07317, Fourth Dept 12-23-22](#)

Practice Point: Here defendant did not know the police were going to cite him for trespass and an open-container violation at the time he ran. Therefore his running was not obstruction of governmental administration and did not provide probable cause for arrest on that ground.

Practice Point: The People's alternative argument that the police had probable cause to arrest for trespass and an open-container violation was presented to the suppression court but was not ruled on. Therefore the appellate court could not consider it.

DECEMBER 23, 2022

## SANDOVAL.

DEFENDANT’S TESTIMONY ABOUT HIS FELONY CONVICTIONS DID NOT OPEN THE DOOR TO A MODIFICATION OF THE COURT’S SANDOVAL RULING TO ALLOW QUESTIONING ABOUT THE FACTS UNDERLYING THE CONVICTIONS; CONVICTION REVERSED (FIRST DEPT).

[People v Henderson, 2022 NY Slip Op 07009, First Dept 12-8-22](#)

Practice Point: The court’s initial Sandoval ruling allowed defendant to be about the number of felony convictions on his record. When the defendant was on the stand, the judge modified the Sandoval ruling to allow questioning about the underlying facts. There was nothing about the defendant’s testimony which justified the Sandoval modification and defendant’s conviction was reversed.

DECEMBER 8, 2022

## SEARCH AND SEIZURE, PLAIN VIEW.

PROBABLE CAUSE FOR SEARCH OF DEFENDANT’S VEHICLE UNDER THE AUTOMOBILE EXCEPTION WAS PROVIDED BY THE ODOR AND OBSERVATION OF MARIJUANA; SEIZURE OF A TRANSPARENT BAG OF PILLS WAS NOT JUSTIFIED BY THE PLAIN VIEW EXCEPTION TO THE WARRANT REQUIREMENT BECAUSE IT WAS NOT IMMEDIATELY APPARENT THE PILLS WERE CONTRABAND AND THERE WAS NO MARIJUANA IN THE BAG (SECOND DEPT).

The Second Department, reversing defendant’s conviction stemming from a transparent plastic bag of pills seized from defendant’s vehicle after a traffic stop.

[People v Rodriguez, 2022 NY Slip Op 07080, Second Dept 12-14-22](#)

Practice Point: The Penal Law statute prohibiting a probable-cause finding based solely on the odor of marijuana is not applied retroactively.

Practice Point: If an object, i.e., a transparent plastic bag of pills, must be manipulated before it can be determined to be contraband, seizure under the plain view exception is not justified. Here the odor and observation of marijuana provided probable cause for the search of the vehicle, and containers within the vehicle, for marijuana. Because the transparent bag of pills did not contain marijuana, the plain view exception did not apply.

DECEMBER 14, 2022

SEIZURE, REASONABLE SUSPICION.

AT THE TIME THE POLICE PARKED THE POLICE CAR BEHIND THE CAR IN WHICH DEFENDANT WAS A PASSENGER SUCH THAT THE DRIVER COULD NOT LEAVE THE AREA, THE POLICE DID NOT HAVE REASONABLE SUSPICION THAT THE OCCUPANTS OF THE CAR HAD COMMITTED A CRIME; DEFENDANT'S MOTION TO SUPPRESS SHOULD HAVE BEEN GRANTED; INDICTMENT DISMISSED (FOURTH DEPT).

[People v Singletary, 2022 NY Slip Op 07392, Fourth Dept 12-23-22](#)

Practice Point: Parking a police car behind a car such that the car cannot leave is a seizure requiring reasonable suspicion a crime has taken place.

DECEMBER 23, 2022

SENTENCING, FOREIGN CONVICTION, PREDICATE FELONY.

THIS WAS NOT A CIRCUMSTANCE WHERE THE ACCUSATORY INSTRUMENTS, AS OPPOSED TO THE LANGUAGE OF THE FLORIDA STATUTE ALONE, CAN BE USED TO DETERMINE WHETHER THE FLORIDA CONVICTION ALLOWED DEFENDANT TO BE SENTENCED AS A SECOND CHILD SEXUAL ASSAULT FELONY OFFENDER; THE FLORIDA STATUTE SHOULD NOT HAVE BEEN DEEMED A PREDICATE FELONY (FOURTH DEPT).

[People v Gozdziaik, 2022 NY Slip Op 07377, Fourth Dept 12-23-22](#)

Practice Point: Here the Florida statute, and not the accusatory instruments in the Florida prosecution, is the only proper basis for the predicate-felony analysis. The Florida statute should not have served as a predicate felony to allow defendant to be sentenced as a second child sexual assault felony offender.

DECEMBER 23, 2022

SENTENCING.

BEFORE SENTENCING DEFENDANT AS A SECOND VIOLENT FELONY OFFENDER, THE COURT DID NOT MAKE A FINDING WHETHER THE TEN-YEAR LOOK-BACK FOR ANY PREDICATE VIOLENT FELONY WAS TOLLED BY A PERIOD OF INCARCERATION; THE ISSUE SURVIVES A WAIVER OF APPEAL AND WAS PROPERLY RAISED FOR THE FIRST TIME ON APPEAL; MATTER REMITTED FOR RESENTENCING (THIRD DEPT).

[People v Faulkner, 2022 NY Slip Op 06957, Third Dept 12-8-22](#)

Practice Point: Before sentencing defendant as a second violent felony offender, the sentencing court did not make a finding whether the ten-year look-back for a predicate violent felony was tolled by a period of incarceration. The issue survives

a waiver of appeal and was properly raised for the first time on appeal. The matter was remitted for resentencing.

DECEMBER 8, 2022

SENTENCING.

THE FELONY WHICH WAS THE BASIS FOR DEFENDANT'S SECOND FELONY OFFENDER STATUS DID NOT MEET THE CRITERIA FOR A PREDICATE FELONY (THIRD DEPT).

[People v Hayes, 2022 NY Slip Op 06965, Third Dept 12-8-22](#)

Practice Point: In order to meet the criteria for a predicate felony re: second felony offender status, the sentence for the prior conviction must have been imposed before the instant felony was committed.

DECEMBER 8, 2022

SENTENCING.

UPON REMITTAL AFTER THE INITIAL PERSISTENT FELONY OFFENSE SENTENCE WAS OVERTURNED, THE SENTENCING COURT PROPERLY RELIED ON ADDITIONAL INFORMATION TO AGAIN SENTENCE DEFENDANT AS A PERSISTENT FELONY OFFENDER (CT APP).

[People v Kaval, 2022 NY Slip Op 07022, CtApp 12-13-22](#)

Practice Point: Here the appellate division overturned defendant's sentence as a persistent felony offender because sufficient tolling of the ten-year lookback due to defendant's incarceration was not demonstrated. The appellate division did not limit its remittal. Therefore, on remittal the sentencing court properly relied upon

additional information about defendant's incarceration which tolled the ten-year lookback and sentenced defendant again as a persistent felony offender.

DECEMBER 13, 2022

SEX OFFENDER REGISTRATION ACT (SORA), FOREIGN FELONY, SEXUALLY VIOLENT OFFENDER STATUS.

IF A DEFENDANT IS CONVICTED OF A FELONY IN A FOREIGN JURISDICTION WHICH REQUIRES THE DEFENDANT TO REGISTER AS A SEX OFFENDER, THE DEFENDANT WILL BE DESIGNATED A SEXUALLY VIOLENT OFFENDER IN NEW YORK EVEN IF THE FOREIGN FELONY DID NOT INVOLVE VIOLENCE (CT APP).

[People v Talluto, 2022 NY Slip Op 07025, CtApp 12-13-22](#)

Practice Point: If a defendant has been convicted of a felony in another state which requires the defendant to register as a sex offender in that state, the defendant will be designated a sexually violent offender in New York, even if the out-of-state conviction did not involve violence.

DECEMBER 13, 2022

SEX OFFENDER REGISTRATION ACT (SORA).

DEFENDANT IN THIS SORA RISK-ASSESSMENT PROCEEDING REQUESTED A DOWNWARD DEPARTURE WHICH WAS NOT ADDRESSED BY COUNTY COURT; THE ORDER WAS REVERSED AND THE MATTER SENT BACK FOR THE RELEVANT FINDINGS OF FACT AND CONCLUSIONS OF LAW (THIRD DEPT).

[People v Howland, 2022 NY Slip Op 06967, Third Dept 12-8-22](#)

Practice Point: In a SORA risk-assessment proceeding, if the defendant requests a downward departure, the court must address the request and make the relevant findings of fact and conclusions of law.

DECEMBER 8, 2022

SPEEDY TRIAL.

UPON REMITTITUR FROM THE COURT OF APPEALS, THE APPELLATE DIVISION AGAIN FOUND THE SEVEN-YEAR PREINDICTMENT DELAY DID NOT DEPRIVE DEFENDANT OF DUE PROCESS OF LAW (FOURTH DEPT).

[People v Johnson, 2022 NY Slip Op 07407, Fourth Dept 12-23-22](#)

Practice Point: The seven-year preindictment delay, applying the Taranovich factors, did not deprive defendant of due process of law.

DECEMBER 23, 2022

SUPERIOR COURT INFORMATION.

THE FELONY COMPLAINT CHARGED DEFENDANT WITH RAPE FIRST (FORCIBLE COMPULSION); THE SUPERIOR COURT INFORMATION (SCI) CHARGED RAPE THIRD (LACK OF CONSENT); BECAUSE RAPE THIRD AS CHARGED IN THE SCI WAS NOT A LESSER INCLUDED OFFENSE OF RAPE FIRST AS CHARGED IN THE FELONY COMPLAINT, THE WAIVER OF INDICTMENT AND SCI WERE JURISDICTIONALLY DEFECTIVE (THIRD DEPT).

[People v Odu, 2022 NY Slip Op 07266, Third Dept 12-22-22](#)

Practice Point: Here the felony complaint charged rape first (forcible compulsion) and the superior court information (SCI) charged rape third (lack of consent). Therefore the offense charged in the SCI was not a lesser included offense of the offense charged in the felony complaint, rendering the waiver of indictment and SCI jurisdictionally defective.

DECEMBER 22, 2022

SUPPRESSION, APPEALS.

SUPPRESSION OF THE WEAPON WAS PROPERLY DENIED, BUT DEFENDANT’S STATEMENT ADMITTING POSSESSION OF THE WEAPON SHOULD HAVE BEEN SUPPRESSED; ALTHOUGH THE HARMLESS ERROR DOCTRINE IS RARELY APPLIED TO UPHOLD A GUILTY PLEA WHERE SUPPRESSION SHOULD HAVE BEEN GRANTED, HERE THE APPELLATE DIVISION DETERMINED THE PLEA WOULD NOT HAVE BEEN AFFECTED BY SUPPRESSION OF THE STATEMENT; THE DISSENT DISAGREED (FOURTH DEPT).

[People v Robles, 2022 NY Slip Op 07336, Fourth Dept 12-23-22](#)

Practice Point: This case is rare exception to the rule that a guilty plea will not stand if a suppression motion should have been granted. Here the appellate division determined suppression of defendant’s statement admitting possession of the weapon would not have affected his decision to plead guilty because the weapon itself had not been suppressed. There was a dissent.

DECEMBER 23, 2022

SUPPRESSION, APPEALS.

THE WAIVER OF APPEAL WAS INVALID; THE SUPPRESSION MOTION SHOULD NOT HAVE BEEN DENIED ON A GROUND NOT RAISED BY THE PEOPLE; AND AN APPELLATE COURT CAN NOT CONSIDER ARGUMENTS ON ISSUES NOT RULED ON BELOW (FIRST DEPT).

[People v Bonilla, 2022 NY Slip Op 07304, First Dept 12-22-22](#)

Practice Point: Here the waiver of appeal was deemed invalid and there was an extensive dissent on that issue. The motion to suppress should not have been denied on a ground not raised by the People. An appellate court cannot consider issues not ruled on below.

DECEMBER 22, 2022

TEMPORARY AND LAWFUL USE OF A WEAPON.

THE DEFENDANT, THINKING THAT THE PERSON TRYING TO BREAK-IN WAS HER ESTRANGED HUSBAND WHO HAD BROKEN IN AND ATTACKED HER BEFORE, FIRED A SINGLE SHOT THROUGH THE METAL DOOR, KILLING THE VICTIM (WHO WAS NOT HER ESTRANGED HUSBAND); BECAUSE HER USE OF THE WEAPON WAS DEEMED DANGEROUS AND RECKLESS, DEFENDANT WAS NOT ENTITLED TO THE TEMPORARY AND LAWFUL USE OF A WEAPON JURY INSTRUCTION (CT APP).

[People v Ruiz, 2022 NY Slip Op 07092, CtApp 12-15-22](#)

Practice Point: Use of a weapon which is deemed dangerous and reckless, here shooting through a metal door, precludes instructing the jury on the temporary and lawful use of a weapon.

DECEMBER 15, 2022

TRAFFIC STOPS.

THE MAJORITY CONCLUDED THE TRAFFIC STOP, THE 40-MINUTE DETENTION, THE CALLING OF DEFENDANT’S PAROLE OFFICER, AND THE SEARCH OF DEFENDANT’S CAR BY THE PAROLE OFFICER, WERE VALID; TWO DISSENTERS ARGUED THE JUSTIFICATION FOR FURTHER DETENTION AROSE ONLY AFTER THE JUSTIFICATION FOR THE LIMITED DETENTION BASED ON THE TRAFFIC STOP HAD DISSIPATED (THIRD DEPT).

[People v Thomas, 2022 NY Slip Op 07263, Third Dept 12-22-22](#)

Practice Point: Here the majority concluded the traffic stop, the 40-minute detention, calling the defendant’s parole officer, and the search of the car by the parole officer, were valid. Two dissenters argued only the limited initial detention related to the traffic stop for rolling through a stop sign was justified.

DECEMBER 22, 2022

VEHICLE AND TRAFFIC LAW, SPEEDING, VISUAL ESTIMATE OF SPEED.

THE PEOPLE DID NOT DEMONSTRATE THE POLICE OFFICER HAD SUFFICIENT TRAINING AND EXPERIENCE TO VISUALLY ESTIMATE THE SPEED OF DEFENDANT’S CAR; SUPPRESSION SHOULD HAVE BEEN GRANTED IN THIS SPEEDING CASE (FOURTH DEPT).

[People v Reedy, 2022 NY Slip Op 07397, Fourth Dept 12-23-22](#)

Practice Point: Although a police officer’s visual estimate of a vehicle’s speed may be sufficient to support a speeding conviction, the People must show the officer had sufficient training and experience to make the speed-estimate, which was lacking in this case.

DECEMBER 23, 2022