Indigent Legal Services

Decisions of Interest

DECEMBER 26, 2024

CRIMINAL

COURT OF APPEALS

People v Mero | December 19, 2024 (Halligan, J.)

MOTION TO SEVER SEPARATE OFFENSES | BUSINESS RELATIONSHIP CONFLICT | AFFIRMED | DISSENTS

Appellant appealed from a Third Department order affirming his conviction for two counts of second-degree murder and two counts of tampering with physical evidence. The Court of Appeals affirmed. The Court held that the trial court did not err in denying appellant's motion to sever two murder charges that occurred about two years apart. Where appellant conceded that initial joinder of the charges was permissible under CPL § 200.20 (2)(c), it was not an abuse of discretion not to sever for good cause where appellant failed to demonstrate "a substantial likelihood" that the jury would be unable to separately consider the proof as to each offense. The Court also held that while the business relationship between defense counsel and a prosecutor, who had been paid by counsel to write briefs for her clients over a four-year period, created a potential conflict of interest, it did not operate on the defense. Chief Judge Wilson, in dissent, would have reversed and remitted for two separate trials and held that good cause to sever exists as a matter of law where, applying *Molineux* jurisprudence, there is no non-propensity purpose for which evidence of one offense could be admitted at the trial of the other and where the risk of prejudice outweighs the probative value of joinder. In a separate dissent, Judge Rivera would have held that trial courts abuse their discretion in denying severance where joinder "carrie[s] significant risks" that the jury will determine guilt based on an accused's perceived criminal disposition, and the evidence of guilt from one offense will "spill over and bolster the evidence of the other."

People v Mero (2024 NY Slip Op 06385)

Oral Argument

People v Rufus | December 19, 2024 (Rivera, J.)

VEHICLE STOP | PROBABLE CAUSE | AFFIRMED

Appellant appealed from a Fourth Department order affirming his DWI conviction following a non-jury trial. The Court of Appeals affirmed. The trial court properly denied appellant's motion to suppress where the vehicular stop was supported by probable cause that appellant had committed a traffic violation. The officers observed appellant's vehicle cross the fog line three times within a tenth of a mile, violating VTL § 1128 (a). The Court also concluded that appellant's legal insufficiency claim was without merit.

People v Rufus (2024 NY Slip Op 06384)

Oral Argument

APPELLATE DIVISION FIRST DEPARTMENT

People v Thomas | December 19, 2024

PROBATION CONDITIONS | NOT REASONABLY RELATED TO REHABILITATION|STRICKEN

Appellant appealed from a Bronx County Supreme Court judgment convicting him of third-degree assault and sentencing him to 2 years' probation. Appellant's challenge to his conditions of probation survived his valid appeal waiver. The Department of Probation's recommendation that, as a condition of his plea, appellant consent to warrantless searches for drugs and weapons was not reasonably related to rehabilitation. Appellant's conviction did not involve the use of a weapon and was not connected to the sale or use of drugs. Accordingly, the judgment was modified to strike the condition. Center for Appellate Litigation (Abigail Everett, of counsel) represented Thomas.

People v Thomas (2024 NY Slip Op 06427)

Oral Argument (starts at 00:06:42)

APPELLATE DIVISION, SECOND DEPARTMENT

People v Ford | December 18, 2024

MULTIPLICITOUS COUNTS | COUNTS DISMISSED | MODIFIED

Appellant appealed from a Richmond County Supreme Court judgment convicting him of 13 counts of third-degree CSCS, after a jury trial. The Second Department modified in the interest of justice by vacating three multiplicitous counts in the indictment where the jury charges on those counts were "essentially identical" to the charges on three other counts, and, as modified, affirmed. While the dismissal of these counts will not affect the duration of the sentence, it is appropriate due to the stigma attached to redundant convictions. Appellate Advocates (Yvonne Shivers, of counsel) represented Ford.

People v Ford (2024 NY Slip Op 06358)

Oral Argument

People v Ford | December 18, 2024

EXCESSIVE SENTENCE | CONSECUTIVE TO CONCURRENT WITH PRIOR CONVICTION | MODIFIED

Appellant appealed from a Richmond County Supreme Court judgment convicting him of third-degree CPCS, fourth-degree CPCS, and third-degree aggravated unlicensed operation of a motor vehicle, after a non-jury trial. He was sentenced to an aggregate term of 10 years' imprisonment and three years' PRS, running consecutively with the sentence imposed on his prior conviction under a separate indictment. The Second Department affirmed the conviction but found that the sentence—an aggregate term of over 50 years' imprisonment—was excessive and modified in the interest of justice by running the sentence concurrently with the sentence on his prior conviction. Appellate Advocates (Yvonne Shivers, of counsel) represented Ford.

People v Ford (2024 NY Slip Op 06359)

Oral Argument (starts at 00:11:01)

People v Morel | December 18, 2024

SURCHARGES & FEES | MODIFIED

Appellant appealed from two Kings County Supreme Court judgments convicting him of first-degree attempted assault and first-degree criminal contempt, following his guilty pleas. With the prosecution'sconsent, the Second Department vacated the imposition of mandatory surcharges and fees in the interest of justice. CPL § 420.35 (2-a) permits the waiver of surcharges and fees for individuals under 21 years old at the time of offense. Appellate Advocates (Sarah B. Cohen, of counsel) represented Morel.

People v Morel (2024 NY Slip Op 06361)

APPELLATE DIVISION, THIRD DEPARTMENT

People v Meyers | December 19, 2024

PROSECUTORIAL MISCONDUCT AT SUMMATION | HARMLESS ERROR | AFFIRMED

Appellant appealed a Chemung County Court order convicting him of second-degree assault and sentencing him, as a second violent felony offender, to six years' imprisonment and five years' PRS. The Third Department found that statements made by the prosecutor suggesting appellant had a propensity for violence—including his admission to instigating the fight and testimony about other similar fighting—were improper. Nevertheless, the court did not find the remarks to have deprived appellant of a fair trial, particularly since the court repeatedly instructed the jurors that summations are not evidence.

People v Meyers (2024 NY Slip Op 06388)

APPELLATE DIVISION, FOURTH DEPARTMENT

People v Swank | December 20, 2024

WARRANTLESS ENTRY | SUPPRESSION | REVERSED

Appellant appealed from an Oswego County Court judgment convicting him, after a plea, of third-degree CPCS. The Fourth Department reversed, granted appellant's suppression motion, and vacated the plea. The warrantless search of appellant's home was invalid, requiring suppression of the guns seized as a result. Police responded to appellant's home after receiving information that he may have fired a shotgun into the air at another location. After a brief stand-off with police, appellant and his wife and daughter all left the home, and there was no indication that anyone else was inside. Police then performed a protective sweep of the inside of the home, during which they observed the barrels of two long guns in a bedroom. While these warrantless sweeps are permissible under certain circumstances, here there was no reasonable belief that a person was inside who posed a danger to officers, could destroy evidence, or needed assistance. Keem Appeals, PLLC (Brad Keem, of counsel) represented Swank.

People v Swank (2024 NY Slip Op 06449)
Oral Argument (starts at 02:09:03)

People v Delee | December 20, 2024

PROSECUTION APPEAL | UNDISCHARGED WEAPON AS DANGEROUS INSTRUMENT | REVERSED

The prosecution appealed from an Onondaga County Court judgment granting Delee's motion to reduce a count of the indictment from first-degree to second-degree burglary. The Fourth Department reversed and reinstated the first-degree burglary count. The trial court erred in ruling that the gun used in the burglary was not a dangerous instrument because it was not fired during the incident, nor was it recovered or tested to see if it could do so. A gun used as a bludgeon, as it was here, met the definition of a dangerous instrument, thus supporting a first-degree burglary charge.
People v Delee (2024 NY Slip Op 06491)

People v Dixon | December 20, 2024

PROSECUTION APPEAL | 440.10 VACATUR | *LAFONTAINE* ISSUE | REVERSED

The prosecution appealed from an Erie County Court judgment granting Dixon's 440.10 motion to vacate his conviction for CPW 2. The Fourth Department reversed, denied the motion, and reinstated the conviction. Dixon, who had been convicted in 1992 of a number of charges including murder and CPW 2, had filed a 440.10 motion seeking to vacate the CPW 2 conviction based on newly discovered evidence. The trial court had granted an earlier 440.10 motion to vacate the other charges, based on another person's confession that he had done the shooting with a gun provided by Dixon The prosecution opposed the second 440.10 motion, arguing that the evidence was not newly discovered because appellant knew about the other person's involvement at the time of the crime. The Fourth Department rejected that argument because the shooter refused to testify after the prosecution threatened him with perjury. However, substituting its own discretion for that of the motion court, the Fourth Department found the newly discovered evidence would not have changed the outcome of the trial. Appellant's own evidence established that he possessed the gun based on a theory of accessorial liability for the weapon rather than as the principal actor--the theory that was presented at trial. The Fourth Department therefore reversed, concluding that the new evidence would not change the CPW 2 verdict. It could not affirm based on the argument that the change in theory was an impermissible amendment to the indictment, because that issue was not decided adversely to the appellant below (*People v LaFontaine*, 92 NY2d 470, 474 [1998]).
People v Dixon (2024 NY Slip Op 06473)
Oral Argument

People v Dondorfer | December 20, 2024

PROSECUTION APPEAL | DRIVING WHILE ABILITY IMPAIRED BY DRUGS | REVERSED

The prosecution appealed from a Wyoming County Court judgment granting Dondorfer's motion to dismiss for failure to properly instruct the grand jury on the definition of the term "impaired" as relevant to a felony DWI conviction. The Fourth Department reversed and reinstated the relevant count of the indictment. The Fourth Department defined impairment by drugs—a definition not specifically set forth in the VTL—as limiting a person's ability to operate a motor vehicle "to any extent." In doing so, the court explicitly rejected the Third Department's reasoning in *People v Caden N.*, which adopted the higher "intoxication" standard for alcohol to define impairment by drugs, rather than the lower "impairment" standard for alcohol in the VTL.
People v Dondorfer (2024 NY Slip Op 06432)
Oral Argument

§TRIAL COURTS

People v Abdullaev | 2024 WL 5114540

SPEEDY TRIAL| FAILURE TO DISCLOSE POLICE MISCONDUCT RECORDS|DISMISSED

Abdullaev was charged in Kings County Criminal Court with operating a motor vehicle under the influence of alcohol or drugs. He moved to dismiss the accusatory instrument on speedy trial grounds, arguing that the prosecution's COC was invalid because it failed to disclose disciplinary records of police witnesses. The prosecution argued that it had complied with its discovery obligations by providing summaries of these records for each officer. County Court ruled such summaries insufficient to satisfy the prosecution's obligation. The prosecution sought to rely on the Appellate Division Fourth Department's ruling in *People v. Johnson*, 218 A.D.3d 1347 (4th Dept. 2023), but County Court ruled it was bound by the Appellate Term, Second Department's ruling in *People v. Hamizane*, holding that the prosecution had to disclose copies of police witnesses' disciplinary records. County Court also ruled the prosecution had failed to disclose BWC audit trails. The COC was invalid and the speedy trial motion granted. The Legal Aid Society NYC (Alexis Makrides, of counsel) represented Abdullaev.

People v Abdullaev (2024 NY Slip Op 51690(U))

People v Pena-Hernandez | 2024 WL 5151190

DISCOVERY | FAILURE TO DISCLOSE PHOTOS | ADVERSE INFERENCE WARRANTED

Pena-Hernandez was charged in Bronx County Criminal Court with operating a motor vehicle while intoxicated and related charges. He moved to dismiss the accusatory instrument on speedy trial grounds arguing that the prosecution's COC was invalid because arrest photographs and those taken at the scene had not been disclosed. The court precluded the prosecution from offering the pictures into evidence and ruled that the defense would be entitled at trial to an adverse inference charge relating to the failure to produce them. But County Court refused to dismiss the accusatory instrument, finding that the COC had been filed in good faith. Bronx Defenders (Molly Harwood, of counsel) represented Pena-Hernandez.

People v Pena-Hernandez (2024 NY Slip Op 51712(U))

FAMILY

APPELLATE DIVISION, FIRST DEPARTMENT

Matter of W.P. | December 19, 2024

JUVENILE DELINQUENCY | NO REASONABLE SUSPICION | REVERSED

Appellant appealed from a Bronx County Family Court order adjudicating him a juvenile delinquent upon admission that he committed acts that, if committed by an adult, would constitute CPW 2 and placed him on probation for 12 months. The First Department reversed, granted appellant's suppression motion, and dismissed the petition. Police—who were in the area in response to a Shotspotter sensor report of shots fired—did not have reasonable suspicion to stop appellant after observing him riding a bicycle on the sidewalk. Police saw him look in the direction of an unmarked police vehicle, duck,

backpedal, and ride in the opposite direction. In response, an officer ordered him to stop, grabbed him by both wrists, and pushed him against a wall. Another officer then observed a bulge in his pocket, which he squeezed and removed. Appellant's detention was unlawful because his "equivocal or innocuous behavior" was "susceptible of an innocent as well as culpable determination." Because the weapon would not have been recovered without the illegal stop, the court dismissed the petition. The Legal Aid Society NYC (John A. Newbery, of counsel) represented W.P.
Matter of W.P. (2024 NY Slip Op 06426)

APPELLATE DIVISION, THIRD DEPARTMENT

Matter of Joseph E. v Crystal G. | December 19, 2024
CUSTODY | MODIFICATION NOT SUPPORTED BY RECORD |MODIFIED
Appellant appealed from an Ulster County Family Court order modifying a prior order of custody and visitation. The Third Department modified and otherwise affirmed. The underlying order included a provision requiring each parent to secure the consent of the other before enrolling the child in extracurricular activities, which the order indicated was on consent. The Third Department found that this consent was not contained anywhere in the record, and Family Court's determination was thus unsupported by a sound and substantial basis. The Third Department also used its authority to search the record and make an independent determination that the modification would not be in the child's best interests, since the parties' animosity toward one another would make mutual consent unlikely. Michelle I. Rosien represented the father.
Matter of Joseph E. v Crystal G. (2024 NY Slip Op 06395)

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