

Decisions of Interest

JULY 17, 2024

CRIMINAL

SECOND DEPARTMENT

People v McKinney | July 10, 2024

GUILTY PLEA | CONCURRENT SENTENCES REQUIRED

The appellant appealed from a Kings County Supreme Court judgment convicting him of attempted 2nd degree assault and attempted 3rd degree CPW based on his guilty plea. The Second Department modified by running the sentences concurrently and vacating the surcharges and fees and otherwise affirmed. There were no facts adduced at the plea to establish that the appellant attempted to possess a loaded firearm before forming the intent to commit a crime with it. The Legal Aid Society of NYC (Danielle Bernstein, of counsel) represented the appellant.

[People v McKinney \(2024 NY Slip Op 03766\)](#)

THIRD DEPARTMENT

People v Tenace | July 11, 2024

ANONYMOUS JURY | NO JUSTIFICATION | REVERSED & REMITTED

The appellant appealed from a Saratoga County Court judgment convicting him of 1st degree assault, 2nd degree assault (two counts), and criminal obstruction of breathing or blood circulation. The Third Department reversed and remitted for a new trial. The court empaneled an anonymous jury without any factual support for employing this “extraordinary procedure.” Although unpreserved, the appellate court invoked its interest of justice jurisdiction to reach the issue. Harmless error analysis did not apply. Danielle Neroni Reilly represented the appellant.

[Oral Argument](#)

[People v Tenace \(2024 NY Slip Op 03784\)](#)

People v Brabant | July 11, 2024

PLEA VIOLATION | HEARING REQUIRED

The appellant appealed from a St. Lawrence County Court judgment convicting him of aggravated family offense (three counts) based on his guilty pleas. The Third Department vacated the sentence imposed on the third count and remitted. The appellant initially pled guilty to two counts of aggravated family offense. He then pled guilty to a third count based on the court’s promise to release him to probation supervision pending sentencing. If he was compliant, he could withdraw his plea; otherwise, he would be sentenced to a

third consecutive term of 2-4 years. He was later returned on a bench warrant and the court imposed an aggregate 6-12 years based on a notarized letter from the complainant's mother reporting that the appellant had injured the complainant, with whom he had been living. A hearing was required to determine whether the appellant violated the terms of his plea and to allow him to cross-examine the mother. The Rural Law Center (Lora J. Tryon, of counsel) represented the appellant.

[People v Brabant \(2024 NY Slip Op 03780\)](#)

TRIAL COURTS

People v Terry | 2024 WL 3382356

BUCCAL SWAB | NOT RELEVANT EVIDENCE | PEOPLE'S MOTION DENIED

The People moved to compel Mr. Terry to provide a buccal swab for DNA comparison with a sample collected from a gun used in a shooting. Kings County Supreme Court denied the motion. Surveillance video showed that Mr. Terry physically assaulted an unknown individual and another man fired shots at that individual. The People failed to show that a buccal swab would provide relevant material evidence linking Terry to the recovered gun. There was no evidence that Terry came into physical contact with the gun, and the other man was the only person alleged to have used it during the charged offenses. Brooklyn Defender Services (Julie Nicole Krumwiede, of counsel) represented Mr. Terry.

[People v Terry \(2024 NY Slip Op 50878\[U\]\)](#)

People v Samuel-Kennedy | 2024 WL 3321828

BUCCAL SWAB | NO PROBABLE CAUSE | PEOPLE'S MOTION DENIED

The People moved to compel Mr. Samuel-Kennedy to provide a buccal swab for DNA testing relating to a weapon possession charge. Kings County Criminal Court denied the motion. The allegation that Samuel-Kennedy was present in an apartment where a pistol was found hidden inside a mattress did not establish probable cause. There was no evidence that the pistol was ever observed in plain view or evincing his dominion or control of it. It could not be inferred that he had hidden the pistol or that he knew or could have known that it was inside the mattress. The Legal Aid Society of NYC (Max Baumbach, of counsel) represented Mr. Samuel-Kennedy.

[People v Samuel-Kennedy \(2024 NY Slip Op 50845\[U\]\)](#)

People v Suazo | 2024 WL 3352829

CONSOLIDATION | PEOPLE'S MOTION DENIED

The People moved to consolidate two misdemeanor dockets, each charging Mr. Suazo with forcible touching, 3rd degree sexual abuse, and 2nd degree harassment. Kings County Criminal Court denied the motion. Both dockets involved allegations that Suazo had engaged in sexually inappropriate touching while working as a massage therapist. While joinder was permissible because the charges in both cases were identical (see CPL 200.20 [c]), consolidation would not serve the interests of justice and there was good cause to order separate trials. The allegations and surrounding testimony would be easily distinguishable—the allegations involved different complainants and witnesses, occurred over a year apart, and were investigated by different officers. But there was an

unacceptable risk that the jury would convict based on two different complainants having made similar allegations. Farber Schneider Ferrari LLP (Sarena T. Townsend, of counsel) represented Mr. Suazo.

[People v Suazo \(2024 NY Slip Op 50862\[U\]\)](#)

FAMILY

FIRST DEPARTMENT

Matter of AL.C. | July 11, 2024

PERMANENCY PLAN | FORMER FOSTER PARENT VISITATION

ACS appealed from a Bronx County Family Court order denying its application to discontinue supervised visits between the children and their former foster parent. The First Department modified by specifying that the foster parent's partner may not be present during the visits and otherwise affirmed, with one justice dissenting in part. The appellate court had jurisdiction over the appeal because an appeal from a nonfinal order may be taken as of right in cases involving abuse or neglect. Family Court properly ordered the visitation as part of a permanency plan, both in response to the children's request and to advance their well-being—the foster parent had cared for them for six years and the visits had a positive and stabilizing effect on them. In the dissent's view, the former foster parent—a legal stranger—lacked standing to be awarded visitation.

[Oral Argument \(starts at 33:06\)](#)

[Matter of AL.C. \(2024 NY Slip Op 03799\)](#)

SECOND DEPARTMENT

Matter of Meehan v Kittle | July 10, 2024

DEFAULT CUSTODY ORDER | MOTION TO VACATE | REVERSED

The father appealed from a Rockland County Family Court order summarily denying his motion to vacate a default custody order. The Second Department reversed and remanded for a hearing before a different judge. After the father's disruptive outburst, Family Court directed him to leave the courtroom, concluded that he had defaulted, and summarily awarded sole custody to the mother. It was error to deny the father's motion to vacate the default order; the law favors resolution on the merits in child custody proceedings. Further, regardless of the father's default, Family Court was required to make a best interest determination after a full and comprehensive hearing. “[G]iven the nature and tenor of certain statements made by [Family Court] on the record,” remittal to a different judge was appropriate. Ilene K. Graff represented the father.

[Matter of Meehan v Kittle \(2024 NY Slip Op 03754\)](#)

Matter of Izzo v Salzarulo | July 10, 2024

CONSENT ORDER | MOTION TO VACATE | HEARING REQUIRED

The mother appealed from a Richmond County Family Court order summarily denying her motion to vacate a custody order purportedly entered on her consent. The Second Department reversed and remitted for a hearing. Although the parties stated on the record

that they had reached a settlement during the custody proceedings, the terms of the settlement were never placed on the record, nor did the parents sign a stipulation. Given the mother's later assertion that she never consented to the terms set forth in the custody order, and without a record of those terms, a hearing was required to determine if there was mutual assent. Francine Scotto represented the mother.

[Oral Argument \(starts at 21:10\)](#)

[Matter of Izzo v Salzarulo \(2024 NY Slip Op 03751\)](#)

Matter of Akaberi v Cruciani | July 10, 2024

CUSTODY | HEARING REQUIRED | REVERSED

The father appealed from a Suffolk County Family Court order denying his motion to vacate an order summarily awarding sole custody to the mother and providing no parental access to the father. The Second Department reversed and remitted for a hearing. Family Court rendered its custody determination without a hearing after the father was excluded from the courtroom for refusing to vouch recording devices that he brought to court in violation of court order. Family Court erred in rendering a custody determination without a hearing; it failed to consider admissible evidence and instead relied on the hearsay statements of counsel. Remittal was required for a hearing and for specific facts and best interests findings to be placed on the record. Arza Feldman represented the father.

[Matter of Akaberi v Cruciani \(2024 NY Slip Op 03745\)](#)

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