

## CRIMINAL

### FIRST DEPARTMENT

***People v Clarke***, 11/10/20 – BURGLAR’S TOOL / NOT

The defendant appealed from a NY County Supreme Court judgment, convicting him of 3<sup>rd</sup> degree robbery, 4<sup>th</sup> degree larceny, and possession of burglar’s tools. The First Department vacated the burglar’s tools conviction as against the weight of evidence, finding that the proof did not warrant the conclusion that the “object at issue” met the statutory definition. The Office of the Appellate Defender (Rosemary Herbert, of counsel) represented the appellant. *[NOTE: Counsel advises that the “object at issue” was a metal disc, recovered from the co-defendant’s purse, and that by the time of trial, police had lost the object, which had not been tested to determine if it was magnetic and capable of removing store security sensors.]*

[http://nycourts.gov/reporter/3dseries/2020/2020\\_06401.htm](http://nycourts.gov/reporter/3dseries/2020/2020_06401.htm)

***People v Lamb***, 11/10/20 – TRAFFICKING / TERRITORIAL JURISDICTION

The defendant appealed from a judgment of NY County Supreme Court, convicting him of sex trafficking and 3<sup>rd</sup> degree promoting prostitution. The First Department vacated the supplemental sex offender fee, because sex trafficking was not an enumerated offense for the purpose of such fee. The appellate court otherwise affirmed. The People proved beyond a reasonable doubt that NY had territorial jurisdiction over the sex trafficking counts, because the defendant’s conduct in this State was sufficient to establish an element of the crime. *See* CPL 20.20 (1) (a). During the relevant period, threatening conduct against a particular person occurred in NJ, but the defendant advanced prostitution in NY by advertising services online. The statute did not require that a defendant advance, or profit from, prostitution of a specific victim who was threatened. The Center for Appellate Litigation (Carl Kaplan, of counsel) represented the appellant.

[http://nycourts.gov/reporter/3dseries/2020/2020\\_06405.htm](http://nycourts.gov/reporter/3dseries/2020/2020_06405.htm)

### SECOND DEPARTMENT

***DECISION OF THE WEEK***

***People v Romualdo***, 11/12/20 – MURDER / INSUFFICIENT PROOF

The defendant appealed from a judgment of Suffolk County Supreme Court, convicting him of 2<sup>nd</sup> degree murder. The Second Department reversed and dismissed the indictment. At trial, the People presented no evidence placing the defendant at or near the crime scene or linking him to the victim during the time frame when the murder was believed to have occurred. DNA evidence established at most that the defendant had sex with the victim at some unspecified time and place. Such proof was legally insufficient to establish that the defendant intentionally caused the victim’s death. The motion for a trial order of dismissal should have been granted. One judge dissented. Suffolk County Legal Aid Society (Felice Milani, of counsel) represented the appellant.

[http://nycourts.gov/reporter/3dseries/2020/2020\\_06559.htm](http://nycourts.gov/reporter/3dseries/2020/2020_06559.htm)

***People v Mahon*, 11/12/20 – LESSER INCLUDED / DISMISSED**

The defendant appealed a judgment of Kings County Supreme Court, convicting him of 2<sup>nd</sup> degree murder and other crimes. The Second Department modified. Several convictions were dismissed as lesser included concurrent counts of higher offenses: 2<sup>nd</sup> degree assault / 1<sup>st</sup> degree assault; 2<sup>nd</sup> degree burglary / 1<sup>st</sup> degree burglary; and criminal possession of a firearm / 2<sup>nd</sup> degree CPW. The appellate court also held that the resentence imposed for CPW 2 had to run concurrently with the resentence for attempted 2<sup>nd</sup> degree murder and 1<sup>st</sup> degree assault, which related to the same complainant. Appellate Advocates (Yvonne Shivers, of counsel) represented the appellant.

[http://nycourts.gov/reporter/3dseries/2020/2020\\_06550.htm](http://nycourts.gov/reporter/3dseries/2020/2020_06550.htm)

***People v Bell*, 11/12/20 – SECOND VIOLENT FELONY / CLASS A**

The defendant appealed from a judgment of Kings County Supreme Court, sentencing him on convictions of predatory sexual assault. The Second Department modified. Supreme Court was not authorized to adjudicate the defendant a second violent felony offender (SVFO), because the instant conviction was for a class A felony. However, the error could not have affected the sentence imposed: the sentencing parameters for a SVFO did not set forth proper sentences for a class A felony, which was a more serious felony than those for which proper sentences were specified. Jay Schwitzman represented the appellant.

[http://nycourts.gov/reporter/3dseries/2020/2020\\_06540.htm](http://nycourts.gov/reporter/3dseries/2020/2020_06540.htm)

***People v Colon*, 11/12/20 – SENTENCE REDUCED / FAMILY TIES**

The defendant appealed from a judgment of Suffolk County Court, convicting him of 1<sup>st</sup> degree burglary and endangering the welfare of a minor. The Second Department reduced the sentence for burglary from 23 to 20 years, plus post-release supervision, in light of the fact that the defendant had three children and a limited criminal history; he did not use a weapon or threaten anyone during the crime, and no one was injured; and he expressed remorse for his role. The appellate court otherwise affirmed, but agreed that the prosecutor was obligated to correct a victim's initial false or mistaken testimony that he observed two individuals with knives outside his house before the perpetrators entered the home. However, on cross, the witness acknowledged that he saw only one person with a knife. The error was harmless. Richard Herzfeld represented the appellant.

[http://nycourts.gov/reporter/3dseries/2020/2020\\_06557.htm](http://nycourts.gov/reporter/3dseries/2020/2020_06557.htm)

## **THIRD DEPARTMENT**

***People v Mooney*, 11/12/20 – VTL FINES / ILLEGAL**

The defendant appealed from a judgment of Clinton County Court, convicting him, upon his plea of guilty, of DWI, 1<sup>st</sup> degree AUO of a motor vehicle, and other offenses. The Third Department modified. The fines of \$500 and \$200 imposed, respectively, for circumvention of an ignition interlock device and driving without headlights, exceeded the maximums set forth in VTL § 1801 (1) and had to be reduced to \$300 and \$150. Lisa Burgess represented the appellant.

[http://nycourts.gov/reporter/3dseries/2020/2020\\_06417.htm](http://nycourts.gov/reporter/3dseries/2020/2020_06417.htm)

***People v Romanelli*, 11/12/20 – PROBATION / CONDITIONS REASONABLE**

The defendant appealed from a judgment of Cortland County Court, convicting him of endangering the welfare of a minor, upon his plea of guilty. The defendant objected to certain conditions of probation. The Third Department affirmed. Nothing in Penal Law § 65.10 limited application of the conditions in subdivision (4-a) to probationers who qualified as sex offenders. The defendant acknowledged that the victim—the daughter of a former girlfriend—sometimes slept in his bed and he had seen her naked. The conditions imposed were reasonably related to his probation and reasonably necessary to ensure that he led a law-abiding life.

[http://nycourts.gov/reporter/3dseries/2020/2020\\_06414.htm](http://nycourts.gov/reporter/3dseries/2020/2020_06414.htm)

## CRIMINAL COURT

***People v Davis*, 2020 NY Slip Op 20298 – 50-A REPEAL / DISCIPLINARY RECORDS**

Following the repeal of Civil Rights Law § 50-a, the defendant filed the instant motion asking Bronx County Criminal Court to reconsider an earlier decision, while held that the People had no obligation to turn over their police witness’s disciplinary records from an internal investigation. The court granted renewal, but adhered to its ruling. The *Brady* obligation of the People extended to information favorable to the defense, material either to guilt or punishment, or affecting the credibility of prosecution witnesses. The People were not required to produce documents related to claims of misconduct in which the officer was exonerated. Further, the defendant had no good-faith basis for cross-examination about those claims. As to a partially substantiated complaint, the Court again determined that the prosecutor had complied with her duties. *See People v Suprenant*, 2020 NY Slip Op 20227 (People met *Brady* and discovery obligations by providing information about disciplinary actions and method to obtain documents directly from police).

[http://nycourts.gov/reporter/3dseries/2020/2020\\_20298.htm](http://nycourts.gov/reporter/3dseries/2020/2020_20298.htm)

## SECOND CIRCUIT

***Frost v NYPD*, 11/12/20 – DUE PROCESS CLAIM / REVIVED**

The plaintiff, who was charged with murder and detained at Rikers for more than three years until a jury acquitted him, filed a 42 USC § 1983 action in District Court–SDNY. He appealed from an order granting summary judgment, dismissing his various claims. The Second Circuit reversed in part. The motion court erred in dismissing the due process claim, which was based on the assertion that detectives coerced a named person into identifying the defendant as the shooter, and such false information was used to detain and prosecute him. The statement of the subject witness should not have been discredited as a matter of law; it raised a genuine dispute of material fact. The lower court also erred in dismissing claims arising out of two incidents of purported excessive force by correction officers. In addition, the merits of the plaintiff’s municipal liability claims needed to be addressed. One judge dissented in part. Jonathan Edelstein represented the appellant.

[https://www.ca2.uscourts.gov/decisions/isysquery/06ad4b88-f46b-48f5-becf-b8f17151749d/1/doc/19-1163\\_complete\\_opn.pdf#xml=https://www.ca2.uscourts.gov/decisions/isysquery/06ad4b88-f46b-48f5-becf-b8f17151749d/1/hilite/](https://www.ca2.uscourts.gov/decisions/isysquery/06ad4b88-f46b-48f5-becf-b8f17151749d/1/doc/19-1163_complete_opn.pdf#xml=https://www.ca2.uscourts.gov/decisions/isysquery/06ad4b88-f46b-48f5-becf-b8f17151749d/1/hilite/)

***USA v Scott*, 11/5/20 – CORRECTION OFFICERS / CONVICTIONS UPHELD**

The defendant correction officers appealed their District Court–SDNY convictions of conspiracy to deprive a person of civil rights and to falsify records and other crimes. The charges arose from the severe beating of an inmate at Downstate Correctional Facility and the cover-up of the assault. The Second Circuit affirmed. The defendants argued that the assault occurred spontaneously, without an agreement. The appellate court disagreed. The defendants entered into a tacit agreement to violate the inmate’s civil rights; after the initial punch, other officers joined the fray. [https://www.ca2.uscourts.gov/decisions/isysquery/7594c521-a1ad-46c6-a124-1787f8014478/6/doc/18-2836\\_opn.pdf#xml=https://www.ca2.uscourts.gov/decisions/isysquery/7594c521-a1ad-46c6-a124-1787f8014478/6/hilite/](https://www.ca2.uscourts.gov/decisions/isysquery/7594c521-a1ad-46c6-a124-1787f8014478/6/doc/18-2836_opn.pdf#xml=https://www.ca2.uscourts.gov/decisions/isysquery/7594c521-a1ad-46c6-a124-1787f8014478/6/hilite/)

**FAMILY**

**FIRST DEPARTMENT**

***M/O Itzel A. (Jose V.)*, 11/12/20 – SEXUAL ABUSE / DERIVATIVE ABUSE**

The respondent appealed from a Bronx County Family Court order, which found that he sexually abused Itzel A. and derivatively abused other children. The First Department modified, vacating the finding of derivative abuse as to the respondent’s daughter Madelin A. Such finding was based on the sexual abuse of Itzel, which occurred three years before the instant proceedings were commenced. There was no proof that the respondent’s abuse was ever directed at his daughter or that she was even aware of it or was ever at risk of becoming impaired. Andrew Baer represented the appellant.

[http://nycourts.gov/reporter/3dseries/2020/2020\\_06443.htm](http://nycourts.gov/reporter/3dseries/2020/2020_06443.htm)

***M/O Prince G. (Liz C.)*, 11/10/20 – MEDICAL ABUSE / DERIVATIVE ABUSE**

The mother appealed from an order of Bronx County Family Court, which determined that she medically abused one child and derivatively abused two others. The First Department affirmed. Twice, the condition of the abused child was improving when he suffered acute liver failure—right after the mother had greater access to him in the hospital. The court reasonably found that the mother administered toxic doses of acetaminophen that caused the liver failure. An attending pediatrician stated that many test results ruled out non-abuse causes. The finding of derivative abuse was also proper, given the fundamental defect in the mother’s understanding of the duties of parenthood, as demonstrated by her taking the child’s medical care into her own hands, endangering his life. Family Court correctly denied the mother a court-appointed medical expert, pursuant to County Law § 722-c, since she made an oral application and did not provide details as to the necessity for an expert.

[http://nycourts.gov/reporter/3dseries/2020/2020\\_06389.htm](http://nycourts.gov/reporter/3dseries/2020/2020_06389.htm)

***M/O N.L. v S.L.*, 11/10/20 – SUPPORT VIOLATION / REMAND**

The mother appealed from a NY County Family Court order regarding a willful violation of a child support order by the father. The First Department reversed. The record contained no written order confirming or rejecting the Support Magistrate’s recommendations; recommending or confirming a purge amount; or addressing the mother’s request for a

payment plan for the father's arrears. The matter was remanded. Rene Kathawala represented the mother.

[http://nycourts.gov/reporter/3dseries/2020/2020\\_06453.htm](http://nycourts.gov/reporter/3dseries/2020/2020_06453.htm)

***M/O Vanessa H. v Michael T.***, 11/10/20 – UCCJEA / TRIBE

The petitioner appealed from an order of NY County Family Court, which dismissed her custody petition. The First Department granted assigned counsel's application to withdraw, based on the lack of non-frivolous issues and dismissed the appeal. The UCCJEA prevented Family Court from exercising jurisdiction once the Mashantucket Pequot Tribe declared that it would continue to exercise jurisdiction over the matter.

[http://nycourts.gov/reporter/3dseries/2020/2020\\_06392.htm](http://nycourts.gov/reporter/3dseries/2020/2020_06392.htm)

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