

CRIMINAL

FIRST DEPARTMENT

***People v Alvarez*, 1/7/21 – JUROR / UNSWORN EXPERT**

The defendant appealed from a judgment of NY County Supreme Court, convicting him of 2nd degree burglary as a sexually motivated felony and another crime. The First Department reversed and ordered a new trial. A juror acted as an unsworn expert. During deliberations, the juror, a retired detective, opined about the feasibility of DNA and fingerprint extraction; the likelihood that tests were conducted and evidence was suppressed regarding certain evidence; and the probability that the defendant was lying based on his speech patterns and body language. Such views, which apparently influenced the jury, were within the scope of the juror's specialized expertise and concerned material issues. In addition, proof that the defendant accessed a pornography website shortly before the instant offense should have been excluded as improper propensity evidence. Legal Aid Society of NYC (David Crow and Daniel Ketani, of counsel) represented the appellant.

http://nycourts.gov/reporter/3dseries/2021/2021_00092.htm

***People v Chirinos*, 1/5/21 – FEES WAIVED / UNDER AGE 21**

The defendant appealed from a judgment of NY County Supreme Court, convicting her upon her plea of guilty of 7th degree criminal possession of a controlled substance. The First Department modified. The defendant was convicted before enactment of CPL 420.35 (2-a), which permits the waiver of surcharges and fees for persons who, like the defendant, were under age 21 at the time of the offense. In the interest of justice, the court vacated the mandatory surcharge, DNA fee, and crime victim assistance fee imposed at sentencing. The People consented to such relief. The Center for Appellate Litigation (David Klem, of counsel) represented the appellant.

http://nycourts.gov/reporter/3dseries/2021/2021_00038.htm

APPELLATE TERM – SECOND DEPT.

***People v Reyes*, 2020 NY Slip Op 51569 (U) – DISSENT / CERT. OF TRANSLATION**

The People appealed from a Queens County Criminal Court order, which, upon reargument, adhered to an order of dismissal. Appellate Term, Second Department reversed. One judge dissented, opining that Criminal Court had properly dismissed on speedy trial grounds. The People's statement of readiness at arraignment was illusory and disingenuous. A misdemeanor complaint converted to an information was meant to provide assurance that the truthfulness and accuracy of charges were verified. But here the complaint was not properly converted to an information. There was no certificate of translation, even though the online booking report and intake bureau crime report gave the People notice of the complainant's inability to speak English. Belatedly filing the certificate did not cure the defect, the dissenter stated.

http://nycourts.gov/reporter/3dseries/2020/2020_51569.htm

People v Ramirez*, 2020 NY Slip Op 51568 (U) – *ANDERS/NEW COUNSEL

The defendant appealed from a judgment of Kings County Criminal Court, convicting him of 2nd degree aggravated unlicensed operation of a motor vehicle. Assigned appellate counsel submitted an *Anders* brief. Appellate Term, Second Department found a nonfrivolous issue concerning the legal insufficiency of the factual allegations of the accusatory instrument. The waiver of appeal, if valid, would not bar such jurisdictional claim. The appeal was held in abeyance for the assignment of new appellate counsel.

http://nycourts.gov/reporter/3dseries/2020/2020_51568.htm

THIRD DEPARTMENT

People v Miller*, 1/7/21 – *CONFLICT / RESENTENCING

The defendant appealed from a judgment of Albany County Supreme Court, convicting him of 4th degree larceny. The Third Department vacated the sentence and remitted for resentencing. The defendant entered his initial guilty plea before County Court and at all relevant times was represented by the Albany County Public Defender's Office. As a matter of law, that office was precluded from representing the defendant at the sentencing hearing because the Public Defender, prior to being appointed to that position, was the County Judge who presided over the defendant's plea and deferred sentencing pending completion of, or discharge from, the drug court treatment program. Erin Morigerato represented the appellant.

http://nycourts.gov/reporter/3dseries/2021/2021_00056.htm

People v Blandford*, 1/7/21 – *DISSENT / NO FOUNDED SUSPICION

The defendant appealed from a judgment of Chemung County Court, convicting him upon his plea of guilty of attempted 2nd degree criminal possession of marihuana. The appeal brought up for review an order denying suppression. The Third Department affirmed. One justice dissented. While the traffic stop was valid, the proof did not establish a founded suspicion that criminality was afoot, so as to justify the canine search. The trooper's testimony about his interaction with the defendant after the stop was vague and confusing. Without explaining, the trooper said that the defendant's statements were not consistent with the trooper's observations.

http://nycourts.gov/reporter/3dseries/2021/2021_00058.htm