CRIMINAL

FIRST DEPARTMENT

DECISION OF THE WEEK

People v Robinson, 5/24/18 – **BELATED PEREMPTORY CHALLENGE / NEW TRIAL**
In New York County Supreme Court, during jury selection for a manslaughter trial, the People's for-cause challenge to prospective juror Ms. C was denied. The People did not strike her with a peremptory challenge; and when asked if the remaining jurors in the first group seated were acceptable, the prosecutor answered, "Yes." During the defense exercise of peremptory challenges, the People interrupted, said they had made a mistake, and sought to belatedly make a peremptory challenge to Ms. C. Over defense objections, the court permitted the People to do so. That was error, the First Department held. Under no circumstances may the People exercise a peremptory challenge after the defendant has exercised his or her peremptory challenges. CPL 270.15 (2); *People v Powell*, 13 AD3d 975. The order in which peremptory challenges are made is a matter of substance, a right secured to the defendant, and a very strictly construed rule. The statute contains no good-faith exception. The judgment of conviction was reversed, and a new trial was ordered. The Legal Aid Society of NYC (Mitchell Briskey, of counsel) represented the appellant.
http://nycourts.gov/reporter/3dseries/2018/2018_03731.htm

People v Patterson, 5/22/18 – **CHALLENGES FOR CAUSE DENIED / NEW TRIAL**
New York County Supreme Court erred in denying defense counsel's for-cause challenges to two prospective jurors whose statements during voir dire suggested that they were predisposed to believe that an indictment is an indication of guilt. The possibility of bias might well have been dispelled if the trial court had sought to elicit unequivocal assurances of impartiality from the prospective jurors. However, the court did not do so. Therefore, a new trial on the burglary, robbery, and criminal impersonation charges was ordered. The Center for Appellate Litigation (John Vang, of counsel) represented the appellant.
http://nycourts.gov/reporter/3dseries/2018/2018_03641.htm

People v Ambroise, 5/22/18 – **FLORIDA CONVICTION / NOT NY FELONY EQUIVALENT**
It was undisputed that the defendant was improperly sentenced as a predicate felon based on a Florida conviction. The First Department exercised its interest of justice jurisdiction to vacate the second felony offender adjudication and remanded the matter to New York County Supreme Court for further sentencing proceedings regarding the defendant's conviction of fourth-degree grand larceny. On remand, the People could submit additional materials bearing on the defendant's predicate status or allege a different prior felony conviction, if any, as the basis for a predicate felony adjudication. The Office of the Appellate Defender (Stephen Strother, of counsel) represented the appellant.
http://nycourts.gov/reporter/3dseries/2018/2018_03642.htm

People v Harding, 5/24/18 – **DEFENDANT'S AUTHORITY / INSANITY DEFENSE**
Following a nonjury trial in Bronx County, the defendant was convicted of murder and a weapon charge and sentenced to an aggregate term of 50 years. On appeal, the defendant contended that he received ineffective assistance in that counsel declined to assert the affirmative defense of mental disease or defect—in the face of the defendant's opposition to such defense. The trial court had correctly agreed that such decision was for the defendant, not counsel to make, the First Department stated. A defendant retains ultimate authority to decide whether to assert an insanity defense, as with the closely related defense of extreme emotional disturbance.
http://nycourts.gov/reporter/3dseries/2018/2018_03734.htm

THIRD DEPARTMENT

People v McClain, ***Braye***, and ***Steenberg*** 5/24/18 – **BAD APPEAL WAIVERS**
In a trio of cases, the Third Department agreed with the defendants that the waivers of the right to appeal were invalid, but upon reaching the merits, sustained the challenged judgments. In *McClain*, Schenectady County Court (Sira, J.) had only an abbreviated colloquy with the defendant and failed to explain the separate and distinct nature of the waiver or to ascertain that the defendant fully understood its consequences. While a detailed written waiver was executed in open court, the *McClain* judge made no attempt to ensure that the defendant understood its contents or ramifications. Similarly, the *Braye* case involved a brief, insufficient inquiry by Schenectady County Court (Drago, J.) and the court's failure to address the written waiver during the allocution. In *Steenberg*, the key flaw in the appeal waiver was that Franklin County Court did not inform the defendant of its separate and distinct nature.
http://nycourts.gov/reporter/3dseries/2018/2018_03780.htm
http://nycourts.gov/reporter/3dseries/2018/2018_03779.htm
http://nycourts.gov/reporter/3dseries/2018/2018_03777.htm

U.S. SUPREME COURT

Byrd v United States, 5/14/18 – **RENTAL CAR / PRIVACY EXPECTATION**
The Supreme Court ruled unanimously that, under the Fourth Department, a driver who has permission to use a rental car, but is not listed on the rental agreement, has the same reasonable expectation of privacy in the car as the driver who rented the car. See the May 24 edition of ***NEWS PICKS FROM NYSDA STAFF*** (https://www.nysda.org/page/NewsPicks) for a discussion of this decision.
https://www.supremecourt.gov/opinions/17pdf/16-1371_1bn2.pdf

FAMILY

FIRST DEPARTMENT

Matter of David R., 5/22/18 – **ATTEMPTED SEXUAL ABUSE / LESSER-INCLUDED OFFENSE**
In Bronx County Family Court, the respondent was adjudicated a juvenile delinquent upon a finding that he committed acts that, if committed by an adult, would constitute sexual abuse in the first and third degrees, attempted sexual abuse in the first and third degrees, and other offenses. As the presentment agency conceded, the attempted third-degree sexual abuse count was a lesser-included offense. Thus, such count was dismissed. The Legal Aid Society of NYC (Marcia Egger, of counsel) represented the appellant.
http://nycourts.gov/reporter/3dseries/2018/2018_03640.htm

SECOND DEPARTMENT

Matter of A. v P., 5/23/18 – **SIJS DENIAL REVERSED / JUDGE CHASTISED**
In a proceeding pursuant to Family Court Act article 6, the mother appealed from orders of Nassau County Family Court that, without a hearing, denied her motion for an order making specific findings to enable the subject child to petition for special immigrant juvenile status, and dismissed her guardianship petition. The Second Department reversed, reinstated the petition, and remitted for a hearing and new determination before a different Judge. Contrary to Family Court's finding, there were no statutory requirements for fingerprinting or submission of documentation pertaining to the Office of Children and Family Services. Further, the trial court had erred in basing its rulings on the mother's purported failure to prosecute in not having submitted documentation regarding the child's school enrollment. The reviewing court found inappropriate, and not to be countenanced, certain remarks by the Family Court judge, to wit: that the child "should be speaking English a lot better" after having been in the United States for two years; the child should "make some friends who speak English;" if the child only spoke Spanish, "what are you gonna do, you're gonna be hanging around just where you are;" and the child "[c]an't speak English, doesn't go to school, it's wonderful. It's a great country America." Bruno Bembi represented the appellant.
http://nycourts.gov/reporter/3dseries/2018/2018_03674.htm

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