CRIMINAL

COURT OF APPEALS

People v Monforte – **WAIVER OF INDICTMENT / DEFECTIVE**
The defendant challenged his Schenectady County conviction of 1st degree manslaughter. He was arrested and arraigned upon a felony complaint charging him with 2nd degree murder and 1st degree criminal use of a firearm. After being held for action of the grand jury, he waived indictment and agreed to be prosecuted by an SCI charging 1st degree manslaughter. On appeal, the defendant argued that his waiver of indictment was improper and County Court lacked jurisdiction to accept his plea. The COA agreed and reversed. The Court could consider the claim, despite the defendant's guilty plea and his failure to raise the claim in County Court or the Appellate Division. When an accused is held for Grand Jury action upon a felony complaint charging a class A felony punishable by life imprisonment, he or she may not waive indictment and agree to be prosecuted for a lesser included offense in order to facilitate a plea bargain. *People v Trueluck*, 88 NY2d 546. Craig Meyerson represented the appellant.
http://www.nycourts.gov/reporter/3dseries/2019/2019_06451.htm

FIRST DEPARTMENT

People v Johnson, 9/3/19 –
INSANITY DEFENSE / HATE CRIME CONVICTION AFFIRMED
The defendant appealed from a judgment of NY County Supreme Court, convicting him of attempted murder, assault, and kidnapping as hate crimes, and various other offenses. The convictions arose from the shooting of three people and dousing of others with kerosene in 2002 at a bar. The First Department affirmed. The trial court properly permitted cross-examination of a defense expert about the defendant's ability to cooperate with his attorneys to refute a claim about delusions. The defendant did not demonstrate that the only way he could rebut the cross-examination was by waiving the attorney-client privilege. The People's expert was properly permitted to testify that persons asserting insanity defenses may exaggerate their mental illnesses. Further, the trial court imposed reasonable limits on the cross-examination of the People's expert psychologists about details of unrelated cases. The appellate court also rejected the defendant's argument that he was entitled to instructions on the insanity defense beyond the CJI.
http://nycourts.gov/reporter/3dseries/2019/2019_06444.htm

APPELLATE TERM, SECOND DEPT.

People v Neischer, 9/3/19 – **ACCUSATORY INSTRUMENT / DEFECTIVE**
The defendant appealed from a judgment of Criminal Court, Richmond County, which convicted him, upon his plea of guilty, of 7th degree criminal possession of a controlled substance (CPCS), based on the possession of cocaine. The Appellate Term, Second Department reversed, vacated the plea, and dismissed the subject count. A valid accusatory instrument is a non-waivable prerequisite to prosecution, and a guilty plea does not forfeit

the right to challenge a jurisdictional defect. The factual allegations charging a controlled substance must establish the basis of the arresting officer's belief that the substance seized was illegal. Here, neither the physical characteristics of the substance nor the packaging associated with cocaine residue were set forth; and no laboratory test result was annexed. The officer's general claims as to his relevant training and experience was not enough. Legal Aid Society of NYC (Adrienne Gantt of counsel) represented the appellant.
http://nycourts.gov/reporter/3dseries/2019/2019_51410.htm

SECOND CIRCUIT

Jones v County of Suffolk, 9/4/19 –
SEX OFFENDER VERIFICATION VISITS / SPECIAL NEEDS DOCTRINE
The plaintiff, a registered sex offender, brought a 42 USC § 1983 action, contending that Suffolk County and a nonprofit, Parents for Megan's Law, violated his Fourth Amendment rights when they made two home visits, pursuant to a program to verify the home addresses of sex offenders. District Court–EDNY granted summary judgment dismissing the complaint, finding that such visits were reasonable. On appeal, the plaintiff argued that the special needs doctrine did not apply because the visits constituted law enforcement efforts. The Second Circuit disagreed and affirmed. The appellate court assumed that the visits were seizures, but found them reasonable. Under the special needs doctrine, courts have deemed reasonable temporary seizures that serve special needs beyond law enforcement, where warrant and probable cause requirements are impracticable and a substantial governmental interest is served. Here the relevant interest was reducing recidivism by improving registry accuracy.
http://www.ca2.uscourts.gov/decisions/isysquery/6d899693-82dd-4615-93ca-94604475da81/2/doc/18-1602_opn.pdf#xml=http://www.ca2.uscourts.gov/decisions/isysquery/6d899693-82dd-4615-93ca-94604475da81/2/hilite/

FAMILY

Forensic Custody Reports: WHERE'S THE SCIENCE
By Timothy Tippins, NYLJ, 9/4/19
There is a staggering incongruity between psychology—a science that depends on research—and the dearth of research citations in forensic custody reports. The science of psychology is often ignored by professionals. Indeed, there is a disturbing anti-scientific attitude within parts of the field. When forensic mental health experts opine in Family Court, the lives of litigants and their children can be drastically altered. Both bench and bar must therefore be more vigilant in holding experts to the science supporting the discipline. Whenever an expert offers a conclusion or opinion, the question should be asked: Where is the science?