

## CRIMINAL

### SECOND DEPARTMENT

***People v Perkins*, 9/11/19 – CPL 30.30 / HEARING NEEDED**

The defendant appealed from a Queens County Supreme Court judgment, convicting him of possessing a sexual performance by a child. The appeal brought up for review the denial of his CPL 30.30 motion. The Second Department remitted for a hearing. The defendant contended that the trial court erred in summarily denying his speedy trial motion, since the People failed to demonstrate their entitlement to exclude a specified period. By alleging a period of unexcused delay in excess of six months since arraignment on the felony complaint, the defendant satisfied his initial burden. In opposition, the People failed to demonstrate that any periods should be excluded. Moreover, the appellate court took judicial notice of a court action sheet containing only an ambiguous notation regarding the defendant's waiver of his CPL 30.30 rights. Adam Elewa represented the appellant.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_06516.htm](http://nycourts.gov/reporter/3dseries/2019/2019_06516.htm)

***People v Copleland*, 9/11/19 – O'RAMA VIOLATION / REVERSAL**

The defendant appealed from a Kings County Supreme Court judgment, convicting him of 1<sup>st</sup> degree murder and other crimes. The Second Department ordered a new trial because of the trial court's failure to comply with CPL 310.30 and *People v O'Rama* (78 NY2d 270). Supreme Court paraphrased two jury notes, rather than sharing their entire contents with counsel. Legal Aid Society of NYC (Justine Luongo and Steven Miraglia, of counsel) represented the appellant.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_06507.htm](http://nycourts.gov/reporter/3dseries/2019/2019_06507.htm)

***People v Garcia*, 9/11/19 – PEOPLE'S APPEAL / SUPPRESSION UPHELD**

The People appealed from Putnam County Court orders granting suppression. The Second Department affirmed. When the occupant of a vehicle is arrested, the circumstances that supply probable cause may also warrant a belief that the vehicle contains contraband, evidence of a crime, a weapon or a means of escape. The lower court concluded that the recovery of a small quantity of what appeared to be cocaine along with a cut straw, in plain view on the defendant's person, did not provide probable cause to believe that additional contraband would be found in the trunk, particularly after a search of the passenger compartment revealed nothing. David Squirrell represented the respondent.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_06509.htm](http://nycourts.gov/reporter/3dseries/2019/2019_06509.htm)

***People v Snyder*, 9/11/19 – SORA / REDUCED TO LEVEL ONE**

The defendant appealed from a SORA order issued by Queens County Supreme Court. The Second Department reduced the defendant's designation from level two to one. Her federal conviction of sex trafficking conspiracy, for which she was sentenced to time served, required her to register as a sex offender. At a hearing, counsel sought an adjudication of level one, based on the fact that the defendant was a sex-worker victim, not a predator. The salient circumstances were not accounted for by SORA Guidelines and tended to show a lower likelihood of re-offense. The defendant was exploited by the commercial sex trade when she was a minor, and such victimization continued even after she helped to train other

girls. Moreover, a departure to level one would avoid an overassessment of the defendant's dangerousness and recidivism risk. Jeffrey Cohen represented the appellant.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_06521.htm](http://nycourts.gov/reporter/3dseries/2019/2019_06521.htm)

## THIRD DEPARTMENT

### *People v Youngs*, 9/12/19 – REPUTATION PROOF / NEW TRIAL

The defendant appealed from a Madison County Court judgment, convicting him of various sexual offenses. The Third Department held that, by precluding proof of the victim's reputation for being untruthful, County Court deprived the defendant of his right to present a defense, and the error was not harmless as to three counts turning on victim credibility. *See People v Fernandez*, 17 NY3d 70. A defense witness was prepared to testify that: she had known the victim since birth; they were members of the same extended family; many family members knew the victim; and the witness was aware of her bad reputation for truthfulness. John Cirando represented the appellant.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_06540.htm](http://nycourts.gov/reporter/3dseries/2019/2019_06540.htm)

## FAMILY

## FIRST DEPARTMENT

### *Matter of Michael R. v Amanda R.*, 9/10/19 – CHILD SUPPORT / REVERSED

The mother appealed from orders of NY County Family Court rendered in child support proceedings, and the Second Department reversed. Pursuant to CPLR 5501(a)(1) (appeal from final judgment brings up for review nonfinal orders necessarily affecting judgment), the appellate court reviewed a preclusion order. Such order was improper, where the mother had complied with compulsory financial disclosure and the father went to trial without seeking to compel additional financial discovery. The order denying the mother's objections was erroneous in: stating that the Support Magistrate had made a recommendation as to incarceration and a purge amount; denying objections based on counsel's failure to file an affidavit of service; and applying the doctrine of law of the case to a procedural ruling. The only evidence supporting the father's claims was his arrears summary, admitted into evidence without supporting proof. Bruce Young represented the appellant.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_06454.htm](http://nycourts.gov/reporter/3dseries/2019/2019_06454.htm)

## SECOND DEPARTMENT

### *Matter of Cheryl P.*, 9/11/19 – JD / IMPROPER ADMISSION

The appellant challenged from an order of disposition in a juvenile delinquency proceeding held in Orange County Family Court. The Second Department reversed and dismissed the petition. The appellant's admission was improper. The court failed to obtain an allocution from a parent with regard to understanding rights the appellant might be waiving as a result

of her admission; and she appeared telephonically, even though no statutory provision allowed that procedure. Further, the plea allocution failed to establish the cost of damage, an element of the criminal mischief offense charged. Andrew Szczesniak represented the appellant.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_06497.htm](http://nycourts.gov/reporter/3dseries/2019/2019_06497.htm)

## ARTICLE

### **COMMENTARY: Appellate Review / Child Custody**

By Jim Montagnino, NYLJ, 9/13/19

NY intermediate appellate courts are empowered to review factual findings and legal conclusions in criminal and civil cases. *See* CPL 470; CPLR 5501. In child custody cases, the First, Second, and Fourth Departments have employed the two-tiered *People v Bleakley* (69 NY2d 490) analysis, first reviewing legal sufficiency, then weight of evidence. Not so in the Third Department, which has long blurred the distinction between legal and factual review; employed an amorphous “sound and substantial basis” standard; and implied that if proof is legally sufficient to satisfy that test, deference to factual determinations is mandatory. Instead, the Appellate Division should: (1) address the legal issue of whether a custody determination was supported by a sound and substantial basis; (2) if so, decide whether the quantum or quality of conflicting evidence calls into question the factual findings; and (3) if so, further decide to defer to the trial judge’s assessment of credibility or instead to substitute its fact-finding authority and reverse or modify.

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