CRIMINAL

FIRST DEPARTMENT

People v Muniz-Cayetano, 9/29/20 – **INTOXICATION DEFENSE / NO INQUIRY**
The defendant appealed from a judgment of NY County Supreme Court, convicting him of attempted 2nd degree burglary. The First Department reversed and remanded. The offense involved the defendant, a hotel employee, rummaging through the purse of a guest in her room. In the plea allocution, the defendant stated that, at the time of the offense, he was drunk and asking for help. Yet the court conducted no further inquiry. After an off-the-record discussion with counsel, the defendant again said he was drunk, adding, "And I lost my mind…I don't know what I was doing." Following another discussion with counsel, the defendant said he was "looking for money from the lady." Where a defendant's factual recitation negates an essential element of the crime, the court may not accept the plea without further inquiry to ensure that he understands the nature of the charge and that the plea is intelligently entered. *People v Lopez*, 71 NY2d 662. Here, when the defendant raised a possible intoxication defense, the plea court failed to inquire into whether: he understood the defense implicated by his statements; he indeed had a viable defense; and he wished to forego his right to pursue the defense at trial. By stating that he was looking for money, the defendant did not recant his comments about intoxication, nor relieve the court of its inquiry duty. Heriberto Cabrera represented the appellant.
http://nycourts.gov/reporter/3dseries/2020/2020_05156.htm

State ex rel. Meyer v Brann, 9/29/29 – **BAIL / REDUCED**
The defendant appealed from a NY County Supreme Court judgment, denying his application for a writ of habeas corpus and dismissing the petition seeking a reduction of bail, set at $50,000 cash or a $100,000 partially secured surety bond. The Second Department reduced to $50,000 the bond amount. The petitioner was charged with nonviolent felonies, had no prior record, had voluntarily returned to court after release on a $3,000 partially secured bond, and had family ties. *See* CPL 510.30 (2) (a). The Legal Aid of NYC (Henry Myer, of counsel) represented the appellant.
http://nycourts.gov/reporter/3dseries/2020/2020_05145.htm

People v Collier, 10/1/20 – **NEW COUNSEL / DENIED**
The defendant appealed from a judgment of NY County Supreme Court, convicting him of 5th degree criminal possession of a controlled substance after a jury trial. The First Department affirmed. The trial court properly denied the defendant's request, made on the eve of trial, for new assigned counsel. His expression of generalized discomfort with counsel did not constitute good cause for a substitution.
http://nycourts.gov/reporter/3dseries/2020/2020_05298.htm

People v Narvaez, 10/1/20 – **NEW COUNSEL / DENIED**
The defendant appealed from a judgment of NY County Supreme Court, convicting him of predatory sexual assault against a child (13 counts) and other sexual offenses, after a jury trial. The First Department affirmed. The defendant failed to demonstrate good cause for assignment of substitute counsel. *See People v Linares*, 2 NY3d 507. His complaints were

generalized and conclusory. A defendant's right to effective counsel is not violated by his attorney reporting to the court that a mental health professional informed counsel that there was no reason to question the defendant's mental competency.
http://nycourts.gov/reporter/3dseries/2020/2020_05300.htm

SECOND DEPARTMENT

People v Branch, 9/30/20 – **FIREARMS / AGAINST WEIGHT**
The defendant appealed from a Queens County Supreme Court judgment, convicting him of criminal possession of a firearm, possession or disposition of an unpermitted rifle or shotgun (two counts), and other crimes, following a nonjury trial. The Second Department vacated the above-named convictions, finding the verdict to be against the weight of evidence. The People's case was based on a theory of constructive possession. The proof showed that the defendant resided in the third bedroom of the searched premises. His brother had resided in the first bedroom—where the weapons were found—until his death a year or two before the search. There was testimony that, after the brother's death, the door to the first bedroom remained locked. No proof indicated that the defendant frequented the first bedroom, had a key to that room, or kept his belongings there. Appellate Advocates (Jenin Younes, of counsel) represented the appellant.
http://nycourts.gov/reporter/3dseries/2020/2020_05220.htm

People v Rodriguez, 9/30/20 – **PEOPLE'S APPEAL / *BRADY* VIOLATION**
The People appealed from a 2019 order of Kings County Supreme Court. Without a hearing, the trial court granted the defendant's CPL 440.10 motion to vacate a 1999 judgment, convicting him of 2nd degree murder upon a jury verdict. The Second Department affirmed. The defendant was not provided with material, regarding the role of the sole eyewitness against him, as a witness in two unrelated homicide trials; her use as a confidential informant; her placement in a witness relocation program, after her participation in one of those trials; and the DA's payment of her rent for one year. Such material contradicted the eyewitness's trial testimony in this case, stating that she did not have any deals with law enforcement—misinformation that was emphasized in the prosecutor's summation. The witness's credibility was critical. No other proof directly linked the defendant to the shooting. Robert Reuland represented the respondent.
http://nycourts.gov/reporter/3dseries/2020/2020_05234.htm

People v Clarke, 9/30/20 – **DISCOVERY / MODIFIED**
Pursuant to CPL 245.70 (6), the defendant sought to vacate or modify a protective order relating to discovery, which directed that certain recordings would be exhibited only to the defendant, Brooklyn Defender Services attorneys, and any person approved by Kings County Supreme Court. The Second Department modified. The trial court abused its discretion in requiring defense counsel to seek court approval before showing records to investigators or others employed by counsel or appointed to assist in the defense.
http://nycourts.gov/reporter/3dseries/2020/2020_05221.htm

People v Zayas, 9/30/20 – **DISCOVERY / MODIFIED**
Pursuant to CPL 245.70 (6), the People sought to vacate or modify a protective order regarding discovery. Rockland County Court erred in denying the People's request in its entirety. In light of the pretrial hearing scheduled to begin October 2 and other factors, the court should have directed that disclosure of audio and video recordings of the drug sales would be made available forthwith to defense counsel only, to be viewed at the prosecutor's office; and should have delayed, until the commencement of trial, the disclosure of the names, addresses, and contact information of the confidential informant and undercover personnel.
http://nycourts.gov/reporter/3dseries/2020/2020_05236.htm

SECOND CIRCUIT

USA v Zullo, 9/25/20 – **COMPASSIONATE RELEASE / REMAND**
A decade ago, the defendant was sentenced to 15 years for drug offenses. In District Court–VT, he sought compassionate release, arguing that: his sentence was unjustly long; he had shown exemplary rehabilitation; he had close family relationships; he was a teenager at the time of his offense; and the government breached his plea agreement. The District Court denied his application, believing that the factors cited were not relevant. The **Second Circuit** vacated and remanded. The First Step Act allowed the District Court to consider *any* extraordinary and compelling reason the defendant might raise. The pandemic could be an additional justification for compassionate reduction of a sentence. On remand, the District Court was to consider the factors the defendant invoked and any other relevant facts and then to exercise its broad discretion under the First Step Act.
https://www.ca2.uscourts.gov/decisions/isysquery/92a20f4f-e1d9-4e42-868c-d01cbac0a5e7/2/doc/19-3218_opn.pdf#xml=https://www.ca2.uscourts.gov/decisions/isysquery/92a20f4f-e1d9-4e42-868c-d01cbac0a5e7/2/hilite/

FAMILY

FIRST DEPARTMENT

Thompson v Thompson, 9/29/20 – **CHILD SUPPORT / IMPUTED INCOME**
The mother appealed from an order of NY County Supreme Court, which denied her request to impute income to the father in calculating child support. The First Department reversed and remanded. The trial court erred in relying on the father's self-reported gross annual income and not imputing income based on earning potential. The father said that he lost his job after the instant proceedings were commenced, but failed to explain why he could not secure a similar position. In the face of the father's recent annual earnings of $78,866 to $100,000, the trial court should not have found income imputation "speculative". Sean Nolan represented the appellant.
http://nycourts.gov/reporter/3dseries/2020/2020_05168.htm

Matter of Syeda A. (Syed I.), 9/29/20 – **NEGLECT / ONE INCIDENT**
The father appealed from a Bronx County Family Court order of disposition, to the extent that it brought up for review a fact-finding order holding that he neglected his eldest daughter and derivatively neglected three other children. The First Department affirmed. The eldest daughter's out-of-court statement, that her father punched her in the mouth with a closed fist, was corroborated by out-of-court statements of two sisters submitted through a caseworker. Further, the caseworker testified that, days after the incident, she observed a minor laceration on the inside of the child's lip. The fact that the injuries resulted from a single incident did not preclude a finding of excessive corporal punishment. Since the proceeding was initiated before the eldest daughter's 18th birthday, the court had jurisdiction after she reached the age of majority. As to the derivative neglect, the excessive punishment showed a faulty understanding of parental duties so as to warrant an inference that the father presented an ongoing danger to the other children.
http://nycourts.gov/reporter/3dseries/2020/2020_05127.htm

Matter of Issiah C., 10/1/20 – **JD / VICTIM'S TESTIMONY**
The respondent appealed from an order of disposition of Bronx County Family Court, which adjudicated him to be a juvenile delinquent, in connection with certain sexual offenses. The First Department affirmed. The victim's direct testimony was interrupted by a six-week continuance. The trial court properly directed her not to discuss her testimony with the counsel for the presentment agency or anyone else during the recess, and allowed her to read a transcript of her initial testimony. There was no evidence of any communication between counsel and the victim about her testimony.
http://nycourts.gov/reporter/3dseries/2020/2020_05279.htm

SECOND DEPARTMENT

Matter of Katelyn P. (Christian G.), 9/30/20 –
ABUSE / PERSON LEGALLY RESPONSIBLE
The respondent appealed from an order of fact-finding, issued by Kings County Family Court, which held that he abused the subject child, and from an order of disposition, which placed the children under the supervision of the petitioner agency for 12 months and required the respondent to complete sex-offender treatment. The Second Department upheld the finding of abuse. As a threshold matter, the appellate court dismissed the appeal from the order of fact-finding, which was subsumed in the order of disposition. In addition, the appeal from the order of disposition was dismissed insofar as it challenged the period of supervision, which had expired. The appeal from the order of disposition also brought up for review the findings of abuse (*see* CPLR 5501 [a] [1]), which were not academic. Such an adjudication constituted a permanent and significant stigma, which might impact the respondent's status in future proceedings. The respondent was properly found to be a person legally responsible for the care of the subject child. He lived with the child for nine months, transported her to and from school, babysat for her when the mother was at work, and helped her with homework.
http://nycourts.gov/reporter/3dseries/2020/2020_05211.htm

Matter of Shah v Shah, 9/30/20 –
MOM'S ACCESS / COURT PASSED THE BUCK
The mother appealed from an order of Queens County Family Court, which dismissed the mother's petition to enforce custody provisions contained in the parties' judgment of divorce. The Second Department modified. Family Court should have set forth a schedule for the mother's parental access, rather than delegating that issue to the parties by directing that the mother would have such time as the parties mutually agreed on, considering the wishes of the children. Remittal was required. Marion Perry represented the mother.
http://nycourts.gov/reporter/3dseries/2020/2020_05212.htm

Schwartz v Schwartz, 9/30/20 – **RELOCATION / 12.5 MILES TOO FAR**
In a matrimonial action, the mother appealed from an order of Westchester County Supreme Court, which denied her application for permission to relocate. The Second Department affirmed such denial. The parties' agreement, setting forth specific reasons that would permit relocation, was not dispositive, but was an element to be considered along with *Tropea* factors (*Matter of Tropea v Tropea*, 87 NY2d 727). While the proposed move was only 12.5 miles from the former marital residence in Scarsdale, it would significantly hamper the father's ability to participate in the children's activities in Scarsdale. As part of his religious practice of modern Orthodox Judaism, the father generally did not travel by motor vehicle on the Sabbath, when many of the children's activities occurred. He attended by walking or biking there.
http://nycourts.gov/reporter/3dseries/2020/2020_05248.htm