CRIMINAL

FIRST DEPARTMENT

People v Feliciano, 12/1/20 – **SEVERANCE DENIED / REVERSAL**
The defendant appealed from a judgment of Bronx County Supreme Court, convicting him of 2nd degree murder and 1st degree robbery. The First Department reversed and ordered a new trial. Acting in concert, the defendant and his codefendant allegedly robbed and fatally shot one victim and robbed a second victim. After the People's motion to consolidate was granted, the defendant sought severance. The trial court denied the application but implemented a "dual jury" procedure—both juries heard the People's evidence common to the charges against both defendants, as well as the cross examination of the People's witnesses by both defense counsel. The codefendant was acquitted. A trial before dual juries—a modified form of severance—should be used sparingly and was improper here, since it did not prevent prejudice to the defendant due to the codefendant's antagonistic defense, that he was not present at the crime. The codefendant's cross-examinations undermined the defendant's defense, that he was merely present and did not share the intent of his purported confederate to commit the crimes. The Center for Appellate Litigation (Claudia Trupp, of counsel) represented the appellant.
http://nycourts.gov/reporter/3dseries/2020/2020_07145.htm

People v Allen, 12/3/20 – **IAC / LESSER INCLUDED / HARMLESS**
The defendant appealed from a judgment of NY County Supreme Court, convicting him of two counts of 2nd degree burglary. The First Department affirmed, but stated that the defendant received ineffective assistance when defense counsel deferred to him regarding whether to seek a jury charge on a lesser included offense. *See People v Colville*, 20 NY3d 20 (defendant denied right to counsel when court permitted him, not counsel, to decide whether to request jury charge on lesser included offense). However, the error was harmless. There was no reasonable view of the evidence that the defendant committed 3rd, but not 2nd, degree robbery.
http://nycourts.gov/reporter/3dseries/2020/2020_07302.htm

SECOND DEPARTMENT

DECISION OF THE WEEK

People v Hollmond, 12/2/20 – **WITHDRAWAL OF PLEA / REVERSAL**
The defendant appealed from a Kings County Supreme Court judgment, convicting him of 1st degree manslaughter and 2nd degree attempted murder (two counts). The Second Department reversed, granted the defendant's motion to withdraw his plea, and remitted for proceedings before a different justice. Vacatur may be warranted where, as here, a guilty plea was motivated in part by unduly coercive circumstances. To effectuate the right to counsel, a defendant must have a reasonable time and fair opportunity to consult counsel in private, which was not the case here. The trial court failed to ensure that the defendant—who was confined at facilities in Coxsackie and then Napanoch—was transferred to Rikers.

The failure occurred in the face of repeated, urgent pleas by defense counsel, who said that the defendant's confinement at distant facilities precluded meaningful communication and trial preparation. In a rote plea colloquy, the court inexplicably failed to ask if the defendant was given enough time to consult with counsel. The defendant's testimony at a hearing on his plea withdrawal motion confirmed that, after rejecting several plea offers, he accepted an offer because he did not have enough time to consult with counsel; his lawyer was not ready for the trial the court ordered to begin; and the travel regimen for court appearances (leaving the correctional facility at 5 a.m., arriving back at midnight, having only one meal a day) was taking its toll. The defendant promptly moved to withdraw his plea, and the People did not allege that any prejudice would result. Appellate Advocates (Lynn Fahey, of counsel) represented the appellant.
http://nycourts.gov/reporter/3dseries/2020/2020_07222.htm

People v Bellucci, 12/2/20 – **730 EXAM / REVERSAL**
The defendant appealed from a judgment of Richmond County Supreme Court, convicting him of 1st degree murder (two counts). The Second Department reversed. In 2010, the defendant, a paranoid schizophrenic, was charged in connection with the death of his parents. Over the next five years, he was deemed incompetent to stand trial four times. In 2015, he was found competent. Prior to the start of trial, Supreme Court denied two joint requests for a CPL 730.30 exam, which were based on the defendant's noncompliance with his medication and inability to communicate rationally with counsel. The lower court demanded that defense counsel present an insanity defense, against the defendant's wishes. Defense counsel also pursued a justification defense. The trial court erred in denying the 730 exam reasonably sought by both the defense and the People, and in insisting on an insanity defense—a matter to be decided by the defendant. Upon remittal, the court or either party could raise the issue of the defendant's capacity to proceed. Legal Aid Society of NYC (Natalie Rea, of counsel) represented the appellant.
http://nycourts.gov/reporter/3dseries/2020/2020_07215.htm

APPELLATE TERM
SECOND DEPARTMENT

People v Garcia, 2020 NY Slip Op 51415(U) – **CPL 710.30 NOTICE / REVERSAL**
The defendant appealed from judgments of Suffolk County District Court, convicting him of speeding and leaving the scene of an accident without reporting property damage. Appellate Term, Second Department reversed. At trial, the People were required, but failed, to establish that they provided CPL 710.30 notice of evidence of statements allegedly made by the defendant to police. Absent the statements, the People failed to prove all elements of the infractions. Thus, the informations were dismissed. Scott Lockwood represented the appellant.
http://nycourts.gov/reporter/3dseries/2020/2020_51415.htm

People v Cubas-Escoto, 2020 NY Slip Op 51423(U) – ***BOYKIN* RIGHTS / REVERSAL**
The defendant appealed from a judgment of Nassau County District Court, convicting him of 3rd degree menacing. Appellate Term, Second Department reversed, vacated the guilty plea, reinstated the accusatory instrument, and remitted. The claim was reviewable on

direct appeal, even though the defendant did not move to withdraw the plea or vacate the judgment of conviction, since the plea and sentence occurred on the same date. Reversal was required because the plea court never referenced the constitutional rights forfeited, and the record did not show that counsel spoke to the defendant about such rights. The appellate court also noted that, despite knowing that the defendant was a noncitizen, the lower court failed to advise him of the deportation consequences of his guilty plea. Thomas Villecco represented the appellant.
http://nycourts.gov/reporter/3dseries/2020/2020_51423.htm

People v Tagiev, 2020 NY Slip Op 20314 – **FINE VACATED / *PEQUE* COMPLIANCE**
The defendant appealed from a judgment of Kings County Criminal Court, convicting him of DWI (common law). Appellate Term, Second Department modified. The court imposed a $300 fine, but the minimum was $500 and the VTL did not mandate any fine. The appellate court therefore vacated the fine. Also addressed was the defendant's contention that, while informing him of possible negative immigration consequences including deportation, the court did not recite the CPL 220.50 (7) admonition. Assuming that the court had a duty to provide a *Peque* (22 NY3d 168) warning for a misdemeanor plea, the statement here was adequate. Appellate Advocates (Jonathan Schoepp-Wong, of counsel) represented the appellant.
http://nycourts.gov/reporter/3dseries/2020/2020_20314.htm

THIRD DEPARTMENT

People v Holtslander, 12/3/20 – **DUPLICITOUS / *MOLINEUX* ERROR / REVERSAL**
The defendant appealed from an Otsego County Court judgment, convicting him of 1st degree sexual abuse. The Third Department reversed and ordered a new trial. The defendant was charged with 13 counts of sexual abuse. Before trial, he sought dismissal of counts 2–13 as duplicitous. The court denied the motion. That was error. After trial, the defendant moved to set aside the verdict based on the duplicitous charges. This time, County Court dismissed counts 2–13. On appeal, the issue was whether such dismissal should have occurred earlier. The appellate court held that County Court erred in denying defendant's pretrial motion to dismiss and that such error was not harmless, when considered in conjunction with the *Molineux* error. The direct evidence addressed not only count 1, but also 12 additional incidents. Further, County Court wrongly permitted evidence of uncharged crimes. The prejudicial nature of the *Molineux* proof outweighed its probative value. If the court had timely dismissed counts 2–13, the proof of uncharged crimes would likely have been excluded. A limiting instruction was provided only once, in the final charge. Michael Garzo represented the appellant.
http://nycourts.gov/reporter/3dseries/2020/2020_07250.htm

FAMILY

SECOND DEPARTMENT

M/O Margaret K.K. (Alicia A.A.) 12/2/20 – **TPR / EFFECTIVE ASSISTANCE**
The mother appealed from an order of Rockland County Family Court, which granted petitions to terminate her parental rights to four children based on mental illness. In affirming, the Second Department observed that a TPR respondent has the right to effective assistance of counsel and to have counsel present at a court-ordered psychological examination. However, the failure of the mother's attorney to attend such exam did not deny the mother effective assistance. Counsel had notice of the evaluation, received the evaluator's report, conducted a detailed cross-examination, and successfully moved for the appointment of an independent psychiatric evaluator.
http://nycourts.gov/reporter/3dseries/2020/2020_07194.htm