CRIMINAL

COURT OF APPEALS

People v J.L., 12/17/20 – **JURY CHARGE DENIED / REVERSED**
The trial court's denial of the defendant's request for a jury instruction on voluntary possession, in connection with a 3rd degree CPW count, constituted reversible error requiring a new trial. There was a reasonable view of the evidence that, to the extent the defendant possessed the weapon at all, such possession was not voluntary. A reasonable juror could have found that the defendant was shot in the neck while in someone else's home. In the frantic moments afterward, while searching for a towel to stanch the bleeding, he came close enough to a drawer to see an object that looked like a gun and to transfer his DNA to the weapon by bleeding on it. Police officers corroborated much of the defendant's testimony. Judge Rivera authored the majority opinion. Chief Judge DiFiore dissented in an opinion in which Judges Garcia and Feinman concurred. Appellate Advocates (Cynthia Colt, of counsel) represented the appellant.
http://www.nycourts.gov/reporter/3dseries/2020/2020_07663.htm

People v Williams, 12/17/20 – **JURY CHARGE DENIED / AFFIRMED**
The defendant was not entitled to a jury charge regarding temporary and lawful possession and was properly convicted for unlawfully possessing a firearm used in a shooting. He admitted that he accepted possession of the firearm when not facing any imminent threat to his safety. In anticipation of a potential confrontation, he then chose to retain possession of the firearm. Justification may excuse otherwise unlawful use, but not unlawful possession, of a weapon. Judge Stein wrote the majority opinion. Judges Rivera and Wilson wrote separate concurrences.
http://www.nycourts.gov/reporter/3dseries/2020/2020_07664.htm

People v Bisono, 12/15/20 – **APPEAL WAIVERS / INVALID**
The Court of Appeals reversed 10 Appellate Division orders, finding unenforceable the purported waivers of appeal. In oral colloquies and written forms, the waivers mischaracterized the rights being ceded. In one case, *People v Daniels*, Judges Garcia and Stein dissented, complaining that the majority went beyond the requirements of *People v Thomas*, 34 NY3d 545. The majority disagreed with the dissent's view that the *Daniels* colloquy was analogous to the one in *People v Ramos*, 7 NY3d 737. Further, they emphasized that the written waiver in *Daniels* had to be seen in the complete context, which included the errant oral colloquy and a vulnerable defendant with a serious mental health condition. Joined by Judge Stein, Judge Garcia otherwise concurred in the result and lamented that *Thomas* had caused a sea change, resulting in the voiding of 90 appeal waivers to date.
http://www.nycourts.gov/reporter/3dseries/2020/2020_07484.htm

FIRST DEPARTMENT

People v Rivera, 12/15/20 – **440 / SUMMARY GRANT / VIABLE DEFENSE**
The People appealed from a NY County Supreme Court order, summarily granting the defendant's CPL 440.10 motion to vacate a judgment convicting him of 2nd degree burglary. The First Department affirmed. The motion court did not impermissibly vacate the conviction based on actual innocence. Instead, the court ruled that the plea was not knowing and voluntary because counsel did not alert the defendant to a potentially viable defense. The defendant had claimed that he became angry and formed a criminal intent only after entering the complainant's hospital room, yet counsel did not tell him that the intent had to exist before the entering/remaining.
http://nycourts.gov/reporter/3dseries/2020/2020_07508.htm

People v Romulus, 12/15/20 – **SORA / DISSENT / MITIGATION**
The defendant appealed from an order of Bronx County Supreme Court, which found him a level-two sex offender. The First Department affirmed. The Presiding Justice dissented. He did agree with the majority that the record did not support assessing points for a history of drug or alcohol abuse. While the defendant reported the daily use of marijuana for five years, he had a history of prolonged voluntary abstinence. However, the dissenter opined that the defendant should have been adjudicated as a level-one offender, since the guidelines did not adequately account for three mitigating factors: (1) an expert evaluation stating that the defendant presented a low risk of recidivism; (2) the statutory nature of the rape offense; and (3) the assessment of points for lack of community supervision—an element which flowed from the plea bargain, and the recognition by the DA and the court that supervision was not necessary. Perhaps the legislature should update the RAI based on current research on recidivism, the dissent stated.
http://nycourts.gov/reporter/3dseries/2020/2020_07512.htm

FAMILY

SECOND DEPARTMENT

M/O Fielder v Fielder, 12/16/20 – **CHILD SUPPORT / ERRANT SUSPENSION**
The mother appealed from an order of Kings County Family Court, which granted the father's petition to suspend child support based on parental alienation and custodial interference. The Second Department reversed. The hearing record did not establish that the mother deliberately frustrated, or actively interfered with, the father's parental access rights, so as to justify the drastic measure imposed. Peter Lomtevas represented the appellant.
http://nycourts.gov/reporter/3dseries/2020/2020_07568.htm

Rosa Amanda L.R. v Carlos Arnoldo O.R., 12/16/20 – **SIJS / REINSTATED**
In a guardianship proceeding pursuant to Family Ct Act Article 6, the mother appealed from Nassau County Family Court orders, which denied applications to appoint her as

guardian of the subject child; to dispense with service on the father; and to issue an order making specific findings so as to enable the child to petition for special immigrant juvenile status (SIJS). The Second Department reversed, reinstated the petition, and remitted for expedited proceedings. Family Court erred in dismissing the petition on the ground that the mother's counsel failed to properly certify the child's birth certificate. Counsel's identification in the attorney certification was sufficient to satisfy CPLR 2105. Bruno Bembi represented the appellant.
http://nycourts.gov/reporter/3dseries/2020/2020_07580.htm

M/O Deondre R., 12/16/20 – **MOM GETS SAY / FLAWED NOTICES FORGIVEN**
The parents filed appeals from rulings of Queens County Family Court in related Family Ct Act Article 6 and 10 proceedings. The Second Department affirmed, finding that the mother's neglect constituted a change of circumstances warranting a transfer of custody to the father, but that she was properly allowed input regarding decisions as to the child. As a threshold matter, Family Court noted that both parties had improperly taken appeals from the underlying decision, whereas only an order or judgment is an appealable paper. *See* CPLR 5512 (a). The court sua sponte deemed the premature notices of appeal to be valid. *See* CPLR 5520 (c) (appellate court may treat defective NOA as valid when interests of justice so demand).
http://nycourts.gov/reporter/3dseries/2020/2020_07581.htm

THIRD DEPARTMENT

Elizabeth B. v Scott B., 12/17/20 – **MEDICAL / MOM GETS LAST WORD**
The parents took cross appeals from a judgment of Schenectady County Supreme Court, granting joint custody of their son. The Third Department modified, finding fault with an award to the father of final decision-making power on medical matters. He testified about the mother's alienating behavior regarding medical decisions, but the parties were often able to agree on medical care, even while marginalizing each other's opinions. In giving the father the final say, the trial court did not explain why it ignored a negative forensic assessment. Moreover, the mother was better at making appropriate, timely medical decisions for the child. Thus, the appellate court gave her the final word on medical issues. Two justices concurred in part and dissented in part. Matthew Hug represented the mother.
http://nycourts.gov/reporter/3dseries/2020/2020_07634.htm