

## CRIMINAL

### FIRST DEPARTMENT

*Matter of Bannister v Wiley*, 1/28/20 –

**NO MANIFEST NECESSITY / RETRIAL PROHIBITED**

The defendant/petitioner's trial ended with NY County Supreme Court's sua sponte declaration of a mistrial—without the defendant's consent—in order to accommodate a juror's weekend travel plans. That was an abuse of discretion, the First Department held. As requested by the defendant, the trial court could have directed the juror to report for deliberations the following day, a Friday. Further, the lower court failed to confirm that the jury was hopelessly deadlocked. To bar a retrial, the defendant filed the instant CPLR Article 78 petition in the nature of prohibition. The appellate court held that no manifest necessity had compelled a mistrial, double jeopardy protections thus barred a retrial, and the indictment had to be dismissed. Legal Aid Society of NYC (Stephen Pokart, of counsel) represented the appellant.

[http://nycourts.gov/reporter/3dseries/2020/2020\\_00522.htm](http://nycourts.gov/reporter/3dseries/2020/2020_00522.htm)

### SECOND DEPARTMENT

*People v James*, 1/29/20 – **ROBBERY / AGAINST WEIGHT**

The defendant appealed from a judgment of Orange County Court, convicting him of 1<sup>st</sup> degree robbery and 3<sup>rd</sup> degree CPW. The Second Department reversed and dismissed the indictment. The guilty verdict was against the weight of the evidence in this one-witness identification case. The complainant struggled to recall details of the crime, including how she had described the defendant. Her description of the perpetrator shortly after the incident did not match the defendant's appearance. Moreover, at the time of his arrest minutes after the incident, the defendant did not possess money or items taken. Gary Eisenberg represented the appellant.

[http://nycourts.gov/reporter/3dseries/2020/2020\\_00615.htm](http://nycourts.gov/reporter/3dseries/2020/2020_00615.htm)

### THIRD DEPARTMENT

*People v Blanford*, 1/30/20 – **ENHANCED SENTENCE / REMITTAL**

The defendant appealed from a judgment of Broome County Court, convicting him of certain drug possession charges and imposing an enhanced sentence. The Third Department vacated the sentence. An enhanced sentence may not be imposed unless the court has specifically warned the defendant about the risk of such outcome. Although the instant defendant received certain warnings, he was not advised that a positive drug test could result in a more severe sentence. When he objected to the enhanced sentence, the court did not advise him of the right to a hearing. The matter was remitted for imposition of the original agreed-upon sentence or an opportunity for the defendant to withdraw his guilty plea. Christopher Hammond represented the appellant.

[http://nycourts.gov/reporter/3dseries/2020/2020\\_00646.htm](http://nycourts.gov/reporter/3dseries/2020/2020_00646.htm)

## FOURTH DEPARTMENT

### ***People v Tucker*, 1/31/20 – FIREARM LAW / CONSTITUTIONAL**

The defendant appealed from a judgment of Erie County Supreme Court, convicting him of criminal possession of a firearm. He moved to dismiss on the ground that Penal Law § 265.01-b (1) was unconstitutional as applied to him, because it violated his Second Amendment right to possess a revolver in the home for self-defense. The trial court denied the motion, and a jury found the defendant guilty. The Fourth Department rejected the constitutional challenge and affirmed. NY's licensing requirement imposed an insubstantial burden on the right of law-abiding citizens to possess a handgun in the home for self-defense. The State had a substantial interest in protecting persons within their homes from violence, and prohibiting the unlicensed possession of a handgun in the home advanced that interest.

[http://nycourts.gov/reporter/3dseries/2020/2020\\_00739.htm](http://nycourts.gov/reporter/3dseries/2020/2020_00739.htm)

## FAMILY

## FIRST DEPARTMENT

### ***Janiya P. (Scott G.)*, 1/30/20 – DV / CHILDREN'S PRESENCE / NEGLECT**

NY County Family Court dismissed neglect petitions against the respondent. The First Department reversed, reinstated the petitions, found neglect, and remanded for a dispositional hearing. The respondent was the father of the youngest subject child and a person legally responsible for the mother's eldest child. He neglected the children by committing domestic violence against the mother. While the children were present, he grabbed the mother by the hair and dragged her into the apartment after she returned from the hospital. The court also erred in failing to draw a negative inference against the respondent for failing to testify or present evidence. The Legal Aid Society of NYC (Israel Appel, of counsel) represented the appellants.

[http://nycourts.gov/reporter/3dseries/2020/2020\\_00679.htm](http://nycourts.gov/reporter/3dseries/2020/2020_00679.htm)

## SECOND DEPARTMENT

### ***Tai-Gi K. (Nadine B.)*, 1/29/20 – TPR / REVERSED**

The mother appealed from an order of fact-finding and disposition of Queens County Family Court, which found permanent neglect and terminated her parental rights. The Second Department reversed and dismissed the petition. The record established that, in 2012, the child entered foster care. By 2016, the mother had adequate housing, had completed her service plan, and enjoyed unsupervised parental access. Later that year, a trial discharge commenced. Although the mother then lived in Manhattan and the child attended school in Brooklyn, the petitioner did not help arrange a school transfer, nor did it provide appropriate services. The trial discharge failed because the child spent weeknights with the foster mother, due to the long commute between the mother's apartment and the child's school. The agency did not establish that, during the relevant

period, the mother failed to maintain contact with, or plan for the future of, the child; and that the agency made diligent efforts to strengthen the parental relationship. The Center for Family Representation represented the appellant.

[http://nycourts.gov/reporter/3dseries/2020/2020\\_00586.htm](http://nycourts.gov/reporter/3dseries/2020/2020_00586.htm)

***Matter of Farouz v Faltas*, 1/29/20 – CUSTODY DISMISSAL / REVERSED**

The mother appealed from an order of Richmond County Family Court, which granted the father's motion, at the close of her case, to dismiss her custody modification petition. The Second Department reversed, reinstated the petition, and remitted for a continued hearing. The mother established a prima facie case of a change of circumstances which might warrant modification of custody. She testified that she had obtained suitable housing, was steadily employed, and had acquired a vehicle; and she also asserted that the father's wife physically abused the child. That testimony, coupled with information derived from an in camera interview, was sufficient to warrant a full inquiry. Etta Ibok represented the appellant.

[http://nycourts.gov/reporter/3dseries/2020/2020\\_00592.htm](http://nycourts.gov/reporter/3dseries/2020/2020_00592.htm)

## **FOURTH DEPARTMENT**

***Williams v Davis*, 1/31/20 – FATHER STORMS OFF / HEARING RE-DO**

The father appealed from an order of Onondaga County Family Court, which awarded the mother sole custody of the parties' child. The Fourth Department reversed and remitted for a new hearing. During an appearance, Family Court stated that it was not "making any findings" that day and would not do so until after a future hearing. As a result, the father apparently became frustrated, and he walked out of court. As he was leaving, the court warned him that a permanent order would be issued in his absence. Thereafter, the court proceeded to hold a hearing, take testimony from the mother, and issue its determination. Generally, custody determinations should only be made following a plenary hearing. While not condoning the father's behavior, the appellate court found error in the grant of custody to the mother in the absence of adequate notice to the father regarding a hearing to determine best interests. Hiscock Legal Aid Society (Danielle Blackaby, of counsel) represented the appellant.

[http://nycourts.gov/reporter/3dseries/2020/2020\\_00777.htm](http://nycourts.gov/reporter/3dseries/2020/2020_00777.htm)