

CRIMINAL

THIRD DEPARTMENT

***People v Davis*, 10/8/20 – GUILTY PLEA / SITUATIONAL COERCION**

The defendant appealed from a Broome County Court judgment, which convicted him of a drug possession charge. The Third Department affirmed, rejecting the argument that the plea court erred in denying the defendant's motion to withdraw his plea. Even if the defendant's girlfriend was the owner of the cocaine found in the car he drove, the defendant's motion did not negate his constructive ownership of the drugs. Further, his claim that he felt pressure to take the plea deal merely described the "situational coercion" faced by many defendants considering a plea offer.

http://nycourts.gov/reporter/3dseries/2020/2020_05556.htm

FOURTH DEPARTMENT

***People v McKenzie-Smith*, 10/9/20 – AN TOMMARCHI / NEW TRIAL**

The defendant appealed from a judgment of Monroe County Supreme Court, convicting him of 2nd degree murder and other crimes. The Fourth Department reversed and granted a new trial. County Court violated the defendant's right to be present during the questioning of prospective jurors regarding bias, hostility, or predisposition to believe or discredit the testimony of potential witnesses. *See People v Antommarchi*, 80 NY2d 247. At the outset of jury selection, there was no discussion of the defendant's right to be present at the bench during sidebar conferences with prospective jurors. He did not waive that right during the first round, when defense counsel used a peremptory challenge after a sidebar conference at which the defendant was not present. David Abbatoy represented the appellant.

http://nycourts.gov/reporter/3dseries/2020/2020_05653.htm

***People v Griffin*, 10/9/20 – TERM HARSH / YOUTH / MINIMAL HISTORY**

The defendant appealed from a judgment of Yates County Court, which revoked a sentence of probation imposed upon her conviction for certain drug sales, and imposed concurrent five-year terms plus two years' post-release supervision. The Fourth Department modified. The sentence was unduly severe in light of the defendant's young age, minimal criminal history, and efforts to address substance abuse issues. Also cited were the nonviolent nature of the crimes, and the relatively minor infraction for which the defendant was discharged from her treatment program, resulting in the VOP. The appellate court reduced the incarceration period to three years. J. Scott Porter represented the appellant.

http://nycourts.gov/reporter/3dseries/2020/2020_05645.htm

***People v Smith*, 10/9/20 – INCLUSORY COUNT / IMPEACHING SILENCE**

The defendant appealed from a Monroe County Court judgment, convicting him of 1st degree burglary (two counts), 2nd degree burglary, and other crimes. The Fourth Department modified. The 2nd degree burglary count had to be dismissed as a lesser inclusory concurrent count of the 1st degree burglary charges. The defendant also contended that the trial court should have suppressed his statements to police because they

involuntary. However, the record did not include any determination of the issues raised at the *Huntley* hearing. The defendant abandoned his contention that the statements should have been suppressed by failing to seek a ruling and to object to their admission at trial. He also urged that the prosecutor had impermissibly questioned him and the investigator about his pretrial silence. As a general rule, a prosecutor may not use such silence to impeach the defendant's trial testimony. But that rule did not apply where a defendant spoke to police and omitted exculpatory information presented for the first time at trial. Danielle Reilly represented the defendant.

http://nycourts.gov/reporter/3dseries/2020/2020_05643.htm

***People v Edwards*, 10/9/20 – DISSENT / SUPPRESSION**

The defendant appealed from a judgment of Erie County Supreme Court, convicting him upon his plea of guilty to 2nd degree CPW and another crime. Two justices dissented, opining that the trial court erred in declining to suppress the tangible property and the defendant's statements. The police officer who met the informant lacked sufficient information to evaluate his reliability. The informant was agitated, may not have been sober, and provided no description of the men who purportedly "ripped him off". Moreover, when officers arrived at the subject van, they did not independently observe any indicia of criminal activity.

http://nycourts.gov/reporter/3dseries/2020/2020_05672.htm

***People v Blunt*, 10/9/20 – CPL 330.30 / NO JUROR MISCONDUCT**

The defendant appealed from a Monroe County Court judgment, convicting him of 2nd degree murder and 2nd degree conspiracy. The Fourth Department affirmed. In a previous decision, the appellate court held that County Court erred in summarily denying the defendant's CPL 330.30 motion to set aside the verdict and concluded that a hearing was required regarding purported juror misconduct. Following the hearing, the remittal court denied the motion. The hearing evidence established that the subject juror and the defendant's mother had a superficial relationship arising from knowing each other during childhood and thereafter having minimal contact over several decades. The juror's failure to disclose the relationship appeared to be inadvertent. In any event, the defendant failed to show that any misconduct may have affected a substantial right. Nothing in the record suggested that the juror harbored any bias against the mother that may have been imputed to the defendant. No evidence supported the defendant's speculative assertion that the juror likely obtained unfavorable information about him while working for the same employer as the mother.

http://nycourts.gov/reporter/3dseries/2020/2020_05639.htm

FAMILY

FOURTH DEPARTMENT

M/O Bryleigh E.N. (Derek G.), 10/9/20 – TPR / DSS / NO STANDING

The father appealed from a Family Court order, granting the DSS petition seeking to terminate his parental rights. The Fourth Department reversed. DSS had no standing to initiate the proceeding, and the court had no jurisdiction to entertain it. Social Services Law § 384-b applied to destitute or dependent children where ending parental rights would free them for adoption. This was not such a situation. Indeed, at the first appearance, Family Court granted temporary full custody to the mother, with the consent of DSS. The TPR petition against the father was thus dismissed. The Livingston County Conflict Defender (Heidi Feinberg, of counsel) represented the father.

http://nycourts.gov/reporter/3dseries/2020/2020_05670.htm

http://nycourts.gov/reporter/3dseries/2020/2020_05671.htm

M/O Joyce M.M. v Robert J.G., 10/9/20 –

PATERNITY / DISMISSAL WITHOUT PREJUDICE

In a paternity proceeding, the petitioner appealed from an order of Erie County Family Court, dismissing her petition with prejudice. The Fourth Department modified. The petitioner—the maternal grandmother and custodian of the subject child—sought a determination that the respondent was the biological father of the child. She alleged that he had sexual intercourse with the mother at the time of conception. The respondent, a resident of North Carolina, moved to dismiss on the grounds that the petition failed to state a cause of action and that Family Court lacked personal jurisdiction over him. The trial court granted the motion, with prejudice, based on the latter ground. That was error. Family Ct Act § 519 provides exceptions to the common law, which provides that paternity proceedings customarily abate upon the unavailability of the putative father. Personal jurisdiction over a nonresident putative father may be established under Family Court Act § 580-201. However, the petitioner failed to allege that the respondent engaged in sexual intercourse with the mother in NY at the time of conception or that he had any other relevant ties to this State. The lower court should have granted the father’s motion based on the petitioner’s failure to state a cause of action predicated on his sexual intercourse with the mother in NY. Such dismissal should be without prejudice. Michael McPartlan represented the petitioner.

http://nycourts.gov/reporter/3dseries/2020/2020_05616.htm

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