CRIMINAL

FOURTH DEPARTMENT

People v Stackhouse, 3/26/21 – **AGAINST WEIGHT / RIGHT TO COUNSEL**
The defendant appealed from an Onondaga County Court judgment, which convicted him of 2nd degree murder and other crimes. The Fourth Department reversed. Two counts of 1st degree robbery were dismissed because the defendant's version of events was amply supported by the physical evidence; and as to the People's theory that he participated in the theft of the victim's last $10, the defendant's admission was uncorroborated. A new trial was ordered as to the remaining counts because the defendant's right to counsel was violated. When he made specific factual allegations of serious complaints, the trial court failed to conduct a minimal inquiry and to timely act to safeguard his rights. New counsel was belatedly appointed, and the mishandling of the defendant's request contributed to ineffective assistance. Substitute counsel had only 10 days to prepare, and upon the denial of suppression, failed to seek redaction of the defendant's video-recorded statement. The jury thus heard a reference to the defendant's history of incarceration. There could be no tactical or strategic reason for such error. Hiscock Legal Aid Society (Kristen McDermott, of counsel) represented the appellant.
http://nycourts.gov/reporter/3dseries/2021/2021_01883.htm

People v Hawkins, 3/26/21 – **INSUFFICIENT PROOF / ACCESSORY**
The defendant appealed from a County Court judgment, convicting him of 2nd degree CPW (two counts) and another crime. The Fourth Department reversed and dismissed the indictment. The trial evidence was legally insufficient as to one weapon count. The codefendant robbed an individual at gunpoint. As the codefendant walked away, the victim entered a vehicle whose operator headed toward the codefendant, who fired several shots. Then the co-defendant got into a vehicle operated by the defendant, who had been parked two blocks away. The defendant did not participate in the robbery, and the proof did not show his mental culpability as an accessory. There was no evidence that the defendant: was with the codefendant earlier that day; knew that he would be armed or meant to rob someone; or had an ongoing relationship with him. As to the other weapon count, the verdict was against the weight of evidence. The People did not prove that the defendant—finding himself in the presence of a man with a loaded weapon—willingly aided possession of the weapon or shared a community of purpose with him. The Monroe County Conflict Defender (Carolyn Walther, of counsel) represented the appellant.
http://nycourts.gov/reporter/3dseries/2021/2021_01882.htm

People v Lawrence, 3/26/21 – **SUPPRESSION / NO PROBABLE CAUSE**
The defendant appealed from an Oneida County Court judgment, convicting him of multiple crimes. The Fourth Department dismissed counts related to a handgun. County Court erred in denying suppression. The defendant had standing as a passenger of the vehicle to challenge its search by virtue of the People's reliance on the statutory automobile presumption. The officer who searched the vehicle—which had just been in a one-car collision—had no safety reasons to insist on retrieving the registration certificate

from the glove compartment, rather than allowing the defendant to do so. Donald Gerace represented the appellant.
http://nycourts.gov/reporter/3dseries/2021/2021_01921.htm

People v Coffie, 3/26/21 – ***HUNTLEY* HEARING / TOO LATE**
The defendant appealed from a Supreme Court judgment, convicting him of 1st degree robbery. The Fourth Department reversed and granted a new trial. Before trial, the defendant moved to suppress his statements to the police, but the court did not hold a pretrial hearing. Only after nine prosecution witnesses had testified at trial was a *Huntley* hearing held—at the People's request. The defendant's statements were found voluntary and admissible. The error was not harmless, given identification issues, including suggestive ID procedures and the partial face covering worn by the culprit. In a second case, the defendant appealed from a judgment convicting him of attempted 2nd degree murder (two counts) and attempted 1st degree assault. The Fourth Department modified, finding the sentence unduly severe and directing that the terms run concurrently. The Monroe County Public Defender (James Hobbs, of counsel) represented the appellant.
http://nycourts.gov/reporter/3dseries/2021/2021_01884.htm

People v Meeks, 3/26/21 – **WAIVER OF INDICTMENT / DEFECTIVE**
The defendant appealed from an Onondaga County Court judgment, convicting him of 1st degree rape. The Fourth Department reversed and dismissed, because the waiver of indictment was jurisdictionally defective. The felony complaint alleged four offenses based on two rapes, in September and October 2016; a criminal sexual act in November 2016; and another crime. Yet the waiver of indictment listed only a single count to be charged in the SCI—a rape between July and November 2016. So the defendant was not on notice of the precise crime for which he was waiving prosecution by indictment, and the uncertainty implicated double jeopardy concerns. No language in the waiver form, SCI, or plea colloquy stated that the plea to one count of rape 1st fully satisfied all offenses alleged in the felony complaint. Hiscock Legal Aid Society (Noreen McCarthy, of counsel) represented the appellant.
http://nycourts.gov/reporter/3dseries/2021/2021_01925.htm

People v Boyd, 3/26/21 – **SENTENCES / CONCURRENT**
The defendant appealed from a County Court judgment, convicting him of 1st degree assault (count 6), 2nd degree CPW (count 8), and other crimes. The Fourth Department modified, by directing that the sentences imposed for counts 6 and 8 run concurrently with each other and all other counts. The consecutive terms for the above-named crimes were illegal. Where a defendant was charged with CPW in violation of Penal Law § 265.03 (3), and a different crime that had an element involving use of that weapon, consecutive sentencing was permissible, if the defendant knowingly unlawfully possessed a loaded firearm before forming the intent to cause a crime with that weapon. The People had the burden of establishing the legality of consecutive sentences. No facts alleged in relevant counts of the indictment or the plea allocution showed separate and distinct acts. Legal Aid Bureau of Buffalo (Erin Kulesus, of counsel) represented the appellant.
http://nycourts.gov/reporter/3dseries/2021/2021_01897.htm

People v Curry, 3/26/21 – **PRESERVED / AFFIRMED**
The defendant appealed from an Onondaga County Court judgment, convicting him of certain drug crimes. In affirming, the Fourth Department rejected the merits of the defendant's suppression argument, but offered a useful reminder about one path to preservation. While the defendant failed to raise the specific contention advanced on appeal as part of his omnibus motion or at the suppression hearing, County Court expressly decided the question raised on appeal. Thus, the defendant's specific contention was preserved for appellate review. *See* CPL 470.05 (2).
http://nycourts.gov/reporter/3dseries/2021/2021_01890.htm

FAMILY

FOURTH DEPARTMENT

Noah C. (Greg C.–Jacqueline C.), 3/26/21 – **NEGLECT / CORROBORATION**
The parents appealed from an order of disposition entered in Ontario County Family Court in an Article 10 proceeding. The appeal was dismissed insofar as it concerned the dispositional provisions entered on consent. The appeal from the final order also brought up for review the fact-finding order adjudicating the children to be neglected. The Fourth Department modified. The parents had neglected the children by using cocaine. But the proof did not establish neglect based on inadequate food/shelter or excessive corporal punishment. As to the latter ground, the petitioner agency did not introduce proof to corroborate one child's statement that the parents caused certain injuries. Linda Campbell and Michael Pulver represented the father and mother, respectively.
http://nycourts.gov/reporter/3dseries/2021/2021_01911.htm

M/O Myers v Myers, 3/26/21 – **CUSTODY / CHANGE**
The father appealed from an order of Onondaga County Family Court, dismissing his custody modification petition. The Fourth Department reversed and remitted for a "best interests" hearing. The 3rd grade child's excessive school absences constituted the requisite change in circumstances. Rebecca Konst represented the father.
http://nycourts.gov/reporter/3dseries/2021/2021_01916.htm

M/O Milano v Anderson, 3/26/21 – **SUPPORT / MOOT**
The father appealed from an order of Onondaga County Family Court, which denied his objections to a Support Magistrate order dismissing his petition to terminate child support based on emancipation. The Fourth Department dismissed the appeal. During the pendency of this appeal, the child turned 21, so the father's support obligation ceased. Even if the father prevailed on appeal, he would have no avenue to regain overpayments, given the strong public policy against recoupment. Thus, a ruling on the merits would have no practical consequence to the parties. The exception to the mootness doctrine did not apply.
http://nycourts.gov/reporter/3dseries/2021/2021_01903.htm