

# CRIMINAL

## FOURTH DEPARTMENT

***People v Desjardins*, 7/16/21 – CPS INTERVIEW / RIGHT TO COUNSEL**

The defendant appealed from a judgment of Oswego County Supreme Court, convicting him, upon his plea of guilty, of 2<sup>nd</sup> degree course of sexual conduct against a child and other crimes. The Fourth Department reversed. The appeal brought up for review an order denying suppression. The purported waiver of appeal was invalid since the colloquy and written waiver did not sufficiently apprise the defendant of the scope of the waiver or the rights that would survive. On the merits, County Court erred in declining to suppress statements made after the defendant's right to counsel attached. The CPS caseworker who interviewed the defendant, who was in custody, was deemed to have been acting as an agent of the police, given several factors. She was aware that he was being held on criminal charges and was represented; and she worked on a multidisciplinary task force of social services and law enforcement agencies. Further, the caseworker called the investigating officer after the interview and went to his office to report the statements. Robert Gallamore represented the appellant.

[https://nycourts.gov/reporter/3dseries/2021/2021\\_04465.htm](https://nycourts.gov/reporter/3dseries/2021/2021_04465.htm)

***People v Blanco-Ortiz*, 7/16/21 – PROBATION CONDITION / TOO BROAD**

The defendant appealed from a judgment of Erie County Supreme Court, convicting him, upon a plea of guilty, of attempted 1<sup>st</sup> degree sexual abuse. The Fourth Department modified. County Court erred in imposing broad conditions constraining the defendant's use of social networking, the internet, email, and cell phones with a camera. He had no prior criminal history, and no evidence linked his use of technology to the offense. Thus, the cited conditions did not relate to the goals of probation. The conditions should be narrowed to provide that the defendant must not: use the internet to access pornographic material; access, or have an internet account for, a commercial social networking website; and communicate with other persons or groups for the purpose of promoting sexual relations with persons under the age of 18. Legal Aid Bureau of Buffalo (Robert Kemp, of counsel) represented the appellant.

[https://nycourts.gov/reporter/3dseries/2021/2021\\_04447.htm](https://nycourts.gov/reporter/3dseries/2021/2021_04447.htm)

***People v Baek*, 7/16/21 – NO RULING / REMITTAL**

The defendant appealed from an Allegany County Court judgment, convicting him of 3<sup>rd</sup> degree rape. The Fourth Department reserved decision. Although the defendant preserved his contention concerning facial duplicity by moving to dismiss the indictment on that ground, the appellate court was unable to address that issue because the trial court did not on it. *See* CPL 470.15 (1). The matter was remitted for a ruling.

[https://nycourts.gov/reporter/3dseries/2021/2021\\_04424.htm](https://nycourts.gov/reporter/3dseries/2021/2021_04424.htm)

***People v Brewer*, 7/16/21 – MURDER / SENTENCE REDUCED**

The defendant appealed from a judgment of Monroe County Supreme Court, convicting him upon a jury verdict of 2<sup>nd</sup> degree murder. The Fourth Department reduced the sentence from 25 years to life to 20 years to life, noting that the defendant was 18 at the time of the incident. David Abbato represented the appellant.

[https://nycourts.gov/reporter/3dseries/2021/2021\\_04461.htm](https://nycourts.gov/reporter/3dseries/2021/2021_04461.htm)

***People v Serrano*, 7/16/21 – SUMMATION / ADMONISHMENT**

The defendant appealed from a Genesee County Court judgment, convicting him of 2<sup>nd</sup> degree vehicular manslaughter and other related crimes. The Fourth Department affirmed but admonished the prosecution for improperly implying, during summation, that the defense expert lied and mischaracterizing an aspect of the testimony.

[https://nycourts.gov/reporter/3dseries/2021/2021\\_04438.htm](https://nycourts.gov/reporter/3dseries/2021/2021_04438.htm)

## FAMILY

### FOURTH DEPARTMENT

***M/O Pontillo v Johnson-Kosiorek*, 7/16/21 – CUSTODY / PSYCH. EVAL.**

The mother and the AFC appealed from an order of Genesee County Family Court, dismissing the mother's custody petition and granting the father's cross-petition. The Fourth Department reversed and remitted. Where the mother's emotional health was the central issue in the proceeding, Family Court erred in ruling before the parties completed psychological evaluations. Without the forensic report, there was insufficient evidence to resolve the custody dispute. Caitlin Connelly represented the mother, and Jennifer Lorenz represented the child.

[https://nycourts.gov/reporter/3dseries/2021/2021\\_04455.htm](https://nycourts.gov/reporter/3dseries/2021/2021_04455.htm)

***M/O Calvin L.W. (Dominque H.)*, 7/16/21 – WITHDRAWAL / ERROR**

The mother appealed from an order of Niagara County Family Court, terminating her parental rights. The Fourth Department reversed. Family Court erred in allowing the mother's attorney to withdraw as counsel and proceeding with the hearing in the mother's absence. Since the attorney apparently did not tell the mother he was seeking to withdraw, he should not have been relieved. Generally, no appeal lies from an order entered on default. However, here the absence of notice to the mother invalidated the default. The matter was remitted for assignment of new counsel and a new hearing. The mother represented herself on appeal.

[https://nycourts.gov/reporter/3dseries/2021/2021\\_04470.htm](https://nycourts.gov/reporter/3dseries/2021/2021_04470.htm)