

## CRIMINAL

### SECOND DEPARTMENT

#### ***People v Mosquito*** | August 4, 2021

CREDIT CARDS | ILLICIT SEARCH

The defendant appealed from a judgment of Queens County Supreme Court, convicting him of 2<sup>nd</sup> degree criminal possession of a forged instrument and other offenses, upon a jury verdict. The Second Department reversed. After a valid vehicle stop, an officer recovered bags of marijuana from the car, as well as three credit cards in a wallet found in the center console. Although the officer lawfully encountered the cards when looking for marijuana, there was no basis to believe the cards might be illicit and to search further. Warrantless searches and seizures of an individual's effects were presumptively unreasonable per se. The People failed to demonstrate that the credit cards were lawfully seized under the plain view doctrine. Since the defendant had completed the incarceratory part of his sentence, the entire indictment was dismissed. Appellate Advocates (Chelsea Lopez, of counsel) represented the appellant.

[https://nycourts.gov/reporter/3dseries/2021/2021\\_04620.htm](https://nycourts.gov/reporter/3dseries/2021/2021_04620.htm)

#### ***People v Coulibaly*** | August 4, 2021

SEALING DENIAL | CIVIL APPEAL

The defendant appealed from a Suffolk County Court order, which denied his CPL 160.59 motion to seal his conviction of 3<sup>rd</sup> degree criminal possession of a controlled substance. The Second Department affirmed. The CPL did not provide for an appeal from an order like this one. However, the proceeding was civil in nature, so the court had jurisdiction to consider the appeal under CPLR 5701 (a) (2) (v) (appeal of right is available from order resolving motion on notice and affecting substantial right). County Court properly denied the motion since the requisite 10-year had not passed.

[https://nycourts.gov/reporter/3dseries/2021/2021\\_04616.htm](https://nycourts.gov/reporter/3dseries/2021/2021_04616.htm)

#### ***People v Hollman*** | August 4, 2021

PLEA WITHDRAWAL | DISSENT

The defendant appealed from a judgment of Nassau County Supreme Court, convicting him of 2<sup>nd</sup> degree reckless endangerment and other crimes. The Second Department affirmed. One justice dissented and would have granted the defendant's motion to withdraw his plea of guilty. The defendant apparently had not had an adequate opportunity to discuss the case and potential defenses with counsel. Further, right before the plea, he had fractured his finger and was using medical marijuana to mitigate the pain, but he was told by counsel and court that he could not get medical care until after the proceeding. The withdrawal motion indicated that counsel said that the defendant could take back his plea at any time; misinformed him about the negotiated sentence; and withheld a statement from an exculpatory witness. Supreme Court failed to scrutinize the motion. Moreover, the transcript alone warranted granting relief.

[https://nycourts.gov/reporter/3dseries/2021/2021\\_04617.htm](https://nycourts.gov/reporter/3dseries/2021/2021_04617.htm)

# APPELLATE TERM

## ***People v Salzburg*** | 2021 NY Slip Op 51716(U)

CONTEMPT | AGAINST WEIGHT

The defendant appealed from a judgment of Queens Criminal Court, convicting him after a nonjury trial of attempted 2<sup>nd</sup> degree criminal contempt. Appellate Term, Second Department reversed, finding the verdict against the weight of evidence. The expiration date of the order of protection had been changed from 10/8/15 to 10/8/16. The People failed to prove that the revision occurred before the order was given to the defendant in court. Appellate Advocates (Paris DeYoung, of counsel) represented the appellant.

[https://nycourts.gov/reporter/3dseries/2021/2021\\_50716.htm](https://nycourts.gov/reporter/3dseries/2021/2021_50716.htm)

## ***People v Burden*** | 2021 NY Slip Op 50712(U)

DELAYED DECISION | REVERSED

The defendant appealed from a judgment of a Justice Court in Suffolk County, convicting him of committing a disorderly act. Appellate Term, Second Department dismissed in the interest of justice. The bench trial lasted only 72 minutes, yet it took 342 days for a decision. There was no excuse for the delay, which was a ground for reversal even absent preservation. Raymond Negron represented the appellant.

[https://nycourts.gov/reporter/3dseries/2021/2021\\_50712.htm](https://nycourts.gov/reporter/3dseries/2021/2021_50712.htm)

## FAMILY

# SECOND DEPARTMENT

## ***Haik v Haik*** | August 4, 2021

CHILD SUPPORT | RECITALS

The wife appealed from a judgment of divorce entered in Nassau County Supreme Court. The Second Department modified and remitted. The child support provisions contained in the stipulation of settlement did not include any of the recitals required by statute. Thus, the court should have granted the motion to vacate such provisions, as well as a related provision allocating unreimbursed health care expenses. However, the defendant had failed to show any reason to disturb the agreement regarding equitable distribution. Mary Ellen O'Brien represented the appellant.

[https://nycourts.gov/reporter/3dseries/2021/2021\\_04599.htm](https://nycourts.gov/reporter/3dseries/2021/2021_04599.htm)

## ***Yusupov v Baraev*** | August 4, 2021

DIVORCE | NO MARRIAGE

The plaintiff appealed from an order granting a CPLR 3211 (a) motion to dismiss a divorce complaint on the ground that there was no valid marriage between the parties. At a hearing, the plaintiff, the rabbi who performed the ceremony, her mother, and her cousin testified. The only written evidence of a marriage was the ketubah (a Jewish religious marriage contract) in the plaintiff's possession. But the defendant denied that he ever signed the document and testified that the signature was in Hebrew, and he did not write in Hebrew. Supreme Court found the defendant credible.

[https://nycourts.gov/reporter/3dseries/2021/2021\\_04634.htm](https://nycourts.gov/reporter/3dseries/2021/2021_04634.htm)