

# Decisions of Interest

MARCH 22, 2022

## CRIMINAL

### FOURTH DEPARTMENT

#### ***People v Douglas*** | March 18, 2022

BATSON | NEW TRIAL

The defendant appealed from a Supreme Court judgment, convicting him of 2<sup>nd</sup> degree CPW and another crime. The Fourth Department granted a new trial. Supreme Court erred in denying a *Batson* challenge. Statements the prosecutor attributed to the prospective juror at issue were made by a different prospective juror, who was struck by the defendant. The Monroe County Public Defender (Helen Syme, of counsel) represented the appellant.

[People v Douglas \(2022 NY Slip Op 01919\) \(nycourts.gov\)](#)

#### ***People v Mighty*** | March 18, 2022

CONSTRUCTIVE POSSESSION | MERE PRESENCE

The defendant appealed from a Supreme Court judgment, convicting him of two counts of 3<sup>rd</sup> degree CPCS. The Fourth Department dismissed the indictment. The evidence of possession was legally insufficient. The motion for a trial order of dismissal was not specifically directed at the alleged error raised on appeal, but the appellate court reached the issue in the interest of justice. There was no evidence that the defendant actually possessed the controlled substance, and his mere presence where contraband was found was insufficient to establish constructive possession. The Monroe County Public Defender (William Clauss, of counsel) represented the appellant.

[People v Mighty \(2022 NY Slip Op 01923\) \(nycourts.gov\)](#)

#### ***People v Abughanem*** | March 18, 2022

PHYSICAL INJURY | NOT PROVEN

The defendant appealed from a County Court judgment, convicting him of multiple crimes. The Fourth Department modified. The evidence was legally insufficient to support a conviction of 3<sup>rd</sup> degree assault. The People failed to present evidence establishing that the victim sustained a physical injury when the defendant jumped on her back. Although she reported back pain, there were no photographs of injuries or any evidence of substantial back pain. The count was dismissed. The Legal Aid Bureau of Buffalo (Nicholas DiFonzo, of counsel) represented the appellant.

[People v Abughanem \(2022 NY Slip Op 01938\) \(nycourts.gov\)](#)

### ***People v Singleton*** | March 18, 2022

TAXI STOP | NO REASONABLE SUSPICION

The defendant appealed from a County Court judgment, convicting him of 3<sup>rd</sup> degree CPCS. The Fourth Department dismissed the indictment. County Court erred in denying suppression. A taxi in which the defendant rode was stopped based on a belief that he was a suspect in a recent shooting. But the detective who ordered the stop had never seen an image of the suspect, and the defendant's presence near the crime site did not support a reasonable suspicion that he was the shooter. The Ontario County Public Defender (John Cirando, of counsel) represented the appellant.

[People v Singleton \(2022 NY Slip Op 01893\) \(nycourts.gov\)](#)

### ***People v Adams*** | March 18, 2022

SENTENCE | NOT PRONOUNCED

The defendant appealed from a County Court judgment, convicting him of 4<sup>th</sup> degree arson, upon a plea of guilty. The Fourth Department modified. During sentencing, the lower court failed to orally pronounce the definite term component of the defendant's sentence. See CPL 380.20 (court must pronounce sentence in every case where conviction is entered). The appellate court vacated the sentence and remitted for resentencing. The remittal court was directed to address the defendant's assertion that her probationary term must be reduced by the time served in jail and any objections to the conditions of probation. The Monroe County Public Defender (David Juergens, of counsel) represented the appellant.

[People v Adams \(2022 NY Slip Op 01921\) \(nycourts.gov\)](#)

### ***People v Webber*** | March 18, 2022

RESTITUTION | SURCHARGE MODIFIED

The defendant appealed from a Cattaraugus County Court judgment, convicting her of 1<sup>st</sup> degree assault and another crime, upon her plea of guilty. The Fourth Department modified. County Court erred in imposing the maximum restitution surcharge of 10%. Such issue would survive even a valid appeal waiver where, as here, the court failed to advise the defendant of the potential surcharge range. The appellate court reached the unpreserved issue in the interest of justice. The record contained no filing of an affidavit of an official or organization, designated pursuant to CPL 420.10 (8), demonstrating that the actual cost of the collection and administration of restitution exceeded 5% of the restitution amount or the amount collected. Ana Tupchik represented the appellant.

[People v Webber \(2022 NY Slip Op 01904\) \(nycourts.gov\)](#)

## FAMILY

### FOURTH DEPARTMENT

#### ***Matter of Isabella S.*** | March 18, 2022

NEGLECT | NOT PROVEN

The mother appealed from an order of Onondaga County Family Court finding neglect. The Fourth Department reversed. After acknowledging her mental health issues, the mother had been compliant with treatment. She acted appropriately with the child and was involved in a housing program that would allow her to care for the child. Thus, there was insufficient evidence that actual or imminent harm to the child was clearly attributable to any act or failure on the mother's part.

[Matter of Isabella S. \(Nicole S.\) \(2022 NY Slip Op 01897\) \(nycourts.gov\)](#)

#### ***Matter of Rajea T.*** | March 18, 2022

NEGLECT | NOT PROVEN

A news outlet appealed from an order of Genesee County Family Court, entered in a Family Ct Act Article 10 proceeding, denying access to a transcript of a hearing regarding disqualification of a deputy county attorney/judicial candidate based on a conflict of interest. The Fourth Department modified. Family Court had erred in excluding the appellant from the hearing without making findings that such action was warranted, as required by 22 NYCRR 205.4 (b). There was no need for exclusion, since the appellant would not cause disruption, the parties made no compelling objections, and the disclosure of confidential information was not an issue. Further, under Family Ct Act § 166 (giving the court discretion to permit the inspection of papers and records), the transcript should have been provided. Cornell Law School First Amendment Clinic represented appellant.

[Matter of Rajea T. \(Niasia J.\) \(2022 NY Slip Op 01940\) \(nycourts.gov\)](#)



#### **Cynthia Feathers**

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