

Decisions of Interest

MAY 2, 2022

CRIMINAL

FOURTH DEPARTMENT

People v Palombi | April 29, 2022

SPEEDING | ASSAULT | AGAINST WEIGHT

The defendant appealed from a County Court judgment convicting him of 3rd degree assault. The Fourth Department reversed. Driving with only a learner's permit, the defendant lost control and crashed into a utility pole while rounding a curve. The verdict, that a passenger was seriously injured due to the defendant's criminal negligence, was against the weight of evidence. Expert proof about a speed of 92 mph was speculative, and the theory that the defendant tried to "flatten out the curve" by crossing the double line did not show moral blameworthiness. The Ontario County Public Defender (Cara Waldman) represented the appellant.

[People v Palombi \(2022 NY Slip Op 02896\) \(nycourts.gov\)](#)

See Guide to NY Evidence

[7.01 OPINION OF EXPERT WITNESS.docx](#)

People v Gardner | April 29, 2022

JURY CHARGE | ACCOMPLICE

The defendant appealed from an Allegany County Court judgment, convicting him of 2nd degree burglary. The Fourth Department granted a new trial. County Court erred in admitting as a past recollection recorded the written statement of a prosecution witness. The statement was not accurate, according to the witness, and was made many months after the alleged events recorded. The lower court also erred in charging the jury on accomplice liability, referring to a person who "potentially"—rather than "intentionally"—aided another. In the interest of justice, the appellate court concluded that the mistaken term prejudiced the defendant, who was alleged to have aided the principal by driving him to and from the crime scene. David Abbatoy represented the appellant.

[People v Gardner \(2022 NY Slip Op 02911\) \(nycourts.gov\)](#)

See Guide to NY Evidence

[8.25 PAST RECOLLECTION RECORDED.PDF](#)

People ex rel. Steinagle v Howard | April 29, 2022

BAIL | HABEAS GRANTED

The petitioner appealed from an order of Erie County Supreme Court dismissing her habeas corpus petition, which challenged a bail decision to remand her to custody. The Fourth Department reversed and remitted. A bail decision may be reviewed in a habeas proceeding if it appears that there was a violation of constitutional or statutory standards against excessive bail or that the refusal of bail was arbitrary. Here the bail-fixing court failed to explain its decision on the record or in writing, as required by statute. Barry Covert represented the appellant.

[People ex rel. Steinagle v Howard \(2022 NY Slip Op 02901\) \(nycourts.gov\)](#)

People v Lopez | April 29, 2022

SENTENCE ILLEGAL | PREDICATE

The defendant appealed from a Supreme Court judgment, convicting him of 1st degree sexual abuse, upon his plea of guilty. The Fourth Department modified. Supreme Court improperly sentenced the defendant as a second felony offender. The issue was unpreserved, but the illegality of the sentence was readily discernible from the record. A federal conviction for conspiracy to commit a drug crime may not serve as a predicate felony. The Monroe County Public Defender (Shirley Gorman) represented the appellant.

[People v Lopez \(2022 NY Slip Op 02925\) \(nycourts.gov\)](#)

People v Young | April 29, 2022

SENTENCE HARSH | SEX ASSAULT

The defendant appealed from a judgment convicting him of predatory sexual assault against a child, upon a guilty plea. The sentence was reduced from 14 years to life to 10 years to life, given the defendant's lack of a criminal history, abusive upbringing, resulting mental health issues, and remorse. John Cirando represented the appellant.

[People v Young \(2022 NY Slip Op 02912\) \(nycourts.gov\)](#)

People v Hartsfield | April 29, 2022

DISSENT | PRIOR INCARCERATION

The defendant appealed from a judgment of Monroe County Supreme Court, convicting him of 1st degree rape and other crimes, upon two jury verdicts. The Fourth Department affirmed. Two justices dissented. It was error to let the People elicit from the rape complainant testimony about her knowledge of the defendant's prior incarceration. Evidence of the victim's state of mind, i.e. her fear of the defendant, was not probative on the issue of forcible compulsion. The error was not harmless.

[People v Hartsfield \(2022 NY Slip Op 02908\) \(nycourts.gov\)](#)

See *Guide to NY Evidence*

[8.41 STATE OF MIND.docx](#)

People v Ginty | April 29, 2022

DISSENT | REASONABLE SUSPICION

The defendant appealed from an Onondaga County Court judgment, convicting him of 2nd and 3rd degree CPW, upon his plea of guilty, and from a judgment revoking a sentence of probation and imposing imprisonment. The Fourth Department affirmed. One justice

dissented. The People did not show that the officer who made the traffic stop had a reasonable suspicion that the defendant was armed and posed a threat to his safety. The initially cooperative defendant became fidgety and moved his hand in the waistline area. The officer did not observe a telltale bulge in the clothing nor see the defendant (the only Black occupant of the vehicle) reach into his pants. His actions were innocuous.

[People v Ginty \(2022 NY Slip Op 02899\) \(nycourts.gov\)](#)

***People v Bradford* | April 29, 2022**

DISSENT | STUN BELT

The defendant appealed from an order of Steuben County Court, denying his CPL 440.10 motion to vacate a judgment convicting him of various crimes. The Fourth Department affirmed. Two justices dissented. The defendant was required to wear a stun belt during trial, but County Court did not specify a security reason for such restraint, as required by *People v Buchanan*, 13 NY3d 1. A hearing was warranted regarding the claim that counsel was ineffective in not objecting to the stun belt.

[People v Bradford \(2022 NY Slip Op 02897\) \(nycourts.gov\)](#)

***People v Brown* | April 29, 2022**

POST-PLEA | NEGATING CRIME

The defendant appealed from an Onondaga County Court judgment, convicting him of 1st degree hindering prosecution. The Fourth Department affirmed. During the plea colloquy, the defendant did not negate an element of the crime. Absent a post-plea motion, County Court had no duty to inquire as to the voluntariness of the plea based on the defendant's comments during sentencing. The Fourth Department declined to follow Third Department decisions misreading *People v Pastor*, 28 NY3d 1089, which did not expand *People v Lopez*, 71 NY2d 662 (where defendant's factual recitation during plea proceedings negated essential element of crime, court must make further inquiry to ensure defendant understood nature of charge and was intelligently entering guilty plea).

[People v Brown \(2022 NY Slip Op 02917\) \(nycourts.gov\)](#)



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