

# Decisions of Interest

JULY 11, 2022

## CRIMINAL

### FOURTH DEPARTMENT

#### ***People v Lopez-Sarmiento*** | July 8, 2022

ASSAULT | NO PHYSICAL INJURY

The defendant appealed from a Yates County Court judgment, convicting him of 2<sup>nd</sup> degree assault and other crimes. The Fourth Department modified. The proof as to assault showed that the defendant attempted to stab the victim; they struggled over the knife; and she suffered minor cuts to her hands. On such proof, he was guilty only of attempted 2<sup>nd</sup> degree assault. D.J. & J.A. Cirando represented the appellant.

[People v Lopez-Sarmiento \(2022 NY Slip Op 04493\)](#)

#### ***People v Leonard*** | July 8, 2022

DISSENT | NO REASONABLE SUSPICION

The defendant appealed from a Monroe County Court judgment, convicting him of 2<sup>nd</sup> degree CPW, upon his plea of guilty. The Fourth Department affirmed. Two justices dissented. An informant merely told police that his parole officer said the defendant was dangerous and known to carry weapons. The officers' attempt to stop the vehicle was not supported by reasonable suspicion. The car did not stop, and the defendant fled on foot. The ensuing chase was not lawful, since the record was ambiguous as to whether the officer saw the defendant grab his waistband before or after the pursuit.

[People v Leonard \(2022 NY Slip Op 04468\)](#)

#### ***People v Slaughter*** | July 8, 2022

CSAAS | EXPERT

The defendant appealed from an Onondaga County Court judgment convicting him of 1<sup>st</sup> degree sexual abuse and other sexual offenses. The Fourth Department affirmed, finding that County Court properly allowed expert testimony concerning child sexual abuse accommodation syndrome (CSAAS) to explain behavior that might be puzzling to the jury. Although the expert testified briefly regarding the general behavior of perpetrators, the court sustained a defense objection and delivered a limiting instruction. On appeal, the defendant asserted that the trial court should have struck that testimony, but the argument was unpreserved, and that CSAAS was no longer generally accepted in the scientific community, but the record did not support that contention.

[People v Slaughter \(2022 NY Slip Op 04478\)](#)

### ***People v Smith*** | July 8, 2022

#### DEFENDANT | TAKING THE STAND | PLEADING THE FIFTH

The defendant appealed from a judgment of Onondaga County Supreme Court, convicting him of 2<sup>nd</sup> degree assault. The Fourth Department affirmed. The trial court ruled that, if the defendant took the stand, the prosecution could cross-examine him about who he was with during the underlying incident. The defendant contended that such cross-examination would have violated his Fifth Amendment rights because that information was the subject of a pending federal indictment. As set forth in *People v Betts*, 70 NY2d 289, a defendant could testify but assert his privilege against self-incrimination with respect to a pending criminal charge. While the prosecution could not question the defendant about pending *unrelated* criminal charges for credibility purposes, the facts here were *related* to the charges at issue.

[People v Smith \(2022 NY Slip Op 04494\)](#)

### ***Malvestuto v Schroeder*** | July 8, 2022

#### CHEMICAL TEST | LICENSE REVOCATION

The petitioner initiated an Article 78 proceeding to annul a determination revoking his driver's license, based on his refusal to submit to a chemical test, following his arrest for DWI. The determination was confirmed by the Fourth Department, which held that the arresting officer possessed reasonable grounds to believe that the petitioner had been driving while intoxicated. The hood of the car was warm; a single set of footprints in the snow led away from the driver's side; the petitioner admitted that he had been in the vehicle; and he showed signs of impairment and refused to do field sobriety tests. After being warned about consequences, the petitioner declined to submit to the chemical test.

[Malvestuto v Schroeder \(2022 NY Slip Op 04511\)](#)

### ***Forsyth v Rochester*** | July 8, 2022

#### FOIL | FEES

The petitioner made a FOIL request for certain video footage recorded by the Rochester Police Department as part of its Body-Worn Camera program. Under a blanket policy, the respondents RPD and City denied the request. They also improperly sought to charge a fee for costs to review/redact the footage. After much legal wrangling, the respondents relented and released the BWC footage, along with a log as to minor redactions. Petitioner then won an order for attorney's fees and costs. The respondents appealed, and the Fourth Department affirmed. The petitioner had substantially prevailed, and the respondents had no reasonable basis to deny the FOIL request. Indeed, the petitioner was subjected to the kind of unreasonable delays and denials that the counsel fee provision, set forth in Public Officers Law § 89 (4), sought to deter.

[Forsyth v City of Rochester \(2022 NY Slip Op 04507\)](#)

## FAMILY

### FOURTH DEPARTMENT

#### ***Matter of Silas W.*** | July 8,2022

ABUSE | REVERSED

The mother appealed from an intermediate order in an Article 10 proceeding, finding that she had neglected the children. The Fourth Department reversed. There was nothing intrinsically dangerous about the mother leaving two children to eat and watch television while she was in the bathroom with the door open. She knew that one child could be aggressive but not that he might open a locked window and drop his sibling from a height of two stories. Further, proof as to the children's hygiene and the apartment's condition did not establish neglect. Where a parent failed to provide adequate clothing and medical care, though able to do so, neglect could be found. However, there was no evidence about the mother's financial status. Andrew Coyle represented the appellant.

[Matter of Silas W. \(2022 NY Slip Op 04506\)](#)

#### ***Matter of Jiryan S.*** | July 8,2022

TPR | ADJOURNMENT DENIED | VACATED

The mother appealed from an order of Onondaga County Family Court, which terminated her parental rights based on permanent neglect. The Fourth Department vacated the order. When the mother failed to appear at the fact-finding hearing, Family Court wrongly denied counsel's request for an adjournment. The mother had not previously sought such relief, and there was no indication that a delay would have adversely affected the child. Further, when the mother defaulted, she was experiencing Covid-like symptoms and was prohibited from entering the courthouse.

[Matter of Jiryan S. \(2022 NY Slip Op 04514\)](#)

#### ***Dupont v Armstrong*** | July 8,2022

CUSTODY | ADJOURNMENT DENIED | REVERSED

The mother appealed from an order of Oneida County Family Court, which granted the father's custody modification petition. The Fourth Department reversed. A week before the hearing, the mother's attorney told Family Court that she was no longer representing the client and sought an adjournment. On the morning of the hearing, the mother herself asked for a postponement and explained that there had been a breakdown in the relationship with her attorney and that she was set to meet with a new attorney. Her request was not a delaying tactic or the result of a lack of diligence. Yet the court denied the adjournment, and the mother was forced to proceed pro se. The matter was remitted for a new hearing. Bradley Keem represented the appellant.

[Dupont v Armstrong \(2022 NY Slip Op 04509\)](#)