

**SUPREME COURT OF THE STATE OF NEW YORK**  
***Appellate Division, Fourth Judicial Department***

**911**

**KA 09-00323**

PRESENT: CENTRA, J.P., PERADOTTO, GREEN, PINE, AND GORSKI, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, APPELLANT,

V

MEMORANDUM AND ORDER

MELISSA GIANNI, DEFENDANT-RESPONDENT.  
(APPEAL NO. 1.)

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WILLIAM J. FITZPATRICK, DISTRICT ATTORNEY, SYRACUSE (JAMES P. MAXWELL OF COUNSEL), FOR APPELLANT.

D.J. & J.A. CIRANDO, ESQS., SYRACUSE (JOHN A. CIRANDO OF COUNSEL), FOR DEFENDANT-RESPONDENT.

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Appeal from an order of the Onondaga County Court (Joseph E. Fahey, J.), rendered October 15, 2008. The order, insofar as appealed from, granted that part of defendant's omnibus motion to dismiss the first count of the indictment, charging defendant with assault in the second degree.

It is hereby ORDERED that said appeal is unanimously dismissed.

Same Memorandum as in *People v Gianni* ([appeal No. 2] \_\_\_ AD3d \_\_\_ [July 2, 2009]).

Entered: July 2, 2009

Patricia L. Morgan  
Clerk of the Court