

MOTION NO. (288/94) KA 10-01190. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V CHARLIE MIXON, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: SCUDDER, P.J., SMITH, CARNI, LINDLEY, AND GORSKI, JJ. (Filed Oct. 1, 2010.)

MOTION NO. (1377/01) KA 00-02496. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V MITCHELL MONTGOMERY, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: SCUDDER, P.J., CARNI, LINDLEY, SCONIERS, AND GREEN, JJ. (Filed Oct. 1, 2010.)

MOTION NO. (1500/04) KA 03-00777. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V BERNARD J. SORRENTINO, DEFENDANT-APPELLANT. -- Motion for reargument denied. PRESENT: SCUDDER, P.J., FAHEY, CARNI, LINDLEY, AND PINE, JJ. (Filed Oct. 1, 2010.)

MOTION NO. (781/05) KA 00-02510. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V RUDOLPH YOUNG, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: SCUDDER, P.J., CENTRA, PERADOTTO, CARNI, AND GORSKI, JJ. (Filed Oct. 1, 2010.)

MOTION NO. (445/06) KA 05-00193. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V RICHARD F. MILLS, DEFENDANT-APPELLANT. -- Motion for reargument and renewal denied. PRESENT: MARTOCHE, J.P., SMITH, PINE, AND GREEN, JJ. (Filed Oct. 1, 2010.)

MOTION NO. (605/07) KA 05-00736. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V JEFFREY MC ALLISTER, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: SCUDDER, P.J., MARTOCHE, SMITH, GREEN, AND GORSKI, JJ. (Filed Oct. 1, 2010.)

MOTION NO. (1011/07) KA 06-00940. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V EDUNDABIRA O. OJO, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: SCUDDER, P.J., CENTRA, GREEN, AND GORSKI, JJ. (Filed Oct. 1, 2010.)

MOTION NO. (1125/07) KA 06-01069. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V SHAWN E. AKIN, DEFENDANT-APPELLANT. -- Motion for reargument or, in the alternative, leave to appeal to the Court of Appeals denied. PRESENT: SCUDDER, P.J., FAHEY, GREEN, AND PINE, JJ. (Filed Oct. 1, 2010.)

MOTION NO. (1482/08) KA 07-01106. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V DANIEL OGBORN, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: SCUDDER, P.J., PERADOTTO, GREEN, AND GORSKI, JJ. (Filed Oct. 1, 2010.)

MOTION NO. (46/09) CA 08-01310. -- MICHAEL GUIFFRIDA, INDIVIDUALLY AND DOING BUSINESS AS THE STOMPING GROUNDS, HORAN & HORAN OF SYRACUSE, INC., ALFRED GUIFFRIDA, ANTOINETTE GUIFFRIDA AND LOUANNE GUIFFRIDA,

PLAINTIFFS-RESPONDENTS, V STORICO DEVELOPMENT, LLC, ROBERT DOUCETTE, RICHARD DEVITO, DEFENDANTS-APPELLANTS, ET AL., DEFENDANT. -- Motion for leave to appeal to the Court of Appeals denied. PRESENT: SMITH, J.P., FAHEY, PERADOTTO, AND PINE, JJ. (Filed Oct. 1, 2010.)

MOTION NO. (287/09) KA 04-02793. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V TERRY WASHINGTON, DEFENDANT-APPELLANT. -- Motion for writ of error coram nobis denied. PRESENT: MARTOCHE, J.P., SMITH, CENTRA, FAHEY, AND PINE, JJ. (Filed Oct. 1, 2010.)

MOTION NO. (148/10) CA 09-01645. -- JOAN M. LEWIS, PLAINTIFF-APPELLANT, V FRANK LUSTAN AND CAROL LUSTAN, DEFENDANTS-RESPONDENTS. -- Motion for reargument or leave to appeal to the Court of Appeals denied. PRESENT: SMITH, J.P., PERADOTTO, CARNI, PINE, AND GORSKI, JJ. (Filed Oct. 1, 2010.)

MOTION NO. (257/10) CA 09-01445. -- BETTY L. KIMMEL, PLAINTIFF-APPELLANT, V STATE OF NEW YORK AND NEW YORK STATE DIVISION OF STATE POLICE, DEFENDANTS-RESPONDENTS. EMMELYN LOGAN-BALDWIN, APPELLANT. -- Motion for leave to appeal to the Court of Appeals denied. PRESENT: SCUDDER, P.J., PERADOTTO, CARNI, GREEN, AND GORSKI, JJ. (Filed Oct. 1, 2010.)

MOTION NO. (277/10) CA 09-01916. -- STEPHEN NICHOLS, PLAINTIFF-APPELLANT-RESPONDENT, V XEROX CORPORATION, ROBERT MARA,

INDIVIDUALLY AND IN HIS CAPACITY AS AN EMPLOYEE OF XEROX CORPORATION, AND MARIE HACK, INDIVIDUALLY AND IN HER CAPACITY AS AN EMPLOYEE OF XEROX CORPORATION, DEFENDANTS-RESPONDENTS-APPELLANTS. -- Motion for reargument or leave to appeal to the Court of Appeals denied. PRESENT: SMITH, J.P., FAHEY, CARNI, LINDLEY, AND SCONIERS, JJ. (Filed Oct. 1, 2010.)

MOTION NO. (375/10) KA 09-00476. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V OHJNA OLOMONSA, ALSO KNOWN AS JOHN SOLOMON, DEFENDANT-APPELLANT. -- Motion for a writ of error coram nobis denied. PRESENT: CENTRA, J.P., FAHEY, CARNI, GREEN, AND PINE, JJ. (Filed Oct. 1, 2010.)

MOTION NO. (433/10) CA 09-01999. -- CHANG HAN KIM AND BOOK SOON KIM, PLAINTIFFS-RESPONDENTS, V CLYMER CENTRAL SCHOOL, SCHOOL BOARD OF CLYMER CENTRAL SCHOOL DISTRICT, BARNES CONSTRUCTION COMPANY, DEFENDANTS-RESPONDENTS, ENVIRONMENTAL PRODUCTS & SERVICES, INC., DEFENDANT-APPELLANT, ET AL., DEFENDANT. -- Motion for reargument or leave to appeal to the Court of Appeals denied. PRESENT: SMITH, J.P., CENTRA, FAHEY, AND PINE, JJ. (Filed Oct. 1, 2010.)

MOTION NO. (471/10) CA 09-02378. -- VASILIIY P. LITVINOV, PLAINTIFF-RESPONDENT, V EILEEN M. HODSON, ET AL., DEFENDANTS, JACK FOY AND NEW YORK CENTRAL MUTUAL FIRE INSURANCE COMPANY, DEFENDANTS-APPELLANTS. -- Motion for leave to appeal to the Court of Appeals denied. PRESENT:

SCUDDER, P.J., SMITH, PERADOTTO, LINDLEY, AND SCONIERS, JJ. (Filed Oct. 1, 2010.)

MOTION NO. (546/10) CA 09-02316. -- JAMES WILK AND LORIANN WILK, PLAINTIFFS-RESPONDENTS, V LEWIS & LEWIS, P.C. AND MICHAEL J. SKONEY, ESQ., DEFENDANTS-APPELLANTS. -- Motion for reargument denied. PRESENT: SMITH, J.P., FAHEY, CARNI, SCONIERS, AND PINE, JJ. (Filed Oct. 1, 2010.)

MOTION NO. (572/10) CA 09-02612. -- RICHARD BENEVENTO, PLAINTIFF-RESPONDENT, V CITY OF BUFFALO AND CITY OF BUFFALO BOARD OF PARKING, DEFENDANTS-APPELLANTS. -- Motion for leave to appeal to the Court of Appeals denied. PRESENT: CENTRA, J.P., CARNI, LINDLEY, GREEN, AND GORSKI, JJ. (Filed Oct. 1, 2010.)

MOTION NO. (591/10) TP 09-00945. -- IN THE MATTER OF ANDREW OPHARDT, PETITIONER, V JULIO VASQUEZ, COMMISSIONER, COMMUNITY DEVELOPMENT OF CITY OF ROCHESTER, AND CITY OF ROCHESTER, RESPONDENTS. (PROCEEDING NO. 1.) -- Motion for reargument denied. PRESENT: SCUDDER, P.J., MARTOCHE, FAHEY, GREEN, AND GORSKI, JJ. (Filed Oct. 1, 2010.)

MOTION NO. (592/10) CA 09-01337. -- IN THE MATTER OF ANDREW OPHARDT, PETITIONER-PLAINTIFF-APPELLANT, V JULIO VASQUEZ, COMMISSIONER, COMMUNITY DEVELOPMENT OF CITY OF ROCHESTER, AND CITY OF ROCHESTER,

RESPONDENTS-DEFENDANTS-RESPONDENTS. (APPEAL NO. 1.) -- Motion for reargument denied. PRESENT: SCUDDER, P.J., MARTOCHE, FAHEY, GREEN, AND GORSKI, JJ. (Filed Oct. 1, 2010.)

MOTION NO. (593/10) CA 09-02500. -- LIEBEL & MERLE SALES, INC., PLAINTIFF-APPELLANT, V POLYMER CONVERSIONS, INC., DEFENDANT-RESPONDENT. -- Motion for reargument or leave to appeal to the Court of Appeals denied. PRESENT: SCUDDER, P.J., MARTOCHE, FAHEY, GREEN, AND GORSKI, JJ. (Filed Oct. 1, 2010.)

MOTION NO. (611/10) CA 09-02366. -- SHELIA BENSON, PLAINTIFF-RESPONDENT, V TREVOR M. LILLIE AND SUIT-KOTE CORP., DEFENDANTS-APPELLANTS. -- Motion for reargument or leave to appeal to the Court of Appeals denied. PRESENT: CENTRA, J.P., PERADOTTO, LINDLEY, SCONIERS, AND GORSKI, JJ. (Filed Oct. 1, 2010.)

MOTION NO. (638/10) CA 09-02554. -- FARRAH DONALD, CLAIMANT-RESPONDENT, V STATE OF NEW YORK, DEFENDANT-APPELLANT. -- Motion for leave to appeal to the Court of Appeals denied. PRESENT: SCUDDER, P.J., CENTRA, CARNI, SCONIERS, AND PINE, JJ. (Filed Oct. 1, 2010.)

MOTION NO. (655/10) CA 09-01993. -- SHANNON L. JOHNSON, PLAINTIFF-APPELLANT, V YARUSSI CONSTRUCTION, INC., CARMEN BONGIOVANNI, DEFENDANTS-RESPONDENTS, ET AL., DEFENDANTS. -- Motion for leave to appeal

to the Court of Appeals denied. PRESENT: MARTOCHE, J.P., SMITH, FAHEY, PERADOTTO, AND GREEN, JJ. (Filed Oct. 1, 2010.)

MOTION NO. (711/10) KA 10-00250. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V KEVIN BRYANT, DEFENDANT-APPELLANT. -- Motion for reargument denied. PRESENT: MARTOCHE, J.P., SMITH, CENTRA, SCONIERS, AND PINE, JJ. (Filed Oct. 1, 2010.)

MOTION NO. (720/10) CA 09-01804. -- DAVID J. SMITH, PLAINTIFF-RESPONDENT-APPELLANT, V NIAGARA FRONTIER TRANSIT METRO SYSTEM, INC. AND EUGENE B. JENKINS, DEFENDANTS-APPELLANTS-RESPONDENTS. -- Motion for reargument or leave to appeal to the Court of Appeals denied. PRESENT: MARTOCHE, J.P., SMITH, CENTRA, SCONIERS, AND PINE, JJ. (Filed Oct. 1, 2010.)

MOTION NO. (746/10) CA 10-00068. -- MICHAEL ROACH, INDIVIDUALLY AND AS REPRESENTATIVE OF THE ESTATE OF CATHERINE ROACH, DECEASED, ERIN K. ROACH, STEPHEN M. ROACH AND CHRISTOPHER D. ROACH, PLAINTIFFS-APPELLANTS, V COACH USA, INC., COACH CANADA, INC., ERIE COACH LINES COMPANY, INDIVIDUALLY AND DOING BUSINESS AS COACH CANADA, INC., TRENTWAY-WAGAR, INC., INDIVIDUALLY AND DOING BUSINESS AS COACH CANADA, INC., TRENTWAY-WAGAR (PROPERTIES) INC., RYAN A. COMFORT, DEFENDANTS-RESPONDENTS, ET AL., DEFENDANTS. (APPEAL NO. 1.) -- Motion for leave to appeal to the Court of Appeals granted.

PRESENT: SCUDDER, P.J., PERADOTTO, CARNI, AND SCONIERS, JJ. (Filed Oct. 1, 2010.)

MOTION NO. (747/10) CA 10-00069. -- MICHAEL ROACH, INDIVIDUALLY AND AS REPRESENTATIVE OF THE ESTATE OF CATHERINE ROACH, DECEASED, ERIN K. ROACH, STEPHEN M. ROACH AND CHRISTOPHER D. ROACH, PLAINTIFFS-APPELLANTS, V COACH USA, INC., ET AL., DEFENDANTS, J&J HAULING, INC., AND THE ESTATE OF ERNEST D. ZEISET, JR., DECEASED, DEFENDANTS-RESPONDENTS. (APPEAL NO. 2.) -- Motion for leave to appeal to the Court of Appeals granted. PRESENT: SCUDDER, P.J., PERADOTTO, CARNI, AND SCONIERS, JJ. (Filed Oct. 1, 2010.)

MOTION NO. (748/10) CA 10-00070. -- LAURALEE DAVIDSON, PLAINTIFF-APPELLANT, V COACH USA, INC., COACH CANADA, INC., ERIE COACH LINES COMPANY, INDIVIDUALLY AND DOING BUSINESS AS COACH CANADA, INC., TRENTWAY-WAGAR, INC., INDIVIDUALLY AND DOING BUSINESS AS COACH CANADA, INC., TRENTWAY-WAGAR (PROPERTIES) INC., RYAN A. COMFORT, DEFENDANTS-RESPONDENTS, ET AL., DEFENDANTS. (APPEAL NO. 3.) -- Motion for leave to appeal to the Court of Appeals granted. PRESENT: SCUDDER, P.J., PERADOTTO, CARNI, AND SCONIERS, JJ. (Filed Oct. 1, 2010.)

MOTION NO. (749/10) CA 10-00072. -- LAURALEE DAVIDSON, PLAINTIFF-APPELLANT, V COACH USA, INC., ET AL., DEFENDANTS, J&J HAULING, INC., AND THE ESTATE OF ERNEST D. ZEISET, JR., DECEASED, DEFENDANTS-RESPONDENTS. (APPEAL NO. 4.)

-- Motion for leave to appeal to the Court of Appeals granted. PRESENT:
SCUDDER, P.J., PERADOTTO, CARNI, AND SCONIERS, JJ. (Filed Oct. 1, 2010.)

MOTION NO. (761/10) CA 10-00156. -- JACQUELYN E. MURAD,
PLAINTIFF-RESPONDENT-APPELLANT, V JOSEPHINE RUSSO, DEFENDANT-RESPONDENT.
(ACTION NO. 1.) CITY OF UTICA, PLAINTIFF-APPELLANT-RESPONDENT, V JOSEPHINE
RUSSO, DEFENDANT-RESPONDENT. (ACTION NO. 2.) -- Motion for reargument or
leave to appeal to the Court of Appeals denied. PRESENT: SMITH, J.P.,
FAHEY, CARNI, GREEN, AND GORSKI, JJ. (Filed Oct. 1, 2010.)

MOTION NO. (769/10) CA 09-01406. -- FRANCES J. TAITT, PLAINTIFF-APPELLANT,
V CHARLES D. SNELLING AND TIMOTHY BEEBE, DEFENDANTS-RESPONDENTS. (APPEAL
NO. 1.) -- Motion for reargument denied. PRESENT: SMITH, J.P., FAHEY,
CARNI, GREEN, AND GORSKI, JJ. (Filed Oct. 1, 2010.)

MOTION NO. (770/10) CA 09-01408. -- FRANCES J. TAITT, PLAINTIFF-APPELLANT,
V CHARLES D. SNELLING AND TIMOTHY BEEBE, DEFENDANTS-RESPONDENTS. (APPEAL
NO. 2.) -- Motion for reargument denied. PRESENT: SMITH, J.P., FAHEY,
CARNI, GREEN, AND GORSKI, JJ. (Filed Oct. 1, 2010.)

MOTION NO. (772/10) CA 10-00109. -- JON DENNIS FERRIS, SR. AND SONJA
FERRIS, PLAINTIFFS-RESPONDENTS, V BENBOW CHEMICAL PACKAGING, INC.,
DEFENDANT-APPELLANT. -- Motion for leave to appeal to the Court of Appeals

denied. PRESENT: SMITH, J.P., FAHEY, CARNI, GREEN, AND GORSKI, JJ.
(Filed Oct. 1, 2010.)

MOTION NO. (813/10) CA 10-00073. -- THE NEW KAYAK POOL CORPORATION, NOW
KNOWN AS KAYAK POOL CORPORATION, AND KAYAK KATALOGUE, CORP.,
PLAINTIFFS-RESPONDENTS, V KAVINOKY COOK LLP, DEFENDANT-APPELLANT, AND
HODGSON RUSS, LLP, DEFENDANT-RESPONDENT. -- Motion for reargument or leave
to appeal to the Court of Appeals denied. PRESENT: SCUDDER, P.J.,
MARTOCHE, SCONIERS, GREEN, AND GORSKI, JJ. (Filed Oct. 1, 2010.)

MOTION NO. (829/10) CA 10-00300. -- MICHAEL GUIFFRIDA, INDIVIDUALLY AND
DOING BUSINESS AS THE STOMPING GROUNDS, HORAN & HORAN OF SYRACUSE, INC.,
ALFRED GUIFFRIDA, ANTOINETTE GUIFFRIDA AND LOUANNE GUIFFRIDA,
PLAINTIFFS-RESPONDENTS, V STORICO DEVELOPMENT, LLC, ROBERT DOUCETTE,
RICHARD DEVITO, DEFENDANTS-APPELLANTS, ET AL., DEFENDANT. -- Motion for
leave to appeal to the Court of Appeals denied. PRESENT: PERADOTTO, J.P.,
CARNI, LINDLEY, AND PINE, JJ. (Filed Oct. 1, 2010.)

MOTION NO. (855.1/10) CA 09-02588. -- EUGENE PALLADINO,
PLAINTIFF-RESPONDENT, V CNY CENTRO, INC., DEFENDANT-RESPONDENT, AMALGAMATED
TRANSIT UNION LOCAL 580, DEFENDANT-APPELLANT. EUGENE PALLADINO,
PLAINTIFF-RESPONDENT, V CNY CENTRO, INC., DEFENDANT-RESPONDENT, CHARLES
WATSON, AS BUSINESS AGENT OF AMALGAMATED TRANSIT UNION LOCAL 580, AND

AMALGAMATED TRANSIT UNION LOCAL 580, DEFENDANTS-APPELLANTS. -- Motion for leave to appeal to the Court of Appeals denied. PRESENT: MARTOCHE, J.P., FAHEY, CARNI, SCONIERS, AND GREEN, JJ. (Filed Oct. 1, 2010.)

MOTION NO. (899/10) KA 09-00902. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V THOMAS B. SIMCOE, DEFENDANT-APPELLANT. -- Motion for reargument denied. PRESENT: SMITH, J.P., FAHEY, LINDLEY, SCONIERS, AND GREEN, JJ. (Filed Oct. 1, 2010.)

OP 10-00932. -- THE PEOPLE OF THE STATE OF NEW YORK EX REL. WILLIAM R. PRAILEAU, PETITIONER, V PATRICIA LEONEY, SUPERINTENDENT, CAPE VINCENT CORRECTIONAL FACILITY, NEW YORK STATE DEPARTMENT OF CORRECTIONAL SERVICES, RESPONDENTS. -- Motion for leave to appeal to the Court of Appeals denied. PRESENT: SCUDDER, P.J., MARTOCHE, SMITH, CENTRA, AND GREEN, JJ. (Filed Oct. 1, 2010.)

KA 09-00302. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V PATRICK J. CRISALLI, DEFENDANT-APPELLANT. -- Judgment unanimously affirmed. Counsel's motion to be relieved of assignment granted (*see People v Crawford*, 71 AD2d 38 [1979]). (Appeal from Judgment of Ontario County Court, William F. Kocher, J. - Burglary, 3rd Degree). PRESENT: SCUDDER, P.J., MARTOCHE, SMITH, FAHEY, AND GREEN, JJ. (Filed Oct. 1, 2010.)

KA 09-00387. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V DAVID

DALE, DEFENDANT-APPELLANT. -- Judgment unanimously affirmed. Counsel's motion to be relieved of assignment granted (*see People v Crawford*, 71 AD2d 38 [1979]). (Appeal from Judgment of Livingston County Court, Robert B. Wiggins, J. - Violation of Probation). PRESENT: SCUDDER, P.J., MARTOCHE, SMITH, FAHEY, AND GREEN, JJ. (Filed Oct. 1, 2010.)

KAH 08-02381. -- THE PEOPLE OF THE STATE OF NEW YORK EX REL. CHARLES GIST, PETITIONER-APPELLANT, V J.P. MORRISSEY, SUPERINTENDENT, BUTLER CORRECTIONAL FACILITY, RESPONDENT-RESPONDENT. -- Judgment unanimously affirmed. Counsel's motion to be relieved of assignment granted (*see People v Crawford*, 71 AD2d 38 [1979]). (Appeal from Judgment of Supreme Court, Wayne County, Dennis Kehoe, A.J. - Habeas Corpus). PRESENT: SCUDDER, P.J., MARTOCHE, SMITH, FAHEY, AND GREEN, JJ. (Filed Oct. 1, 2010.)

KA 09-01957. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V MARIO MALAVE, DEFENDANT-APPELLANT. -- Judgment unanimously affirmed. Counsel's motion to be relieved of assignment granted (*see People v Crawford*, 71 AD2d 38 [1979]). (Appeal from Judgment of Wyoming County Court, Michael F. Griffith, J. - Attempted Promoting Prison Contraband, 1st Degree). PRESENT: SCUDDER, P.J., MARTOCHE, SMITH, FAHEY, AND GREEN, JJ. (Filed Oct. 1, 2010.)

KA 09-01958. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V MARIO MALAVE, DEFENDANT-APPELLANT. -- Judgment unanimously affirmed. Counsel's

motion to be relieved of assignment granted (*see People v Crawford*, 71 AD2d 38 [1979]). (Appeal from Judgment of Wyoming County Court, Michael F. Griffith, J. - Bail Jumping, 2nd Degree). PRESENT: SCUDDER, P.J., MARTOCHE, SMITH, FAHEY, AND GREEN, JJ. (Filed Oct. 1, 2010.)

KA 10-00174. -- THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, V ROBERT W. MAYS, DEFENDANT-APPELLANT. -- Judgment unanimously affirmed. Counsel's motion to be relieved of assignment granted (*see People v Crawford*, 71 AD2d 38 [1979]). (Appeal from Judgment of Erie County Court, Michael F. Pietruszka, J. - Attempted Assault, 2nd Degree). PRESENT: SCUDDER, P.J., MARTOCHE, SMITH, FAHEY, AND GREEN, JJ. (Filed Oct. 1, 2010.)