

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
FOURTH JUDICIAL DEPARTMENT

People v. Douse

2026 NY Slip Op 02742 · No. 159 KA 24-01033 · Decided May 1, 2026

SUMMARY

The New York Appellate Division, Fourth Department, unanimously affirmed judgments convicting Annisa N. Douse of assault in the second degree and endangering the welfare of a child. The court held that a missing-witness charge was properly denied because the proposed testimony would have been cumulative, and that expert medical testimony regarding the victim's injuries was properly admitted. The court declined to review an unpreserved sentencing challenge based on *Erlinger v. United States* and concluded that the sentences were not unduly harsh or severe.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Fourth Judicial Department
WRITING FOR THE COURT	Bannister, J.P.; Montour, J.; Greenwood, J.; Nowak, J.; Hannah, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Fourth Judicial Department
DECIDED	May 1, 2026
DOCKET	159 KA 24-01033
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed from judgments of conviction entered after a jury verdict for assault in the second degree and endangering the welfare of a child.
STANDARD OF REVIEW	The denial of a missing witness charge was reviewed under the applicable burden-shifting framework for such charges. The admissibility of expert testimony was reviewed for abuse of discretion. The sentencing challenge was unpreserved, and the court declined discretionary interest-of-justice review.
PRECEDENTIAL VALUE	published
PARTIES	Annisa N. Douse v. The People of the State of New York

TOPICS

evidence

expert testimony

preservation of error

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether County Court erred by denying defendant's request for a missing witness charge concerning medical personnel who treated the victim.
2. Whether the admission of medical expert testimony regarding the cause of the victim's injuries improperly usurped the jury's function.
3. Whether defendant was entitled to resentencing as a first-time felony offender under *Erlinger v. United States* despite her prior violent felony conviction.

HOLDINGS

1. The court properly denied the missing witness charge because the prosecution established that the proposed testimony would have been cumulative, and defendant failed to demonstrate that the testimony would in fact have been noncumulative.
2. The trial court properly admitted the medical expert testimony because it concerned professional or technical matters beyond the ken of the average juror, even though it addressed an ultimate issue for the jury.
3. The sentencing challenge was not preserved because defendant admitted her prior conviction and did not dispute the relevant incarceration period; the court declined to review the claim in the interest of justice.

KEY QUOTATIONS

*"A missing witness charge instructs a jury that it may "draw an unfavorable inference based on a party's failure to call a witness who would normally be expected to support that party's version of events"" (*1)*

*"The admissibility of expert testimony, even when it concerns an ultimate issue to be determined by the jury, is within the sound discretion of the trial court"" (*2)*

*"Expert opinion is proper when it would "help to clarify an issue calling for professional or technical knowledge, possessed by the expert and beyond the ken of the typical juror"" (*2)*

FACTUAL BACKGROUND

Defendant engaged in a physical altercation with her 11-year-old son, who sustained injuries treated by medical personnel at a hospital. At trial, a pediatric emergency department doctor and a child abuse pediatrician testified that the injuries were consistent with physical abuse and inconsistent with routine childhood activity. Defendant was convicted of assault in the second degree and endangering the welfare of a child.

PROCEDURAL HISTORY

Ontario County Court convicted defendant upon the same jury verdict of assault in the second degree and endangering the welfare of a child. Defendant appealed, challenging the denial of a missing witness charge, the admission of medical expert testimony, and her sentencing as a second violent felony offender. The Appellate Division affirmed both judgments.

DISPOSITION

affirmed

CASES CITED

- People v. Savinon, 100 NY2d 192, 196-197 (2003)
- People v. Gonzalez, 68 NY2d 424, 427 (1986)
- People v. Smith, 33 NY3d 454, 458-461 (2019)
- People v. Garcia, 192 AD3d 1463, 1465-1466 (4th Dept 2021)
- People v. Kitching, 78 NY2d 532, 536-537 (1991)
- People v. Elmore, 211 AD3d 1536, 1539 (4th Dept 2022)
- People v. Carr, 59 AD3d 945, 946 (4th Dept 2009), affd, 14 NY3d 808 (2010)
- People v. Khiamdavanh, 234 AD3d 1353, 1354 (4th Dept 2025)
- People v. Mason, 281 AD2d 893, 893 (4th Dept 2001)
- People v. Cronin, 60 NY2d 430, 433 (1983)
- People v. Nicholson, 26 NY3d 813, 828 (2016)
- People v. Beckwith, 289 AD2d 956, 958 (4th Dept 2001)
- People v. Valentine, 48 AD3d 1268, 1270 (4th Dept 2008)
- People v. Seignious, 114 AD3d 883, 884 (2d Dept 2014)
- Erlinger v. United States, 602 U.S. 821 (2024)
- People v. Hernandez, 43 NY3d 591, 597 (2025)
- People v. Emanuel, 240 AD3d 1324, 1327 (4th Dept 2025)
- People v. Lopez-Nunez, 239 AD3d 1327, 1327-1328 (4th Dept 2025)