

RAISE THE AGE

NO EXTRAORDINARY CIRCUMSTANCES

***People v M.C.*, 5/15/19, NY County – SENSELESS, ANOMALOUS ACT**

The two defendants were charged with numerous crimes, including assault and robbery, stemming from a single incident. Allegedly, defendant #1 held a pellet gun or similar weapon to the head of the teenage complainant and demanded money, while defendant #2 held a knife to the victim's neck. Defendant #1 then fired the gun, hitting the victim in the head. Four staples were needed to close the resulting head wound, which required no further medical treatment. Both defendants had no criminal convictions, JD adjudications, or behavioral or mental health problems. Supreme Court found that, as to both defendants, the People had not established extraordinary circumstances sufficient to override the preference for removal to Family Court, pursuant to CPL 722.23. This was a horrific experience for the complainant, and there was little explanation for the random, senseless act. However, there was no evidence that the defendants would not be amenable to rehabilitative services.

***People v A.R.*, 5/8/19, NY County – HISTORY OF TRAUMA / NEED FOR SERVICES**

The defendant was indicted for robbery, CPW, and larceny charges in connection with two incidents involving brandishing of a knife and stealing money and other items from convenience stores. A letter from the defendant's psychiatrist recounted a history of severe trauma, but a strong family bond, and advocated against an institutional setting. Supreme Court held that the DA had failed to meet the "high standard" that applied to establish that extraordinary circumstances existed. The prosecution's submission consisted solely of an affirmation from ADA summarizing the crimes and pending matters in Family Court. There were no sworn allegations from anyone with personal knowledge, as required by CPL 722.23 (1) (b). In any event, the allegations were substantively insufficient. There was no evidence that the defendant had been convicted of any crimes, and there was proof that he needed intensive services and could benefit from mental health treatment. The DA's claim that the public expects appropriate punishment when people commit crimes relied on mistaken assumptions. Segregation in a penal institution does little to protect society, as demonstrated by the analysis that motivated the RTA legislation. *See* Assembly Memo in Support. In Family Court, services are combined with safety measures to protect the community while working toward rehabilitation.

***People v J.B.*, 4/23/19, Onondaga County – BB GUN / NO PRIOR CRIME**

The defendant was charged with assault, CPW, and another offence, in connection with a single incident. The People sought to establish extraordinary circumstances, but the Youth Part held that such circumstances did not exist. The victim was shot with a BB gun, which he said, "felt like a hornet's bite." But he did not sustain a significant injury caused by the defendant. Moreover, there was no proof that the defendant had previously been involved in any criminal activity. In this decision regarding extraordinary circumstances, the court also memorialized a prior oral ruling that the prosecution did not establish that the defendant displayed a firearm or deadly weapon in furtherance of an offense charged. The *J.B.* court cited a Nassau County case, *People v M.M.*, 63 Misc 3d 772,

http://www.nycourts.gov/reporter/3dseries/2019/2019_29071.htm (“nothing in the plain language of the statute indicates that CPL § 722.23 [2] [c] [ii] is intended to extend to cases where the AO has not displayed an *actual* firearm or ‘deadly weapon’, but has only displayed ‘what appears to be’ a firearm or deadly weapon”).

***People v S.J.*, 4/10/19, NY County – MOLESTATION / NO CRIMINAL HISTORY**

The defendant was indicted for burglary and assault charges. Supreme Court found no extraordinary circumstances. There were no allegations of sworn fact, and in any event, the allegations were substantively inadequate. The defendant followed the complainant up a flight of steps in an apartment building, grabbed her jacket, struggled with her, and threw her down the steps. No specific allegations of any sexual behavior were made. In other pending cases, the defendant was alleged to have followed women and groped them over their clothing. This was not a case of a defendant who had a proven history or background of violence or other indicia that he was unsuitable for rehabilitative services.

***People v J.W.*, 3/28/19, Erie County – ROBBERY / AMENABLE TO SERVICES**

The AO was charged with 1st degree robbery. She was one of the two main perpetrators of the robbery; was the person alleged to have placed a hard object to the back of the complainant cab driver’s head; and refused to return the stolen money. The codefendant (A.T., *infra*) “egged on” the AO. Since the arraignment, the AO had been amenable to services. The Youth Part held that the People did not show extraordinary circumstances.

EXTRAORDINARY CIRCUMSTANCES FOUND

***People v A.T.*, 3/25/19, Erie County – INCORRIGIBLE / PENDING CASES**

The AO was charged with 1st degree robbery in connection with the offense described above in *People v J.W.* In addition, the AO was charged with the robbery of a different cab driver, with the use of a BB gun, and was released. Then the AO was again arrested and accused of robbing a third cab driver. The AO failed to return to court for further proceedings and was arrested on bench warrants and then charged for an additional crime of grand larceny. The People contended that the AO was the primary actor in such crimes. The Youth Part found that extraordinary circumstances existed. The AO had multiple separate pending cases; appeared to thwart any efforts at rehabilitation; failed to comply with conditions of release; and had to be arrested to secure his appearance in court.

***People v J.B.*, 3/26/19, Onondaga County – 3 INCIDENTS / OUT OF CONTROL**

The defendant was charged with committing felonies on three separate dates. The offenses included burglary and larceny. The Youth Part found that extraordinary circumstances were present. In the first incident, the defendant entered the victim’s bedroom where she was sleeping, woke her and her son with his movements, and stole property while the victim screamed. In the second incident, while participating in a probation-mandated program, the defendant burglarized an apartment and stole the family’s presents on Christmas Eve. In the third incident, the defendant snatched a purse from a woman, who was holding an infant, almost causing her to fall. The defendant’s repeated criminal activity in a four-month period—while he was on Family Court probation—evinced his inability

to stop his criminal behavior. He was out of control and was not remorseful, contrite or receptive to counseling.

NO SIGNIFICANT PHYSICAL INJURY

***People v J.T.*, 5/28/19, NY County – BRUISES / SCRAPES**

The defendant participated in a group assault on a complainant, resulting in multiple felony charges. Supreme Court held that the DA failed to prove by a preponderance of the evidence that the defendant caused a significant physical injury, as set forth in CPL 722.23 (2) (c) (i). Allegedly, the group surrounded a vehicle, and the defendant punched the complainant in the face six or seven times and struck him in the hand with a metal pipe. Medical records showed that the complainant was seen in the ER, discharged after an hour, and only suffered contusions, abrasions, and swelling.

***People v K.U.*, 5/23/19, NY County – DIFFICULT WALKING / 2 WEEKS**

The two defendants were involved in a group assault on one complainant, using hands and feet and scooters, resulting in various assault charges. Supreme Court found that the DA did not prove a significant physical injury. The victim was seen in the ER and discharged after two hours. He had a hematoma on his scalp, a scrape on his lip, bruises on his elbow and forearm, and mild tissue swelling. The ADA reported that the complainant had difficulty walking and suffered pain for two weeks. That was not enough.

***People v E.P.*, 5/20/19, NY County – PUNCH / NOSE FRACTURE**

The defendant was charged with criminal mischief and assault offenses. Supreme Court held that the DA did not prove a significant physical injury. The codefendant punched the complainant, resulting in a mildly displaced fracture to the nasal bone. The victim went to the ER and discharged after two hours, with no recommendation for further treatment and no prescription medication.

***People v R.R.*, 4/5/19, NY County – PIPE AS WEAPON / BUMP ON HEAD**

The defendant was charged with assault, robbery, and other crimes. Supreme Court found that there was no significant physical injury. The defendant hit a store security guard with a metal pipe and/or a hammer. Then, when the guard fell, the defendant struck him with his hands, feet and/or objects. In the ER, the victim was diagnosed with a laceration of the head, pain in his knee, and a bump on his head. No further medical treatment was required.

***People v M.C.*, 3/28/19, NY County – PELLET GUN / STITCHES / HEADACHES**

The defendant was charged with assault, CPW, robbery, and other crimes. No significant physical injury was proven, Supreme Court held. The defendant held a pellet gun to the victim's head and demanded money, while the codefendant held a knife to his neck. The defendant fired the pellet gun, striking and injuring the complainant, who was seen in the ER and received four staples to close the wound. The complainant reported that he continued to suffer from headaches and had difficulty concentrating and sleeping. That was insufficient.

***People v R.J.*, 2/20/19, NY County – SIX STITCHES / NO SCARRING**

The defendant was charged with assault, robbery, and other offenses. Supreme Court concluded that the DA did not prove a significant physical injury. The complainant required six stitches to close a cut on his forehead. He also suffered a bruise and scrape to the leg. The medical records made no mention of the possibility or likelihood of scarring.

SIGNIFICANT PHYSICAL INJURY FOUND

PUBLISHED DECISION: People v Y.L.

2019 NY Slip Op 29181 (Monroe County, 5/17/19)

BROKEN NOSE / HOSPITAL STAY

The defendant and a codefendant were charged with attempt to commit 1st degree gang assault. The Youth Part found that the injury they inflicted constituted a significant physical injury. They taunted, punched, and kicked in the head a homeless, mentally ill man. He suffered a broken nose, significant swelling to the head, and extreme pain, requiring a hospital stay of several days. The defendants asserted that the People failed to demonstrate that each caused the injury. A prior, unpublished decision out of Broome County found that the Legislature intended that a defendant must be the sole actor who caused the conduct outlined. The *Y.L.* court disagreed. Such a narrow interpretation was inconsistent with the legislative intent animating the RTA law. A discussion on accomplice liability in the Assembly demonstrated that causation does not require a sole actor. The People established that both defendants were not just present or nearby; they were active participants in the crime. Each not only aided and shared a community of purpose, but also admitted directly participating in the attack.

http://www.nycourts.gov/reporter/3dseries/2019/2019_29181.htm

***People v A.P.*, 4/22/19, NY County – BULLET IN LEG / SURGERY / SCAR**

The defendant was charged with assault, robbery, and CPW offenses. Supreme Court found that the defendant caused a significant physical injury when he shot the complainant in the leg. Surgery was required to save the victim's life, because the bullet penetrated the femoral artery, which could not be salvaged, requiring a vein to be taken from the other leg and inserted in the injured leg. The victim would have scarring on both legs.

***People v J.T.*, 4/9/19, NY County – DETACHED RETINA / SURGERY**

The defendant was charged with assault and harassment offenses. Supreme Court found that a significant physical injury existed. The defendant struck the complainant in the face, causing a detached retina and displaced lens. After the incident, the complainant could only see shadows out of the left eye. Surgery was required to reattach the retina and replace the lens.

***People v J.G.*, 3/26/19, NY County – BULLET / LOST KIDNEY**

The defendant was charged with attempted 2nd degree murder and other crimes. He shot the victim, inflicting multiple wounds that caused such extensive damage to the victim's kidney that it could not be saved and had to be removed. Such proof established a significant physical injury, Supreme Court held.

People v L.H., 11/20/18, NY County – LIP / SCAR

The defendant was charged with robbery, assault, and other crimes. He and two others surrounded the complainant. Then the defendant pursued the complainant, shoved him, and punched him in the face; and a codefendant kicked his ear and hand. The complainant went to the hospital and received numerous stitches to treat a laceration to the lip an inch-plus in length. There would likely be some scarring as a result of the injury. These facts were sufficient to show that the defendant caused a significant physical injury. Further, the defendant appeared to have played a primary role in the incident.

NO FIREARM DISPLAY

PUBLISHED DECISION: People v D.G.

63 Misc 3d 1237(A) (Kings County, 4/4/19)

PROOF FELL WOEFULLY SHORT

The defendant was charged as an AO with robbery and other crimes. The felony complaint alleged that, one evening at around 8:30 p.m., as the complainant was exiting her Mercedes Benz, the defendant took a firearm out of his jacket, pointed it at her, and demanded her car keys, entered the vehicle, and then exited and fled on foot. The question was whether the defendant “displayed a firearm, shotgun, rifle or deadly weapon,” as defined in the Penal Law, in furtherance of an offense charged. *See* CPL 722.23 (2) (c) (ii). The defense correctly contended that the object perceived must have been an actual firearm or deadly weapon, as defined in the Penal Law. The decision discussed previous decisions regarding this factor and concluded that the People did not satisfy their burden via the complainant’s statement that the defendant held what she perceived to be a black firearm. There was no proof as to the weather or lighting conditions at the time of the incident, nor was there testimony as to the length of time that the victim saw the alleged firearm. Such proof fell woefully short.

DISPLAY OF FIREARM FOUND

People v K.M., 5/31/19, NY County –

DISPLAYING FIREARM / OPERABILITY PROOF

The defendant was charged with CPW charges and other offenses. Supreme Court held that the DA established that the defendant displayed a firearm in furtherance of the charged crimes. The felony complaint stated that the defendant and a man argued on a subway car, the argument escalated, and the defendant pulled out a gun. A police officer observed the defendant holding a firearm and disarmed him. Operability was proven by a report reflecting that stock bullets were chambered and discharged. Testing of actual ammunition, rather than matching stock, normally was necessary. However, CPL 722.23 (2) (c) (ii) does not require that the DA prove display of a loaded firearm, only display of a firearm, as defined in Penal Law § 265 (3) (“firearm” means any pistol or revolver; a shotgun having one or more barrels less than 18" in length; a rifle having one or more barrels less than 16" in length; any weapon made from a shotgun or rifle... if such weapon was altered...has an overall length of less than 26"; or an assault weapon).

***People v S.D.*, 5/13/19, NY County – 911 CALL / POLICE RETRIEVE GUN**

The defendant was charged with CPW counts. A 911 caller stated that she saw three black boys chasing a fourth boy, and one pursuer was holding a black gun. An officer responding to the call saw the defendant running with a black gun handle protruding from his pocket. Another officer saw the defendant run behind a parked car, heard the noise of a heavy metal object hitting the ground, and then observed a firearm on the ground. Supreme Court found that the defendant displayed a firearm in furtherance of the charged crimes.

***People v J.M.*, 2/22/19, NY County –
SEARCH WARRANT / GUN RECOVERED**

The defendant was charged with robbery, weapon possession, and other crimes. The felony complaint stated that he displayed a firearm toward a group of persons and then took a bicycle belonging to one person in the group. A search warrant was executed, resulting in the recovery of a handgun from the defendant's bedroom closet. A report stated that the firearm was tested and operable. The defendant admitted to police that he displayed a gun before taking the bike. Supreme Court held that the DA had satisfied the burden that the defendant displayed a firearm.

NO SEXUAL CONTACT

***People v J.S.*, 4/15/19, NY County –
VIDEO / AMBIGUOUS RE SEXUAL NATURE**

The defendant was charged with various sexual offenses. Supreme Court found that the DA failed to prove that the defendant unlawfully engaged in sexual intercourse, oral sexual conduct, anal sexual conduct or sexual contact, as defined in § 130.00 of the Penal Law. *See* CPL 722.23 (2) (c) (iii). Penal Law § 130.00 (3) states that sexual contact is any touching of the sexual or other intimate parts of a person, whether directly or through clothing, for the purpose of sexual gratification. The video of an encounter on an elevator showed that the defendant touched the complainant three times on the back, arm, and head, but did not appear to use force. The two remained engaged on conversation, with no indication of hostility. There was no evidence of what the defendant and the complainant were conversing about, so the video evidence was at best ambiguous about the sexual nature of what transpired.

SEXUAL CONTACT FOUND

***People v S.J.*, 3/11/19, NY County – DEFENDANT GRABBED BREAST**

The defendant was charged with burglary, sexual abuse, and other offenses. Supreme Court found that he unlawfully engaged in sexual contact. The complainant reported that, during the commission of a burglary, the defendant grabbed her breast, in violation of Penal Law § 130.52 (1) (person is guilty of forcible touching when such he/she intentionally, and for no legitimate purpose, forcibly touches sexual or other intimate parts of another person for purpose of degrading or abusing such person, or for purpose of gratifying actor's sexual desire).