

Decisions of Interest

JANUARY 30, 2023

CRIMINAL

FIRST DEPARTMENT

People v Luck | Jan. 24, 2023

FEDERAL CONVICTION | CONDUCT WITHIN SCOPE | SORA REGISTRATION

The defendant appealed from a Bronx County Supreme Court order that adjudicated him a risk level one sex offender, contending that his federal conviction did not require him to register as a sex offender in New York. The First Department affirmed. While the elements of the defendant's federal conviction for conspiracy to commit sex trafficking of a minor do not completely overlap the New York offense of 2nd degree promoting prostitution, the conduct underlying the federal conviction was "within the scope of the New York offense."

[People v Luck \(2023 NY Slip Op 00275\)](#)

SECOND DEPARTMENT

People v Reid | Jan. 25, 2023

JURY CHARGE | MODIFIED

The defendant appealed from a judgment of Queens County Supreme Court that convicted him of 2nd and 3rd degree CPW and 2nd degree reckless endangerment. The Second Department modified by vacating the conviction of 2nd degree CPW and remitted for a new trial. The defendant was charged in the indictment with 2nd degree CPW under the theory that he knowingly possessed a loaded firearm outside his home or business. Because the defendant had been arraigned on a special information and admitted a prior conviction, Supreme Court instructed the jury that, to find him guilty of 2nd degree CPW, they only needed to find that he knowingly possessed a loaded firearm. But the prosecution was limited by the indictment; thus, the trial court erred by omitting from the jury charge the element of possession outside the defendant's home or business. Twyla Carter (Nancy Little, of counsel) represented the appellant.

[People v Reid \(2023 NY Slip Op 00336\)](#)

People v Ghotra | Jan. 25, 2023

SORA | OUT-OF-STATE CONVICTION | SEXUALLY VIOLENT OFFENDER

The defendant appealed from a Nassau County Supreme Court order that designated him a level one sexually violent offender. The Second Department affirmed. Correction Law § 168-a "requires any person subject to SORA's foreign registration requirements to be designated a sexually violent offender regardless of whether the underlying offense is

violent in nature.” Because the defendant was convicted of felonies in New Hampshire that required him to register as a sex offender, he was properly adjudicated a level one sexually violent offender.

[People v Ghotra \(2023 NY Slip Op 00338\)](#)

TRIAL COURTS

People v Hooks | 2023 WL 367193

DISCOVERY | INVALID COC AND SOR

The defendant moved to invalidate the People’s COC and SOR because they failed to disclose *Giglio* material, activity logs, body camera video for all responding officers, and a statement made by the complainant to law enforcement. Kings County Criminal Court invalidated the COC and dismissed the accusatory instrument. The People belatedly disclosed certain materials after the filing of the COC and SOR. They never filed a supplemental COC and failed to provide an adequate explanation for the delay or their failure to provide the outstanding items. As more than 90 days of time chargeable to the People had elapsed without a valid COC or SOR, the accusatory instrument charging the defendant with two misdemeanors and a criminal violation was dismissed pursuant to CPL 30.30. The Legal Aid Society of NYC (Nicholas Raskin, of counsel) represented the defendant.

[People v Hooks \(2023 NY Slip Op 23019\)](#)

People v Simmons | 2023 WL 328587

CPL 245.50 | DISCOVERY | COMPLAINANT’S CRIMINAL HISTORY

The defendant moved to invalidate the People’s COC and SOR because they failed to disclose the complaints, case summaries, and other underlying materials for the complainant’s criminal convictions. Bronx County Supreme Court denied the motion, concluding that the People complied with CPL 245.20 (1) (p) by disclosing the list of criminal convictions, which included the date of conviction, Penal Law section, county in which the conviction was obtained, and docket or indictment number.

[People v Simmons \(2023 NY Slip Op 23016\)](#)

People v A.M. | 2023 WL 353201

RAISE THE AGE | EXTRAORDINARY CIRCUMSTANCES

The People moved to prevent removal of the two adolescent offenders’ cases to the juvenile delinquency part of the Erie County Family Court. Erie County Youth Part denied the motion. Under CPL 722.23 (1) (d), a court must deny the prosecutor’s motion to prevent removal unless “extraordinary circumstances” exist to deny the transfer to Family Court. This is a “high standard” and denial of transfers “should be extremely rare.” Here, the AOs attempted to steal snacks from the victim’s store. When the victim prevented them from leaving, the youths physically attacked him, punching him in the head and face. Extraordinary circumstances did not exist; the alleged incident was not highly unusual or especially heinous. The AOs were separately represented by Michael Cimasi and Kara Buscaglia.

[People v A.M. \(2023 NY Slip Op 50054\[U\]\)](#)

FAMILY

FIRST DEPARTMENT

Matter of Annissa D. v Martha D. | Jan. 24, 2023

FAMILY OFFENSE | SUSTAINED THEN DISMISSED

The petitioner appealed from two New York County Family Court orders, one of which found that the hearing proof established that the respondent committed a family offense, entered a suspended judgment set to expire immediately, and vacated the temporary order of protection. The other order dismissed the family offense petition following the same hearing. The First Department affirmed. Family Court providently exercised its discretion in limiting the suspension period and dismissing the petition—the case had been pending for over two years, and there were no allegations that the respondent failed to abide by the temporary order of protection or behaved in a way that would have warranted its extension.

[Matter of Annissa D. v Martha D. \(2023 NY Slip Op 00264\)](#)

SECOND DEPARTMENT

Matter of Aurora B. (Eric. H.) | Jan. 25, 2023

DISMISSED | DEFAULT ORDER

In related Article 10 proceedings, the mother and father separately appealed from orders of Rockland County Family Court finding that they neglected their daughters and placing the children in the custody of Social Services. The Second Department dismissed the appeals. The parents failed to appear at the combined fact-finding and dispositional hearing. No appeal lies from an order made on default of the appealing party. Subjects of contest in Family Court may be reviewed, but the lower court's failure to adjourn the hearing was not a subject of contest below.

[Matter of Aurora B. \(2023 NY Slip Op 00317\)](#)

THIRD DEPARTMENT

Matter of Pauline DD. v Martha DD. | Jan. 26, 2023

UNSPECIFIED FAMILY OFFENSE | AFFIRMED

The respondent appealed from an Essex County Family Court order that found, after a hearing, that she committed an unspecified family offense. The Third Department affirmed. If Family Court does not specify the family offense that was committed, the appellate court may independently review the record to determine if it supports the determination. Here, the petitioner established by a preponderance of the evidence that the respondent committed the family offense of 2nd degree harassment when she called

the petitioner's son a derogatory name and, on a separate occasion, obstructed the petitioner's vehicle.

[Matter of Pauline DD. v Martha DD. \(2023 NY Slip Op 00353\)](#)

Matter of Issac Q. (Kimberly R.) | Jan. 26, 2023

PERMANENCY ORDER | NOT APPEALED

The respondent mother appealed from a Schuyler County Family Court order that adjudicated her son permanently neglected and terminated her parental rights. The Third Department affirmed. While Family Court may have erroneously adopted concurrent permanency goals of freeing the child for adoption and return to parent (relevant portions of the audio recording of the hearing were inaudible), no appeal was taken from the underlying permanency order and it was not included in the record on appeal. Moreover, any such error would not constitute a basis to reverse the permanent neglect finding.

[Matter of Issac Q. \(2023 NY Slip Op 00356\)](#)

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