

# Decisions of Interest

SEPTEMBER 25, 2023

## CRIMINAL

### SECOND DEPARTMENT

#### ***People ex rel. Fast v Molina*** | September 18, 2023

HABEAS CORPUS | CPL 30.30 | WRIT SUSTAINED

The petitioner filed a writ of habeas corpus seeking to be released on his own recognizance or upon posting bail pursuant to CPL 30.30 (2) (a). The Second Department sustained the writ and remitted. The People's unspecified delay in producing the grand jury minutes, which was attributable to a backlog in the court reporter's production of transcripts, did not constitute excusable delay. The People failed to demonstrate that the timing of the production of the minutes was beyond their control or that they engaged in diligent efforts to produce outstanding discovery by the trial readiness deadline. The Fast Law Firm, P.C. (Elena Fast, of counsel) represented the petitioner.

[People ex rel. Fast v Molina \(2023 NY Slip Op 04641\)](#)

#### ***People v Jony*** | September 20, 2023

SORA | PURPOSE OF VICTIMIZATION | DISSENT

The defendant appealed from a Queens County Supreme Court order designating him a level two sex offender. The Second Department affirmed, with one justice dissenting. In the dissent's view, Supreme Court erred in assessing 20 points on factor seven for the establishment of a relationship with the complainant for the primary purpose of victimization. The defendant first met the complainant during a visit with his co-worker, the complainant's uncle, and later communicated with her online. He eventually asked the complainant for nude photographs and they met several times to engage in oral sex. There was no evidence that their initial meeting was for a sexual purpose or showing the nature and duration of their relationship before he first contacted her online. Points are not intended to be assessed on risk factor seven based on grooming alone.

[People v Jony \(2023 NY Slip Op 04674\)](#)

### THIRD DEPARTMENT

#### ***People v Jones*** | September 21, 2023

RESENTENCE | VACATED | REMITTED

The defendant appealed from a Schenectady County Court judgment convicting him of 1<sup>st</sup> and 2<sup>nd</sup> degree assault based on his guilty plea, and from a judgment of that court resentencing him on the 1<sup>st</sup> degree assault conviction. The Third Department vacated the

1<sup>st</sup> degree assault sentence and remitted. Supreme Court failed to determine whether the defendant was an eligible youth as to the 1<sup>st</sup> degree assault conviction. A conviction of an armed felony does not automatically preclude an adjudication as a youthful offender—the court must first consider the factors of CPL 720.10 (3) to determine if the defendant is an eligible youth and, if so, then must decide whether the eligible youth is a youthful offender. Mitchell S. Kessler represented the appellant.

[People v Jones \(2023 NY Slip Op 04689\)](#)

## TRIAL COURTS

***People v Caselnova*** | September 20, 2023

FUNDAMENTAL FLAWS | GRAND JURY | INDICTMENT DISMISSED

The defendant moved to dismiss an eight-count indictment based on insufficient evidence and defective grand jury proceedings. Saratoga Supreme Court granted the motion. The charges, which included attempted 2<sup>nd</sup> degree murder, arose from a late night, drunken verbal exchange between the defendant and a group of men that escalated to a physical altercation and ended in a shootout involving the defendant and one of the men. The grand jury instructions were defective. The prosecutor: (1) should have instructed on the permissible use of deadly force to prevent an attempted kidnapping or rape; (2) should have instructed on the defendant’s withdrawal along with the initial aggressor rule; (3) improperly instructed on the defendant’s duty to retreat, given his inability to do safely; and (4) should not have identified the armed individual as the only perceived threat. Further, the prosecutor’s biased tactics impaired the integrity of the proceedings and potentially prejudiced the grand jury. The cumulative effect of the errors rendered the grand jury proceeding fundamentally defective and unfair. Gregory J. Teresi represented the defendant.

## FAMILY

## THIRD DEPARTMENT

***Matter of Luisa JJ. v Joseph II.*** | September 21, 2023

HAGUE CONVENTION | EXCEPTIONS | WRONGFUL WITHHOLDING

The father appealed from a Washington County Supreme Court order that directed him to return the child (born in 2013) to the mother’s custody. The Third Department reversed and remitted. The parents shared custody and agreed that the child would live primarily with the mother in Italy and visit the father in NY throughout the year. During the child’s 2022 winter visit, he told the father that a minor relative of the mother’s boyfriend had been sexually abusing him and that, after telling the mother, she did nothing to stop it. The father reported the abuse to NY law enforcement and did not return the child to Italy. An Italian court ordered the father to return the child to the mother, and Supreme Court granted the mother’s request to enforce that order. Although the father wrongly withheld the child according to the Hague Convention, Supreme Court abused its discretion by ordering the child’s return without inquiring into the “grave risk” and “age and maturity”

exceptions the father asserted. He alleged that, after the disclosure, the mother forced the child to continue to share a bed with the minor who abused him and as a result the child was afraid to return to Italy. Green Kaminer Min & Rockmore LLP (Richard Min, of counsel) represented the father.

[Matter of Luisa JJ. v Joseph II. \(2023 NY Slip Op 04699\)](#)

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