

## RAISE THE AGE

### ***NO EXTRAORDINARY CIRCUMSTANCES***

#### ***People v J.C.***, 12/19/18 – **PRIOR CHARGES**

The AO was charged with 4<sup>th</sup> degree grand larceny, petit larceny, and 5<sup>th</sup> degree criminal possession of stolen property. Prior to the filing of the instant matter, he had robbery charges pending in **New York County** Supreme Court, and the DA asserted that those charges established extraordinary circumstances. The trial court rejected such contention. All relevant circumstances must be considered. The AO was only 16; had no criminal convictions; apparently played a secondary role in the pre-existing case; and merely temporarily deprived the complainant of her cell phone in the instant matter.

#### ***People v D.P.***, 2019 NY Slip Op 50261(U) – **PRIOR CHARGES**

In **Erie County** Family Court, the accusatory instrument charged the AO with 2<sup>nd</sup> degree CPW. The felony complaint stated that the defendant knowingly and unlawfully possessed a .38-caliber revolver, loaded with four rounds in the chamber. Following arraignment, the court determined that the People did not meet the requirements of CPL 722.23 (2) (c). The People moved to prevent removal to Family Court. “Extraordinary circumstances” refers to a very unusual or remarkable situation. The alleged criminal behavior was not extraordinary. The supporting depositions set forth the AO’s prior adjudication as a YO for a robbery and violations of probation. Even for charges filed prior to the enactment of the RTA, the intent of the law should be honored—to give adolescent and juvenile offenders an opportunity to rehabilitate. The goal is avoidance of criminal records and incarceration when possible.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_50261.htm](http://nycourts.gov/reporter/3dseries/2019/2019_50261.htm)

#### ***People v R.K.***, 1/28/19 – **NEW CHARGES**

After being released in the instant **New York County** case, the AO was accused of having committed a robbery. No evidence suggested that a gun was involved, despite the DA’s reference to a “gunpoint robbery.” The AO had an excellent record as to cooperating with rehabilitative services; and he faced many challenges, including learning disabilities and exposure to domestic violence resulting in PTSD. The People did not establish extraordinary circumstances; and there was no basis for depriving the AO of rehabilitative measures offered in Family Court.

#### ***People v R.M.***, 2019 NY Slip Op 28429 – **MENTAL HEALTH ISSUES**

The defendant was charged as an AO in the Youth Part of **Westchester County** Court. He was accused of one count of aggravated cruelty to animals relating to intentionally suffocating and killing a cat. The court denied the People’s motion to prevent removal. The AO was age 16, suffered from depression, and had made three suicide attempts. The nature of the crime did not constitute extraordinary circumstances. Further, the defendant’s mental health weighed in favor of transferring the case to Family Court, which was well-equipped to meet her the therapeutic and supervisory needs.

[http://www.nycourts.gov/reporter/3dseries/2018/2018\\_28429.htm](http://www.nycourts.gov/reporter/3dseries/2018/2018_28429.htm)

***People v B.H.*, 2019 NY Slip Op 29024 – SEVERAL MITIGATING FACTORS**

The AO was charged with attempted 2<sup>nd</sup> degree murder and other crimes. **Nassau County** Supreme Court ordered removal to Family Court. The People moved to prevent removal, contending that extraordinary circumstances existed, based on: (1) the seriousness of the crime; (2) aggravating circumstances not captured in the accusatory instruments; and (3) the impact of removal on public confidence in the system, the safety of the community, and the victim. In opposition, defense counsel noted that the AO was likely intimidated into joining the subject gang. Supreme Court observed that removal is the presumption; and legislative debates revealed that the Assembly contemplated that the denial of removal would be “extremely rare.” The term “extraordinary circumstances” was equated with “highly unusual and heinous facts,” and AOs not amenable to the heightened services offered in the Family Court. The Assembly set forth a lengthy list of mitigating factors, including economic difficulties, substandard housing, educational challenges, emotional difficulties, and substance abuse. The People stated that school records showed evidence of the AO’s truancy, disorderly behavior, and drug possession; but those were mitigating, not aggravating, factors. No evidence showed that the AO stabbed the most seriously injured victim, led the assault, or was not receptive to services.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_29024.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_29024.htm)

***People v D.L.*, 62 Misc 3d 900 –IMPULSIVE ACT**

The AO was charged with attempted 2<sup>nd</sup> degree arson. The DA moved to prevent removal to Family Court. As to extraordinary circumstances, **Monroe County** Family Court found no highly unusual or heinous facts, and no indication that the AO would be unable to benefit from services available in Family Court. To the contrary, the investigator opined that the AO needed to speak to a counselor and receive mental health assistance. Moreover, the People provided no justification for retaining the case in the Youth Part. The AO had just turned 16 at the time of the incident. If the offense had occurred three weeks earlier, the case would have gone to Family Court. Her behavior was impulsive, as is typical for a youth. Had the AO truly intended to burn down the house and harm the inhabitants, a fire could have been furtively set at night. Instead, she rang the complainant’s door bell and announced her plan. This allowed the adult occupant to act to curb the AO’s behavior.

[http://www.nycourts.gov/reporter/3dseries/2018/2018\\_28419.htm](http://www.nycourts.gov/reporter/3dseries/2018/2018_28419.htm)

***People v J.M.*, 1/9/19 – NOT PRIMARY AGGRESSOR / TWO OPEN CASES**

The AO was charged in **Queens County** with robbery, assault, and grand larceny. The People conceded that the accusatory instrument did not establish any of the CPL 722.23 (2) (c) elements, and thus the case was eligible for removal to Family Court. The prosecution sought to prevent removal based on extraordinary circumstances. The court denied the application. The AO, who was alleged to have committed two separate offenses, was not the primary aggressor in either incident. His two open cases in the Youth Part did not constitute extraordinary circumstances.

## ***EXTRAORDINARY CIRCUMSTANCES***

### ***People v A.G.*, 62 Misc 3d 1210 (A) – OTHER PENDING CASES**

The defendant, age 16, was charged in two felony complaints with robbery, grand larceny, and other charges. The case was eligible for removal to Family Court, because none of the statutory factors was present, i.e. that the defendant caused significant physical injury to a non-participant; displayed a firearm, shotgun, rifle or deadly weapon in furtherance of such offense; or unlawfully engaged in sexual intercourse or other sexual contact. The People sought to prevent removal based on extraordinary circumstances. **Queens County** Supreme Court held that the instant matters, as well as the defendant's numerous pending cases, constituted extraordinary circumstances. If the case were removed to Family Court, the defendant would still have five pending matters in Supreme Court and Criminal Court. That could lead to different and duplicative processes and outcomes, which would not be in the interest of the community or the defendant. Moreover, a global disposition of all matters in the Youth Part would provide a consistent outcome for rehabilitation.

[http://www.nycourts.gov/reporter/3dseries/2018/2018\\_51963.htm](http://www.nycourts.gov/reporter/3dseries/2018/2018_51963.htm)

## ***SIGNIFICANT PHYSICAL INJURY AND DEADLY WEAPON***

### ***People v B.H.*, 62 Misc 3d 735 – AO NOT SOLE ACTOR / REMOVED**

What constitutes a significant physical injury is not defined in the statute. In debates, the Assembly noted that such an injury would be “more serious than a bruise,” and would likely involve “bone fractures, injuries requiring surgery, and injuries resulting in disfigurement,” that is, injuries sustained through use of a weapon. **Nassau County** Court found that there was no question that the victim in this case—who was stabbed six times and hit in the head with a baseball bat, causing facial paralysis—sustained a significant physical injury. It was not dispositive that he might fully recover from his wounds and not suffer permanent effects. The standard for “serious injury” under the No-Fault Insurance Law was too stringent for the criminal law context. Because no evidence permitted the conclusion that the instant AO was the sole actor who caused the injury, however, there was no clear basis to retain the matter in the Youth Part. In reaching such conclusion, the court disagreed with the People, who argued that the AO's conduct met the definition of accessory liability because this was a gang assault, and there was at least some evidence that the AO and his co-defendants were members of the gang. The court declared that liability based on “acting in concert” with others was precluded in the RTA's legislative history as a factor for retaining the case in the Youth Part. The Assembly's main sponsor of the bill stated that the three-factor test “required the defendant to be the sole actor who causes the conduct outlined.”

[http://www.nycourts.gov/reporter/3dseries/2018/2018\\_28403.htm](http://www.nycourts.gov/reporter/3dseries/2018/2018_28403.htm)

### ***People v J.M.*, 2/27/19 – AO NOT SOLE ACTOR / REMOVED**

The defendant, an AO, was charged with 2<sup>nd</sup> degree assault in the **Broome County** Youth Part. The People sought to prevent removal, contending that he had caused a significant physical injury to a person other than a participant in the offense. The People alleged that

the AO had punched the victim in the face and head. When the victim fell to the floor, the AO kicked him in the head. After the AO was pulled away, his girlfriend punched and kicked the victim, who suffered a broken nose. The DA did not prove that the AO was the sole actor who caused the injury—the girlfriend could have done so. Thus, the court did not need to reach the issue of significant physical injury, and the People’s application was denied.

*People v E.B.M. and J.M.B.*, 2019 NY Slip Op 29055 –

**CODEFENDANTS CAUSED INJURY / RETAINED IN YOUTH PART**

The two codefendants were charged in separate felony complaints as AOs in the Youth Part of **Nassau County** Court for gang assault and robbery charges. It was alleged that, along with others, the codefendants punched, kicked, and stomped the complainant before stealing his wallet. The victim sustained a fractured nose and orbital bone, and a concussion; and he required reconstructive surgery and two titanium plates in his face. The group of cohorts also robbed a second victim of his iPhone and wallet. The People argued against removal. The court concluded that they had established that each AO was personally responsible for directly causing a significant physical injury to victim one. Thus, the matters were retained in the Youth Part. In reaching such conclusion, the court discussed three salient elements of Assembly debates. (1) In cases of violent felonies, the legislators’ rationale for CPL 722.23 (2) (c), requiring a determination as to whether one of three factors was present, was that not all felonies defined as violent involve a violent act; and only cases of truly violent felons should stay in the criminal part. Nonviolent youths should receive superior services, achieve better outcomes, and be spared a criminal record. (2) Lawmakers intended “significant physical injury” to fall between “physical injury” and “serious physical injury”, as defined in the Penal Law. (3) There was no desire to punish groups of youths for the act of “one bad apple.” Thus, the three-factor test did not prevent removal of a codefendant who was just present during an occurrence. However, the test did disqualify an individual who directly caused the requisite injury, as these codefendants had done.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_29055.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_29055.htm)

*People v G.C.*, 2019 NY Slip Op 29050 – **INJURY AND WEAPON FACTORS**

The defendant was charged as an AO in the Youth Part of the **Westchester County** Court and alleged to have committed 2<sup>nd</sup> degree murder and attempted second degree murder. The People relied on the accusatory instrument, the face sheet of the autopsy report, and facts orally relayed to the court by the prosecutor. With the murder charge and facts provided, the People met the factor of significant physical injury. Further, the ME conclusion’s that the decedent died of a gunshot wound satisfied the factor of display of a firearm, shotgun, rifle or deadly weapon. The matter was appropriately before the Youth Part.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_29050.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_29050.htm)

*People v A.S.*, 62 Misc 3d 1220 (A) – **BROKEN WRIST**

The People alleged that the defendant committed 1<sup>st</sup> degree robbery, and they sought to prevent removal to the JD Part of **Erie County** Family Court. The accusatory instrument stated that the defendant and co-defendant struck the complainant in the head four times

with a pistol and forcibly stole money. Medical records indicated that the complainant suffered a broken wrist and received staples in his head due to lacerations. “Significant physical injury” is greater than “physical injury” as defined in Penal Law § 10.00. The People sufficiently pled facts as to significant physical injury. The matter would remain in the Youth Part.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_50187.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_50187.htm)

***People v A.T.*, 2019 NY Slip Op 29039 – DEADLY WEAPON / BB GUN**

The defendant, age 16, was charged with 2<sup>nd</sup> degree robbery. The accusatory instrument claimed that he placed a BB gun to the complainant’s head and demanded all his money. Since the People sufficiently pled facts that would cause a reasonable person to believe that the defendant displayed a deadly weapon in furtherance of the offense, the matter would remain in the Youth Part, **Erie County** Family Court held.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_29039.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_29039.htm)

## ***OTHER MATTERS***

***People v J.B.*, 2019 NY Slip Op 29051 –**

**UNTIMELY HEARING REQUEST/ NO PERSONAL KNOWLEDGE**

The defendant was charged as an AO in the Youth Part of **Westchester County** as to the commission of 2<sup>nd</sup> degree CPW. The People argued that extraordinary circumstances existed, requiring the case to remain in the Youth Part. They alleged that the AO was an integral member of a gang and had previously possessed a pistol and a machete. A hearing was denied since the People did not make their request within 30 days of arraignment. Further, where most of the People’s factual allegations were based on conversations with law enforcement officers, the prosecution did not establish extraordinary circumstances founded on the requisite personal knowledge of the affiant. Thus, the matter was removed to Family Court.

[http://www.nycourts.gov/reporter/3dseries/2019/2019\\_29051.htm](http://www.nycourts.gov/reporter/3dseries/2019/2019_29051.htm)

**STANDING DECISION AND ORDER, 12/5/18 –**

**ACCESSIBLE MAGISTRATES / ARRAIGNMENTS**

In **New York County**, a Standing Decision rejected the District Attorney’s contention that, when a defendant was arraigned after regular court hours before an accessible magistrate (AM), a second arraignment was necessary in the Youth Part. The court declared that an arraignment before an AM was a valid arraignment. CPL 180.75 (1) referred to AMs performing arraignments. CPL 722.10 (2) authorized AMs to act in place of Youth Part judges when the Youth Part was not in session. CPL 1.20 (9) defined the term arraignment, which is when “a defendant against whom an accusatory instrument has been filed appears before the court in which the criminal action is pending for the purpose of having such court acquire and exercise control over his person with respect to such accusatory instrument and of setting the course of further proceedings.” Together, these sections established that AMs could, and should, conduct arraignments of youths charged with crimes in Supreme Court.