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Criminal Law
Practice Newsletter

The Significant Decisions Addressing Criminal Law Released by Our New York State Appellate Courts in December 2021, Distilled to Succinct Practice Points. The Entries in the Table of Contents Link to the Practice Points Which Link to the Decisions on the Official New York Courts Website. Click on "Table of Contents" in the Header on Any Page to Return There. Right Click on the Citations to Keep Your Place in Newsletter.
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People v Downing, 2021 NY Slip Op 06698, Second Dept 12-1-21

Practice Point: Here appellate counsel was deemed ineffective for failing to file an amended or supplemental brief based upon a Court of Appeals case which came out after the appellate brief was filed. The case made consideration of youthful offender status mandatory for all eligible youth.

APPEALS, PRESERVATION, DEPORTATION, GUILTY PLEAS.

THERE IS AN EXCEPTION TO THE PRESERVATION REQUIREMENT WHERE A DEFENDANT IS UNAWARE OF THE DEPORTATION CONSEQUENCES OF A GUILTY PLEA AND THEREFORE DID NOT MOVE TO WITHDRAW THE PLEA ON THAT GROUND (SECOND DEPT).

People v Jones, 2021 NY Slip Op 06701, Second Dept 12-1-21

Practice Point: There is an exception to the preservation requirement where a defendant who pled guilty was unaware of the deportation consequences and therefore could not have preserved the court’s failure to so inform him by moving to withdraw the plea.

APPEALS, PRESERVATION, DEFEDANT'S ABSENCE FROM SIDEBAR.

UNDER THE UNIQUE CIRCUMSTANCES OF THIS CASE, AN OBJECTION WAS NECESSARY TO PRESERVE THE ERROR RELATED TO DEFENDANT'S ABSENCE FROM A SIDEBAR CONFERENCE ABOUT A PROSPECTIVE JUROR; DEFENDANT SUBSEQUENTLY WAIVED HIS RIGHT TO BE PRESENT AND WAS GIVEN THE OPPORTUNITY TO OBJECT TO HIS ABSENCE FROM THE PRE-WAIVER SIDEBAR (CT APP).

People v Wilkins, 2021 NY Slip Op 06936, CtApp 12-14-21

Practice Point: The failure to include defendant in a sidebar conference about a prospective juror is usually reversible error which does not require preservation by objection to be appealable. Here, however, preservation was deemed necessary. The defendant subsequently waived his right to be present at the sidebars and the court gave him the opportunity to object to the pre-waiver sidebar. No objection was made.

APPEALS, PRESERVATION, FAILURE TO CHALLENGE PREDICATE FELONY STATMENT.

DEFENDANT FAILED TO CHALLENGE THE PREDICATE FELONY STATEMENT IN THE LOWER COURT; THEREFORE THE ALLEGED ERROR WAS NOT PRESERVED FOR APPEAL (CT APP).

People v Lashley, 2021 NY Slip Op 06938, CtApp 12-14-21

Practice Point: To preserve the issue for appeal, an alleged error in a predicate felony statement must be challenged in the lower court. The "illegal-sentence" exception to the preservation requirement did not apply in this case.

APPEALS, SEX OFFENDER REGISTRATION ACT (SORA), RISK-LEVEL ASSESSMENT.

THE REQUIREMENTS FOR AN APPEALABLE ORDER IN A SORA RISK-LEVEL PROCEEDING EXPLAINED (THIRD DEPT).

People v Lane, 2021 NY Slip Op 07324, Third Dept 12-23-21

Practice Point: A written order served on the defendant is a prerequisite for an appeal of a SORA risk-level determination.

APPEALS, TRIAL ORDER OF DISMISSAL, BENCH TRIAL, DENIAL IMPLICIT IN VERDICT.

ALTHOUGH THE JUDGE IN THIS BENCH TRIAL DID NOT EXPLICITLY RULE ON DEFENDANT'S MOTION FOR A TRIAL ORDER OF DISMISSAL, THE MAJORITY DETERMINED THE DENIAL OF THE MOTION WAS IMPLICIT IN THE VERDICT AND THEREFORE THE LEGAL INSUFFICIENCY ARGUMENT COULD BE CONSIDERED ON APPEAL; THE DISSENT DISAGREED (FOURTH DEPT).

People v Dubois, 2021 NY Slip Op 07364, Third Dept 12-23-21

Practice Point: Here in this bench trial, the denial of defendant's motion for a trial order of dismissal was deemed to be implicit in the verdict.

ASSAULT, SERIOUS INJURY.

THE JURY'S FINDING THAT THE VICTIM SUFFERED "SERIOUS INJURY" WITHIN THE MEANING OF THE ASSAULT SECOND STATUTE WAS AGAINST THE WEIGHT OF THE EVIDENCE (FOURTH DEPT).

People v Defio, 2021 NY Slip Op 07400, Fourth Dept 12-23-21

Practice Point: Where there is conflicting trial evidence of an essential element of a crime, here the serious-injury element of Assault Second, an appellate court may find a guilty verdict to be against the weight of the evidence. Conflicting trial evidence is the trigger for a "weight of the evidence" argument on appeal.

CIRCUMSTANTIAL EVIDENCE WHICH REQUIRES A JURY TO SPECULATE IN INADMISSIBLE.

TESTIMONY THAT THE FREQUENCY OF SEXUAL RELATIONS BETWEEN DEFENDANT AND HIS WIFE DROPPED OFF PRECIPITOUSLY AT ABOUT THE TIME THE CHILD ALLEGED THE SEXUAL ABUSE BEGAN SHOULD NOT HAVE BEEN ADMITTED BECAUSE IT ALLOWED THE JURY TO SPECULATE ABOUT THE REASON FOR THE DROP-OFF; SEXUAL ASSAULT OF A CHILD AND RAPE CONVICTIONS REVERSED AND NEW TRIAL ORDERED (THIRD DEPT).

People v Hansel, 2021 NY Slip Op 07035, Third Dept 12-16-21

Practice Point: This case illustrates when the line between a reasonable inference and speculation is crossed by circumstantial evidence. Circumstantial evidence should not be admitted at trial if it invites pure speculation by the jury. Here evidence that the frequency of defendant's sexual relations with his wife dropped off at about the time the alleged abuse of the child began should never have been admitted.

COMMUNITY GUNS, GANGS.

THE TRIAL COURT PROPERLY ALLOWED EXPERT TESTIMONY ABOUT "COMMUNITY GUNS," A CONCEPT USED BY GANGS TO MAKE GUNS AVAILABLE WHILE AVOIDING BEING CAUGHT POSSESSING THE GUNS (FIRST DEPT).

People v Manley, 2021 NY Slip Op 06814, First Dept 12-7-21

Practice Point: Gangs apparently attempt to avoid weapons-possession charges by the concept of "community guns," allowing access to guns from a "neutral" location. In this case, expert testimony explaining the concept of "community guns" was properly allowed,

COURT OF CLAIMS, WRONGFUL CONVICTIONS, TRIAL ORDER OF DISMISSAL EQUALS ACQUITTAL.

FOR PURPOSES OF CLAIMANT'S ACTION FOR WRONGFUL CONVICTION AND IMPRISONMENT, THE TRIAL ORDER OF DISMISSAL IN THE CRIMINAL TRIAL WAS THE EQUIVALENT OF AN ACQUITTAL (FOURTH DEPT).

Owens v State of New York, 2021 NY Slip Op 07374, Fourth Dept 12-23-21

Practice Point: For purposes of a wrongful conviction suit in the Court of Claims, the grant of a trial order of dismissal in the underlying criminal trial is the equivalent of an acquittal.

FAMILY OFFENSE, FAMILY COURT, AGE OF COMPLAINANT.

THE FACT THAT COMPLAINANT TURNED 21 DURING THE FAMILY OFFENSE HEARING DID NOT DEPRIVE FAMILY COURT OF JURISDICTION; NOR DID THE INCAPACITY OF THE COMPLAINANT (SECOND DEPT).

Matter of Vellios v Vellios, 2021 NY Slip Op 07276, Second Dept 12-22-21

Practice Point: The fact that the complainant in this family offense proceeding turned 21 or was incapacitated did not deprive Family Court of subject matter jurisdiction.

FAMILY OFFENSE, RESTRICTIONS ON HEARING EVIDENCE.

IN THIS FAMILY OFFENSE PROCEEDING, THE JUDGE SHOULD NOT HAVE PLACED TIME AND TESTIMONY RESTRICTIONS ON THE HEARING; ORDER REVERSED AND NEW HEARING ORDERED (FIRST DEPT).

Matter of Kristina M. v Paul M., 2021 NY Slip Op 06957, First Dept 12-14-21

Practice Point: The judge in this family offense proceeding should not have placed time and testimony restrictions on the hearing. New hearing ordered.

GUILTY PLEA IN FULL SATISFACTION OF ALL CHARGES PRECLUDES A SECOND PLEA TO ANY OTHER CHARGE IN THAT INDICTMENT.

AFTER PLEADING GUILTY IN FULL SATISFACTION OF THE CHARGES IN THE INDICTMENT, A SECOND PLEA TO ANOTHER COUNT OF THE INDICTMENT WAS PRECLUDED (FIRST DEPT).

People v Turane, 2021 NY Slip Op 07071, First Dept 12-16-21

Practice Point: Once a guilty plea is entered in full satisfaction of the charges in an indictment, a subsequent guilty plea to any of the other charges in the indictment is invalid. In that circumstance, the defendant would need to withdraw his initial guilty plea and the indictment would have to be reinstated.

IDENTIFICATION BY A WITNESS, SUGGESTIVE COMMENTS BY POLICE.

WITH RESPECT TO THE IDENTIFICATION OF THE DEFENDANT BY A WITNESS TO THE CRIME: NO HEARING ON THE SUGGESTIVENESS OF COMMENTS MADE TO THE WITNESS BY THE POLICE WAS NECESSARY BECAUSE THE WITNESS WAS A LONG-TIME ACQUAINTANCE OF THE DEFENDANT (SECOND DEPT).

People v Richardson, 2021 NY Slip Op 07287, Second Dept 12-22-21

Practice Point: Here a detective apparently made comments to the witness which suggested the defendant was the perpetrator. No “suggestive-identification” hearing was necessary because it was demonstrated the witness had known the defendant for three years.

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IDENTIFICATION BY POLICE.

THE ARRESTING DETECTIVE SHOULD NOT HAVE BEEN ALLOWED TO IDENTIFY THE PERSON DEPICTED IN SURVEILLANCE VIDEOS AS THE DEFENDANT, NEW TRIAL ORDERED (FIRST DEPT).

People v Challenger, 2021 NY Slip Op 06927, First Dept 12-9-21

Practice Point: As a general rule, if a police officer is no more qualified than a juror to determine if the defendant is depicted in a video, it is error to allow the police officer to identify the person in the video as the defendant. There are exceptions to this rule, when, for example, the video is poor-quality, the police officer has spent time with the defendant, and the defendant's appearance had changed.

IDENTIFICATION BY POLICE.

POLICE OFFICERS PROPERLY ALLOWED TO IDENTIFY THE PERSON IN A SURVEILLANCE VIDEO AS THE DEFENDANT (FIRST DEPT).

People v Lee, 2021 NY Slip Op 06774, First Dept 12-2-21

Practice Point: In the usual case, a police officer is not better able to identify a person in a video as the defendant than is a juror and such an identification will not be allowed. In this case, the videotape was in poor condition and the officers had spent time with the defendant, so it was not an abuse of discretion to allow the identification by two police officers.

INDICTMENTS, FAIR NOTICE.

THE PERSISTENT ABUSE STATUTE ENCOMPASSES THREE DISTINCT TYPES OF SEXUAL CONTACT; THE INDICTMENT DID NOT IDENTIFY THE SPECIFIC GENRE OF SEXUAL CONTACT WITH WHICH DEFENDANT WAS CHARGED; THE INDICTMENT THEREFORE DID NOT PROVIDE FAIR NOTICE OF THE ACCUSATIONS (FIRST DEPT).

People v Hardware, 2021 NY Slip Op 06772, First Dept 12-2-21

Practice Point: If a criminal statute can be violated by different acts, here the term "sexual contact" in the "persistent sexual abuse" statute can mean "forcible touching," "sexual abuse third degree," or "sexual abuse second degree," the failure to identify the specific act alleged renders the indictment constitutionally defective in that it hinders the preparation of a defense and fails to protect against double jeopardy.

INEFFECTIVE ASSISTANCE, ADMISSION BY ATTORNEY.

DESPITE DEFENSE COUNSEL'S ADMISSION BEFORE THE MOTION COURT THAT HE DID NOT PROPERLY INVESTIGATE THIS MURDER CASE, DEFENDANT DID NOT DEMONSTRATE THAT COUNSEL WAS INEFFECTIVE OR THAT THE ALLEGED INEFFECTIVENESS MET THE CRITERIA FOR A CONFLICT OF INTEREST (FIRST DEPT).

People v Graham, 2021 NY Slip Op 07068, First Dept 12-16-21

Practice Point: Although defense counsel admitted to the motion court that he did not adequately prepare for this murder trial, his motion for file a late alibi notice was granted, the court appointed co-counsel for the trial, and the defendant wanted him to continue to represent him. Those facts, and the fact that the trial was handled competently, defeated the ineffective assistance argument on appeal.

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People v Goodwin, 2021 NY Slip Op 07418, Fourth Dept 12-23-21

Practice Point: The judge's threat to impose a harsher sentence should the defendant decide to go to trial rendered the guilty plea involuntary.

JURORS, JUROR COULD NOT CONTINUE, ACCEPTANCE OF PARTIAL VERDICT.

THE JUDGE SHOULD NOT HAVE ACCEPTED A PARTIAL VERDICT WITHOUT INTERVIEWING THE JUROR WHO HAD INFORMED THE COURT SHE COULD NOT CONTINUE DELIBERATING BECAUSE SHE WAS SUFFERING ANXIETY ATTACKS; BECAUSE THE JUROR WAS NOT QUESTIONED, IT IS IMPOSSIBLE TO KNOW WHETHER THE PARTIAL VERDICT WAS REACHED BEFORE THE JUROR BECAME UNABLE TO CONTINUE (SECOND DEPT).

People v Moody, 2021 NY Slip Op 07559, Second Dept 12-29-21

Practice Point: When a juror tells the judge he/she cannot continue deliberating, the judge cannot accept a partial verdict reached before the juror asked to be excused without making sure he/she was able to participate at the time the partial verdict was reached.

JURORS, ETHNIC BIAS, CONSTITUTIONAL LAW.

COMMENTS ALLEGEDLY MADE BY A JUROR DURING DELIBERATIONS EXPRESSING ETHNIC BIAS REQUIRED A HEARING AND FINDINGS WHETHER DEFENDANT'S CONSTITUTIONAL RIGHTS, BOTH FEDERAL AND STATE, WERE VIOLATED (FIRST DEPT).

People v Chodakowski, 2021 NY Slip Op 06781, First Dept 12-2-21

Practice Point: A juror's statements during deliberations evincing ethnic bias may violate a defendant's Sixth Amendment right to a jury trial and may prejudice the jurors in violation of the New York State Constitution.

JURORS, EXPECT DEFENSE TO PRESENT EVIDENCE.

THE DEFENSE FOR CAUSE CHALLENGE TO A JUROR WHO SAID SHE WOULD EXPECT THAT THE DEFENSE WOULD PRESENT EVIDENCE SHOULD HAVE BEEN GRANTED (SECOND DEPT).

People v Feddaoui, 2021 NY Slip Op 06859, Second Dept 12-8-21

Practice Point: A prospective juror who expects the defense to present evidence is not qualified to serve on the jury.

JURORS, PREMATURE DELIBERATIONS.

JURORS WHO ENGAGED IN PREMATURE DELIBERATIONS SHOULD NOT HAVE BEEN DISCHARGED AS "GROSSLY UNQUALIFIED" ABSENT A FINDING THEY COULD NOT RENDER AN IMPARTIAL VERDICT (FIRST DEPT).

People v Thompson, 2021 NY Slip Op 06778, First Dept 12-2-21

Practice Point: Here two jurors discussed the case on the subway before deliberations began. The trial court dismissed them as "grossly unqualified." The court should not have found the jurors unqualified without first questioning them and concluding from their answers they could not render an impartial verdict based solely on the evidence.

JURORS, TEND TO BELIEVE POLICE.

THE FOR CAUSE CHALLENGE TO A PROSPECTIVE JUROR WHO SAID HE WOULD BE INCLINED TO BELIEVE THE TESTIMONY OF POLICE OFFICERS SHOULD HAVE BEEN GRANTED (FOURTH DEPT).

People v Harrison, 2021 NY Slip Op 07445, Fourth Dept 12-23-21

Practice Point: A juror who is inclined to believe police witnesses should be successfully challenged "for cause."

JURORS, TEND TO BELIEVE THE POLICE.

THE CHALLENGE TO A JUROR WHO SAID HE WOULD FAVOR THE TESTIMONY OF THE POLICE SHOULD HAVE BEEN GRANTED (SECOND DEPT).

People v Thomas, 2021 NY Slip Op 06711, Second Dept 12-1-21

Practice Point: Here a juror said he would favor the testimony of the police and the court did not elicit his assurance he could set aside his bias. The defense challenge to that juror should have been granted.

JURORS, UNABLE TO UNDERSTAND BURDEN OF PROOF.

FOR CAUSE CHALLENGES TO TWO JURORS WHO WERE UNABLE TO UNDERSTAND THE PEOPLE'S BURDEN OF PROOF SHOULD HAVE BEEN GRANTED (SECOND DEPT).

People v Wilson, 2021 NY Slip Op 07305, Second Dept 12-22-21

Practice Point: Here two jurors who could not understand the People's burden of proof should have been discharged for cause.

PLEA COLLOQUY DID NOT ADMIT CRIME.

DEFENDANT, DURING THE PLEA COLLOQUY, DID NOT ADMIT HE POSSESSED A STOLEN "MOTOR VEHICLE," AS OPPOSED TO A "MOTOR CYCLE," AND THE JUDGE DID NOT INQUIRE FURTHER; THE ISSUE NEED NOT BE PRESERVED FOR APPEAL BY A MOTION TO WITHDRAW THE PLEA; GUILTY PLEA VACATED (SECOND DEPT).

People v Douglas, 2021 NY Slip Op 06857, Second Dept 12-8-21

Practice Point: Here the charged offense required possession of a stolen "motor vehicle" and the statute specifically excluded "motorcycles" from its reach. The defendant, during the plea colloquy, acknowledged possessing a "motor cycle" and the judge did not conduct any further inquiry. The guilty plea was invalid because the colloquy negated an essential element of the offense.

RAPE, NO EVIDNCE OF FORCE OR THREATS.

THE COMPLAINANT WAS CAJOLED BY OTHERS, NOT THE DEFENDANT, TO HAVE SEX WITH DEFENDANT IN FRONT OF THE OTHERS; THERE WAS NO EVIDENCE FORCE WAS USED AND NO EVIDENCE OF ANY THREATS TO USE FORCE; RAPE FIRST CONVICTION REVERSED (SECOND DEPT).

People v Graham, 2021 NY Slip Op 06699, Second Dept 12-1-21

Practice Point: Here the complainant was cajoled by others, not including the defendant, to have sex with defendant in front of the others. There was no evidence force or threats of force were involved. The Rape First conviction was reversed.

RIGHT TO COUNSEL, INVOCATION IMPROPERLY INTRODUCED AT TRIAL.

THE ELICITATION OF TESTIMONY FROM A DETECTIVE THAT DEFENDANT INVOKED HIS RIGHT TO COUNSEL AND HIS RIGHT AGAINST SELF-INCRIMINATION WAS SUBJECT TO A HARMLESS ERROR ANALYSIS AND DID NOT REQUIRE REVERSAL; THE DISSENT ARGUED THE ABSENCE OF A CURATIVE INSTRUCTION RENDERED THE ERROR REVERSIBLE (THIRD DEPT).

People v Serrano, 2021 NY Slip Op 07037, Third Dept 12-16-21

Practice Point: It is black letter law that a jury should never learn the defendant invoked his right to counsel and his right to remain silent when questioned by the police. The issue here was whether the error was subject to the harmless error analysis on appeal. The majority held that it was. The dissent argued the fact that no curative instruction was given to the jury rendered the error reversible.

SEARCH AND SEIZURE, EMERGENCY EXCEPTION TO WARRANT REQUIREMENT.

THE WARRANTLESS SEARCH OF THE RESIDENCE WAS NOT JUSTIFIED BY THE EMERGENCY EXCEPTION TO THE WARRANT REQUIREMENT (FOURTH DEPT).

People v Hidalgo-Hernandez, 2021 NY Slip Op 07404, Fourth Dept 12-23-21

Practice Point: Here the police responded to a 911 call about the caller’s roommate who was unconscious on the floor. The police determined the roommate had died. There was nothing to indicate an “emergency” at the time a police technician searched the house and saw drugs. Therefore the motion to suppress the items found in a subsequent search pursuant to a warrant should have been granted.

SET ASIDE SENTENCE.

A SENTENCE CANNOT BE SET ASIDE AS EXCESSIVE PURSUANT TO A CPL 440.20 MOTION (SECOND DEPT).

People v Chambers, 2021 NY Slip Op 07267, Second Dept 12-22-21

Practice Point: A motion to set aside a sentence as excessive but not illegal is not a proper subject for a motion pursuant to CPL 440.20.

SEVERENCE, MOLINEUX EVIDENCE.

PURSUANT TO A MOLINEUX ANALYSIS, THE WEAPON-POSSESSION COUNT SHOULD HAVE BEEN SEVERED FROM THE MENACING AND ASSAULT COUNTS, IN WHICH DISPLAY OF A WEAPON WAS ALLEGED; THE SIROIS HEARING DID NOT DEMONSTRATE THE DEFENDANT CAUSED THE VICTIM TO REFUSE TO TESTIFY, THEREFORE THE VICTIM'S GRAND JURY TESTIMONY WAS NOT ADMISSIBLE; NEW TRIAL ORDERED (THIRD DEPT).

People v Bryant, 2021 NY Slip Op 07582, Third Dept 12-30-21

Practice Point: Here the weapon-possession charge re: a handgun recovered from defendant's residence should have been severed from the assault and menacing counts under a Molineux analysis. The assault and menacing counts included allegations of the display of a weapon, Therefore the weapon-possession count was deemed to be more prejudicial than probative.

SEX OFFENDER REGISTRATION ACT (SORA), ACCEPTANCE OF RESPONSIBILITY, PRISON SEX OFFENDER TREATMENT PROGRAM.

PARTICIPATION IN A PRISON SEX OFFENDER TREATMENT PROGRAM WAS NOT ENOUGH TO AVOID A 10-POINT ASSESSMENT FOR FAILURE TO ACCEPT RESPONSIBILITY IN THIS SORA RISK-LEVEL PROCEEDING (FIRST DEPT).

People v Solomon, 2021 NY Slip Op 07519, First Dept 12-28-21

Practice Point: In a SORA risk-level proceeding, the defendant's participation in a prison sex offender treatment program does not necessarily warrant a finding the defendant has accepted responsibility for his actions.

SEX OFFENDER REGISTRATION ACT (SORA), DOWNWARD DEPARTURE, MITIGATING FACTORS.

THE SORA COURT SHOULD HAVE CONSIDERED THAT THE DEFENDANT DID NOT REOFFEND DURING AN EXTENDED TIME WHEN HE WAS NOT SUPERVISED AS A MITIGATING FACTOR WHICH MAY WARRANT A DOWNWARD DEPARTURE IN THIS SORA RISK-LEVEL PROCEEDING (FOURTH DEPT).

People v Edwards, 2021 NY Slip Op 07359, Fourth Dept 12-23-21

Practice Point: Here the defendant sex offender, due to a mistake, was not supervised when released for an extended period of time and did not reoffend. The SORA court should have considered that issue which was raised in defendant's motion for a downward departure.

SEX OFFENDER REGISTRATION ACT (SORA), USE OF MARIJUANA.

EVIDENCE. EVIDENCE OF OCCASIONAL MARIJUANA USE DID NOT SUPPORT THE ASSESSMENT OF 15 POINTS IN THIS SORA RISK-LEVEL PROCEEDING (FIRST DEPT).

People v Baez, 2021 NY Slip Op 06771, First Dept 12-2-21

Practice Point: Occasional marijuana use did not support the assessment of 15 points in this SORA risk-level proceeding.

SEX TRAFFICKING, JURY INSTRUCTIONS.

THE SEX TRAFFICKING STATUTE HAS TWO LINKED BUT DISTINCT ELEMENTS WHICH WERE PROPERLY EXPLAINED TO THE JURY IN THE INITIAL JURY INSTRUCTIONS; HOWEVER THE SUPPLEMENTAL INSTRUCTION IN RESPONSE TO A JURY NOTE ERRONEOUSLY COLLAPSED THE STATUTE TO A SINGLE ELEMENT; NEW TRIAL ORDERED ON THE SEX TRAFFICKING COUNTS (CT APP).

People v Lamb, 2021 NY Slip Op 07057, CtApp 12-16-21

Practice Point: The Sex Trafficking statute has two distinct but linked elements which must be explained to the jury. Here the initial instructions correctly the explained the two linked elements, but the supplemental instruction severed the link between the two elements, requiring a new trial.

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SEXUAL ASSAULT REFORM ACT (SARA), CONSTITUTIONAL LAW.

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People ex rel. Rivera v Superintendent, Woodbourne Corr. Facility, 2021 NY Slip Op 07044, Third Dept 12-16-21

Practice Point: The Sexual Assault Reform Act (SARA), which imposes restrictions on where sex offenders may live, and may result in temporary confinement until a residence is found, does not violate Ex Post Facto clause of the US Constitution.

SUPERIOR COURT INFORMATION, WAIVER OF INDICTMENT.

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Practice Point: A superior court information (SCI) is jurisdictionally defective if it charges an offense greater than any offense charged in the underlying misdemeanor complaint.

Practice Point: A waiver of indictment is jurisdictionally defective where, as here, the defendant was not held for grand jury action on the underlying misdemeanor complaint.

SUPPRESSION HEARING, INCREDIBLE TESTIMONY BY POLICE.

ALTHOUGH THE MAJORITY AFFIRMED DEFENDANT'S CONVICTION, THE TWO DISSENTERS WOULD HAVE DISMISSED THE INDICTMENT BECAUSE THE TESTIMONY OF THE POLICE OFFICERS AT THE SUPPRESSION HEARING DESCRIBING THE TRAFFIC STOP WAS NOT CREDIBLE (FOURTH DEPT).

People v Stroud, 2021 NY Slip Op 07375, Fourth Dept 12-23-21

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VICTIMS OF CRIME, CIVIL SUITS BY, YOUTHFUL OFFENDERS.

THE EXTENSION OF THE STATUTE OF LIMITATIONS IN CPLR 213-B(1) WHICH ALLOWS A VICTIM OF A CRIME TO SUE THE PERPETRATOR WITHIN SEVEN YEARS OF THE DATE OF CRIME APPLIES ONLY WHERE THE PERPETRATOR HAS BEEN "CONVICTED OF [THE] CRIME;" A PERPETRATOR WHO HAS BEEN ADJUDICATED A YOUTHFUL OFFENDER HAS NOT BEEN "CONVICTED OF A CRIME" WITHIN THE MEANING OF CPLR 213-B(1) (SECOND DEPT).

Pitt v Feagles, 2021 NY Slip Op 07299, Second Dept 12-22-21

Practice Point: The extended seven-year statute of limitations for actions by victims of sex offenders is triggered by the "conviction" of the sex offender. Here the defendant was adjudicated a youthful offender. Therefore the seven-year extension did not apply.

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