

NEW YORK APPELLATE DIGEST, LLC

An Organized Compilation of Summaries of Selected Decisions, Mostly Reversals, Addressing Criminal Law, Released by Our New York State Appellate Courts in January 2023, Distilled to Practice Points, One or Two Sentences Each. The Entries in the Table of Contents Link to the Summaries Which Link to the Full 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 the Reversal Newsletter.
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Criminal Law
Reversal Newsletter
January 2023

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[Matter of Linda UU. v Dana VV., 2023 NY Slip Op 00013, Third Dept 1-5-22](#)

Practice Point: In order for conduct to amount to disorderly conduct it must have a “public” as opposed to an “individual” dimension. This case shows the distinction can be difficult to discern.

JANUARY 5, 2023

JUDGES, JURORS.

AFTER A JUROR CAME FORWARD DURING DELIBERATIONS TO SAY SHE THOUGHT THE DEFENDANT HAD FOLLOWED HER IN HIS CAR DURING THE TRIAL AND OTHER JURORS EXPRESSED SAFETY CONCERNS WITH RESPECT TO TRIAL SPECTATORS, THE JUDGE INTERVIEWED EACH JUROR AND PROPERLY DENIED DEFENDANT’S MOTION FOR A MISTRIAL BASED ON A GROSSLY-UNQUALIFIED-JUROR ARGUMENT; TWO-JUSTICE DISSENT (THIRD DEPT).

[People v Fisher, 2023 NY Slip Op 00248, Third Dept 1-19-23](#)

Practice Point: After a juror came forward during deliberations to say he had concerns for her safety because she thought defendant had followed her in his car during the trial, the trial judge interviewed her and the other jurors. The majority concluded defendant’s motion for a mistrial was properly denied. There was a two-justice dissent.

JANUARY 19, 2023

JUDGES, JURY INSTRUCTIONS, POSSESSION OF A WEAPON.

THE INDICTMENT CHARGED DEFENDANT WITH POSSESSION OF A WEAPON OUTSIDE HIS HOME OR BUSINESS; THE JUDGE INSTRUCTED THE JURY THEY NEED ONLY FIND DEFENDANT POSSESSED A LOADED FIREARM; THE POSSESSION OF A WEAPON CONVICTION WAS REVERSED (SECOND DEPT).

[People v Reid, 2023 NY Slip Op 00336, Second Dept 1-25-23](#)

Practice Point: The People are constrained to prove what is charged in the indictment and alleged in the bill of particulars. If the judge instructs the jury otherwise, the conviction will be reversed. Here the judge determined defendant had a prior conviction and his possession of a weapon, no matter where, would support a conviction. Therefore, the judge reasoned, the jury need not be instructed that the possession must be outside defendant's home or business as charged in the indictment. The conviction was reversed.

JANUARY 25, 2023

UNCORROBORATED ADMISSION.

DEFENDANT'S RAPE CONVICTION BASED SOLELY ON HIS UNCORROBORATED ADMISSION WAS NOT SUPPORTED BY LEGALLY SUFFICIENT EVIDENCE (THIRD DEPT).

[People v Bateman, 2023 NY Slip Op 00249, Third Dept 1-19-23](#)

Practice Point: A conviction which rests solely on an uncorroborated admission is not supported by legally sufficient evidence.

JANUARY 19, 2023

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