RTA CASELAW

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Timeliness of retention motion

- People v. Kelly, Sup. Ct. N.Y. Co., 1/28/19: "The plain language of CPL §722.23(1)(a) mandates that this Court, "shall" order removal unless a motion to prevent removal is made within thirty calendar days of the Defendant's arraignment. The motion to prevent removal was filed…more than thirty calendar days after the Defendant's…arraignment in this case. The court therefore must order removal of the action to Family Court."

- People v. JB, Co. Ct. Westchester (2/27/19): People are not entitled to an EC hearing when request made more than 30 days after arraignment.

Speedy Trial

- In the Matter of Hernandez, Fam. Ct. Queens (3/26/19): The initial appearance for cases after an AO removal is when the juvenile delinquency petition is filed and the speedy trial clock does not begin with the filing of the AO complaint. Unlike removals of juvenile offender petitions pursuant to CPL 722.22 and 725.05, AO removals pursuant to 722.23 are not the same; the family court definition of petition under FCA 311.1(7) does not apply to AO removals.

Preponderance of Evidence/ Evidentiary issues

- People v. J.M., Broome Co. S.Ct., 2/27/19: Court holds that there was insufficient evidence to prove that the AO was the sole actor who caused the victim's injury. Court rejects People's theory of "reasonable inference" that the AO's actions caused the broken nose. Additionally held that "the standard of proof for a grand jury is lower than a preponderance of the evidence standard. The burden of proof for indictment is reasonable cause to believe a person committed an offense. CPL §§70.10, 190.65(1). In applying this `minimally demanding standard', the only question for review is whether the guilty inference could rationally have been drawn. People v. Jensen, 86 NY2d 248, 255 (1995)." (also sole actor/preponderance)

- People v. J.M., Sup. Ct. Queens Co., 1/9/19: "CPL §722.23[1](b) mandates that every motion to prevent removal of an action to family court must `contain allegations of sworn fact based upon personal knowledge of the affiant.' Here, the Affirmation in Support of the Motion and the Felony Complaint contain hearsay claims and do not contain allegations of sworn fact based upon personal knowledge. As such, the motion to prevent removal must be denied.

- People v. EBM, Co. Ct. Nassau (2/28/19): Significant injury found. Held that medical records not required and hearsay accepted.

- People v. A.R., Sup. Ct. NY Co. (5/8/19): No allegations of sworn fact referenced in the People's submission in support of extraordinary circumstances contrary to

the plain language of 722.23(1)(b) requiring that a retention motion contain allegations of sworn fact based upon personal knowledge of the affiant.

- People v. Y.L., 2019 NY slip Op. 29181 (Co. Ct. Monroe Co.) (5/17/19): Sufficient foundation for Facebook live video based on one defendant identifying himself on the video and admitting to punching the cw

- People v. JW, Fam.Ct. Erie Co. (3/28/19): sworn allegations of fact by the complainants in the complaint suffice as allegations of sworn fact based upon personal knowledge of the affiant for purposes of extraordinary circumstance motion. CPL 722.23(1)(b).

- People v. DG, Sup. Ct. Kings Co. (4/4/19): "People's burden is measured by a preponderance of the evidence. In Pattern Jury Instructions, to establish a fact by a preponderance of the evidence means to prove that something is more likely true than not true. In other words, a preponderance of the evidence in the case means such evidence when considered and compared with that opposed to it, has more convincing force, and produces in your minds [sic] a belief that what is sought to be proven is more likely true than not true. The Court may rely upon a review of the accusatory instrument, as well as any other relevant facts as presented by the parties when making it determination for removal purposes. CPL §722.24(2)[b]. Also, as with most pretrial hearings, hearsay evidence is admissible to establish any material fact (*see, People v. Mitchell,* 124 AD3d 912, 2 NYS3d 207 [App Div2d, 2015]).

  "Although this Court is not holding that a firearm must be recovered, and or discharged in order for the People to meet their burden….the People's mere recitation of the facts as outlined in the complaint, and bald assertions that the Complainant perceived what she believed to be a black colored firearm, at night, standing alone, falls woefully short of the Legislative intent"

- People v. SJ, (NYCo. SCt, 4/10/19): People failed to establish extraordinary circumstances where there were "no allegations of sworn fact from anyone who has personal, firsthand knowledge of the subject matter referenced in the District Attorney's submission". The court cited the plain language of CPL §722.23(1)(b) and Matter of JB, 2019 NY Slip Op. 29051 (West. Co. Ct.) (AO charged with burglary in the first degree as a sexually motivated felony)

- People v. MM, Co. Ct. Nassau Co. (4/30/19): EC not found. Court excludes past juvenile delinquency history and records based on Family Court Act 381.2 which "expressly prohibits the use of the AO's juvenile delinquency history, including his past adjudications, past admissions and statements to the court, against him or his interests in any other court." Citing, *Green v. Montgomery*, 95 NY2d 693, 697 (2001) which held that a JD adjudication could not be considered in a SORA hearing because the "rationale behind FCA 381.2 is that `delinquency proceedings are designed not just to punish the malefactor but also to extinguish the causes of juvenile delinquency through rehabilitation and treatment".

Distinguishes Matter of JP (Bronx)
[Family court records obtained from family court prosecutor. ADA argued that FCA 166 does not encompass police or prosecution records, the records are not sealed pursuant to FCA 375.2 and they are not seeking to use as evidence in a fact finding hearing, just at the jurisdictional stage.]

- People v. Raphael, Sup. Ct., Queens Co. (9/23/19): No EC found. AO has 4 open felony complaints in the youth part. Removal motions as to 3 was filed one day late and is denied, but would have been denied on the merits if timely. No allegation that AO displayed a weapon, caused SPI, forcibly removed property. Allegations establish that AO was a participant. No prior criminal arrests or convictions.

- People v. CM, Youth Part, Onondaga Co. (9/25/19): EC found. Burglary and Robbery. P filed a motion only as to robbery, but court did not treat "that error as a fatal flaw". Burglary: the residence was targeted, AO has prior experience in youth part and took a leadership role in execution. Robbery: AO scouted out a vulnerable individual and planned robbery. Actions display "a current lack of moral conscience, his mean spiritedness and his antisocial behavior. Held that AO did not benefit from "myriad of services previously offered to him". Considers prior youth part proceedings, but not family court records because of FCA 381.2.

- People v. Jacob S., Youth Part County Ct., Orange Co. (10/9/19): P failed to meet burden. AO charged with sex abuse 1 for touching 8 year old sister on buttocks and vagina. AO diagnosed with Asperger's syndrome, anxiety, ADHD, PDD and on the autism spectrum. His parents removed him from a residential treatment center where he was doing well and did not appropriately supervise him. Court held that FCA 381.2 prevents consideration of family court records.

- People v. LC, Sup. Ct. Bronx Co.(10/21/19): No EC found: 2 in concert robberies on one day followed by one 7 weeks later. The first two incidents were not supported by sworn allegations of fact based upon personal knowledge of the affiants and therefore, the P's argument re: a pattern of crimes committed over a period of time are not supported as required by statute. Each committed at around 3am, cws middle aged Mexican men. P argue premeditated and not impulsive.

- People v. Prophete, Sup. Ct. NY Co.(10/22/19): Court will not consider ADA's report on AO's Family court matters due to FCA 381.2.

GRAND JURY/SEVERANCE

- In re Cyrus R. Vance, Jr. v. Hon. Gayle Roberts, First Dep"t, 10/10/19: Court did not exceed authority in severing a case in order to remove an RTA case after multiple cases joined for grand jury presentation. Held that the court, not the prosecution or the grand jury has the authority to make the determination as to whether charges are properly joinable pursuant to CPL 200.20(a), (b).

Extraordinary circumstances

FOUND

- People v. Ampy, Sup. Ct. NY Co., 11/8/18: EC found where AO has 7 arrests, 2 delinquency findings and 3 VOPs and found to be the leader in the instant offense. 2 armed robberies on one night one week after a theft of a purse. Access to a range of services have not changed his behavior.

- People v. A.G., 62 Misc.3d 1210 (Sup. Ct., Queens Co) 12/20/18: "defendant is alleged to have committed several offenses involving robbery and grand larceny. All of these offenses were allegedly committed while he was on Family court Probation. This Court finds that the instant matters as well as defendant's numerous pending cases constitute an extraordinary circumstance such that removal should be prevented.

  Assuming arguendo these matters are removed to Family court, defendant would still have five (5) matters in Queens Supreme Court and Queens Criminal Court pending disposition. This could lead to the likelihood of different and/or duplicative judicial processes and outcomes, which would not be in the interest of justice for the community or the defendant. Moreover, a global disposition of all matters in the Youth Part would provide a consistent outcome for defendant's potential rehabilitation. Therefore, this Court finds that extraordinary circumstances exist such that removal would not be in the interest of justice."

- People v. Woods, Sup. Ct. Queens Co. (1/22/19): EC found due to SPI found. Assault of 2 CWs resulting in bruising, bleeding, a broken wrist, a broken nose, fractures, loss of sensation in the arms/legs, face fractures and eye tissue damage

- Matter of AT, Sup. Ct. Erie Co. (3/25/19): (Companion case People v. JW) Extraordinary circumstances found. AO charged with multiple felonies committed within weeks of each other and was instigator of this offense. Was re-arrested while under supervision, failed to report to probation and appear in court. Found no to be amenable to services. Citing People v. AG.

- People v. TS, Sup. Ct., Queens Co. (4/19/19): EC found. Retained based on repeated arrests while under court/probation supervision and a global disposition would provide a consistent outcome for potential rehabilitation. AO on Family court probation. While on probation, was arrested in Brooklyn as a JO and indicted for Assault 1. Court found SPI on that case. Six months later charged with 2 distinct robberies in Queens. One an in concert robbery and the second, video shows AO handing gun to co-d which was later recovered.

- People v. JT, Sup. Ct. Queens Co. (6/19/19): Court finds EC. Distinguishes JM. AO has 2 prior convictions for the same or similar acts as the current pending matters. AO is principal actor in the crimes. Has two prior misdemeanor convictions for similar acts. Court notes that the complainants are 11 and 15 and AO threatened to stab one of them.

NOT FOUND

- People v. J.C., Sup. Ct., N.Y. Co. , 12/19/18. "The Court specifically rejects the proposition that a preexisting violent felony charge, standing alone, is sufficient to constitute extraordinary circumstances and prevent the removal of a case to Family Court. Rather, all of the circumstances presented to the Court must be considered in determining whether the defendant and the safety of the public are best served by a removal to Family Court…The Defendant is only sixteen years old and has no reported criminal convictions. He appears not to have played the primary role in his pre-existing case, where a different person brandished a weapon and shoved the complainant. The Defendant's role was apparently limited to using his Facebook account to arrange a fake sale and holding on to the bike while the accomplices confronted the complainant. There is no supportable basis for depriving the Defendant of the opportunity to utilize the rehabilitative and specifically tailored corrective measures offered in Family Court. While it is true his older case will remain in Supreme Court, that case at this point in time is still pre-trial and may or may not lead to adult penal consequences."

- People v. T.R., 62 Misc.3d 1219 (Fam. Ct. Erie Co) 12/21/18: AO charged with 2 students charged as JDs in high school charged with terroristic threat (false bomb claim). Held: no extraordinary circumstances. Not extraordinary to conspire with other students, the effect on other students is not pled, defendant's failure to accept responsibility is "hardly irregular or unforeseeable. To the contrary, it is very common that a sixteen-year-old child would fabricate a story or distance himself from involvement in a circumstance such as this. Defendant's failure to take immediate responsibility is not an extraordinary circumstance".

- People v. D.L., 2018 WL 6817304, ____ NYS3d____ Family Co., Monroe Co. (2018): No extraordinary circumstances found. "[T]he Court finds no highly unusual or heinous facts. Nor is there any indication that D.L. will be unable to benefit from the services available in the Family Court." DL 3 weeks past her 16th birthday and she is not charged with a JO offense and would not have been criminally responsible as a 15 year old. " DL's behavior is precisely the type of impulsive act done without thought of consequences, which is typical of young people. Had DL truly intended to burn the house and harm the inhabitants, a fire could have been set at night or in a manner where no one was aware of her actions. Instead, DL rang the complainant's door bell and announced her plan to set a fire because she was mad, thereby allowing the adult occupant to take action to curb her behavior."

- People v. R.M., County Ct, Westchester Co., 12/14/18: Extraordinary circumstances not found because facts do not make out the felony Aggravated Cruelty to Animals charge, only the misdemeanor, and the AO's mental health history "weighs in favor of transferring the case to Family Court…[t]he People, and of course, the defendant, have both indicated their desire to resolve this case with some form of treatment for the defendant. Both agree that a facility offering intensive inpatient treatment, and a secure environment would be the appropriate outcome for this case…the court is of the opinion that this defendant will benefit from the offerings of Family Court and is confident that the Family Court is well-equipped to meet her therapeutic and supervisory needs."

- People v. J.M., Sup. Ct. Queens Co., 1/9/19: "CPL §722.23[1](b) mandates that every motion to prevent removal of an action to family court must `contain allegations of sworn fact based upon personal knowledge of the affiant.' Here, the Affirmation in Support of the Motion and the Felony Complaint contain hearsay claims and do not contain allegations of sworn fact based upon personal knowledge. As such, the motion to prevent removal must be denied.

  While the statute does not define "extraordinary circumstances", this Court looks for facts that are highly unusual or irregular. Upon a review of the motion, there are no circumstances present which meet this definition. At bar, defendant is alleged to have committed two separate offenses, both of which defendant is not alleged to be the primary aggressor. The fact that defendant has two open cases in the Youth Part, does not constitute an extraordinary circumstance such that removal is inappropriate. Both matters can be effectively adjudicated in the family court where either rehabilitation and/or detention can be imposed. "

- People v. BH, 2019 WL 321860 (Sup. Ct. Nassau County, 1/23/19) Held that the People failed to prove the existence of extraordinary circumstances. Analysis bases on legislative intent that "denying removal of a case to the Family Court would be `extremely rare' (Assembly Record, 38-39). The phrase `extraordinary circumstances" itself was described as applying to instances where `highly unusual and heinous facts' were demonstrated and `there is a strong proof' that the AO would `not be amenable or would not benefit from the heightened services' offered in the Family Court (Id., 39)" Court balanced the aggravating and mitigating circumstances and found extraordinary circumstances do not exist. AO did not commit "numerous crimes over several days. While the assault was violent, there is no evidence in the record which would permit the Court to conclude that it was the AO who actually stabbed the most seriously injured victim in the back….[t]here is also no evidence in the record that the AO was a leader of the assault or that he was on of the individuals responsible for the attempt to coerce and intimate [sic] the victim's younger brother into joining the group….There is no evidence in the record showing that the AO is not amenable to services".

  Court analyzed the legislative framing of "the discussion of extraordinary circumstances in terms of aggravating and mitigating factors that a Court could

consider. Among the aggravating factors that a Court might consider were (1) whether the AO had committed a series of crimes over many days; (2) whether the AO had acted in an especially cruel and/or heinous manner; and (3) whether the AO was a leader of the criminal activity who had threatened or coerced other reluctant youths into committing the crimes before the court (Assembly Record, p. 40). In contrast to the short list of aggravating factors a court could consider, the Assembly set forth a lengthy, comprehensive list of mitigating factors. These factors include economic difficulties faced by the AO, substandard housing the AO may have lived in, educational challenges experienced by the AO; and emotional/psychological difficulties the AO may have, such as lack of insight, susceptibility to peer pressure due to immaturity, the absence of positive role models or positive behavioral role models in the AO's life, and abuse of alcohol or drugs (40). **The Assembly envisioned that the courts, in assessing these aggravating and mitigating factors would fashion a standard with a `very high bar' for retention of cases in the Youth Part, a standard which would take into consideration of all the factors in a given case and where, ultimately, `one in a thousand' cases would be held in the criminal court and the rest would go to Family Court. (Assembly Record, 83-34)"**

- People v. R.K., Sup. Ct. N.Y. Co., 1/28/19: "The Defendant is sixteen years old, has no reported criminal convictions, and has one finding of juvenile delinquency for criminal possession of stolen property in the fifth degree. The Defendant is accused of committing a robbery after being released in this case. The District Attorney described this robbery as a, "gunpoint" robbery, but there is no evidence to suggest anyone involved in this event had a gun, said they had a gun, or displayed a gun. It is alleged that the Defendant placed his hand near his waistband while an accomplice snatched five dollars from the complainant's hand.

  There is no other substantive evidence that the Defendant has been involved in other criminal activity. The information and arguments provided by the District Attorney relating to possible gang involvement and unproven allegations of other criminal actively [sic] is not sufficiently supported and does not to [sic] establish extraordinary circumstances given all of the circumstances in this matter.

  Based on the evidence submitted by the District Attorney's office, the Defendant and his mother have a proven track record of being open and receptive to receiving and actively engaging in counseling, therapeutic, prosocial and other rehabilitative services. The Defendant is routinely described as cooperative and willing to engage. His challenges include a history of exposure to domestic violence, learning disabilities, a community near his home that is plagued by negative influences, and appending delinquency charge in Family Court. He has no proven history of violence or involvement with weapons, no serious psychological problems, no history of drug or alcohol abuse, and no difficulty engaging in rehabilitative services. The Defendant continues to show a willingness to accept help, try to new treatment modalities, and work on

rehabilitation as clearly demonstrated by the letter from the mental health professional who is helping him at Crossroads.

There is no supportable basis for depriving the Defendant of the opportunity to utilize the rehabilitative and specially tailored corrective measures offered in Family Court. The Court does not minimize the pending allegations in this case or the case that is simultaneously being removed to Family Court, and recognizes the important interest in keeping the community safe and no duplicating rehabilitative efforts that have been unsuccessful. However, the high burden that must be satisfied in order to direct retention is not met by the circumstances that are present."

- People v. Fagan, Sup. Ct. NY Co. 1/31/19: AO charged with robbery with what appeared to be a firearm. 2 pending cases in Brooklyn and Manhattan supreme court on which he has pled guilty. No history of causing serious injury, no evidence of actually possessing an operable firearm, all allegedly committed with a group of peers. AO has history of receptivity and engaging in rehabilitative services.

- People v. TL, Youth Part Onondaga Co. (2/4/19) Held that extraordinary circumstances not established. AO charged with 3 separate incidents: Rob 1, Att. Rob 1, Rob 1. Had a case in 11/18 diverted to Family court and failed to cooperate with services. At hearing PO testified that she did not know if AO would have benefitted from services

- Matter of J.P., Sup. Ct. Bx Co., (2/11/19): Extraordinary circumstances not found. Noting the legislative intent and dictionary definition that extraordinary circumstances as "exceptional to a very marked extent" and "most unusual: far from common: very outstanding: very remarkable. Additionally, given the legislative intent of the statute, "the word `circumstances' within the term `extraordinary circumstances' must be taken to include a wide variety of circumstances, including mitigating circumstances…and those bearing on the adolescent offenders [sic] personal life and background". Held that prior juvenile delinquency adjudications, YO adjudications or even prior felony convictions are not a bar to removal. In this case, AO had prior JD adjudication for attempted robbery and YO for robbery, but no criminal record. Prior robberies committed close in time, with not uncommon violence. In the instant case, he was less culpable than the other perpetrator.

- People v. K.M., NY Co., 2/13/19: No extraordinary circumstances on three incidents of theft of expensive store merchandise where AO has 1 YO adjudication for an assault 1 where an accomplice caused the serious injury. AO has history of unstable family and social support system and untreated diagnosis of ADHD. The court noted that while "his compliance with offered rehabilitative services has been inconsistent, the services that have been offered…appear to have been insufficient and lacked suitability given his needs, background and history."

- People v. DP, Erie Co. (2/22/19): EC not found. AO charge CPW 2—court finds nothing extraordinary about charge. Has prior JO for rob 2-was sentenced to 5 year split with multiple VOPs and incarceration in OCFS. Parole revoked. Held " Reform is about changing the dynamics. The intent of the RTA is to give adolescent and juvenile offenders an opportunity to rehabilitate. The goal is avoidance of criminal records and incarceration when possible and in appropriate circumstances." Distinguishes from AG, because there are no pending cases.

- People v. JB, (Co. Ct., West. Co., 2/27/19): Extraordinary circumstances not found based on allegations of gang membership, prior allegation of gun possession and allegations of a prior attempted attack of a rival gang member with a machete. The People's motion contains hearsay allegations that are not supported by sworn allegations of fact as required by statute and the motion is denied. Failure of People to request a hearing within 30 days precludes hearing.

- People v. Dukes, NY Co. Sup. Ct. (3/8/19): EC not found. Charged with GL4-car and in family court placement for similar crimes (2 JDs) after VOP. Court bases finding on no prior convictions and no supportable basis for depriving him of the "opportunity to utilize the rehabilitative and specially tailored corrective measures offered in Family Court."

- People v. SJ, (NYCo. SCt, 4/10/19): People failed to establish extraordinary circumstances where there were "no allegations of sworn fact from anyone who has personal, firsthand knowledge of the subject matter referenced in the District Attorney's submission". The court cited the plain language of CPL §722.23(1)(b) and Matter of JB, 2019 NY Slip Op. 29051 (West. Co. Ct.) (AO charged with burglary in the first degree as a sexually motivated felony) Court notes no history of violence or other indicia that make him unsuitable for the rehabilitative services in Family Court.

- Matter of JC, Sup. Ct. Qu. Co. (3/27/19): Court rejects People's assertions that a pending felony and allegations of gang affiliation is sufficient for an extraordinary circumstance finding. People failed to provide a statement of personal knowledge related to the gang affiliation or establishing the source of the photograph provided. Noted that the allegations establish only that the AO was an accessorial actor.

- People v. JW, Fam.Ct. Erie Co. (3/28/19): No extraordinary circumstances found where AO did not instigate offense (rob 1) and she has demonstrated an amenability to services by cooperating with the resource coordinator, appeared timely in court, led a law abiding life and attends school.

- People v. SJ, (NYCo. SCt, 4/10/19): People failed to establish extraordinary circumstances where there were "no allegations of sworn fact from anyone who has personal, firsthand knowledge of the subject matter referenced in the District Attorney's submission". The court cited the plain language of CPL §722.23(1)(b) and Matter of JB, 2019 NY Slip Op. 29051 (West. Co. Ct.) (AO charged with

burglary in the first degree as a sexually motivated felony) Court notes no history of violence or other indicia that make him unsuitable for the rehabilitative services in Family Court.

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  Four indictments, 1 Rob 3, 3 Rob 1s: social media arranged sale of headphones, took money and then cell phone, jewelry.

- People v. Rivera, Sup. Ct. NY Co. (5/8/19): 2 separate rob 1 indictments. One where defendant brandished a knife. No extraordinary circumstances found. AO has long history of foster care, psychiatrist letter detailing pervasive and severe trauma recommending against placement in an institutional setting expresses optimism about AO's potential. AO has strong connection to mother and is engaged in mental health services. All held to be significant and pervasive factors weighing in his favor. Court rejects People's claim that removal would cause the public to lose faith in the effectiveness of the criminal justice system, because the public expects appropriate punishment when people commit crimes, holding that the statement is "unwarranted and seems to rely on outdated and mistaken assumptions….if is false to state that Family court cannot or does not use punitive measures in handling juvenile delinquency matters…[where[services are combined with safety measures in order to protect the community while working toward rehabilitation at the same time."

- People v. J.B., Sup. Ct. Onondaga Co.(5/13/19): No extraordinary circumstances found. Assault 2: CW shot in the back with a bb gun, described as feeling like a "hornet's bite". No significant physical injury or prior involvement in criminal activity. Removal does not end the defendant's path through the overall criminal justice system: Family Court will independently determine how to assist the AO as he proceeds toward adulthood by offering various services, while considering the needs of public safety and promoting confidence in the justice system.

- People v. Cisse, Sup. Ct. NY Co. (5/15/19), EC not found where AO had no known criminal history, Family Court involvement, behavioral or mental health problems. AO had bb/pellet gun which was fired into CW's head, other 2 had knives held to cw's neck. Took debit card and tried to withdraw money.

- People v. CM, Youth Part, Onondaga Co (5/17/19):No EC found where AO has no prior criminal involvement and there is no indication that he can't be rehabilitated. Two indictments: Rob 2 and CPW

- People v. Jaggernauth, Sup. Ct. NY Co. (4/10/19): No EC found where AO charged with burglary as a sexually motivated felony where P's submission consisted of the ADA's summary of the crimes reportedly charged against AO. No allegations of sworn fact from anyone with personal, firsthand knowledge. Even if P's submission had allegations of sworn fact, it would be substantively insufficient. P's reference to incidents being prosecuted in family court did not include whether they are pending charges or whether a finding was made.

- People v. JB, Youth Part, Onondaga Co., (4/23/19): No EC found. Court holds that EC requires more than an analysis of what the AO did. It requires " a look at the AO's actual input and the internal makeup of the individual. An AO that is repeatedly involved in criminal activity; who show's [sic] no remorse; who encourages others to do his dirty work, may lead this Court to make a finding that an AO's case should not be removed"

- People v. A.R., Sup. Ct. NY Co. (5/8/19): 2 separate rob 1 indictments. One where defendant brandished a knife. No extraordinary circumstances found. AO has long history of foster care, psychiatrist letter detailing pervasive and severe trauma recommending against placement in an institutional setting expresses optimism about AO's potential. AO has strong connection to mother and is engaged in mental health services. All held to be significant and pervasive factors weighing in his favor. Court rejects People's claim that removal would cause the public to lose faith in the effectiveness of the criminal justice system, because the public expects appropriate punishment when people commit crimes, holding that the statement is "unwarranted and seems to rely on outdated and mistaken assumptions….if is false to state that Family court cannot or does not use punitive measures in handling juvenile delinquency matters…[where[services are combined with safety measures in order to protect the community while working toward rehabilitation at the same time."

- People v. Cisse and Smith, Sup. Ct., NY Co., (5/15/19): No EC found. Robbery of a teenager with a BB gun and a knife. Gun fired and used to hit cw in the head. Cw's debit card, attempted withdrawal slips and knife recovered shortly after incident. AOs admitted to incident. No priors. CW received 4 staples to close a head wound of 1.5 cm. OTC meds recommended. No other treatment other than removal of stitches.

- People v. J.B., Sup. Ct. Onondaga Co.(5/13/2019): No extraordinary circumstances found. Assault 2: CW shot in the back with a bb gun, described as feeling like a "hornet's bite". No significant physical injury or prior involvement in criminal activity. Removal does not end the defendant's path through the overall criminal justice system: Family Court will independently determine how to assist the AO as he proceeds toward adulthood by offering various services, while

considering the needs of public safety and promoting confidence in the justice system.

- People v. KLB, Sup. Ct. Queens Co. (7/8/19): No EC. AO has no prior arrests or convictions. 2 robberies six days apart: first in concert where one displayed what appeared to be a firearm, cw punched/kicked in the head and body. 2nd: weapon was umbrella. Not alleged that the AO had the firearm. Held that there are no highly unusual or heinous facts preventing removal. The "behavior demonstrates the kind of poor judgment and impetuous conduct that militates in favor of removal to the family court in order to redirect defendant's errant path"

- People v. AO, Sup. Ct., Queens Co. (7/8/19): No EC. Rob 1- AO and co-d punched cw in head and co-d swung a knife toward cod. 2 gravity knives recovered near scene and cell phone recovered from AO. Found that AO not primary actor and did not have weapon. No highly unusual or heinous facts.P alleged gang involvement, but failed to provide any supporting documentation.

- People v. LL, Sup. Ct. Queens Co. (7/19/19): No EC found. Att. Rob 1. Argument that use and display of a weapon is EC despite court finding that there was no display of a deadly weapon as it was a bb gun. No prior history. No allegation that AO was principal actor and 7 others involved. No allegation that AO was the one who displayed the BB gun. Behavior held to be "the kind of poor judgment and impetuous conduct that militates in favor of removal"

- People v. Oquendo, Sup. Ct., Richmond Co. (8/14/19): No EC found when AO acting in concert with 2 others charged with setting fire at 5:16am to outside of commercial building causing significant structural, electrical and smoke damage to the building. Merriam-Webster definition of extraordinary as "going beyond what is usual, regular or customary" and "exceptional to a very marked extent" appears consistent with the legislative intent behind the statute. Noting legislative intent that EC sets a `"high standard" for the prosecutor to sustain and that 'denials of transfer to the family court should be extremely rare...and should be denied only when highly unusual and heinous facts are proven and there is...strong proof that the young person is not amenable…[to] services in the family court." Record at 39. Held that there was no assertion that D's actions were part of a bigger plot of community destruction or a pattern or criminal behavior.

- People v. Raphael, Sup. Ct., Queens Co. (9/23/19): No EC found. AO has 4 open felony complaints in the youth part. Removal motions as to 3 was filed one day late and is denied, but would have been denied on the merits if timely. No allegation that AO displayed a weapon, caused SPI, forcibly removed property. Allegations establish that AO was a participant. No prior criminal arrests or convictions.

- People v. CM, Youth Part, Onondaga Co. (9/25/19): EC found. Burglary and Robbery. P filed a motion only as to robbery, but court did not treat "that error as a fatal flaw". Burglary: the residence was targeted, AO has prior experience in youth part and took a leadership role in execution. Robbery: AO scouted out a vulnerable individual and planned robbery. Actions display "a current lack of moral conscience, his mean spiritedness and his antisocial behavior. Held that AO did not benefit from "myriad of services previously offered to him". Considers prior youth part proceedings, but not family court records because of FCA 381.2.

- People v. A.L., Youth Part, Onondaga Co. (10/7/19) Court denies AO's application to **waive EC determination.** Rob 3 plea offered with YO and probation. Court holds that AO's belief that adult probation would serve him better than family court probation demonstrates lack of knowledge of implications of waiver. No legal benefit to AO demonstrated by P or D.

- People v. LC, Sup. Ct. Bronx Co.(10/21/19): No EC found: 2 in concert robberies on one day followed by one 7 weeks later. The first two incidents were not supported by sworn allegations of fact based upon personal knowledge of the affiants and therefore, the P's argument re: a pattern of crimes committed over a period of time are not supported as required by statute. Each committed at around 3am, cws middle aged Mexican men. P argue premeditated and not impulsive.

- People v. Prophete, Sup. Ct. NY Co.(10/22/19): No EC. Knifepoint (boxcutter) robbery. Punching 2-3x when cw tried to get his property back. Boxcutter recovered. Court holds no basis to deprive AO of opportunity to utilize the rehabilitative and specially tailored corrective measures in FCt. Court will not consider ADA's report on AO's Family court matters due to FCA 381.2.

Significant Physical Injury

FOUND

- People v. Howard, NY Co. (11/20/18): Significant physical injury found where a centimeter laceration to complainant's lip which required numerous stitches and likely to cause a permanent scar. AO played primary role in that he chased complainant shoved to ground and punched in his face.

- People v. Smalls, N.Y. Co. Sup. Ct., 12/7/18: Court finds that significant physical injury was caused. Cut to the face with a sharp object, necessitating 10 stitches and cut to the hand with a sharp object necessitating 5 stitches. Defendant admitted to using a razor blade. Physician reported possibility of permanent scarring to face and ongoing pain medication required.

- People v. B.H., 89 NYS3d 855, 861 (2018)(Co. Ct. Nassau Co.) (12/11/18) "There can be no question that the victim who was stabbed six times and it in the head with a baseball bat, causing him facial paralysis, sustained a significant physical injury. That the victim may fully recover from his wounds and not suffer any permanent effects from the injury should not mitigate its significance as a physical injury." (but see sole actor argument)

- People v. A.S., 2019 Slip Op. 50187 (Fam.Ct. Erie Co.) 1/15/19: Significant injury proven where defendant and the co-d struck the cw in the head with a "black pistol causing lacerations to head that required staples. The allegation of a broken wrist also meets significant physical injury.

- People v. Woods, Sup. Ct. Queens Co. (1/22/19): SPI found. Assault of 2 CWs resulting in bruising, bleeding, a broken wrist, a broken nose, fractures, loss of sensation in the arms/legs, face fractures and eye tissue damage

- People v. Peek, NY Co. (1/23/19): Significant physical injury found. Decision references court file. [This case was litigated by Neighborhood Defender Services which filed an article 78 where the judge relied on an in concert theory, rejecting sole actor analysis. The NYC defender organizations and NYSDA filed an amicus brief. The First Department held that an Article 78 did not lie and the issue was not decided]

- People v. JM, Bronx (2/19/19): Significant physical injury found where the complainant lost sight in right eye, damage to retina requiring surgery. Also found in second robbery where five facial fractures to orbital and cheek bones with two stitches on eyebrow.

- People v. EBM, Co. Ct. Nassau (2/28/19): Significant injury found where complainant sustained multiple facial fractures (nose, orbital bone and concussion) and required reconstructive surgery and placement of titanium plates in his face. Held that medical records not required and hearsay accepted.

- People v. Thompson, NY Co. (4/9/19): Significant physical injury found where complainant was no longer able to see normally, but only shadows requiring surgery in order to reattach his retina and replace the lens.

- People v. Price, NY Co. (4/22/19): Significant physical injury and display of a firearm found. Video shows AO shooting the complainant in the leg requiring surgery. Bullet penetrated femoral artery which was destroyed requiring insertion of a vein from the opposite leg. Permanent scarring and an additional surgery was required. Surgical records were submitted.

- People v. JW, 2019 NYLJ LEXIS 1376, Kings (4/26/19): Significant physical injury found where complainant was stabbed 5 times, four in the back and once in the thigh causing bleeding in the chest cavity and hospitalized for three days. The People's presentation of photos and hearsay evidence found to be sufficient.

- People v. Y.L., Co. Ct. Monroe Co. (5/17/19): Broken nose held to be significant physical injury. Two CT scans submitted. AO admitted to directly participating in the attack resulting in the injury. (see also sole actor)

NOT FOUND

- People v. R.J., NY Co. S.Ct., 2/20/19: Significant physical injury not proven. DA submitted felony complaint, emergency room medical records, and photographs of the complainant. Injury required six stitches to close a 1.5cm laceration to forehead near the hairline without sedation while in the emergency room. Only over the counter medication recommended and no prescription medication, nor further treatment other than removal of the stitches was necessary.

- People v. J.M., Broome Co. S.Ct., 2/27/19: Court holds that there was insufficient evidence to prove that the AO was the sole actor who caused the victim's injury. Court rejects People's theory of "reasonable inference" that the AO's actions caused the broken nose. Additionally held that "the standard of proof for a grand jury is lower than a preponderance of the evidence standard. The burden of proof for indictment is reasonable cause to believe a person committed an offense. CPL §§70.10, 190.65(1). In applying this `minimally demanding standard', the only question for review is whether the guilty inference could rationally have been drawn. People v. Jensen, 86 NY2d 248, 255 (1995)." (also sole actor/preponderance) Decision not reached as to whether a "singular minimally displaced nasal fracture constitutes "significant physical injury" within the statutory framework of the RTA legislation.

- People v. S.J., NY Co. S.Ct., 3/5/19: Significant physical injury not proven. DA presented emergency room medical records, surveillance videos with partial coverage of the incident and the ADA's recitation of her interview with the complainant the day after treatment in the emergency room. Alleged that complainant pushed down stairs. No injury, dizziness, headaches or vomiting. She described moderate back pain and was given over the counter medication.

- People v. Cisse, Sup. Ct. NY Co. (3/28/19): Significant physical injury not proven. Pellet gun fired into neck of complainant who received 4 staples. Cw reported continued pain, headache, difficulty concentrating and sleeping. No prescription medication or further medical treatment other than removal of stitches.

- People v. Ravenell, NY Co. (4/5/19): Significant physical injury not found where the complainant was seen in the ER for a laceration to his head, pain in his knee and a lump and bruising to the back of his head. Sprained knee. Over the counter meds and an ace bandage for knee.

- People v. Pagan, NY Co, (5/20/19): Significant physical injury not found. Bilateral, mildly fractured nose. Discharged from ER after 2 hours. No follow up treatment recommended. Complaint, ER records, photos and ADA's recitation of her interview with the complainant.

- People v. Urena, Orta: NY Co. (5/23/19): Significant physical injury not found where complainant was discharged from the ER after 2 hours reporting pain to elbow, forearm, wrist and knee.

- People v. Tatis, NY Co. (5/28/19): Significant physical injury not found. Complainant struck with a metal pipe causing contusions, tenderness, abrasions, and swelling.

- People v. Branton, Sup. Ct. NY Co. (8/26/19): Display found, no SPI. Video shows AO discharge a gun. Cw suffered a soft tissue laceration in the head 4cm in length and a hematoma. 2 sutures and 7 staples. No medication or follow up other than staple removal.

- People v. Day, Sup. Ct. NY Co. (9/13/19): SPI not found. In concert robbery where cw pushed and struck. Cw left ER after 3 hours. CW reported being punched in face 3x resulting in eyebrow laceration, nosebleed, swelling and bruising to her eye and swelling of hand as well as mildly displaced fracture of nose and orbital bones. No vision problems or headache. Returned to work the following day. Records showed that fractures would heal on their own.

- People v. Mendez, NY Co. (9/23/19): SPI not found. CW suffered bruising, abrasions, lacerations, pain and slight nasal fractures and staples (more than 5) to the head. No deformity to nose. OTC meds, return medical visits and missed 3 weeks of work . AO with 2 others punched, kicked and struck cw in various parts of body including head. Hit in head with a belt.

Display of a Firearm

FOUND

- People v. LM, 2019 NY Slip Op 50305 (Co. Ct., Nassau Co. 2019) AO alleged to have discharged a loaded pistol, firing 5 shots with a the complainant sustaining a gunshot wound to the abdomen.

- People v. Fulmore, NY Co. (1/31/19): Display established. Video shows co-d hand AO a black object which he puts in his waistband and lifts his shirt so store employee can see what appears to be the handle of a black gun.

- People v. AT, 2019 NY Slip Op 50305 (Fam. Ct. Erie Co., 2019): Held that AO displayed firearm where a BB gun was recovered. AO displayed a black and silver BB gun, placed it to the complainant's head and demanded all his money. Arrested shortly thereafter and the officer recovered a black and silver BB gun where he observed the AO throw it.

- People v. GC, 2019 NY Slip Op 29050 (Co. Ct. Westchester Co. 2019) Held that People met burden that AO displayed a handgun where he was charged with murder 2 by shooting the complainant in the torso. People submitted a copy of the face sheet of the autopsy report stating death caused by a bullet wound, advised the court of an eyewitness who observed the AO fired the gun at the decedent and recovered clothes of the AO which tested positive for gunshot primer residue. No gun recovered.

- People v. Mitchell, NY Co. (2/22/19): Held that AO displayed a firearm based on the complaint and an operability report. AO admitted to police that he pulled a gun out and displayed it before taking the bike from a group of individuals.

- People v. Golden, NY Co. (3/26/19): Display found. Video shows AO using a gun to shoot at other persons. Face not clear in this video, but another video close in time and place shows the same person in the same clothing and AO's face can be identified.

- People v. Price, NY Co. (4/22/19): Significant physical injury and display of a firearm found. Video shows AO shooting the complainant in the leg requiring surgery. Bullet penetrated femoral artery which was destroyed requiring insertion of a vein from the opposite leg. Permanent scarring and an additional surgery was required. Surgical records were submitted.

- People v. Drayton, NY Co. (5/13/19): Held that AO displayed a firearm. DA produced a copy of the complaint, an NYPD property voucher for a black pistol, NYPD lab report showing operability, 911 call which was made just prior to the arrest reporting seeing 3 boys chasing a fourth, one holding a gun. PO saw AO with gun protruding from pocket, heard heavy metal object hit the ground and then saw the gun.

- People v. McCrae, NY Co. (5/31/19): Held that AO displayed a firearm. Reliance on complaint that subway riders witnessed AO pull out a gun. Police disarmed the AO. Lab report submitted showing the gun to be operable.

- People v. Branton, Sup. Ct. NY Co. (8/26/19): Display found, no SPI. Video shows AO discharge a gun. Cw suffered a soft tissue laceration in the head 4cm in length and a hematoma. 2 sutures and 7 staples. No medication or follow up other than staple removal.

NOT FOUND

- People v. MM, 2019 WL 1303815, (Co. Ct. Nassau Co., 3/21/19): Held that the People failed to prove that the AO displayed a firearm or deadly weapon. Allegations were that the AO reached into his waistband while making a threat about shooting in one complaint and in the other, that the AO placed his hand in his pocket "as if he had" a handgun. The People cited the complainants' supporting deposition on the third case which alleged that the AO had "what *appeared to be* a black handgun" when the AO threatened to shoot her. The court cited the dictionary definition of "display" of "to show or make something evident". The court additionally cited legislative intent "behind RTA is to treat 16 year-old offenders different from adults and to implement a mechanism that will facilitate the transfer of the majority of cases to the Family Court, it would be illogical for the Court to construe CPL §722.23(2)(c)(ii) in a way that *expands* the reach of the provision to cases that would otherwise proceed toward automatic removal to the Family Court under CPL §722.23(1)(a).

- People v. DG, Sup. Ct. Kings Co. (4/4/19): Display of a firearm does not encompass displays what appears to be a weapon. "Clearly, the Legislature intended for a `display of a firearm or deadly weapon' to be something more than to merely `display what *appears* to be a firearm or deadly weapon". This requires evidence that what is actually displayed, is in fact, a firearm or deadly weapon." AO charged with demanding complainant's car keys holding what she recognized to be a gun from inside his jacket.

Sex Offense

- People v. Mines Saleem, NY Co. (4/15/19): Held that AO placing his hand on the complainant's head, back/shoulder area and arm was not sexual contact even though they were in an elevator. Video shows touching with no force and multiple times, AO removed hand and they are engaged in conversation during the incident with no evidence of hostility.

- People v. Jacob S., Youth Part County Ct., Orange Co. (10/9/19): P failed to meet burden. AO charged with sex abuse 1 for touching 8 year old sister on buttocks and vagina. AO diagnosed with Asperger's syndrome, anxiety, ADHD, PDD and on the autism spectrum. His parents removed him from a residential treatment center where he was doing well and did not appropriately supervise him. Court held that FCA 381.2 prevents consideration of family court records. People failed to submit a written statement or video of AO during questioning which the court deems necessary to assess "the manner in which the Defendant was questioned, his ability to understand the situation and consequences of his statements and the role his parents had in such questioning, together with both parents and the District Attorney relying on prior JD matters, it is apparent that the ultimate statement to the investigator was tainted, at best…" Court notes that AO is a "16 year old who clearly suffers from cognitive, emotional and other mental limitations, and there exists no supportable basis for depriving this Defendant the opportunity to utilize the specially tailored rehabilitative services that can be provided through the Family Court.

Sole Actor

- Practice Commentary CPL 722.10, William C. Donnino:

  The key Assembly sponsor of the legislation noted that the three items require[ ] that the defendant be the sole actor who causes the conduct....Assembly, Record of Proceedings, April 8, 2017, p. 51.

  The rationale behind subdivision two was that not all felonies defined as violent for plea and sentencing purposes necessarily involve a violent act [e.g., burglary of a dwelling, Penal Law § 140.25(2)]; thus, by requiring a finding of one of those three items, only those cases [of] the truly violent felons would stay in the criminal part and those kids who were not violent would transfer to Family Court. Assembly, Record of Proceedings, April 8, 2017,p. 21-22.

  - People v. B.H., 89 N.Y.S.3d 855, 861(Co. Ct. Nassau Co) 12/11/18: People concede that the AO did not directly cause the victim's injury, but rather that the MS-13 gang, which the AO is allegedly a part of and liability is based on in concert theory. Held: "However, liability based on the AO "acting in concert" with others, while a basis for criminal liability, is precluded in the RTA's legislative history as a factor for retaining the AO's

case in the Youth Part. In discussing the three factors for retention of an AO's case in the Youth Part, the Assembly's main sponsor of the Bill states that the three factor test "required the defendant to be the sole actor who causes the conduct outlined…The Legislative history states that this is consistent with the spirit of the law because "kids happen to get in trouble together all the time" and the Assembly did not want to punish an entire group for `one bad apple'. (Assembly Record, 51) Indeed, the Legislative history specifically states that `gang assault', including, but not limited to `breaking car windows, breaking apartment windows, beating up kids or tampering with witnesses' could be adjudicated in the Family Court (Assembly Record, 31). Based on this stated legislative intent to exclude gang activity from the three factors for retaining a case in the Youth Part, the People's argument is unavailing.

- People v. Peek, NY Co. (1/23/19): Significant physical injury found. Decision references court file. [This case was litigated by Neighborhood Defender Services which filed an article 78 where the judge relied on an in concert theory, rejecting sole actor analysis. The NYC defender organizations and NYSDA filed an amicus brief. The First Department held that an Article 78 did not lie and the issue was not decided]

- People v. J.M., Broome Co. S.Ct., 2/27/19: Court holds that there was insufficient evidence to prove that the AO was the sole actor who caused the victim's injury. Court rejects People's theory of "reasonable inference" that the AO's actions caused the broken nose. Additionally held that "the standard of proof for a grand jury is lower than a preponderance of the evidence standard. The burden of proof for indictment is reasonable cause to believe a person committed an offense. CPL §§70.10, 190.65(1). In applying this `minimally demanding standard', the only question for review is whether the guilty inference could rationally have been drawn. People v. Jensen, 86 NY2d 248, 255 (1995)." (also sole actor/preponderance)

- People v. Y.L., 2019 NY slip Op. 29181 (Co. Ct. Monroe Co.) (5/17/19): Court rejects sole actor analysis. Rejects analysis of J.M. relying on legislative intent, holding that "such a narrow interpretation [is] inconsistent with the legislative intent behind the Raise the Age legislation. Indeed, a discussion on accomplice liability between Assembly Person Quart and Sponsor Assembly Person Lentol demonstrates that causation should not be so narrowly defined as requiring a "sole" actor. Held that the People established that each defendant aided and shared a "community of purpose" with his co-defendant but also admitted directly participating in the attach on the victim resulting in his significant physical injury.

Juvenile Offenders

- People v. AB, Sup. Ct. Queens Co. (1/8/19): Removal granted. In concert Rob 1 where one of the two youth had knife. No physical injuries. JO is small and said was bullied by cod. No prior arrests and took responsibility for role in incident.

- People v. DD, Sup. Ct. Queens Co. (3/29/19): Removal granted. Assault 1 in concert. CW 15 y.o. Unapprehended slashed cw with a machete. JO did not have a weapon, play a primary or leadership role. First contact with system and no rearrests. Classified as emotionally disturbed in school and in special education. Removal to family court "will enable him to participate in programs geared to offenders his age which will not be available to him in Supreme Court."

- People v. M.F.: Sup. Ct. Queens Co. (4/15/19). In concert robbery with co-defendants, scrapes and bleeding to cw's hands, cell phone taken, one had a knife. Case removed: not alleged that JO was principal actor or incited the attack, or was the masked male with the knife. No prior arrests for violent felonies before this matter, nor was there serious physical injury caused. Defendant and family have a long history with ACS and foster care placement.

- People v. AC, Sup. Ct. Queens Co.(8/2/19): Removal granted. Rob1, in concert. CW walking his bike and one cod sprayed silly string. Cw hit in head and body with fists and belt. 2 days later, in concert robbery where cw lost consciousness after being hit and kicked. JO found not to be the principal actor, did not possess/brandish a weapon, cws did not suffer serious physical injuries as a result of JO's acts. No prior arrests/convictions. JO has long history with ACS with history of DV in home. JO has history of mental illness and substance abuse with multiple hospitalizations .