

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: CRIMINAL TERM: PART YP32
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THE PEOPLE OF THE STATE OF NEW YORK

- against -

Docket Number: FYC - 70038-18

J.P.,

Defendant.

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Denis J. Boyle, J.:

The defendant, J. P., stands before me, an Adolescent Offender, charged upon a felony complaint with separate counts of Attempted Robbery in the First Degree (Penal Law section 110/160.15(3)); Attempted Robbery in the Second Degree (Penal Law sections 160.10 (1) and (2)(a)); Assault in the Second Degree (Penal Law section 120.05 (6)); and related charges. The People have moved in writing, pursuant to Criminal Procedure Law sections 722.23(1)(b) and (d), to prevent removal of the instant action to family court on the ground that “extraordinary circumstances exist that should prevent the transfer of the action to family court” (Criminal Procedure Law section 722.23(1)(d)).¹ Incident to this motion, the People have requested a hearing in further support of their motion, pursuant to Criminal Procedure Law sections

¹Reference to the felony complaint in this case reveals that the Adolescent Offender defendant stands charged with multiple violent felony counts as defined in section 70.02 of the penal law (See Criminal Procedure Law section 722.23(2)(a)). However, the People have acknowledged that the underlying facts in the instant matter do not satisfy either of the three factors enumerated under Criminal Procedure Law sections 722.23(2)(c)(i)(ii) and (iii), and, therefore, resolution of the instant motion to prevent removal will proceed pursuant to the terms of Criminal Procedure Law section 722.23(1)(a) as required under Criminal Procedure Law section 722.23(2)(c). I note further, the Adolescent Offender defendant does not stand charged with an “armed felony” (see Criminal Procedure Law section 722.21(5)).

722.23(1)(b) and (c). A hearing has now been held pursuant to the People's motion to prevent removal of the action and pursuant to the mandate of Criminal Procedure Law section 722.23(1)(e). I now make the following findings of fact and reach the following conclusions of law.

Findings of Fact:

I note, preliminarily, the defense presented two witnesses at the hearing before me; Ms. Melanie Jacks and Mr. Rohee Ramnath. I credit their testimony. Further, both the People and the defendant have submitted written submissions, including exhibits as will be discussed further, *infra*, in support of their respective positions. Additionally, certain records from the Bronx Family Court have been obtained pursuant to this Court's subpoena and provided to both parties.

In support of the People's contention that extraordinary circumstances are presented in this case, such as would warrant granting the People's motion to prevent removal of the action to family court, the People cite, in the first instance, the facts underlying the instant charges. As revealed in the record of the grand jury proceedings in this matter and as alleged by the People, on October 24, 2018, at 10:15 a.m., the defendant, together with an unapprehended individual, approached the complainant as the complainant was standing on a subway platform in a subway station located at the corner of White Plains Road and East 225th Street. The People further allege that the defendant and the unapprehended individual then surrounded the complainant. The unapprehended individual displayed a knife and demanded the complainant's personal property including complainant's cell phone and wallet. The evidence before the grand jury further reflects that the complainant ran from the defendant and the unapprehended person and in turn, that the defendant and the unapprehended individual chased the complainant, caught up to

him and again, surrounded the complainant. The defendant and the unapprehended fellow perpetrator together began to punch the complainant about the complainant's face with their closed fists. The complainant described the pain which resulted as a "flushness" and his cheek as being "very hot and sore" and "very swollen" (Grand Jury minutes, pg. TPH8; see, People's Affirmation to Prevent Removal, paragraph 4). The record before the grand jury reflects, in addition, that the complainant was "terrified" during this incident (Grand Jury minutes, pg. TPH6). Ultimately, the defendant and his unapprehended accomplice did not succeed in taking property from the complainant and the defendant was thereafter arrested after being identified by the complainant in a photo array. Upon defendant's arrest, he resisted arrest, resulting in additional misdemeanor charges in addition to the felony counts based upon the incident for which he was arrested.²

In further support of the People's application to prevent removal of the instant action to family court, the People rely upon the record of prior proceedings in both the Bronx County Family Court and the Criminal Term of the Bronx Supreme Court involving the defendant. In this regard, the records obtained from the Bronx Family Court reveal a series of criminal acts on the part of the defendant which became the subject of dispositions over time in Family Court. These matters include an Assault in the Third Degree (Penal Law section 120.00(1)), committed on October 19, 2015 and which was admitted by the defendant in Family Court, resulting in defendant being found to be a juvenile delinquent and placed on Level Two Probation with certain conditions, including that he refrain from further delinquent acts. Thereafter, as noted by the People, on May 13, 2016, the defendant was adjudicated a Juvenile Delinquent in the Bronx

² I note, as well, the allegations underlying the charge of Harassment in the Second Degree (Penal Law section 240.26 (1)).

County Family Court upon his admission to having committed Attempted Robbery in the Second Degree under Penal Law section 160.10(1), on March 2, 2016. Pursuant to his adjudication as a juvenile delinquent, the Bronx Family Court entered a disposition against him of twelve months of placement with the Administration for Children's Services. The records of prior Family Court proceedings reveal, in addition, that defendant was also adjudicated a juvenile delinquent on May 13, 2016 for having committed Criminal Possession of Stolen Property in the Fifth Degree (Penal Law section 165.40) on April 6, 2016, for which he was ordered to pay restitution to the complainant in the amount of \$25.00. On that same date, May 13, 2016, the defendant was found in violation of the probation on which he had been previously placed when adjudicated a juvenile delinquent for the Attempted Robbery in the Second Degree matter. Upon this finding, defendant was ordered to be placed for a period of twelve months in the custody of the Commissioner of Social Services for placement with "ACS - Non Secure Placement subject to further orders of the Court.". The defendant's experience in Family Court, as revealed in the records of Family Court proceedings, reflects that on a subsequent date, he admitted having committed Attempted Assault in the Second Degree (Penal Law section 110/120.05(2)), on August 30, 2017. This matter was thereafter dismissed pursuant to further proceedings in the Family Court in furtherance of justice in August, 2018.

The record before me also includes the information contained in clinical reports prepared by the New York City Health and Hospitals Family Court Mental Health Services, based upon evaluations of the defendant on April 19, 2016 and May 2, 2016. In pertinent part, these reports indicate that the defendant was treated at Bellevue Hospital in late August, 2015 for approximately a week and a half for what the defendant described as "bugging out, destroying stuff for no reason" (Clinical Report, Evaluation Date: 4/19/16, pg. 3 of 7). He received a

diagnosis of “ADHD” (Clinical Report, supra at pg. 3 of 7). The subsequent clinical report prepared by the Family Court Mental Health Services for an adjourn date in Family Court of May 3, 2016 includes an interview with defendant’s mother in which she is described as “emphatic” that she does not want any services in the home; as she put it in her interview, “not ACS, no probation” (Clinical Report for Adjourn Date 5/3/16, pg. 4 of 7). In the course of this interview, defendant’s mother stated that she would give the defendant and his brother “away [to ACS] before working with ACS” and that she was “refusing any intervention of services ordered by the Court or ACS” (Clinical Report for Adjourn Date 5/3/16. Pg. 4 of 7).

The record of prior proceedings further reveals that the defendant has previously pled guilty on December 1, 2017, in the Bronx Supreme Court to two counts of Robbery in the Second Degree, based upon separate incidents. As amplified upon in the People’s affirmation, in the first of these two incidents, the defendant was charged as a juvenile offender under Indictment Number: 3510/16, with separate counts of Robbery in the Second Degree pursuant to Penal Law sections 160.10(1) and 160.10(2)(a), alleged to have been committed on October 23, 2016. Thereafter, during the pendency of those charges, the defendant was again arrested and charged as a juvenile offender under Indictment Number: 0723/17, with separate counts of Robbery in the Second Degree pursuant to Penal Law sections 160.10(1) and 160.(2)(a), as under the preexisting indictment, Indictment Number: 3501/16. These separate charges were resolved in the Bronx Supreme Court, as indicated supra, on December 1, 2017 upon the defendant’s separate pleas of guilty to two counts of Robbery in the Second Degree pursuant to Penal Law section 160.10(2)(a), incident to which he was adjudicated a Youthful Offender on each matter and sentenced on each to concurrent terms of one year in jail.

A review of Defense Exhibits A, B and C, attached in support of defendant’s Affirmation

in Opposition reveals aspects of this adolescent offender's history in family court and more particularly, his family's extensive history with Child Protective Services and the efforts of various social workers over time to intervene with the defendant's family dynamic in a constructive way. As the records before the court demonstrate, the efforts on the part of these social welfare agencies, including Child Protective Services, to help the defendant, his siblings, and significantly defendant's mother, to cope with their circumstances, have been typically thwarted by the defendant's mother. The defense exhibits, consisting of progress notes from Family Services, Children's Rescue Fund and correspondence from the Rising Ground organization, a successor organization to the Leake and Watts social service organization, is voluminous and spans the years in the defendant's life going back to 2010 up through 2018. In sum and substance, these documents refer to acts of theft on the part of the defendant on various occasions, and more significantly, to his experience in Family Court on robbery charges. However, the significance of these records is the context they provide for evaluating the criminal conduct committed by the defendant in the years during which these reports were generated. Throughout these reports and over the entire span of the years these reports cover, the defendant's mother is revealed as resistant to the efforts on the part of social workers to aid and assist members of the defendant's family, including the defendant. His mother is characterized in one report as "extremely difficult to work with" and it is alleged in the report that she assaulted a case worker in court (Defense Exhibit A, Family Service Progress Report, Event Date: May 13, 2016, pg. 311). There are repeated references in these reports to the mother's cursing and belligerent attitude towards social workers in response to the efforts on the part of those social workers to help the family, including the defendant, in the various difficulties encountered by the defendant's family over time (see, e.g. Defense Exhibit A, Family Service

Progress Reports, Event Date: January 21, 2015, pg. 9; Event Date: February 24, 2015, pg. 20 and Event Date: January 31, 2017, pg. 117). There is, by way of further example, reference in one report to the defendant's mother's refusal to sign consent for the defendant to be evaluated by a psychiatrist (Defense Exhibit A, Family Services Progress Report, Event Date; November 3, 2016, pg. 22). On balance, the contents of these extensive records makes clear that in those years when the defendant committed the robberies which resulted in his juvenile delinquency adjudication in family court, and thereafter when he was adjudicated a youthful offender in Bronx Supreme Court for the Robbery in the Second Degree counts to which he pled guilty, as well as in the many years leading up to his experiences in family and supreme court, the most significant adult family member in his life, that being his mother, had neglected him, rejected him, given up on him and had failed as well, to cooperate with outside entities, including the Department of Probation as well as social welfare agencies, to engage the defendant in efforts to help him address his criminal and otherwise anti-social behavior.

Ms. Melanie Jacks, a program director for Rising Ground, a nonprofit organization which provides a "multitude of services" to children and families in the City of New York, testified at the instant hearing to her experience with the defendant through defendant's voluntary participation in the Credible Messenger Mentoring Program, beginning on May 30, 2018 through November 13, 2018 (Hearing Transcript, January 18, 2019, pgs. 7 and 11-12). Through his voluntary participation in the program, defendant was provided group mentoring, access to group discussions on a variety of topics including anger management, conflict resolution and other issues, as well as additional services (Hearing Transcript, January 18, 2019, pg. 11). Mr. Rohee Ramnath testified on defendant's behalf as well, in his capacity as a lead mentor with the Credible Messenger Program. By virtue of his experience with the defendant in the program

during a time frame which extended from May, 2016 to February, 2017, Mr. Ramnath described the defendant as “very humble. No problems ... He’s never been restrained. He followed all directions. We rarely had to redirect him. He participated in group. That’s how he earned home passes” (Hearing Transcript, January 18, 2019, pg. 22). Mr. Ramnath maintained in his testimony that there was never any negative behavior on Jamir’s part while he was in the program (Hearing Transcript, January 18, 2019, pg. 24). He indicated further, that defendant’s mother “had no interest in any route to assist with Jamir” (Hearing Transcript, January 18, 2019, pg. 24).

The record includes, as well, Defense Exhibit D, which consists of eighteen certificates that defendant has earned for class work and other activities while incarcerated since December, 2018.

Conclusions of Law:

In support of their contention that “extraordinary circumstances” are presented in this record, and as amplified upon in the People’s Memorandum of Law submitted in support of the People’s Motion to Prevent Removal, as well as in oral argument, the People cite the statutory framework of Criminal Procedure Law section 722.22(2) by way of analogy. In doing so, the People maintain that the seriousness and underlying circumstances of the crime here charged, that being Attempted Robbery in the Second Degree, a Class C violent felony offense, and the harm done, including punches to the complainant’s face constitute considerations which militate in favor of a finding of extraordinary circumstances. The People maintain, in addition, that the evidence of defendant’s guilt is strong and includes video surveillance. As has been discussed supra, the People further contend that defendant’s criminal history in both Bronx Family and Supreme Court, including his adjudication as a Juvenile Delinquent in 2016 for Attempted

Robbery in the Second Degree (Penal Law section 160.10(1)) and his subsequent adjudications as a juvenile Offender in the Bronx Supreme Court upon his pleas of guilty to separate counts of Robbery in the Second Degree (Penal Law section 160.10(2)(a)), relating to a robbery in 2016 and to a subsequent robbery in March, 2017, for which he was adjudicated a Youthful Offender on each and sentenced to one year jail terms on each, concurrent with each other, further supports a finding of “extraordinary circumstances.” With reference to the purposes and effect of sentencing the defendant and to the impact of a removal on the safety of the public and the confidence of the public in the criminal justice system, the People further argue, in substance, that defendant’s criminal history reflects that he has received numerous opportunities to avoid the most serious consequences of a potential sentence under the Penal Law and yet, his history as a recidivist offender reveals Family Court adjudication to have been insufficient to address defendant’s criminal behavior. In sum, the People argue, “[I]n view of these circumstances, a judgment of conviction would also serve the critical purpose of ensuring safety of the community and to avoid undermining the public’s confidence in criminal justice. Defendant continues to commit serious and violent crimes despite prior family court adjudication and prior Youthful Offender sentences” and accordingly, “this court should exercise its discretion and prevent removal to the Family Court” (People’s Memorandum of Law, Argument).

In opposition to the People’s motion to prevent removal, the defendant refers to the same factors as do the People. In substance, and for reasons amplified upon in defendant’s affirmation and at oral argument, the defendant argues that removal to the family court would enhance the safety and welfare of the community and enhance, as well, public confidence in the criminal justice system by allowing Family Court to provide the defendant the long term, comprehensive treatment which he needs to adequately address his academic and mental health needs (Defense

Affirmation, paragraphs 7(f) and (g), pgs. 10-11). In this regard, the defendant further argues that the fact that the defendant has had previous family court services should not preclude him from receiving such services again (Defense Affirmation, paragraph 7, pgs. 4-5). The defendant addresses the evidence of guilt in this case but, more significantly, for purposes of the instant matter, defendant argues with reference to the seriousness and circumstances of the offenses charged, that the defendant was the “lesser actor” in the attempted robbery charged in this case and that it was the unapprehended perpetrator who possessed the knife alleged to have been used. The defendant further argues that the injuries alleged to have been sustained by the complainant may not rise to the legal threshold required for physical injury (Defense Affirmation, paragraphs 7(a) and (b), pgs. 5-6). In addressing the history and character of this adolescent offender, the defendant cites the extensive documentation submitted as defense Exhibit A in support of defendant’s contention that the neglect of defendant’s mother and her “resistance ... towards efforts of intervention and services” over time makes it clear that defendant remains in need of intervention and treatment (Defense Affirmation, paragraph 7(d), pgs. 6-8). With reference to the potential for such intervention and treatment, the defendant argues that the evidence before the Court reveals that the defendant has “demonstrated reasonable cooperation and engagement with services provided” and has “demonstrated a willingness and motivation to participate and comply with both court-mandated and voluntary programming” (Defense Affirmation, paragraph 7(d), pgs. 8-9). Defendant argues further, with respect to the factors which are cited by the People as well, that to impose a felony conviction on the subject sixteen year old adolescent offender, and a state prison sentence, would be counterproductive to the needs of society and to the safety and welfare of the community (Defense Affirmation, paragraphs 7(e) and (f), pg. 10).

The instant motion by the People to prevent removal of the action to family court turns, as both the People and the defendant recognize, on whether this court determines, upon the motion by the district attorney, that extraordinary circumstances exist that should prevent the transfer of the action to family court (Criminal Procedure Law section 722.23(1)(d)). In this case, the assistant district attorney and the defendant recognize that the term “extraordinary circumstances” is not defined in any of the relevant subdivisions of Article 722 of the Criminal Procedure Law nor does the statute state or otherwise identify factors relevant to a determination as to whether extraordinary circumstances are presented.

In a situation such as is here presented, when the meaning of a statutory term is central to a court’s determination of an issue, the New York Court of Appeals has held, “[A]bsent a statutory definition” [the court] ‘must give the term its ‘ordinary’ and ‘commonly understood meaning’ (People v Ocasio, 28 NY3d 178, 181 [2016], citing People v Versaggi, 83 NY2d 123, 129 [1994]; see People v Morales, 20 NY3d 240, 247 [2012]; People v Quinto, 18 NY3d 409, 417 [2012]). To that end, ‘[i]n determining the meaning of statutory language, [the New York Court of Appeals has] regarded dictionary definitions as useful guideposts’ (Ocasio, 28 NY3d at 181, quoting Yaniveth R. v LTD Realty Co., 27 NY3d 186, 192 [2016])” (People v Andujar, 30 NY3d 160 at pg. 163 [2017]; People v Aragon, 28 NY3d 125 [2016]; People v Wong, 165 AD3d 468 [1st Department 2018], lv denied 32 NY3d 1116; see, People v Berrezueta, 31 NY3d 1091 at pg. 1100 [2018]; see also, Expressions Hair Design, et al v Schneiderman, __ NY3d __, 2018 WL 5258853 [2018]). In People v Andujar, supra, the Court of Appeals when presented with “a discrete statutory construction question regarding” the meaning of the word “equips” in the context of a prosecution for a misdemeanor under the Vehicle and Traffic Law, referenced the dictionary definitions as contained in the Merriam-Webster Collegiate Dictionary [10th edition

1997], The Random House Dictionary of the English Language (2d edition 1987), Webster's Third New International Dictionary (1981) and Black's Law Dictionary (10th edition 2014) (id at pgs. 163-164). The method of analysis employed by the New York Court of Appeals in *People v Andujar*, supra, is consistent with the terms of McKinney's Statutes, sections 232 and 234 which provide, respectively, "[W]ords of ordinary import used in a statute are to be given their usual and commonly understood meaning, unless it is plain from the statute that a different meaning is intended" and "Dictionary definitions may be useful as guide posts in determining the sense with which a word was used in a statute, but they are not controlling."

In furtherance of an analysis similar to that undertaken by the New York Court of Appeals, and with the objective of ascribing to the statutory term "extraordinary circumstances" a working definition which will lend itself to an objective application to the case at hand, I have referenced the dictionary definition of that term as defined in certain dictionary resources previously cited and relied upon by the New York Court of Appeals (*People v Andujar*, supra at pgs. 163-164; see *People v Respress*, 140 AD3d 1324 [3rd Department 2016], lv denied 26 NY3d 936). The term "extraordinary" is defined in the Merriam-Webster Collegiate Dictionary, 11th Edition, in different ways depending upon the word's intended use. To the extent pertinent to the instant case, the term is defined in the Merriam-Webster Collegiate Dictionary as "1.a : going beyond what is usual, regular or customary b : exceptional to a very marked extent" (Merriam-Webster Collegiate Dictionary, 11th Edition, pg. 444). Black's Law Dictionary (10th edition 2014), defines the term "extraordinary circumstances" as "[A] highly unusual set of facts that are not commonly associated with a particular thing or event". Webster's Third New International Dictionary, also cited in *People v Andujar*, supra, as a resource, defines the word "extraordinary" as "1 a : more than ordinary: not of the ordinary order or pattern: going beyond what is usual, regular, common

or customary : not following the general pattern or norm. In subdivision b (1) of that definition, Webster's Third New International Dictionary echoes the Merriam- Webster Dictionary in further defining the word "extraordinary" as "exceptional to a very marked extent" and adds the following language, "most unusual : far from common: very outstanding : very remarkable: rarely equaled : singular, phenomenal : arresting" and under subdivision b (2), Webster's Third New International Dictionary states further, "having little or no precedent and usually totally unexpected".³

Further, upon undertaking a judicial determination of the meaning of the words or terms of a given statute, as stated in McKinney's Statutes, section 230, "[T]he words and phrases used in a statute should be given the meaning intended by the lawmakers." To similar effect is section 92 of McKinney's statutes which provides, "[T]he primary consideration of the courts in the construction of statutes is to ascertain and give effect to the intention of the Legislature." As concisely stated by the New York Court of Appeals in *People v Finley* (10 NY3d 647), "[L]egislative intent drives judicial interpretations in matters of statutory construction" (id at pg. 655, quoting *People v Santi*, 3 NY3d 234, 243; see *People v Eulo*, 63 NY2d 341; see also, *People v Jones*, 26 NY3d 730). In pursuit of a determination of the "meaning intended by the lawmakers" McKinney's Statutes section 125 provides, in pertinent part, "If the interpretation to be attached to a statute is doubtful, the courts may utilize legislative proceedings to ascertain the legislative intent." As stated in *People v Kozlow* (8 NY3d 554), "[T]urning to legislative intent, the purpose of the New York State Legislature in enacting [the "Raise the Age Statute] may be

³ The Random House Dictionary of English Language, cited as well, by the New York Court of Appeals in *People v Andujar*, supra at pg. 164, defines "extraordinary" as "1. Beyond what is usual, ordinary or established. 2. exceptional in character, degree, etc.; noteworthy; remarkable."

discerned from the range of concerns expressed by its proponents and sponsors” (id at pg. 558). In this regard, the defendant cites portions of the discussion in the New York State Legislature which preceded passage of the legislation here in issue. This legislative discussion included a question and answer session incident to which the Assembly member who was answering questions posed by his fellow Assembly members regarding aspects of the then proposed statute, and the intent of certain provisions within the “Raise the Age” statute, stated, in the course of a lengthy discussion, “we definitely intend that in the overwhelming bulk of the cases that the matter will be promptly transferred from the adult court to the family court”(Transcript New York State Assembly session, April 8, 2017, pg. 37; Defense Affirmation, paragraph 2, pgs. 2-3). The record of that legislative proceeding further reflects that a member of the assembly asked, with respect to the bill, “ I understand that there is an extraordinary circumstances test. Could you please tell us about this extraordinary circumstances test., please?” in response to which the assembly member tasked with answering questions regarding the bill, answered, in pertinent part, “in order to reach an agreement on this legislation, we have all agreed that felony cases would, ... start in the adult criminal court, ... and under the language of this bill, we definitely intend that in the overwhelming bulk of the cases that the matter will be promptly transferred from the adult court to the family court.” He went on to say, “[A]nd as a matter of fact, the standard was actually suggested ... when we met in the Governor’s office, the Chair of the Senate Code’s Committee, to create this type of presumption where only one out of a thousand cases, he said, for example, those extremely rare and exceptional cases, would remain in the youth part and there may be a small number of cases, however, where the prosecutor objects to the transfer to the family court and in those instances, the prosecutor, ... must file a motion challenging the transfer and the transfer must occur, unless the prosecutor proves extraordinary circumstances

that should prevent the transfer.” The transcript of the proceeding before the legislature further reflects that another member of the assembly, the then chair of the assembly’s Judiciary Committee, responded to this answer by adding, “[W]ell, ... as you describe it, extraordinary circumstances sounds like a high standard ... “ to which the assembly person answered, “Yes” (Transcript, New York State Assembly session, April 8, 2017, pgs. 37-38). The assembly member continued, “... it is intended that the exceptional circumstances requirement will be a high standard for the DA to meet. And under this bill, denials of transfer to the family court should be extremely rare ... Transfer to the family court should be denied only when highly unusual and heinous facts are proven and there is strong proof that the young person is not amenable or would not benefit in any way from the heightened services in the family court.” When asked if he could give some examples of extraordinary circumstances that might lead to a denial of transfer to the family court, the assembly member answering the questions acknowledged, “I think its difficult to give firm examples. Since this is a new concept, though, we want to have ... at least a little bit of an understanding of what might be involved here. Outside of the most serious felony conduct, all cases will be presumptively transferred. The judge must look at all the circumstances ... all the circumstances of a young person, and aggravating factors may be proven, but the ... court must also consider individual mitigating circumstances as well” (Transcript, New York State Assembly session, April 8, 2017, pgs.39-40; Defense Affirmation, paragraphs 2-3, pgs. 2-3).

By way of illustration, the assembly person went on to say, “[A]ggravating factors that may involve extraordinary circumstances might include proof of a series of crimes committed by the defendant over the course of many days. Did the defendant act in an especially cruel and heinous manner? Was the defendant a ringleader who threatened and coerced reluctant youths to

participate in the crimes? Those are all the things that have to be considered in determining whether aggravating factors exist. But even if these aggravating factors are proven, mitigating circumstances could result in a denial of an extraordinary circumstances finding” The assembly member continued, “Mitigating circumstances ... would include a wide range of individual factors, such as economic difficulties, substandard housing, poverty, learning difficulties, of course, and educational challenges, lack of insight and susceptibility to peer pressure due to immaturity, absence of positive role models, behavioral role models, abuse of alcohol or controlled substances by the defendant, by family or by peers. ... These are things that exceptional circumstances will be required by the court to determine in all of these cases as they go through the system” (Transcript, New York State Assembly session, April 8, 2017, pgs. 38-40; Defense Affirmation, paragraphs 2-3, pgs. 2-3).⁴

Based upon the legislative intent of the statute, as expressed and discussed in the legislative session cited and relied upon by the defendant, the defendant proposes that the following definition of “extraordinary circumstances” be adopted for purposes of the instant analysis: “Extraordinary circumstances is limited to the rare and extremely exceptional situation. It requires the identification of specific factors showing that the juvenile’s circumstances present a substantial and remarkable deviation from the norm and that the Family Court is not adequately equipped to meet the needs of the juvenile or society” (Defense Affirmation, paragraph 4, pg. 4).

Thus, in opposing the People’s motion to prevent removal, defendant has put the definition of “extraordinary circumstances” in issue. In my view, the definition of extraordinary

⁴ It bears noting that the language used to explain the term “extraordinary circumstances” in the course of this legislative session was not incorporated into the statute nor were any of the examples cited in this session by way of illustration included in the statute itself as factors to be considered by the court.

circumstances proposed by the defendant overstates the intent of Criminal Procedure Law section 722.23(1)(d) to a degree. Nevertheless, the reform purposes of Article 720 of the Criminal Procedure Law are manifest and the recognition on the part of the New York State Legislature that justice requires that adolescent offenders, as well as juvenile offenders, be treated differently than adults within the criminal justice system, given the unique circumstances and needs of this population, is explicit.⁵ Mindful of the legislative intent and in the interest of formulating a working definition of “extraordinary circumstances” for purposes of applying that term to the instant record, I am satisfied that the definition of “extraordinary” as defined in the Merriam-Webster Collegiate Dictionary, 11th Edition, that being “exceptional to a very marked extent” and echoed in Webster’s Third New International Dictionary, to be consistent with the legislative intent behind the wording of Criminal Procedure Law section 722.23(1)(d), especially as that definition is amplified upon in the Webster’s Third New International Dictionary to include the additional words, “most unusual: far from common: very outstanding: very remarkable.”⁶

Accordingly, I will use the foregoing definitions of “extraordinary” as defined in the Merriam-Webster Collegiate Dictionary 11th Edition and the Webster’s New International Dictionary in conjunction in applying the extraordinary circumstances standard to the case at hand. I would add, given the legislative intent of the Raise the Age Statute, interpreted in the

⁵ The discussion in *People v D.L.* (Family Court Monroe County 2018, 2018 NY Slip Op 28419, Kohout, J.), clearly describes the growing acknowledgment in the judicial branch as well as in the legislature, over time, that “children are less culpable in the criminal context than adults and more amenable to change.”

⁶ In consideration of the volume of cases to be analyzed pursuant to the extraordinary circumstances standard over time, I would not include for purposes of this definition, the additional language in the Webster’s 3rd New International Dictionary, that being, “rarely equaled, singular, phenomenal: arresting: or, (2): having little or no precedent and usually totally unexpected.”

context of the legislative session discussed supra, the word “circumstances” within the term “extraordinary circumstances” must be taken to include a wide variety of circumstances, including mitigating circumstances, as mentioned at the April 8, 2017 legislative session and those bearing on the adolescent offenders personal life and background. In applying that definition to the extraordinary circumstances standard contained in Criminal Procedure Law 722.23(1)(d), the scope of discretion vested in the trial court Youth Part by the legislature bears noting. Unlike, for example, Criminal Procedure Law section 720.10, defining the circumstances under which a youthful offender adjudication may be granted a defendant in the exercise of the court’s discretion, the pertinent sections of Criminal Procedure Law Article 722 do not limit an adolescent offender’s eligibility for removal based on prior juvenile delinquency adjudications, youthful offender adjudications, or even prior criminal convictions, including for that matter, prior felony convictions. In light of the discretion afforded by the statute, invariably and necessarily, weight to be given relevant factors will vary in each individual case that comes before the Youth Part and individual determinations will result in conclusions upon which reasonable people may disagree. Nevertheless, the dictionary definitions referred to supra, will be applied together in this case to the term “extraordinary circumstances” in the interest of applying an objective defined standard to a fluid set of circumstances.⁷

In consideration of whether extraordinary circumstances within the meaning of Criminal Procedure Law section 722.23(1)(d) are revealed in the instant record, I recognize that the People have cited and relied upon relevant factors. The defendant’s prior juvenile delinquency adjudication for attempted robbery and his youthful offender adjudications for robberies reveal,

⁷ As recognized in *People v T.R.* (Youth Part Erie County, Carter, J. dated December 21, 2018), the application of this standard must necessarily be on a case by case basis.

as the People argue, recalcitrant recidivism on this adolescent offender's part. Yet, the record also reveals that these repeated robberies were committed when the defendant was fifteen years of age. To date, defendant stands before this court with no prior criminal record. Moreover, the multiple prior robberies to which the defendant has pled guilty, in family court and in supreme court, although repetitive and over a relatively brief period of time, were not characterized by a degree of violence otherwise uncommon in a robbery, or, as in the instant case, an attempted robbery. With further reference to the instant case, the defendant was clearly not the more culpable of the two perpetrators, and indeed, he was described by the complainant in his testimony before the grand jury as "just standing there watching" at one point in the sequence of events (Grand Jury Minutes, pg. TPH8). Further, in my view, the potential state prison sentence that this adolescent offender would face upon a conviction for a violent felony in supreme court, does not add to a finding of extraordinary circumstances rather it militates against such a finding in this case (see *People v D.L.*, supra at footnote 5).

Moreover, the evidence introduced in Defense Exhibits A, B and C and through testimony at the hearing before me provides a prism within which to view the criminal conduct committed by the defendant at the ages of fifteen and sixteen and supports a conclusion that the home life described in these reports constitutes a substantial contributing factor to this now sixteen year old defendant's recidivism. As such, it must be viewed as a mitigating circumstance within the meaning of extraordinary circumstances as contemplated by the New York State Legislature. On balance and in the final analysis, taking the record before me in its entirety, I do not find the combination of factors reflected in this record to be "exceptional to a very marked extent, most unusual and far from common." In sum, the Court finds no extraordinary circumstances within the meaning of Criminal Procedure Law 722.23 (1)(d), to have been established by the People,

such as would warrant the retaining of this case in the Youth Part. Accordingly, the People's motion to prevent removal is denied. Therefore, the case is transferred to the Family Court.

This opinion constitutes the decision and order of the Court.

Date: *February 11, 2019*

DJB
Denis J. Boyle, A.J.S.C.