

APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, THIRD DEPARTMENT

Matter of State of New York v. Justin Q.

2025 NY Slip Op 07258 · No. CV-24-1355 · Decided December 24, 2025

SUMMARY

The Appellate Division, Third Department, affirmed an order revoking Justin Q.'s release under a regimen of strict and intensive supervision and treatment and confining him as a dangerous sex offender under Mental Hygiene Law article 10. The court held that the State established by clear and convincing evidence that respondent was likely to commit sex offenses if not confined, crediting the State's expert over respondent's expert. The court also upheld the admission of parole-officer testimony describing photographs and text messages under an exception to the best evidence rule and found any error harmless.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Third Department
WRITING FOR THE COURT	Reynolds Fitzgerald, J.P.; Lynch, J.; Ceresia, J.; Fisher, J.; McShan, J.
JURISDICTION	New York Appellate Division, Third Department
DECIDED	December 24, 2025
DOCKET	CV-24-1355
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from an order revoking respondent's release under a regimen of strict and intensive supervision and treatment, finding him to be a dangerous sex offender requiring confinement, and directing confinement in a secure treatment facility.
STANDARD OF REVIEW	The Appellate Division deferred to Supreme Court's credibility determinations and assessment of conflicting expert testimony, reviewing whether the record supported the finding by clear and convincing evidence. Evidentiary rulings concerning hearsay-basis evidence are reviewed for abuse of discretion or a clear violation of due process.
PRECEDENTIAL VALUE	Published

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evidence

best evidence rule

standard of review

harmless error

PRACTICE AREAS

mental hygiene law

sex offender civil confinement

evidence

appellate procedure

QUESTIONS PRESENTED

1. Whether the State proved by clear and convincing evidence that respondent was a dangerous sex offender requiring civil confinement rather than outpatient supervision under SIST.
2. Whether parole officers' testimony describing photographs and text messages from cellular phones violated the best evidence rule.
3. Whether admission of that testimony violated respondent's due process rights to notice and an opportunity to be heard.
4. If admission of the testimony was erroneous, whether the error was harmless.

HOLDINGS

1. The State met its burden of proving by clear and convincing evidence that respondent was a dangerous sex offender requiring civil confinement under Mental Hygiene Law article 10.
2. The parole officers' testimony was admissible secondary evidence because the State sufficiently established the unavailability of the original cellular phones and the State had never possessed or distributed the materials.
3. Respondent's due process argument was unpreserved because it was raised for the first time on appeal.
4. Any error in admitting the testimony was harmless because Supreme Court placed little emphasis on the challenged evidence and relied on substantial independent evidence of respondent's inability to control his sexual behavior.

KEY QUOTATIONS

“In other words, the Mental Hygiene Law draws a distinction between sex offenders who have difficulty controlling their sexual conduct and those who are unable to control it. The former are to be supervised and treated as outpatients and only the latter may be confined” (at 2)

“The best evidence rule simply requires the production of an original writing where its contents are in dispute and sought to be proven.” (at 3)

FACTUAL BACKGROUND

Respondent had a longstanding history of sexually abusing young children, including convictions for sexual abuse and course of sexual conduct against a child. After release under SIST, he allegedly violated numerous

supervision conditions, including through sexualized communications and images involving minors and other prohibited conduct. The State's psychiatric examiner diagnosed pedophilic disorder with hypersexuality and opined that respondent could not safely be managed under SIST, while respondent's expert reached the opposite conclusion. Supreme Court credited the State's expert and found respondent to be a dangerous sex offender requiring confinement.

PROCEDURAL HISTORY

The State commenced a Mental Hygiene Law article 10 proceeding in 2019 as respondent's prison term neared completion. Respondent consented to a finding of mental abnormality and release into the community under strict and intensive supervision and treatment. After alleged violations, reincarceration, and a subsequent release to SIST in 2022, the State commenced a 2023 revocation proceeding. Following a revocation hearing, Supreme Court, Albany County, found by clear and convincing evidence that respondent was a dangerous sex offender requiring confinement. The Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- Matter of State of New York v. David HH., 205 A.D.3d 1105 (3d Dep't 2022)
- Matter of State of New York v. Andrew VV., 217 A.D.3d 1201 (3d Dep't 2023)
- Matter of State of New York v. Robert A., 187 A.D.3d 1326 (3d Dep't 2020), lv denied, 36 N.Y.3d 908 (2021)
- Matter of State of New York v. Tony A., 212 A.D.3d 1056 (3d Dep't 2023)
- Matter of Craig W. v. State of New York, 151 A.D.3d 1135 (3d Dep't 2017)
- Matter of State of New York v. Justin R., 187 A.D.3d 1464 (3d Dep't 2020)
- Matter of State of New York v. John S., 23 N.Y.3d 326, 344 (2014)
- Matter of State of New York v. James K., 135 A.D.3d 35, 39 n. (3d Dep't 2015)
- Matter of State of New York v. Lonard ZZ., 100 A.D.3d 1279, 1280 (3d Dep't 2012)
- Schozer v. William Penn Life Insurance Co. of N.Y., 84 N.Y.2d 639, 643-644, 647 (1994)
- People v. Haggerty, 23 N.Y.3d 871, 876 (2014)
- Matter of David JJ. v. Tara KK., 240 A.D.3d 984, 985 (3d Dep't 2025)
- Matter of State of New York v. Mark S., 87 A.D.3d 73, 80 (3d Dep't 2011), lv denied, 17 N.Y.3d 714 (2011)

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