State of New York
Court of Appeals

MEMORANDUM

No. 77
The People &c.,
Respondent,
v.
Michael Lamb,
Appellant.

Mark W. Zeno, for appellant.
John T. Hughes, for respondent.

MEMORANDUM:

The order of the Appellate Division should be modified by vacating defendant's convictions for sex trafficking and ordering a new trial on those counts and, as so modified, affirmed.

The sex trafficking statute is comprised of two distinct but linked elements, namely the offender must advance or profit from prostitution by one of the enumerated coercive acts (*see* Penal Law § 230.34). The trial court's supplemental instruction, in response to a jury note, erroneously severed the required link between those elements. Accordingly, defendant's sex trafficking convictions should be vacated, and a new trial held on those counts (*see People v Brown*, 87 NY2d 950, 951 [1996]).

The trial court's error in the supplemental instruction was unrelated to defendant's remaining conviction for promoting prostitution in the third degree and does not require vacatur of that count (*see People v Walston*, 23 NY3d 986, 990 [2014]).

Defendant's remaining claims are either rendered academic by our decision or without merit.

SINGAS, J. (concurring):

Defendant stands convicted of two sex trafficking counts and one count of promoting prostitution in the third degree. Although there was a legally sufficient basis for the trial court to submit the question of territorial jurisdiction to prosecute defendant

for the crime of sex trafficking to the jury, the court's supplemental instruction, in response to a jury note, erroneously severed the required link between the elements of that crime. Because the instruction was misleading and prejudicial, we would modify the judgment by vacating defendant's sex trafficking convictions.

I.

In January 2013, defendant began promoting a prostitution business by advertising online. Over the course of 30 months, he posted thousands of online advertisements in both New York and New Jersey. Defendant paid for these advertisements, which solicited both clients and young women to be prostituted, through an account registered to an address in Manhattan. Certain postings offered housing, transportation, employment, and financial assistance to young homeless women, including those living at Covenant House, an association of youth shelters with locations in New York and New Jersey. The advertisements listed a website, a New York-based Twitter handle, a phone number (registered to defendant at the same Manhattan address), and email addresses. His website described the business as an "escort provider of New York City and Tri-State area," and boasted that he offered "the Best NYC/NJ Escorts available."

In June 2013, a 22-year-old woman, KT, answered one of defendant's online escort advertisements. At defendant's request, KT emailed three photographs of herself. Defendant then arranged an "audition" at a hotel in Manhattan. He instructed KT as to what clothing she should bring, including a bathing suit. At the hotel, KT changed into the bathing suit. She and defendant then had sex so that he could "test the merchandise." That

day, KT saw another woman enter defendant's hotel room, other men arriving to have sex with the woman for money, and the woman handing defendant a "cut" of the money earned.

Defendant also photographed KT and immediately posted an advertisement with the photographs so that she could start working right away. He ultimately listed multiple ads specifically featuring her photograph and listing her location as "Midtown West." Over several months, KT performed sexual acts in Brooklyn, Queens, and New Jersey. Defendant required her to charge $120 for thirty minutes or $300 per hour and to give that money to another "employee" who was also defendant's girlfriend. KT ultimately helped manage defendant's prostitution business by screening the women who answered the escort advertisements and reporting back to defendant for his ultimate approval of the women he would employ. KT's phone number was the contact point for clients responding to the ads. She directed the women where to meet the clients, including in Manhattan.

In April 2015, then-18-year-old JC reached out by email to defendant, believing that she was responding to an advertisement for a hostess or catering job. Defendant arranged a meeting and instructed her to bring a "club dress." As JC had no means of transportation, defendant sent a car to transport her to his New Jersey apartment. In the apartment, JC changed into the dress and posed for photographs that defendant said were for a "portfolio." When defendant asked to photograph JC naked, she realized that he wanted her to prostitute herself. JC asked to leave, but defendant signaled that he had a gun in the couch and would shoot or hit her if she did not comply. JC then allowed defendant to photograph her partially clothed. She also drank alcohol at defendant's behest and blacked out. JC's next memory was of defendant dragging her down the stairs outside his apartment. He put JC

in a car and the driver took her home. A later search of defendant's phone revealed additional photographs of JC, taken while she was unconscious and for which she did not remember posing.

Over the course of the next several days, defendant and JC exchanged emails in which JC begged defendant to stop contacting her and defendant made increasingly menacing demands. Defendant threatened to physically hurt JC and her family (either by himself or through his "goons") or circulate the nude photographs to her friends, family, potential employers, and prospective colleges if she refused to work for him as a prostitute. To magnify the immediacy of his threats, defendant told JC her father's name, the color of her front door, and where she went to school. He stated that he had "all [her] personal info." In the emails, defendant sent the photographs of JC, as well as pictures he had taken, without her knowledge, of her high school ID, birth certificate, and Social Security card. Defendant stopped contact with JC after she told him that his threats had induced her to attempt suicide. According to JC, defendant never indicated that he planned for JC to prostitute herself in New York and JC never traveled to New York at defendant's behest.

In June 2014, Covenant House contacted the New York County District Attorney's Office regarding defendant's advertisements targeting young homeless women. The District Attorney's Office began an investigation, obtaining business records from banks as well as telephone and internet companies. In September 2015, an indictment was filed charging defendant with promoting prostitution in the third degree and two counts of sex trafficking as to JC, as well as one count of sex trafficking as to JS, another woman whom

defendant was alleged to have threatened, in New Jersey, with public humiliation if she refused to work for his escort service.

During trial, defendant disputed whether New York had territorial jurisdiction over the sex trafficking charges against him under CPL 20.20 on the theory that the coercive conduct toward the victims occurred wholly in New Jersey. Defendant's pretrial motion to dismiss the indictment on that basis was denied. In defendant's motion for a trial order of dismissal, he repeated the argument that the People had not established territorial jurisdiction because the victims "had absolutely no contact in New York." Supreme Court also denied that motion. Nevertheless, as required by law (*People v McLaughlin*, 80 NY2d 466 [1992]), the court submitted the territorial jurisdiction question to the jury for each sex trafficking count, charging:

> "The prosecution has the burden to prove beyond a reasonable doubt that the State of New York has jurisdiction to prosecute the crime by proving beyond a reasonable doubt either that [defendant] engaged in conduct in the State of New York which constituted at least one element of the crime or that his conduct constituted an attempt to commit the crime in this state."

If the jury determined that the People had proved that one element of the crime, or an attempt to commit the crime, took place in New York, it was then to consider whether the People proved defendant's guilt as to each element of the crime beyond a reasonable doubt. But if the jury concluded that the People had not sustained their jurisdictional burden, it was to cease its deliberations regarding that crime and move on to the remaining counts.

The court then turned to the specific elements of the crimes charged. For count one, sex trafficking as to JS, the court instructed:

> "In order for you to find [defendant] guilty of count 1 regarding [JS], the prosecution is required to prove from all of the evidence in the case beyond a reasonable doubt each of the following:
>
> (1) That during the period from about August 1 to September 30, 2014, in New York, [defendant] advanced or profited from prostitution[,]
>
> (2) that he did so by using force or engaging in any scheme, plan or pattern to compel or induce [JS] to engage in or continue to engage in prostitution activity by means of instilling a fear in her that if the demand was not complied with [defendant] or another would expose a secret or publicize an asserted fact whether true or false tending to subject her to hatred, contempt or r[i]dicule[,] [a]nd
>
> (3) that [defendant] did so intentionally."

The court repeated the legal instructions for the first element for count two, sex trafficking as to JC, and defined the second element as that he did so by threatening to expose a secret that would subject her to hatred or ridicule during the period between April 1 and April 30, 2015. For count three, sex trafficking as to JC based on the separate theory of threatening physical injury, the court instructed that element two was "that [defendant] did so by using force or engaging in any scheme, plan or pattern to compel or induce [JC] to engage in or continue to engage in prostitution activity by means of instilling a fear in her that if his demand was not complied with [defendant] would cause her physical injury, serious physical injury, or death." Neither party objected to these instructions.

During deliberations, the jury sent a note asking, "Is the first element for count 1 in general or specifically for [JS]. Context: some jurors are confused around the wordings of the elements. Some mention the victim specifically, whereas element 1 of count 1 does

not mention her name." The court consulted with the parties and indicated that it would respond that defendant "could have advanced or profited from prostitution by . . . the use of any of those women" and "[i]t is not necessarily specific to [JS]." Defense counsel raised a "global objection that ties in with the jurisdiction issue." According to counsel, "[i]t is as if the statute is written in an over broad manner" and there was "[n]o action nexus in New York." Over defendant's objection, the court answered the note by rereading the first element of sex trafficking and advising the jurors that "it is not specific to anyone. . . . Where it doesn't mention her name it means it is not specific to this person," as long as the conduct occurred during the relevant time frame.

The jury convicted defendant of the sex trafficking charges as to JC and the promoting prostitution charge. Defendant was acquitted of the sex trafficking charge relating to JS. In December 2017, Supreme Court sentenced defendant to an aggregate indeterminate prison term of 6 to 18 years.

The Appellate Division unanimously modified, by vacating the supplemental sex offender fee imposed by the trial court, and otherwise affirmed the judgment (188 AD3d 470 [1st Dept 2020]). As relevant here, the Court determined that the People proved that New York had territorial jurisdiction over defendant's sex trafficking charges because the evidence was sufficient to establish beyond a reasonable doubt that an element of that crime, that defendant advanced or promoted prostitution, occurred in New York (*id.* at 470-471) and rejected defendant's statutory interpretation argument that sex trafficking is a one element crime, citing *People v Giordano* (87 NY2d 441 [1995]). For the same reason, the

Court rejected defendant's challenges to the trial court's supplemental charge on this issue (*id.* at 471).

A Judge of this Court granted defendant leave to appeal (36 NY3d 1057 [2021]).

II.

Defendant argues that there was no territorial jurisdiction for prosecution of the sex trafficking charges, asserting, alternatively that the crime is a single-element offense, in which the "core" coercive conduct had to occur in New York to confer jurisdiction, or that it is a two-element crime requiring proof of a nexus between the two elements for purposes of jurisdiction, wherein one element occurs in New York.

Preliminarily, territorial "[j]urisdiction concerns the power of the State to bring the criminal proceeding, not the factual elements of the crime which must be proven for a conviction" (*McLaughlin*, 80 NY2d at 472). Thus, "territorial jurisdiction implicates the State's inherent authority to prosecute and punish a suspect for alleged criminal conduct" (*People v Carvajal*, 6 NY3d 305, 312 [2005]). Unlike common law, where "[a]n offender could . . . be prosecuted only in the place where the offense was committed" (*People v Stokes*, 88 NY2d 618, 624 [1996]), New York by statute has "broaden[ed] the territorial scope of criminal jurisdiction" (*id.*). In his review of then-Penal Law § 1930, which conferred on New York territorial jurisdiction to prosecute "a person who commits within the state any crime, in whole or in part," Judge Cardozo observed that where an offender commits multiple acts, "some of them in New York and some in another state, the courts of New York, if they can catch the offender, may punish for the offense" (*People v Werblow*, 241 NY 55, 60 [1925]).

The reach of that former statute, however, was deemed "unsatisfactory and a more extensive provision was included in the proposed revision to the Criminal Procedure Law" (*Stokes*, 88 NY2d at 624 [quotation omitted]); thus, "CPL 20.20[] has codified the general principle that, for New York to exercise criminal jurisdiction, some alleged conduct or a consequence of that conduct must have occurred in the state" (*Carvajal*, 6 NY3d at 312). As charged to the jury here, New York has territorial jurisdiction to prosecute a person for an offense when either "[c]onduct occurred within this state sufficient to establish . . . [a]n element of the offense[] or . . . [a]n attempt to commit such offense" (CPL 20.20 [1] [a], [b]). If the defendant disputes the evidence of the State's prosecutorial authority at trial, "the trial court should charge the jury that jurisdiction must be proven beyond a reasonable doubt" (*McLaughlin*, 80 NY2d at 472).

Defendant does not question the grant of territorial jurisdiction under the CPL article 20 statutory scheme but rather attacks its particular application here, in the context of his reading of the crime of sex trafficking. Resolution of this issue demands a statutory interpretation of Penal Law § 230.34.

III.

New York's sex trafficking statute states that "[a] person is guilty of sex trafficking if he or she intentionally advances or profits from prostitution by:"

> "1. unlawfully providing to a person who is patronized, with intent to impair said person's judgment: (a) a narcotic drug or a narcotic preparation; (b) concentrated cannabis as defined in paragraph (a) of subdivision four of section thirty-three hundred two of the public health law; (c) methadone; or (d) gamma-hydroxybutyrate (GHB) or flunitrazepan, also known as Rohypnol;

2. making material false statements, misstatements, or omissions to induce or maintain the person being patronized to engage in or continue to engage in prostitution activity;

3. withholding, destroying, or confiscating any actual or purported passport, immigration document, or any other actual or purported government identification document of another person with intent to impair said person's freedom of movement; provided, however, that this subdivision shall not apply to an attempt to correct a social security administration record or immigration agency record in accordance with any local, state, or federal agency requirement, where such attempt is not made for the purpose of any express or implied threat;

4. requiring that prostitution be performed to retire, repay, or service a real or purported debt;

5. using force or engaging in any scheme, plan or pattern to compel or induce the person being patronized to engage in or continue to engage in prostitution activity by means of instilling a fear in the person being patronized that, if the demand is not complied with, the actor or another will do one or more of the following:

(a) cause physical injury, serious physical injury, or death to a person; or

(b) cause damage to property, other than the property of the actor; or

(c) engage in other conduct constituting a felony or unlawful imprisonment in the second degree in violation of section 135.05 of this chapter; or

(d) accuse some person of a crime or cause criminal charges or deportation proceedings to be instituted against some person; provided, however, that it shall be an affirmative defense to this subdivision that the defendant reasonably believed the threatened charge to be true and that his or her sole purpose was to compel or induce the victim to take reasonable action to make good the wrong which was the subject of such threatened charge; or

> (e) expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule; or
>
> (f) testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or
>
> (g) use or abuse his or her position as a public servant by performing some act within or related to his or her official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely; or
>
> (h) perform any other act which would not in itself materially benefit the actor but which is calculated to harm the person who is patronized materially with respect to his or her health, safety, or immigration status."

(Penal Law § 230.34).

In its language and form, the sex trafficking statute evokes New York's first-degree promoting gambling statute, which we interpreted when defendant disputed the jurisdiction to prosecute the crime in a particular county in *People v Giordano*.[1] To be guilty of first-degree promoting gambling, a defendant must "knowingly advance[] or profit[] from

[1] In addressing the jurisdiction of a prosecution where elements of the crime occurred in more than one county (venue), our focus in *Giordano* was on the essential definition of jurisdiction—wherein one element of the crime must be proven to have occurred in the jurisdiction of prosecution (*see* CPL 20.40 [1]). In this regard, *Giordano* is not inapposite here, as the controlling jurisdictional statute requires that the People prove an element of the crime occurred in New York—again, the jurisdiction of the prosecution (*see* CPL 20.20 [1]; *see also People v Kassebaum*, 95 NY2d 611, 621 [2001] ["(r)ecognition of distinctions between the (venue and territorial jurisdiction) statutes as a whole . . . does not necessarily compel that we interpret identical language in discrete provisions differently"]). Indeed, the difference between venue and territorial jurisdiction when it is based on whether an element of the offense occurred in the jurisdiction of prosecution is the standard of proof by which the People must prove an element occurred in the jurisdiction. Territorial jurisdiction requires proof beyond a reasonable doubt. The statutory interpretation principles applied in *Giordano* are equally relevant in the present case.

unlawful gambling activity by" specific conduct set forth in the statute's subdivisions, including "[e]ngaging in bookmaking" (Penal Law § 225.10 [1]). The defendants argued there was no jurisdiction to prosecute the case in Nassau County because Penal Law § 225.10 (1) sets forth a single-element crime: "promoting gambling by bookmaking" (87 NY2d at 448) and the bookmaking occurred in New York County. We rejected that argument because it would make the language in the opening paragraph surplusage and concluded that advancing gambling is a separate element of the crime from engaging in a bookmaking business. We explained that the opening paragraph of Penal Law § 225.10 "holds [a] defendant guilty of promoting gambling when he 'advances gambling activity', but 'bookmaking' is defined as 'advancing gambling activity by unlawfully accepting bets' as a business. Accordingly, the statute would have no different meaning if the opening language were excised from it as defendants would do" (*id.*). Therefore, we held that first-degree promoting gambling comprises two separate elements. Its opening language encompasses misdemeanor promoting gambling, and the operative word "by" defines how the offender is exposed to felony liability (*id.* at 447).

Here, defendant's single-element argument is similarly unavailing. The coercive actions described in Penal Law § 230.34's subdivisions themselves advance or profit from prostitution. Thus, the opening "advances or profits" language of that statute would be superfluous if it was not a separate element. Moreover, that opening language parallels the definition of the standalone crime of misdemeanor promoting prostitution (*see* Penal Law § 230.20 [1] ["A person is guilty of promoting prostitution in the fourth degree when he or she knowingly . . . (a)dvances or profits from prostitution"]). Its second, aggravating

element is defined in its five subdivisions. Engaging in any of the specified aggravating conduct, for the purpose of advancing the prostitution, elevates the liability of an offender who promotes prostitution to felony sex trafficking.

Aside from being a two-element crime, that the aggravating conduct exposes the offender to increased liability also demonstrates that sex trafficking's elements are linked.[2] Indeed, the plain language of the statute says as much: an offender must intentionally advance or profit from prostitution *by* one of the enumerated coercive actions (*see People v Pabon*, 28 NY3d 147, 152 [2016], quoting *People v Golo*, 26 NY3d 358, 361 [2015] [because "'the clearest indicator of legislative intent is the statutory text, the starting point in any case of interpretation must always be the language itself, giving effect to the plain meaning thereof'"]). In most sex trafficking cases—including the one before us—the offender's goal would be to induce the specific victim, via the coercive conduct, to either join or remain in the prostitution operation (*see* Penal Law § 230.34 [1], [2], [5] [all

[2] The concurring opinion's suggestion that *Giordano* "does not bear on the proper interpretation of Penal Law § 230.34" (concurring op at 17) because the elements of first-degree gambling are not connected is mistaken. Not only does the concurring opinion recognize that the subdivision conduct in the gambling statute increases the defendant's liability (*id.* at 16), but we held in *Giordano* defendants' actions in promoting gambling in Nassau County were connected to their bookmaking operation in Manhattan. We specifically recognized that the defendants hedged bets in Nassau "when bets received by [their] operation were not evenly placed against the two teams in a particular sporting event and it became *necessary* for defendants to shift their risk of loss by placing bets on the favored team with another bookmaking operation" (*Giordano*, 87 NY2d at 445 [emphasis added]). This Court understood the defendants' behavior to ensure that they would make money, via hedging bets, even if they had to pay out money to their Manhattan clients and "thus have a source of funds to pay the Manhattan winners" (*id.*). In short, defendants' actions in Nassau County were integrally related to and helped advance their Manhattan gambling enterprise. Similarly, here, defendant was alleged to have threatened JC in New Jersey in service of his New York prostitution enterprise.

referring to a person being patronized]). In others, the trafficker's conduct may not be intended to compel the victim to be prostituted, but the conduct nevertheless must be in furtherance of the enterprise (*see* Penal Law § 230.34 [3], [4] [both lacking language regarding a person being patronized]). For example, an offender may, pursuant to Penal Law § 230.34 (3), withhold the passport or immigration document of the family member of one of his "employees." Thus, while the statute does not, in every case, require that the victim is the "person being patronized," the offender's aim in threatening the victim must be to promote his or her enterprise in some way.[3]

That the sex trafficking statute is intended to target offenders who promote prosecution through specific coercive conduct common in the sex trade is further demonstrated by the statute's purpose and legislative history (*see Riley v County of Broome*, 95 NY2d 455, 463 [2000] ["the legislative history of an enactment may also be relevant and is not to be ignored, even if words be clear"] (internal quotation marks omitted)]). The legislature recognized the "plight" of sex trafficking victims (Letter from St Labor Dept, June 12, 2007, Bill Jacket, L 2007, ch 74 at 18), the harm that traffickers inflict on victims, and the many ways that traffickers manipulate them into, essentially,

[3] Significantly, to be held liable, the trafficker's threats do not have to successfully promote his enterprise. The Penal Law recognizes that the acts deemed to have been committed in furtherance—i.e., to "advance" prostitution—includes "any other conduct *designed to* institute, aid or facilitate an act or enterprise of prostitution" (Penal Law § 230.15 [1] [emphasis added]; *cf. United States v Maynes*, 880 F 3d 110, 114 [4th Cir 2018] [observing that the federal sex trafficking statute contains no requirement "that a commercial sex act actually occurred, much less that (the offender's conduct) in fact caused the commercial sex act"]).

"sexual . . . servitude" (Senate Introducer's Mem, Bill Jacket, L 2007, ch 74 at 11). Promoting prostitution is the core conduct targeted by the statute (*see* Statement of Assembly Sponsor Jeffrey Dinowitz, Summer 2007, at 1 ["The legislation creates a new class B felony, 'sex trafficking,' with a mandatory prison sentence of up to 25 years for perpetrators who profit from prostitution by engaging in sex trafficking"]). But someone who advances or profits from prostitution without also taking one of the coercive actions described in the statute's subdivisions is not a sex trafficker. Instead, only an individual who promotes prostitution, and furthers that enterprise by exploiting his or her victims through specified aggravating conduct, faces increased liability (*see* Senate Introducer's Mem, Bill Jacket, L 2007, ch 74 at 11; *see also* Danny Hakim & Nicholas Confessore, *Albany Agrees on Law Against Sexual and Labor Trafficking*, NY Times, May 17, 2007, at 1 ["Coercing victims into prostitution by force would be included as a felony sex trafficking offense, as would tricking people into entering the country by promising them jobs or providing them with illegal drugs, and then forcing them into sexual servitude"]).[4]

Finally, when the trafficking legislation was introduced, New York was estimated to be "the fourth busiest point of entry for trafficking victims in the United States" (Letter from St Div of Crim Just Svcs, Bill Jacket, L 2007, ch 74 at 22; *see also* Council of City of NY Resolution § 0504-2006, *New York, NY Recognizing Human Trafficking as a Crime* [Nov. 11, 2006], available at https://www.greenpolicy360.net/w/New_York,_NY_

[4] In addition to the legislative history cited herein, the concurring opinion's contention that sex trafficking is unrelated to the promotion of prostitution (concurring op at 17) is refuted by the opening language's verbatim reference to fourth-degree promoting prostitution.

Recognizing_Human_Trafficking_as_a_Crime [last accessed Nov. 24, 2021] ["New York State's ports, airports, rail stations and international borders all contribute to use of New York as a hub for trafficking, and as a result many of the victims live in the tri-state area"]).

Collapsing sex trafficking into a single-element crime would cast too small a net, unjustifiably limiting the jurisdiction of this State to prosecute only those cases where the entire crime occurred in New York. Just as significantly, treating the statute's two elements as unlinked could unjustifiably authorize prosecution of crimes in New York for extraterritorial conduct having no impact on the public safety of the state. Accordingly, we would hold that the sex trafficking statute is comprised of two discrete yet connected elements, to wit, the offender must advance or profit from prostitution through coercive acts taken in furtherance of his or her prostitution enterprise.

The concurring opinion's conclusion that the People must prove, for jurisdiction purposes, both that defendant advanced or profited from prostitution and that he did so by coercive conduct (concurring op at 17-18) is inconsistent with the court's jurisdiction charge given pursuant to CPL 20.20 (1) (a) and invents an additional component sex trafficking only. Indeed, despite its contentions to the contrary, the concurring opinion's position effectively collapses both sex trafficking elements into one (*cf. Giordano*, 87 NY2d at 447). Section 20.20 (1) (a) contains no language that more than one element of the offense must be committed in New York, and we decline to read language into the statute that simply is not there (*see Matter of Chem. Specialties Mfrs. Assn. v Jorling*, 85 NY2d 382, 394 [1995]). But, the second jurisdictional predicate, as charged to the jury under section 20.20 (1) (b), does permit the jury to find jurisdiction where a defendant has

engaged in conduct constituting an attempt of the entire crime; that is, where the defendant "engage[d] in conduct which tend[ed] to effect the commission of such crime" (Penal Law § 110.00). Regarding sex trafficking, that jurisdictional analysis necessarily considers whether the defendant "came dangerously near" engaging in the specified coercive conduct in furtherance of his or her prostitution enterprise (*People v Acosta*, 80 NY2d 665, 670 [1993] [quotation omitted]).

Notably, a jury's initial finding that the People have established territorial jurisdiction to prosecute the crime based on the commission of one element in New York, or conduct establishing an attempt to commit the entire crime here, is not the end of the jury's inquiry. Rather, the People must still prove that the defendant is guilty by evidence sufficient to establish that he committed each and every element of the crime charged (*see McLaughlin*, 80 NY2d at 472). In other words, to prove defendant's guilt of sex trafficking, the People were required to establish that he advanced or profited from prostitution in New York by his coercive conduct against the victims in New Jersey.

The evidence was sufficient to show, through KT's testimony, that defendant operated a prostitution enterprise in New York. In addition, the People presented evidence that defendant attempted to promote that enterprise through his actions toward a specific victim—JC—thus engaging in conduct constituting an attempt to commit sex trafficking. Simply put, the evidence was sufficient to satisfy CPL 20.20 (1) and to allow the trial court to submit the issue to the jury. The trial court necessarily found as much, as a matter of law, when it denied defendant's trial order of dismissal on the ground that the People had not established territorial jurisdiction.

IV.

The remaining question is whether, given the link between the elements of the crime, the trial court effectively conveyed, in its supplemental instruction in response to the jury request, that connection to the jury for its determination of the factual issues in the case.

To be clear, the jury was properly instructed, pursuant to CPL 20.20 (1), that New York had jurisdiction to prosecute defendant if the People proved beyond a reasonable doubt that he engaged in conduct in the State sufficient to establish one element of sex trafficking or that his conduct constituted an attempt to commit that crime. Defendant did not contend, specifically, that CPL 20.20 (1) was somehow deficient or improper. While territorial jurisdiction "may never be waived" (*McLaughlin*, 80 NY2d at 471), defendant's lack of protest to that instruction and consistent failure to argue that CPL 20.20 (1) was not satisfied undercuts his challenge to the court's instruction as to the State's jurisdiction to prosecute (*cf. Carvajal*, 6 NY3d at 311-312 [because "defendant never moved for a trial order of dismissal . . . on the ground that the People failed to prove jurisdiction, and rejected the court's offer to place the interrogatories before the jury, . . . defendant relinquished his opportunity to hold the People to their burden of proof, and did not preserve his current contention that the jury should have decided whether the People proved jurisdiction beyond a reasonable doubt"]).

The supplemental instruction on the elements of sex trafficking warrants a different resolution. The court's initial charge, based on the pattern jury instruction (*see* CJI2d[NY] Penal Law § 230.34 [5]), appropriately bridged sex trafficking's two elements: the jury had

to find, first, defendant "advanced or profited from prostitution," and, second, "that he did so by" his coercive threats toward JC. As framed by the People's theory of prosecution, the element of promoting prostitution occurred in New York and the coercive conduct that comprised the second element occurred in New Jersey. In other words, defendant's conduct in New Jersey must have been in furtherance of his prostitution enterprise in New York.

In their specific request for supplemental instructions, the jurors highlighted that precise issue: whether the "advances or profits" conduct must relate to the victim of the coercive conduct as named in the individual counts. The jurors questioned whether the first element was "specifically for [JS]"; they then clearly stated that they were confused by the fact that the second, coercive element referred to the victim by name, but the first element did not.[5]

Because the trial court had initially instructed the jurors that the sex trafficking counts required a determination of jurisdiction before a determination of guilt, the court could have asked the jurors to clarify their purpose before fashioning a response (*see People v Taylor*, 26 NY3d 217, 227 [2015]; *People v Lykes*, 81 NY2d 767, 770 [1993]). Indeed, it is unclear whether the jurors sought guidance as to territorial jurisdiction—specifically, pursuant to CPL 20.20 [1] [b]), whether defendant engaged in

[5] The note explicitly referenced count one, sex trafficking as to JS, of which defendant was acquitted. The jurors' language, however, as well as the fact that the trial court gave virtually the same charge for the three sex trafficking counts, demonstrates that their inquiry encompassed the counts relating to JC. The court and the parties in discussing the note understood the jury's inquiry to refer to each sex trafficking count.

conduct in New York constituting an attempt to commit the crime of sex trafficking—or as to their consideration of defendant's guilt. Either way, their note invoked the interplay between the two elements. Specifically, the jurors (correctly) recognized that the initial sex trafficking charge linked the first and second elements but were perplexed because the language of the first element, alone, suggested otherwise.

The inquiry thus revealed "an incomplete comprehension in the minds of the jury of the elements of the crime[] involved" (*People v Miller*, 6 NY2d 152, 156 [1959]). The note's form "reflected their desire" to understand the relationship between sex trafficking's elements, and a proper response to their request "necessarily" should have reiterated the link between the two (*Taylor*, 26 NY3d at 225; *see People v Weinberg*, 83 NY2d 262, 267-268 [1994]; *People v Steinberg*, 79 NY2d 673, 684-685 [1992] [both acknowledging that a court, in its discretion, may determine that a deliberating jury's request for information requires "a broader response" than indicated by the note's text]). Instead, the court responded that the first element was "not specific to anyone." Its response effectively decoupled the second element from the first and removed the victim from the jury's consideration of defendant's prostitution enterprise altogether, thereby contradicting the court's original charge "'on a vital point'" (*People v Malloy*, 55 NY2d 296, 302 [1982], quoting *People v Gonzalez*, 293 NY 259, 263 [1944]).

CPL 310.30 directs that a court, upon a request for legal instruction from a deliberating jury, "give such requested information or instruction as the court deems proper." The court is best suited to assess the jury's inquiry and thus has discretion as to the "proper scope and nature of the response" (*Taylor*, 26 NY3d at 224; *see Steinberg*, 79

NY2d at 684). Its discretion, however, "is circumscribed . . . by the requirement that the court respond meaningfully to the jury's request for further instruction or information" (*Malloy*, 55 NY2d at 302). In considering the court's response, "[t]he factors to be evaluated are the form of the jury's question, which may have to be clarified before it can be answered, the particular issue of which inquiry is made, the supplemental instruction actually given and the presence or absence of prejudice to the defendant" (*id.*). A supplemental instruction that mischaracterizes the elements of the crime for the jury to consider, thereby prejudicing defendant, is error (*see People v Brown*, 87 NY2d 950, 951 [1996]).

Under the circumstances, the supplemental instruction "seriously prejudiced defendant" (*Miller*, 6 NY2d at 156; *see Brown*, 87 NY2d at 951). A reasonable view of the evidence, of defendant's New York-based enterprise and his attempt to further that enterprise by his New Jersey threats against JC, permitted a finding that the People satisfied their jurisdictional burden under CPL 20.20 (1). Moreover, viewing the evidence in the light most favorable to the People (*see People v Contes*, 60 NY2d 620, 621 [1983]), the jury could have found, as the trial court did in rejecting defendant's CPL 330.30 motion, that defendant did, in fact, threaten JC with the goal of inducing her to join his New York prostitution operation. But the court's truncated supplemental instruction muddled the definition of the crime, not only as to jurisdiction, but equally as to the sufficiency of evidence of guilt of the crime of sex trafficking. We therefore cannot be sure that the jury used the proper standard in finding either jurisdiction or that the People proved defendant's guilt.

Moreover, the connection between defendant's New York prostitution enterprise and his New Jersey threats to JC was one of the main issues in the case. That issue clearly prompted "serious discussion" amongst the jurors (*People v Young*, 65 NY2d 103, 109 [1985]). In advising them that defendant's coercive conduct need not be connected to his promotion of prostitution in New York, the court essentially negated the central defense argument that the latter was unrelated to the former. Because it failed to reiterate the link between the elements, the supplemental instruction undermined the initial charge that properly explained the link between the statutory elements "and thereby must have [further] confused the jury" (*id.*). And "[w]here the court's instructions are supplemental, coming after the jury has already once retired, they may well be determinative of the outcome of the case, coming as they do in response to questions raised by the jurors themselves" (*People v Ciaccio*, 47 NY2d 431, 436 [1979]). Indeed, the jury reached its verdict hours after its inquiry. Ultimately, the jurors were given an erroneous instruction which was prejudicially misleading and confusing, risking an improper resolution of both jurisdiction and defendant's guilt of sex trafficking. Defendant is entitled to a new trial.

Finally, contrary to defendant's related contention, Supreme Court's error does not require reversal of his remaining conviction of promoting prostitution. Because the jury sought guidance regarding sex trafficking's elements only as they related to the named victim and expressed no confusion regarding advancing or profiting from prostitution generally, "there was no danger of prejudice as it related to the latter count" (*People v Walston*, 23 NY3d 986, 990 [2014]).

None of defendant's remaining claims has merit.

WILSON, J. (concurring):

The fundamental question here is whether New York has jurisdiction to prosecute a defendant for sex trafficking without showing that the coercive conduct used on a particular victim resulted in the advancement of or profit from prostitution in New York. Although

the trial court initially instructed the jury correctly as to jurisdiction and the sex trafficking crime (Penal Law § 230.34), the court gave a materially incorrect supplemental instruction. By divorcing Penal Law § 230.34's prefatory clause from the remainder of the crime, the instruction expanded jurisdiction in a wholly indefensible way. I thus agree with the concurrence that Mr. Lamb's convictions for sex trafficking must be vacated and a new trial ordered. However, I understand the text and history of the sex trafficking statute differently and would hold that the error in the supplemental instruction is patent and does not in any way turn on the jury's potential confusion. Rather, the instruction was substantively wrong and had the potential to arrogate to New York jurisdiction over crimes over which we have no jurisdiction.

I

The New York Police Department began investigating Mr. Lamb in 2014 when Covenant House New York, one of a network of shelters for runaway and housing-insecure young people in various states, alerted the police to online advertising targeting Covenant House residents for prostitution-related work in New Jersey. The investigation concluded that Mr. Lamb had posted thousands of online advertisements for workers and clients for sex work on both Manhattan and New Jersey website subsections between 2013 and 2015. Throughout that time, Mr. Lamb also maintained a website primarily focused on New York—the website listed a Midtown address and described itself as an "upscale midtown agency" offering escort services in the Tri-State Area. At some point during the investigation, New York police discovered that he had moved to Newark, New Jersey.

After police contacted numerous women Mr. Lamb was suspected of having recruited or attempted to recruit, two spoke to police about their experience with Mr. Lamb: KT and JC.[1] The New York police then arrested Mr. Lamb at his Newark home, where police also recovered numerous electronic devices revealing his connection to his advertisements, websites, and emails.

Mr. Lamb was indicted for two counts of sex trafficking against JC and for promoting prostitution in the third degree. JC was 18 years old in April of 2015 when she responded to Mr. Lamb's advertisement. JC testified at trial that she hoped to get a job as a caterer or party host, but, only after meeting Mr. Lamb at his Newark apartment realized that he was recruiting people for sex work, in which she was not interested. At the apartment, Mr. Lamb asked JC if he could take pictures of her without clothes. When JC declined, Mr. Lamb signaled that he had a gun in the couch or would hit or otherwise hurt her if she did not do what he asked. Frightened for her safety, JC allowed Mr. Lamb to take photos of her partially undressed. Mr. Lamb subsequently forced JC to drink a full cup of alcohol before she could leave. After drinking the alcohol, she remembers very little, but arrived home hours later. The next day Mr. Lamb began threatening JC by email that he would reveal sexual images of her to her father, high school, and potential colleges, including in those messages indications that he had her family and school addresses and other personally identifying information he retrieved from her person while she was

[1] An additional person, JS, also spoke to police and testified against Mr. Lamb at his trial. Mr. Lamb was charged and tried with sex trafficking as to that person, but the jury acquitted him of the crime.

unconscious in his apartment. JC repeatedly begged Mr. Lamb to delete the photos, even attempting to convince him at one point that she had attempted suicide out of desperation, and ultimately telling him that she was going to involve the police.

The other witness against Mr. Lamb at trial, KT, was 22 and living in Staten Island in June of 2013 when she responded to an advertisement Mr. Lamb posted and began working with him. In the Manhattan hotel room where KT met Mr. Lamb, KT observed another person who met with clients in a room where KT was not present. Although KT did not witness the woman have sex with the men, she did have a conversation about the work with the woman. KT also testified to delivering money she made from sex work to Mr. Lamb's girlfriend after working jobs in Manhattan, Brooklyn, Queens, and New Jersey. KT ultimately began helping Mr. Lamb run the business, but later stopped working for Mr. Lamb as a sex worker after a client physically assaulted her.

Mr. Lamb was tried by a jury in New York County for sex trafficking JC and for promoting prostitution in the third degree. At the onset and close of trial, Mr. Lamb objected to New York's jurisdiction to prosecute him for sex trafficking JC. The court noted the objection but ruled the jurisdictional issue a question for the jury. At the close of trial, the court explained that, before deciding whether the prosecution had proven a particular charge, the jury must first establish whether the state of New York had jurisdiction to prosecute the crime alleged. The judge elaborated that to establish state jurisdiction, the jury had to find, beyond a reasonable doubt, that Mr. Lamb "engaged in conduct in the State of New York" and "that ... conduct" was sufficient to establish at least one element of the crime or an attempt to commit the crime in New York.

The judge then told the jury that to find Mr. Lamb guilty of the first sex trafficking count relating to JC, it had to find:

> "One, that during the period of April 1st to April 30th, 2015, in the County of New York Mr. Lamb advanced or profited from prostitution. Two, that he did so by using force or engaging in any scheme, plan or pattern to compel or induce [JC] to engage in or continue to engage in prostitution activity by means of instilling a fear in her that if he demand was not complied with Mr. Lamb or another would expose a secret or publicize an asserted fact whether true or false tending to subject [JC] to hatred, contempt or ridicule. And three, that he did so intentionally."

For the second sex trafficking count, the court instructed the jury as to identical elements to the first count but that the jury must find, instead of coercion through the threatened revelation of a secret,

> "that [Mr. Lamb] did so by using force or engaging in a scheme, plan or pattern to compel or induce [JC] to engage in or continue to engage in prostitution activity by means of instilling a fear in her that if his demand not complied with Mr. Lamb would cause her physical injury, serious physical injury or death."

The jury began deliberations on June 21, 2017. After the jury submitted a request for clarification regarding the wording of that first element, which unlike the other elements did not specify a victim, the judge explained that no specific victim was necessary: "The first element that must be proven beyond a reasonable doubt is that during the period from on/or about August 1st to September 30, 2014 in the County of New York Mr. Lamb advanced or profited from prostitution. It is not specific to anyone."

The jury returned a verdict convicting Mr. Lamb of two counts of sex trafficking for his conduct towards JC and promoting prostitution in the third degree. The court

sentenced him to 6 to 18 years' incarceration for each sex trafficking count and 2 and one third to 7 years for the promoting prostitution count, with the sentences to run concurrently.

Mr. Lamb appealed and the Appellate Division modified, vacating a fee but upholding the convictions (188 AD3d 470 [2020]). The Court applied the textual interpretation of *People v Giordano* (87 NY2d 441 [1995]) to reason that the prefatory language of Penal Law § 230.34 (advancing or profiting from prostitution) was a separate element of the offense, which the People proved, beyond a reasonable doubt, Mr. Lamb had completed in New York (188 AD3d at 470-471). Moreover, the Court concluded that it did not matter "that the threatening conduct against a particular person occurred in New Jersey, because the statute does not require that a defendant advance or profit from the prostitution of the specific victim who was threatened" (*id.* at 470). "For the same reasons," the Court held that "defendant's challenges to the court's supplemental charge on this issue in response to a jury note are unavailing" (*id.* at 471).

II

As an initial matter, the concurrence agrees with me that Penal Law § 230.34 is comprised of two separate but "linked" elements. New York has jurisdiction to prosecute a crime when conduct occurs within the state sufficient to constitute an element of the crime (CPL 20.20 [1] [a]). Thus, if an element of the crime of sex trafficking occurs within New York, New York has jurisdiction to prosecute. To understand the sex trafficking statute and its interplay with CPL 20.20 properly, it is imperative to consider Penal Law § 230.34 in its entirety. It reads:

"A person is guilty of sex trafficking if he or she intentionally advances or profits from prostitution by:

1. unlawfully providing to a person who is patronized, with intent to impair said person's judgment: (a) a narcotic drug or a narcotic preparation; (b) concentrated cannabis as defined in paragraph (a) of subdivision four of section thirty-three hundred two of the public health law; (c) methadone; or (d) gamma-hydroxybutyrate (GHB) or flunitrazepan, also known as Rohypnol;

2. making material false statements, misstatements, or omissions to induce or maintain the person being patronized to engage in or continue to engage in prostitution activity;

3. withholding, destroying, or confiscating any actual or purported passport, immigration document, or any other actual or purported government identification document of another person with intent to impair said person's freedom of movement; provided, however, that this subdivision shall not apply to an attempt to correct a social security administration record or immigration agency record in accordance with any local, state, or federal agency requirement, where such attempt is not made for the purpose of any express or implied threat;

4. requiring that prostitution be performed to retire, repay, or service a real or purported debt;

5. using force or engaging in any scheme, plan or pattern to compel or induce the person being patronized to engage in or continue to engage in prostitution activity by means of instilling a fear in the person being patronized that, if the demand is not complied with, the actor or another will do one or more of the following:

(a) cause physical injury, serious physical injury, or death to a person; or

(b) cause damage to property, other than the property of the actor; or

(c) engage in other conduct constituting a felony or unlawful imprisonment in the second degree in violation of section 135.05 of this chapter; or

(d) accuse some person of a crime or cause criminal charges or deportation proceedings to be instituted against some person; provided, however, that it shall be an affirmative defense to this subdivision that the defendant reasonably believed the threatened charge to be true and that his or her sole purpose was to compel or induce the victim to take reasonable action to

> make good the wrong which was the subject of such threatened charge; or
> (e) expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule; or
> (f) testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or
> (g) use or abuse his or her position as a public servant by performing some act within or related to his or her official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely; or
> (h) perform any other act which would not in itself materially benefit the actor but which is calculated to harm the person who is patronized materially with respect to his or her health, safety, or immigration status."
>
> (Penal Law § 230.34).

Because "'the clearest indicator of legislative intent is the statutory text, the starting point in any case of interpretation must always be the language itself, giving effect to the plain meaning thereof'" (*People v Pabon*, 28 NY3d 147, 152 [2016], quoting *People v Golo*, 26 NY3d 358, 361 [2015]). That "plain meaning must be discerned 'without resort to forced or unnatural interpretations'" (*Matter of Theroux v Reilly*, 1 NY3d 232, 240 [2003]; quoting *Castro v United Container Mach. Group*, 96 NY2d 398, 401 [2001], *see* McKinney's Cons Laws of NY, Book 1, Statutes § 232). The plain language of section 230.34 suggests that it is comprised of two interdependent elements: the prosecution must prove (1) that the defendant intentionally advanced or profited from prostitution, and (2) that the defendant did so *by* one of enumerated coercive actions. Because of the word "by," these elements are necessarily linked. Accordingly, the advancement or profit from prostitution can only be completed through the coercive conduct element. Because the second element requires a victim – a person who has been the target of the prohibited

coercion – it follows that the first element, which can only be completed through the second, must also be linked to that same victim. In sum, Penal Law § 230.34 has two elements that are separate but linked: the advancement or profit from prostitution must be completed through the enumerated coercive actions taken against a particular victim.

Reading the statute's elements as entirely separate would require us to permit the trial in New York of a defendant for sex trafficking even if defendant's coercive acts against a victim were totally unrelated to the defendant's promotion of prostitution. Were we to conclude that commission in New York of any of the coercive acts contained in the subsections numbered 1-5 – without regard to the prefatory clause "advances or profits from prostitution by" – are elements sufficient to confer jurisdiction in New York, New York would, for example, have jurisdiction over all people who "testify . . . with respect to another's legal claim" (Penal Law 230.34 [5] [f]), regardless of what that claim was about or whether it was linked to prostitution in any way. Conversely, and as relevant here, were we to conclude that someone who advances or profits from prostitution in New York could be prosecuted for sex trafficking in New York even when the coercive acts occurred outside of New York and had nothing to do with prostitution at all, we would expand the reach of the sex trafficking statute in ways that make no sense and exceed the legislature's language and intent. We must decline to read the statute in such an unnatural manner when the language plainly draws a connection between the defendant's coercive acts involving a specific victim and the defendant's promotion of prostitution.

Similarly, the People, who concede that the statute consists of two separate but linked elements, contend the linkage is satisfied for jurisdictional purposes when a defendant carries out the coercive acts anywhere in furtherance of advancing or profiting from prostitution in New York, even if the defendant does not actually advance or profit from prostitution in New York through that coercion. The dissent would follow this interpretation of the statute. I disagree – Penal Law 230.34 requires the defendant to have advanced or profited from prostitution through the enumerated coercive action. Either the intentional advancement or profit may take place in New York or the coercion may take place in New York, but the two must be interrelated so that, regardless of whether the coercion or the advancement is the element occurring in New York, the advancement or profit must occur "by" coercion of "the person being patronized". The "linkage" between the two elements must follow the text of the law itself: the defendant must advance or profit from prostitution *by* coercion of the victim.

Accordingly, the supplemental jury instruction improperly severed the required linkage. The concurrence and I agree there as well. The prefatory language ("intentionally advances or profits from prostitution") cannot, as the supplemental instruction allowed, be wholly disassociated from the coercive conduct or the victim of that coercion (*e.g.*, "using force . . . to compel or induce the person being patronized to engage in or continue to engage in prostitution activity").

II

Although the concurrence agrees with me that Penal Law § 230.34 is comprised of two linked elements, I arrive there by the above analysis. The concurrence's reliance on *Giordano* to inform its statutory interpretation is misplaced. New York's jurisdiction to prosecute the defendants in *Giordano* was unquestioned because all the illicit activity (taking bets in New York City and laying them off in Nassau County) occurred within the territorial boundaries of New York State (*Giordano*, 87 NY2d at 445). *Giordano*, thus, cannot contain any holding about jurisdiction. Because *Giordano* dealt, instead, with a question of venue, and because of the fundamental differences between the histories and purposes of the gambling and sex trafficking statutes, our interpretation of the sex trafficking crime is unaffected by our prior construction of the promoting gambling offense.

The concurrence asserts that even though *Giordano* involved venue – not jurisdiction – the difference is of no moment. Our decisional law says otherwise. Territorial jurisdiction bears a close relationship to the inherent power of the state and the relationship between the people subject the legislature's authority and the legislature (*Adams v People*, 1 NY 173, 176 [1848] [quoting Chief Justice John Marshall who wrote that the "'jurisdiction of (a state's) Courts is a branch of (the state's) sovereignty'"]; *see also McLaughlin*, 80 NY2d 466, 471 [1992] [discussing jurisdiction as the "very essence of the State's power to prosecute"]). We have in the past explained that there are "distinct conceptual differences between venue and territorial jurisdiction and their different jurisprudential purposes make it virtually impossible to equate the two" (*McLaughlin*, 80

NY2d at 471). Jurisdiction, as compared to venue, has a marked difference "when measured in terms of the effect on the fundamental rights of the defendant" (*id.*). Thus, when interpreting a statute for the purposes of jurisdiction, we must tread carefully (*see also People v Kassebaum,* 95 NY2d 611, 621 [2001]). Applying *Giordano* to sex trafficking, as the concurrence does, grants New York jurisdiction to prosecute a defendant who advances prostitution solely in Thailand, if that defendant – for completely unrelated reasons – withholds someone's passport in Utica or threatens to reveal someone's secret misdeeds to the New York Post. That consequence, standing alone, should foreclose the idea that *Giordano*'s holding on venue has any genuine relevance here.

Although the concurrence is correct that the differences between jurisdiction and venue do not mandate interpreting identical language differently, we have not referred to those venue decisions as binding precedent, but merely as "additional support to our conclusion that defendant's jurisdiction claim lack[ed] merit" (*id.*). Thus, even if *Giordano* had interpreted language identical to entire clauses of Penal Law § 230.34, that would not dictate a result here. Furthermore, unlike *Kassebaum,* in which a prior decision had interpreted identical statutory language at issue (*compare* CPL 20.20 [1] [a] ["Conduct occurred withing this state sufficient to establish: (A) An element of such offense"] *with* CPL 20.40 [1] [a] ["Conduct occurred withing such county sufficient to establish: (A) An element of such offense"]), there is no such prior construction of the sex trafficking statute.

The only reason to look to the gambling statute at all is that it also contains the word "by."[2] However, attention to the widely diverging legislative histories and purposes that distinguish the statutes, which the concurrence also misconstrues, further reveals any reliance on *Giordano* to be misplaced.

Unlike the statute criminalizing gambling at issue in *Giordano* or the promoting prostitution offenses that predated and exist alongside the sex trafficking law, Penal Law § 230.34 is not a series of additional aggravators tacked onto a prior prohibited conduct (*e.g.*, prostitution). Rather, when the legislature enacted section 230.34 (and its companion labor trafficking statute, codified at Penal Law § 135.35), it criminalized a new and distinct crime of human trafficking, some but not all of which was related to trafficking for sexual exploitation.

The passage of the human trafficking legislation in 2007 marked the end of years of legislative deadlock as the legislature sought to catch up with the roughly two dozen states that had already enacted anti-trafficking laws (*Targeting Human Trafficking*, N.Y. Times [May 21, 2007]). Perceiving a gap between federal enforcement and existing state remedies, advocates had urged the legislature to follow the lead of other states in creating new law that would target smaller operations that often fall out of the federal law enforcement's focus (Floor Record, May 22, 2007, remarks of Senator Krueger ["this wasn't the kind of issue that the federal law enforcement officials were going after"]). The

[2] The concurrence strains to link Penal Law § 230.34 to gambling through the similarity in the statutes' "language and form" which appears to rest on this single word (concurrence at 11).

goal was to curb not just sex trafficking but all forms of modern-day slavery (Floor Record, May 22, 2007, remarks of Senator Padovan). The legislature simultaneously studied, debated and adopted the labor and sex trafficking laws (L 2007, ch 74, § 3). The resulting New York anti-trafficking law provided for additional resources to the victims of trafficking, created an interagency trafficking taskforce, mandated a harsh penalty for those convicted of trafficking (as a class B, rather than class C felony), and criminalized the hallmarks of modern trafficking operations, *i.e.*, drugging patronized people, withholding or destroying identification and immigration documents, requiring prostitution in service of a debt, and finally, promoting prostitution by an array of conduct (230.34 [1-5]; L 2007, ch 74, §§ 1,3, 11, 12).

Those measures swept far broader than the promoting prostitution offenses that existed before the law and that the law left unchanged. Promoting prostitution offenses have existed with few changes since codification in 1965 (L NY 1965, ch 1030, §230). These offenses range in degree, up to and including Penal Law § 230.30 (promoting prostitution in the second degree), which criminalizes the knowing advancement of prostitution "by compelling a person by force or intimidation to engage in prostitution" or profiting by another's coercive conduct (Penal Law § 230.30 [1]). That offense remains valid with some overlap with Penal Law § 230.34, reinforcing the separate nature of both offenses – one criminalizes forceful promotion of prostitution while the other targets the sex trade. In sum, the legislature did not add aggravating circumstances to the existing prostitution laws; it created an entirely new class of offenses related to the crime of human

trafficking, simultaneously enacting Penal Law §§ 230.34 and 135.35. As the Introducer's Memorandum of Support submitted alongside the legislation announces: "This bill creates the *new* crimes of sex trafficking and labor trafficking" (New York State Senate Introducer's Memorandum in Support, S5902, Bill Jacket, L 2007, ch 74 at 9 [emphasis added]).[3]

Not only is it clear that the legislature acted to combat human trafficking as a new and distinct offense, but there is absolutely nothing in the legislative history to suggest that the legislature drew any parallel to gambling, which sharply undercuts the notion that our decision in *Giordano* has anything to do with the proper interpretation of the interaction of Penal Law § 230.34 and CPL 20.20.[4] In *Giordano*, we interpreted Penal Law § 225.10,

[3] References to the sex and labor trafficking additions to the Penal Law as new crimes are numerous in the legislative history, suggesting the understanding that the Legislature was enacting *new* crimes, as opposed to aggravated versions of existing offenses, was widespread (*see e.g.* Introducer's Memorandum, Bill Jacket, L 2007, ch 74 at 11 [referring to the "(n)ew section 230.34" as a "crime of sex trafficking" – not promoting prostitution – and declaring "(t)his bill addresses human trafficking in three ways" including "new crimes that specifically target the methods used by traffickers to exploit their victims"]; Division of Budget recommendation for S5902, Bill Jacket, L 2007, ch 74 at 13 [explaining "(t)his bill seeks to eliminate or greatly reduce human trafficking by…making these acts crimes" and describing the law as "creat(ing) the crime of sex trafficking"]; Division of Criminal Justice Services letter of support, Bill Jacket, L 2007, ch 74 at 21 ["The bill adds two new felonies to the Penal Law, sex trafficking, § 230.34, making it a class B nonviolent felony to 'intentionally advance or profit from prostitution' by one of the proscribed means"]).

[4] Canons of construction, such as the canon that we assume the legislature is aware of every one of our prior decisions when it drafts statutes, can be helpful in certain cases, but are not inviolable rules to be adhered to even when facts suggest otherwise. Here, the legislative history of Penal Law § 230.34 contains no mention of the gambling statute or *Giordano*; rather, the legislature more likely evaluated sex trafficking statutes already enacted by dozens of other states while it was drafting SB 5209, which enacted New York's human trafficking laws (*see e.g.*, Division of Criminal Justice Services, Bill

which reads: "A person is guilty of promoting gambling in the first degree when he knowingly advances or profits form unlawful gambling activity by: (1) Engaging in bookmaking" (Penal Law § 225.10). We found the prefatory language ("knowingly advances or profits from unlawful gambling") to be a separate element from the conduct described after the word "by" (*Giordano*, 87 NY2d at 448). Our holding, however, relied on our understanding of the gambling statute as a typical one in which core conduct (promotion of prostitution) is prohibited, and the several identified aggravators impose increasingly severe penalties. We carefully noted that the prefatory language encompassed the "core crime" at issue, whereas the aggravating conduct simply increased the defendant's "liability…to the felony level because he engaged in bookmaking as a business" (*id.*). The sex trafficking statute has no such core conduct and aggravators: it is a single offense – sex trafficking – which can be committed by dozens of specifically enumerated coercive acts typically used by traffickers.

Jacket, L 2007, ch 74 at 21 [noting that "The federal government and twenty-four other states have enacted laws to combat human trafficking"]; Governor Spitzer's letter recommending approval, Bill Jacket, L 2007, ch 74 at 31 ["Twenty-nine states and the Federal government have enacted human trafficking legislation."]). Additionally, the same word may have different meanings in different contexts; context matters when interpreting statutory language (*People v Roberts*, 31 NY3d 406, 411 [2018] [rejecting "defendants' decontextualized interpretation of the statutory language"]). Thus, for reasons discussed herein, there is no reason to believe that even if the legislature had been aware of *Giordano*, it would have thought that out construction of the gambling statute in that case would bear on the construction of the sex trafficking statute on the theory that the word "by" must always mean the same thing in every context.

The parallel to the gambling statute is not the sex trafficking statute, but Penal Law § 230.15, which establishes promotion of prostitution as the core crime, with aggravators contained in Penal Law §§ 230.19, 230.20, 230.25, 230.30, 230.32 and 230.33. The concurrence misapplies *Giordano*'s construction involving a typical set of aggravators to the conceptually distinct crime of sex trafficking – treating it as if it were one of the aggravating factors increasing liability for the core crime of prostitution (concurrence at 12-13). However, as the history above demonstrates, the sex and labor trafficking statutes were not designed to enact just one more aggravator for the core promoting prostitution offense. Indeed, labor trafficking, which is similarly structured to Penal Law § 230.34 contained no antecedent in the Penal Law and so could not constitute additional aggravating conduct. The result of those diverging histories and purposes means any reliance on the gambling statute has no bearing on the proper interpretation of Penal Law § 230.34, the purpose of which was to criminalize sex trafficking, which occurs only when prostitution is advanced or promoted *by* one of the specific trafficking-related actions the legislature enumerated.

III

In sum, I believe *Giordano* does not bear on the proper interpretation of Penal Law § 230.34. The text and history – particularly when read in the context of CPL 20.20 and longstanding notions of the territorial jurisdiction of States, compel the conclusion that New York's jurisdiction over sex trafficking is not established unless either (a) "advancing or promoting prostitution" in New York is accomplished *by* one of the coercive conducts

the statute itemizes; or (b) "advancing or promoting prostitution" outside of New York is accomplished *by* one of the coercive conducts committed in New York. Applying that reading to the trial court's supplemental instruction, I conclude, and the concurrence agrees, that the court improperly severed the link required for the assertion of jurisdiction (concurrence at 21). Unlike the concurrence, however, I do not agree that the response failed the requirements of CPL 310.30. The response was "meaningful" – it addressed the jury's question with a resolute and clear answer. The jury asked whether the advancing or promoting of prostitution must relate to coercive acts against a specific person, which is the question the court answered. That answer was meaningful, but wrong.

IV

Ultimately, the concurrence's construction of the sex trafficking statute would leave the next court to try Mr. Lamb and others accused of violating Penal Law § 230.34 with no real guidance. The concurrence's emphasis on the jury's request for an instruction and its understandable confusion is, in my view, wholly irrelevant to whether the instruction is legally incorrect and material. By focusing on the jury's concerns and the meaningfulness of the response, the concurrence obscures its jurisdictional holding and interpretation of Penal Law § 230.34. That lack of clarity is untenable for a law which, by the concurrence's observation, addresses conduct that is likely to occur across state lines and therefore pose recurring jurisdictional questions. To be clear, New York can prosecute sex trafficking when prostitution in New York is advanced or profited from by subjecting victims to any of the statutorily enumerated coercive acts regardless of the location of those acts, and New

York can prosecute sex trafficking when prostitution outside of New York is promoted or profited from by subjecting persons in New York to any of the statutorily enumerated coercive acts. But New York cannot prosecute as sex trafficking conduct that exists wholly without its borders or where the out-of-state coercive conduct against a trafficked person does not lead to the advancement of or profit from prostitution in New York. As I see it, that rule is soundly based in Penal Law § 230.34 and is straightforward, easily administrable, and honors the legislature's objective in creating a distinct set of trafficking offenses.

FAHEY, J. (dissenting in part):

Defendant presents two issues to this Court related to the People's jurisdiction to prosecute him for sex trafficking in New York. The first is whether the People proved, by legally sufficient evidence, that New York had geographical jurisdiction over that offense

pursuant to CPL 20.20. The second is whether the trial court's supplemental instruction to the jury in response to a jury note, which inquiry related to the jurisdictional issue in dispute in the case, was erroneous and requires a new trial.

The majority's writing does not clearly decide the first issue, but the Court remits for a new trial and does not dismiss the sex trafficking counts of the indictment on which defendant was convicted. This means that the Court has concluded that the evidence presented was legally sufficient to establish geographic jurisdiction. In that regard, I agree.

However, the majority's conclusion that the trial court's supplemental instruction, in response to the jury's note regarding the elements of sex trafficking, was erroneous cannot be reconciled with the majority's implicit conclusion that New York had jurisdiction to prosecute defendant for sex trafficking. This is a clear contradiction. The Court's decision leaves trial courts with no direction as to how to define the elements of sex trafficking for deliberating juries.

I respectfully dissent. I would affirm the Appellate Division order in all respects.[1]

I.

The two sex trafficking counts at issue on this appeal relate to defendant's conduct toward a single victim. JC was an 18-year-old high school student when she met with defendant on the understanding that he was seeking a hostess for private catering events. When JC realized that the job was actually prostitution and tried to leave defendant's New Jersey apartment, he told her he had a gun and would shoot her or hit her if she did not

[1] I agree with the Appellate Division that the trial court did not violate CPL 310.10 (2) and that the contentions in defendant's pro se supplemental brief are without merit.

allow him to photograph her nude. She complied, and defendant also took nude photographs of her when she was unconscious from consuming alcohol that defendant had coerced her into drinking. When JC thereafter refused to engage in prostitution for defendant, he threatened to send these nude photographs to her friends and family and to post them on the internet. Defendant also informed JC that he knew all of her personal information, including her address and high school. He further threatened that he or his "goon squad" would physically harm her if she did not comply.

On this appeal, defendant does not contest the legal sufficiency of the People's evidence that he engaged in this conduct. Indeed, the People presented evidence that the nude photographs of JC were found on defendant's phone, and they introduced the email exchanges between JC and defendant, which contained defendant's threats, into evidence. Rather, defendant contends on this appeal only that the People did not prove by legally sufficient evidence that New York had jurisdiction to prosecute him for sex trafficking because all of the interactions he had with JC, including their in-person encounter and their email exchanges, took place when both he and JC were in New Jersey. Defendant does not dispute that he had an extensive prostitution operation in New York. He asserts, however, that for New York to have jurisdiction to prosecute him for sex trafficking JC, he must have coerced or threatened JC in New York, or the People must have demonstrated that he was "recruiting" JC to work as a prostitute in New York.

II.

Penal Law § 230.34, which criminalizes sex trafficking, provides that a defendant is guilty of sex trafficking "if he or she intentionally advances or profits from prostitution

by . . .” engaging in certain aggravating conduct.[2] Defendant was charged pursuant to

[2] The full text of the statute is as follows:

> “A person is guilty of sex trafficking if he or she intentionally advances or profits from prostitution by:
> 1. unlawfully providing to a person who is patronized, with intent to impair said person’s judgment: (a) a narcotic drug or a narcotic preparation; (b) concentrated cannabis as defined in paragraph (a) of subdivision four of section thirty-three hundred two of the public health law; (c) methadone; or (d) gamma-hydroxybutyrate (GHB) or flunitrazepan, also known as Rohypnol;
> 2. making material false statements, misstatements, or omissions to induce or maintain the person being patronized to engage in or continue to engage in prostitution activity;
> 3. withholding, destroying, or confiscating any actual or purported passport, immigration document, or any other actual or purported government identification document of another person with intent to impair said person’s freedom of movement; provided, however, that this subdivision shall not apply to an attempt to correct a social security administration record or immigration agency record in accordance with any local, state, or federal agency requirement, where such attempt is not made for the purpose of any express or implied threat;
> 4. requiring that prostitution be performed to retire, repay, or service a real or purported debt;
> 5. using force or engaging in any scheme, plan or pattern to compel or induce the person being patronized to engage in or continue to engage in prostitution activity by means of instilling a fear in the person being patronized that, if the demand is not complied with, the actor or another will do one or more of the following:
> (a) cause physical injury, serious physical injury, or death to a person; or
> (b) cause damage to property, other than the property of the actor; or
> (c) engage in other conduct constituting a felony or unlawful imprisonment in the second degree in violation of section 135.05 of this chapter; or
> (d) accuse some person of a crime or cause criminal charges or deportation proceedings to be instituted against some

Penal Law § 230.34 (5) (a) and (5) (e) on the two counts of sex trafficking pertaining to JC. Accordingly, those two counts required the People to prove: (1) that defendant intentionally advanced or profited from prostitution by using force or engaging in any scheme, plan or pattern to compel or induce JC to engage in or continue to engage in prostitution activity by means of instilling a fear in JC that, if the demand were not complied with, defendant or another would cause physical injury, serious physical injury, or death to a person (*see* Penal Law § 230.34 [5] [a]); and (2) that defendant intentionally advanced or profited from prostitution by using force or engaging in any scheme, plan or pattern to compel or induce JC to engage in or continue to engage in prostitution activity by means of instilling a fear in JC that, if the demand were not complied with, defendant

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> person; provided, however, that it shall be an affirmative defense to this subdivision that the defendant reasonably believed the threatened charge to be true and that his or her sole purpose was to compel or induce the victim to take reasonable action to make good the wrong which was the subject of such threatened charge; or
> (e) expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule; or
> (f) testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or
> (g) use or abuse his or her position as a public servant by performing some act within or related to his or her official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely; or
> (h) perform any other act which would not in itself materially benefit the actor but which is calculated to harm the person who is patronized materially with respect to his or her health, safety, or immigration status.
> Sex trafficking is a class B felony."

or another would expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule (*see* Penal Law § 230.34 [5] [e]).

Defendant contended during trial, as he does on appeal, that the "coercive threats" required under subdivision (5) of the statute had to take place in New York for New York to have jurisdiction to prosecute him for sex trafficking. In other words, defendant contends that it was not enough for him to "intentionally advance[ ] or profit[ ] from prostitution" in New York and then engage in the coercive threats required by subdivision (5) in New Jersey, even if the coercive threats furthered his overall cross-border prostitution enterprise. The crux of defendant's argument depends on our interpretation of the use of the word "by" in the statute.

We interpreted a nearly identical statutory scheme in *People v Giordano* (87 NY2d 441 [1995]). Although the issue in *Giordano* was venue pursuant to CPL 20.40, not jurisdiction pursuant to CPL 20.20, the relevant analysis in *Giordano* was its statutory interpretation. *Giordano* interpreted the statute criminalizing promoting gambling in the first degree (*see* Penal Law § 225.10). Similar to Penal Law § 230.34, that statute provides that a defendant is guilty of promoting gambling in the first degree when the defendant "knowingly advances or profits from unlawful gambling by . . ." engaging in certain aggravating conduct (Penal Law § 225.10). The statute then contains a list of aggravating conduct that elevates the defendant's crime to promoting gambling in the first degree, including, as relevant in *Giordano*, engaging in bookmaking to a defined extent (*see id.* § 225.10 [1]).

The defendants in *Giordano* argued that venue should have been in New York

County, rather than Nassau County, because although they engaged in some gambling activity in Nassau County by "hedging" or "laying off" bets there, their overall gambling operation, including their bookmaking, occurred in New York County. In other words, the defendants in *Giordano* contended, as defendant does here, that the use of the word "by" in the statute required them to engage in both the "core" crime and its "aggravating" element in the same place (*see Giordano*, 87 NY2d at 445-446).

This Court rejected that argument. It held that "advancing or profiting from unlawful gambling activity is a separate element of promoting gambling in the first degree and, if established by the evidence, could support jurisdiction in Nassau County" (*id.* at 446). The Court explained its interpretation of Penal Law § 225.10:

> "The opening paragraph and subdivision (1) describe different conduct; the use of the word 'by' in the statute to define *how* the enhanced liability obtains does not, as defendant maintains, collapse two elements into one. One 'advances gambling' activity by engaging in any conduct which materially aids a gambling operation (Penal Law §§ 225.05, 225.00 [4]), in this case by hedging bets. . . .
>
> "To read Penal Law § 225.10 (1) as a one element crime, 'advancing unlawful gambling by bookmaking,' would make the statute redundant and render the language in the opening paragraph surplusage. That paragraph holds defendant guilty of promoting gambling when he 'advances gambling activity,' but 'bookmaking' is defined as 'advancing gambling activity by unlawfully accepting bets' as a business (*see*, Penal Law § 225.00 [9]). Accordingly, the statute would have no different meaning if the opening language were excised from it as defendants would do. Under well-established principles of interpretation, effect and meaning should be given to the entire statute and 'every part and word thereof' (*Sanders v Winship*, 57 NY2d 391, 396). We should assume the Legislature had a purpose when it used the phrase 'advances or profits from unlawful gambling activity' in the first paragraph and avoid a

> construction which makes the words superfluous (*see, Matter of Branford House v Michetti*, 81 NY2d 681, 688). These rules of statutory construction lead us to conclude that the opening language of the statute and that of subdivision (1) address two distinct types of conduct, and must therefore be two elements of the crime. . . .
>
> "Thus, we conclude that conduct advancing gambling activity *and* engaging in a bookmaking business are two separate elements. If conduct establishing one of these two elements occurred in Nassau County, that County had jurisdiction to prosecute defendants for the whole crime." (*Giordano*, 87 NY2d at 447-448.)

The *Giordano* Court's interpretation of Penal Law § 225.10, a statute that is identical both in structure and its use of the word "by" to Penal Law § 230.34, applies equally here. The crime of sex trafficking as charged in Penal Law § 230.34 (5) contains at least two elements, the first that defendant intentionally advanced or profited from prostitution, and the second that defendant engaged in the coercive threats enumerated in subdivision (5).

Pursuant to CPL 20.20 (1) (a), if defendant engaged in conduct sufficient to establish one element of the offense in New York, New York has jurisdiction to prosecute the offense. Defendant does not dispute that he intentionally advanced or profited from prostitution in New York, and the People presented ample evidence of that during trial. Defendant's contention that he must also commit the aggravating conduct in New York would collapse these two elements of the sex trafficking statute into one, contradicting this Court's reasoning in *Giordano* and the legislature's presumed intent (*see Giordano*, 87 NY2d at 447-448). Defendant was not required to engage in coercive threats in New York, so long as he intentionally advanced or profited from prostitution in New York (*see id.*).

The People proved, by legally sufficient evidence, that defendant intentionally advanced or profited from prostitution in New York, and they therefore provided legally sufficient evidence of New York's jurisdiction to prosecute defendant for sex trafficking.

The Court does not dismiss those two counts of indictment charging defendant with the sex trafficking of JC, and instead grants defendant a new trial on those counts. I assume this means that my colleagues have concluded that the People presented legally sufficient evidence of New York's jurisdiction to prosecute defendant for sex trafficking (*see* CPL 470.40 [1]; 470.20 [2]). Yet the majority does not expressly state that the People proved jurisdiction by legally sufficient evidence in this case, rather stating only that defendant's "remaining claims are either rendered academic by our decision or without merit" (majority mem at 2). To the extent that the Court has rejected defendant's legal sufficiency argument, I agree with that result. But because the Court's implicit conclusion that the People proved jurisdiction by legally sufficient evidence is in irreconcilable conflict with its stated conclusion that the trial court erred in responding to the jury's note, I must respectfully dissent.

III.

The trial court initially instructed the jury on the elements of sex trafficking by reading the New York Criminal Jury Instructions charge. That charge includes the instruction that defendant is guilty of sex trafficking if he advanced or profited from prostitution, and "did so by" engaging in the coercive threats enumerated in subdivision (5) (*see* CJI2d[NY] Penal Law § 230.34 [5]). That CJI instruction tracks the language of the statute and describes these as separate elements, consistent with the jurisdictional

analysis discussed above.

During deliberations, the jury sent a note asking whether the first element of sex trafficking, i.e., that defendant intentionally advanced or profited from prostitution, must relate to a specific victim. After the court informed counsel that it planned to instruct the jury that this element was not specific to any victim, defendant objected on the same basis as the defense's "global objection" to "jurisdiction." The court instructed the jury that "[t]he first element that must be proven beyond a reasonable doubt is that during the period from on/or about August 1 to September 30, 2014 in the County of New York Mr. Lamb advanced or profited from prostitution. It is not specific to anyone."[3]

The majority concludes that this supplemental instruction to the jury requires reversal and a new trial on the sex trafficking counts because that supplemental instruction "erroneously severed the required link" between the two elements of sex trafficking (majority mem at 2).

I disagree. The supplemental instruction did no such thing. Rather, the court merely informed the jurors that the element requiring defendant to advance or profit from prostitution in New York did not pertain to any specific victim, which is consistent with the interpretation of Penal Law § 230.34 (5) the majority implicitly adopts by rejecting defendant's legal sufficiency contention. The trial court did not instruct the jury that defendant's coercive threats need not further defendant's overall prostitution enterprise, or

[3] Although the jury's note asked about a different count of sex trafficking pertaining to a different victim, of which defendant was acquitted, the jury's inquiry and the court's response are reasonably construed to pertain to all counts of sex trafficking with which defendant was charged, including the two at issue on this appeal.

otherwise need not have any connection whatsoever to defendant's cross-border prostitution enterprise. It was certainly clear to the jury from the evidence presented at trial that defendant's prostitution enterprise crossed borders. The court's response to the note therefore did not sever the link between the two elements that the Court concludes is required.

Furthermore, the majority's conclusion that the supplemental jury instruction was improper cannot be squared with its implicit conclusion that the People proved jurisdiction in New York by legally sufficient evidence. As explained, the Court's implicit conclusion that the evidence was legally sufficient to establish New York's jurisdiction to prosecute defendant for sex trafficking necessarily depends on the conclusion that so long as defendant advanced or profited from prostitution in New York, his coercive threats to JC could occur outside New York. Yet by holding that the supplemental jury instruction was erroneous, the Court necessarily concludes that the first element of advancing or profiting from prostitution *did* need to pertain to a specific victim, and defendant's conduct of advancing or profiting from prostitution in New York as evidenced by his overall prostitution scheme was insufficient. Notably, defendant never asked the trial court to seek clarification from the jury about its note, instead understanding the note to relate to the issue of jurisdiction that the parties had been litigating.

In my view, the jurisdictional analysis and the propriety of the court's supplemental instruction are inextricably linked. There are two potential ways for the Court to interpret Penal Law § 230.34 (5): (1) a defendant commits sex trafficking in New York for purposes of CPL 20.20 if the defendant advances or profits from prostitution in New York, even if

the coercive threats required by subdivision (5) occur outside New York, so long as there is some evidence that the coercive threats furthered the defendant's overall prostitution scheme; or (2) as defendant suggests, sex trafficking pursuant to Penal Law § 230.34 (5) is a one-element crime that requires the defendant to advance or profit from prostitution by engaging in coercive threats directed toward a specific victim in New York—the defendant may not advance or profit from prostitution in New York generally and then attempt to coerce someone into engaging in prostitution outside New York, even if it is in furtherance of the defendant's overall enterprise. Inasmuch as the first option is consistent with this Court's reasoning in *Giordano* and the jurisdictional requirements of CPL 20.20, I believe it is the correct approach. If it is, then the trial court's supplemental jury instruction was entirely proper. We must interpret Penal Law § 230.34 the same way when we are evaluating its elements for jurisdictional purposes as we do when we are evaluating its elements for purposes of establishing guilt.

IV.

If the trial court receives a substantially similar inquiry from a deliberating jury upon retrial, how should it respond? The majority does not say, and trial courts will be unable to discern what this Court is requiring of them in future sex trafficking cases. The Judges concurring in the majority memorandum have conflicting views of the proper interpretation of Penal Law § 230.34 (*see* concurring op of Wilson, J.; concurring op of Singas, J.). The Court is inexplicably confused about what should be, in my view, a relatively straightforward matter.

Must the defendant engage in coercive threats in New York, or is it sufficient that

the defendant advances or profits from prostitution in New York? Must the defendant advance or profit from prostitution only by engaging in coercive threats in New York directed toward a specific victim, or is it sufficient that the coercive threats toward the victim, although they occur out of state, further the defendant's overall prostitution enterprise? Answers to these questions await further clarification from this Court. In the meantime, lower courts unfortunately must attempt to decipher the Court's perplexing ruling.

Order modified by vacating defendant's convictions for sex trafficking and ordering a new trial on those counts and, as so modified, affirmed, in a memorandum. Chief Judge DiFiore and Judges Rivera, Garcia, Wilson, Singas and Cannataro concur, Judge Singas in a concurring opinion, in which Chief Judge DiFiore and Judge Cannataro concur, and Judge Wilson in a separate concurring opinion, in which Judges Rivera and Garcia concur.
Judge Fahey dissents in part and votes to affirm in an opinion.

Decided December 16, 2021