

**CASES OF INTEREST**  
**April 2011**

**People v. David Everett**  
**Appellate Division, Fourth Department**  
**2011 WL 1088636**  
**March 25, 2011**

Here an officer was injured while performing a pat-down search of a defendant subsequent to a traffic stop. The defendant was later convicted of assault in the second degree. This Court reversed, finding that the pat-down search for “officer safety” was illegal.

The Court held that a pat-down search of a traffic offender is illegal unless there are **reasonable grounds** for suspecting that the officer is in danger or there is **probable cause** for believing that the offender is guilty of a crime rather than merely a simple traffic infraction.

Since the evidence did not establish that the officer was injured while undertaking a **lawful duty**, the felony assault could not stand.

**People v. Ralph Ferenchak**  
**Appellate Division, Fourth Department**  
**2011 WL 1088739**  
**March 25, 2011**

The Court reversed a conviction for criminal contempt, finding that the information was **jurisdictionally defective** because it did not contain allegations that established the defendant’s **knowledge** of the order of protection.

The People’s paperwork failed to allege that the defendant was served with the order of protection, that he was present in court when it was issued or that he signed the order of protection. Although a copy of the order was attached to the misdemeanor information, it had been issued on an *ex parte* basis and there was no indication on its face that it had been served on the defendant.

**People v. Gregory Spann**  
**Appellate Division, Second Department**  
**2011 WL 924017**  
**March 25, 2011**

This Court reversed based upon the cumulative effect of the **prosecutor’s improper comments during summation**. They held that when summing up, the prosecutor must

stay within the four corners of the evidence, and avoid irrelevant and inflammatory comments which have a tendency to prejudice the jury against the accused.

The Court found the following errors: improper comment on the defendant's medical evidence by referring to it as a "distraction", a "smoke screen" and "smoke and mirrors"; arguing that the defendant's physical condition (sweating and rapid heartbeat) was evidence of consciousness of guilt; impermissibly shifting the burden by telling the jurors that if they did not find the defendant's testimony "reasonable" they could not form the basis of reasonable doubt; and misstating the evidence.

Alarming, this holding, that the cumulative affect of these comments deprived the defendant of a fair trial, had to be reviewed in the exercise of the Court's interest of justice jurisdiction as the errors were mostly unpreserved for appellate review.

**People v. Tony Weaver**  
**NY Court of Appeals**  
**16 NY3d 123**  
**February 10, 2011**

This is a case to beware of because it may do some damage to the defense we often use in **disorderly conduct** cases: that the charged conduct did not involve members of the public.

While the Court agreed that a person is ordinarily guilty of disorderly conduct only when the situation extends beyond an exchange between the individual disputants to a point where it becomes a potential or immediate public problem. They found no *per se* requirement that members of the public must be involved or react to the incident, as long as the conduct **recklessly creates a risk of such public disruption.**

In assessing whether an act carries such public ramifications, the Court laid out the relevant factors to consider: the time and place of the episode, the nature and character of the conduct, the number of other people in the vicinity, whether they are drawn to the disturbance, and if so, the nature and number of those attracted.

[N.B. You have to read the case to decide whether this defendant's abhorrent conduct or his new wife's damp wedding dress had anything to do with the decision.]