

CASES OF INTEREST
August, 2011

Bullcoming v. New Mexico
Supreme Court of the United States
__ US __; 131 S Ct 2705
June 23, 2011

For anyone who missed this newest entry in the *Crawford* and *Melendez-Diaz* line of cases, the Court held here that the Confrontation Clause requires that in order for the prosecution to be able to introduce a forensic laboratory report at trial, the People must present the **witness who did the testing** to testify to the statements in the report and to be subject to cross-examination.

Here, the People produced the lab technician's supervisor, who had neither signed the certification nor performed the test. The Court found that this "surrogate" testimony did not meet the Constitutional requirement.

People v. Terrell Gilford
Court of Appeals
16 NY3d 864
May 3, 2011

In a terrible case for the defense, this Court upheld the decisions of the Appellate Division and the trial court that the **show-up was not unduly suggestive**. Despite the fact that the defendant was displayed jointly to two witnesses at once, was handcuffed, and was flanked by police officers, the trial court found the show-up to be reasonable under the circumstances.

The court below found the procedure to be related in temporal and geographic proximity, driven by the exigency of the victim's critical condition, and conducted to preserve the witnesses' fresh memory of the event. Therefore, the show-up was found to be justified and not rendered unduly suggestive.

People v. Peter Rivera
Court of Appeals
16 NY3d 654
May 3, 2011

On the other hand, in a case we've been waiting for for years, the Court found that when the defendant is driving while a **conditional license** is in effect, he can only be prosecuted (at least with regard to his privilege to drive) for the **traffic infraction** of driving for a use not authorized by his license (VTL §1196(7)(f)), rather than for either the misdemeanor or the felony of aggravated unlicensed operation of a motor vehicle (VTL 511-2 or 511-3).

People v. Steve Johnson
Court of Appeals
2011 WL 2222317
June 9, 2011

This is another in a long line of cases in the area of voir dire, reaffirming the concept that the “**unequivocal assurance**” of a potential juror’s ability to be fair and impartial is required in order to seat that person as a juror.

Therefore, the trial court is required to conduct follow-up questioning when a prospective juror expressed a strong bias in connection with (i.e. against) the defense and was not certain that she would be able to give both sides a fair trial.

People v. Anthony McClary
Appellate Division, Fourth Department
85 AD3d 1622
June 10, 2011

In this case the trial court was reversed for removing a **sworn juror** without a showing that the juror possessed a state of mind that would prevent the rendering of an impartial verdict. The Court reiterated that the standard for removing a sworn juror over the defendant’s objection (i.e. grossly unqualified) is satisfied only when it becomes obvious that the particular juror possesses such a state of mind, and that an improper dismissal is not subject to harmless error analysis.

As a side note, the Court also found that the prosecution’s cumulative instances of prosecutorial misconduct: vouching for the credibility of the confidential informant, eliciting testimony regarding the defendant’s post-arrest silence, forcing the defendant on cross-examination to characterize the prosecution’s witnesses as liars, also required reversal, despite the fact that these errors were not preserved.

People v. Sean Ayers
Appellate Division, Fourth Department
85 AD3d 1583
June 10, 2011

Here the Court found that the trial court had erred in not suppressing the fruits of the arrest, as it had been made **without probable cause**. Approximately one hour after an attempted burglary occurred, the officers saw the defendant in proximity to the burglary location, and without more, stopped and arrested him.

As the information available to the officers at the time justified, at most, reasonable suspicion, and not an arrest requiring probable cause, suppression of the stolen credit card found on him and the rifle found in his vehicle was required.

People v. Carl Calkins
Appellate Division, Fourth Department
85 AD3d 1676
June 17, 2011

The Court here found that the errors committed by the prosecutor in the grand jury required reversal. Although the prosecutor charged the defense of justification based on the **use of physical force in defense of a person**, the prosecutor failed to charge that that defense was also applicable to the criminal mischief charge, in that justification could also exist based on the **use of physical force in defense of premises**.

The prosecutor also failed to inform the grand jurors of defendant's request to call a witness to the incident. The Court reiterated that a defendant's conviction after trial does **not** cure defective grand jury proceedings.