

CASES OF INTEREST
February 2010

People v. Sanchez & Mynin
Court of Appeals
13 NY3d 554
December 1, 2009

In this (alarming) case, the Court decided that a defendant could be convicted of the crime of **gang assault** even though the two persons actually present and providing aid to him, as required by the statute to distinguish this crime from the “average” assault case, did **not** share in the defendant’s intent to injure the victim.

In other words, by this holding a jury could determine that one or both of the persons who must be present in addition to the defendant were not guilty of participating in the assault either as principals or as accomplices, and yet, maintain that the defendant was nevertheless guilty of gang assault.

It is sufficient for this Court that at least two other persons be present and render aid to the defendant. However, although they must assist the defendant in causing physical harm to the victim, they need not share in the defendant’s intent to cause that harm. Judge Jones wrote a nice dissent, joined in by Chief Judge Lippman and Judge Ciparick.

People v. Wrotten
Court of Appeals
2009 WL 4782864
December 15, 2009

This Court previously decided in People v. Cintron (75 NY2d 249 [1990]) that a vulnerable child witness could give testimony by use of a two-way television. This case expanded that holding to allow testimony by an adult complainant living in another state via live **two-way video conferencing**, after finding that due to age and poor health he was unable to travel to court in New York.

The High Court concluded that Judiciary Law §2-b(3) vested the trial court with the authority to fashion a procedure such as the one employed here. They further found that because the “traditional indicia of reliability” were present--the witness testified under oath, there was an opportunity for contemporaneous cross-examination, and the judge, jury and defendant were able to view the witness’s demeanor as he testified--this procedure did not impair the confrontation rights of the defendant.

Although the Court did allow that televised testimony required a case-specific finding of necessity, and that it was an exceptional procedure to be used only in exceptional circumstances, the decision suggests that the Judges gave little consideration to the

enormous problems encountered when trying to cross-examine someone through a television screen. Judge Jones also dissented in this case.

People v. Brown
Court of Appeals
2010 WL 546121
February 18, 2010

While this defendant was incarcerated his son was seriously wounded and in the hospital in a coma. The defendant requested a hospital visit, but jail officials denied that request. Shortly thereafter the defendant entered a plea of guilty which included the fact that the Judge would grant him a furlough for three weeks to see his sick child.

When he returned for sentence the defendant moved to withdraw his plea on the ground that it had not been entered into voluntarily. He had consistently maintained his innocence from the time of his arrest, and claimed that he would never have entered into any guilty plea if his son had not been shot. The trial court denied the motion without a hearing.

This Court reversed, finding that where the record raises a legitimate question as to the voluntariness of a plea, an evidentiary hearing is required to explore defendant's allegations in order to make an informed decision.