

**CASES OF INTEREST**  
**February 2011**

**People v. Martin Nagel**  
**Appellate Division, Fourth Department**  
**78 AD3d 1636**  
**November 19, 2010**

In this case the prosecutor brought a cooperating defendant/witness before a grand jury. However, when the witness refused to be sworn and attempted to invoke his Fifth Amendment privilege he was charged with, and then convicted of, criminal contempt.

The Court reversed, holding that he was entitled to consult with counsel prior to making this kind of decision. Here, the witness was forced to determine whether to assert or to waive his privilege against self-incrimination, but yet, had not been informed regarding the immunity he would receive if he did so. The Court found that, in general, **the prosecution ought not to compel individuals to make binding decisions about their legal rights in the absence of counsel.**

**People v. Marcelle Williams**  
**Appellate Division, Fourth Department**  
**79 AD3d 1653**  
**December 30, 2010**

The case below was a traffic stop, after which money was recovered from the defendant, which led to an arrest for burglary. This Court held that although the stop was legitimate, the officers went beyond ordering the defendant out of his car, which would have been permissible. Instead, they also frisked him, removed the packets of money, cuffed him and placed him in the back of a police car, an arrest not supported by probable cause.

The Court found that the officers had essentially detained the defendant while they attempted to determine whether a burglary had been committed, and whether the money seized from him was the proceeds of same; i.e. whether evidence establishing probable cause could be found.

The money seized was suppressed as the fruit of this unlawful arrest, and therefore the burglary conviction was reversed. However, the most important lesson in this case does not involve the search issue. Rather, it is important to note that this defendant had also taken a plea in another matter, and received a sentence of time to run concurrently with the sentence in this case. When this case was reversed, the Court also had to reverse the plea in the second case, because **counsel had filed a Notice of Appeal in both matters.**

The second reversal is not automatic. Had trial counsel not filed the second notice, this case would have been reversed, but unfortunately, the sentence on the plea would stand,

even though the advantage of concurrent time would have been lost. [See People v. Fuggazzatto, 62 NY2d 862 (1984).]

**People v. Joseph Hecker**

**Court of Appeals**

**15 NY3d 625**

**November 30, 2010**

(Consolidated with People v. Guardino, People v. Hollis and People v. Black.)

These four cases deal with the trial courts' *Batson* decisions. In addition to a restatement of the three-part procedure the trial courts must use to decide these challenges, there are two matters to take away from this case.

First, that as a matter of State law, a trial court's mistaken denial of a peremptory challenge is **per se reversible error**. Second, there is a potentially useful reference to the 10 minutes allotted to counsel to select the jurors. The High Court found that this "...severely curtailed the parties from questioning the panelists, precluding them from conducting a more meaningful voir dire..." and spoke of "...the impossibility of directing [counsel's] attention to all of the panelists in the brief time she had to address them."

One might want to quote this Court of Appeals language for the record when being likewise curtailed at your next jury trial.