CASES OF INTEREST
July 2009

People v. Eric Bailey
Court of Appeals
2009 WL 1616506
June 11, 2009

The Court found the evidence insufficient to prove the intent to defraud required to support a conviction for **possession of a forged instrument**; here, counterfeit bills.

The Court rejected the People's argument that the requisite intent for possession of a forged instrument could be drawn from the defendant's presence in a shopping district, his possession of the forged instruments, and his larcenous intent (he was originally arrested for the attempted theft of various women's purses).

The Court held that although the defendant's inculpatory statement admitting knowledge that the bills were counterfeit was enough to prove that element, knowledge alone was insufficient. The Court pointed out that **knowledge and intent** are two separate elements and **each** must be proven beyond a reasonable doubt by the People. Further, the Court said that if knowledge alone were sufficient to sustain a conviction, the lower courts would effectively be stripping the element of intent from the statute and criminalizing knowing possession.

Therefore, the People must prove not only that the defendant knew the bills were counterfeit but that he intended to use them to defraud, deceive or injure another.

People v. Jeremy Almeter
Court of Appeals
2009 WL 1765982
June 24, 2009

In this case the defendant was charged with both a misdemeanor and a violation arising out of the same incident. Consolidation was never sought, but the charges were prosecuted together under one docket number. Most of the way through the trial the City Court Judge advised counsel that the jury would render a verdict on the misdemeanor but the Court would render the decision on the violation. Of course the jury acquitted and the Judge convicted. The County Court affirmed.

This Court reversed, however, finding that if the reasonable expectation that the trials would be held before the same fact-finder would **not** be the case, the court was obliged to inform the defendant and counsel of this unique mode of proceeding from the outset. In other words, counsel would have had to receive notice both that there would be more than one fact-finder, and which fact-finder would be deciding which charge.

People v. Victor Gomez
Court of Appeals
2009 WL 1850967
June 30, 2009

Here, the High Court determined (again) that for the People to establish a valid **inventory search**, two elements must be examined. First, the court must examine the relationship between the search procedure adopted and the governmental objectives that justify that intrusion. Second, it must examine the adequacy of the controls on an officer's discretion. The opinion relied on this Court's two earlier decisions defining the law on inventory searches: *People v. Galak*, 80 NY2d 715 (1993); and *People v. Johnson*, 1 NY3d 252 (2003).

In the case below, although the police department had a standardized, written protocol governing inventory searches, the People offered no evidence that the officers conducted the search in accordance with that protocol. Further, they did not establish the circumstances under which searching a closed trunk or door panel would have been justified under that protocol.

In addition, the police officer is required to prepare a meaningful inventory of the contents of the accused's car. Here, the People failed to establish that no other items aside from the contraband were found in the vehicle.

The most important part of the decision is the Court's holding that: first, while the standardized search procedure need not be offered into evidence, a description of what the procedure requires **must** be proffered. Second, that the failure to use an inventory search form, while a technical defect, would not be fatal to the establishment of a valid inventory search. However, in the absence thereof, the People would **have** to prove both that the search in accordance with the standardized procedure is designed to produce an inventory, and that the search results were fully recorded in a usable format.

Finally, this Court concluded, as we so often find: "[T]he search at bar was not designed to produce an inventory."

People v. Jose Mejia
Appellate Division, Fourth Department
2009 WL 1887079
July 2, 2009

Here, the Court reversed the decision of the trial court that defendant had not been in **custody** when he was interrogated, and suppressed the statements made to the police.

The Court found that although the defendant had consented to accompany the officers to the police station, because he was then frisked and handcuffed and escorted when he had

to use the bathroom, a reasonable person innocent of any crime would have believed under those circumstances that he or she was in custody.

People v. Jason D. Liggins
Appellate Division, Fourth Department
2009 WL 1981760
July 10, 2009

This is a fun case in the area of search and seizure. It's good to see this Court point out that County Court should have granted the motion to suppress the drugs and the drug paraphernalia seized. Particularly because in doing so they reject each of the People's arguments: that the officers were in "hot pursuit", that there were "exigent circumstances" to justify the warrantless entry into the defendant's apartment, and that the entry was justified by the emergency exception to the warrant requirement.