

**CASES OF INTEREST**  
**June 2009**

**People v. Jonathan Mattocks**  
**Court of Appeals**  
**12 NY3d 326**  
**April 30, 2009**

Although this case involved a completely different topic, buried in section four of the decision was a point to beware of in the future:

The Court affirmed the denial of a suppression (Huntley) motion without a hearing. The police had charged the defendant with selling subway riders "swipes" of his Metrocard. The defendant maintained in his motion that he had merely been speaking with neighborhood acquaintances, but never **affirmatively denied the assertion** of the police. Because the defense allegedly failed to challenge the officer's statement, leaving no factual dispute, the Court held there was no issue that needed to be resolved by way of a hearing.

**In the Matter of Iyona G.**  
**Appellate Division, Fourth Department**  
**60 AD3d 1403**  
**March 20, 2009**

Particularly of note to those of you who handle JDs:

The Court found this petition facially insufficient. The juvenile was being arrested for disorderly conduct, and then resisting arrest. However, since the charge of resisting arrest must contain the element that the **arrest was authorized**, and a warrantless arrest for a juvenile is authorized only in cases where an adult could be arrested for a crime, and disorderly conduct is a violation and not a crime, the Court found that the petition had to be dismissed.

**People v. Joseph Gray**  
**Appellate Division, Fourth Department**  
**2009 WL 1163872**  
**May 1, 2009**

In this case the trial court assured the defendant that his 190.50 issue--his right to testify before the Grand Jury which had been raised and denied by the court--would survive his plea. Defendant entered a plea of guilty in reliance on that assurance. The judge then refused to allow him to withdraw his plea when the defendant discovered that his issue was forfeited by the plea.

The Court found that this was an abuse of discretion, and the plea was not knowingly, voluntarily, and intelligently entered. Therefore, they vacated the plea and remitted the matter.

**People v. Santino Buccina**  
**Appellate Division, Fourth Department**  
**878 NYS2d 530**  
**May 1, 2009**

When the defendant discovered that he would not be allowed to testify before the grand jury in his street clothes, he refused to do so in his jail clothes. Unfortunately, the Court held that that constituted his choice not to testify and, therefore, he was not denied his statutory right to do so.

Further, the Court further refused to decide if having testified in his jail clothes would have impaired the integrity of the grand jury proceeding, resulting in prejudice to the defendant.

Finally, for those of you who have been living under a rock:

First, you must read the Supreme Court case of **Arizona v. Gant**, 129 S Ct 1710, decided April 21, 2009, which held that the search of the defendant's vehicle while he was handcuffed in a patrol car was unreasonable, because nothing inside the vehicle was within his grabbable area.

The Court further found that to justify even a search incident to arrest, it must be reasonable to believe that evidence relevant to the crime of arrest might be found in that vehicle. Here, no evidence of a VTL 511-type crime could be ascertained from the inside of the vehicle.

Second, the Court of Appeals reversed the Third Department, and determined that the failure to obtain a warrant based on probable cause before placing a GPS device on the vehicle of a defendant, or to possess an exception to the warrant requirement, did constitute a Fourth Amendment violation. **People v. Scott Weaver**, 2009 WL 1286044, decided May 12, 2009.