

CASES OF INTEREST
June, 2011

People v. Marcos Fernandez
Court of Appeals
2011 WL 2149523
June 2, 2011

In this case the Court affirmed the Appellate Division which had reversed the trial court. They found that the court below had improperly deprived the defendant of his right to present testimony in a case of sexual conduct against a child. The testimony would have consisted of relatives of both parties, although they were the parents of the defendant, testifying that the female complainant had a bad reputation in the “community” for truth and veracity.

In so holding, the Court made two important findings: First, that the presentation of **reputation evidence** by a criminal defendant is a **matter of right**, not discretion. Second, that family and family friends **can** constitute a relevant **community** for such purpose.

This Court found the trial court’s decision to exclude was an abuse of discretion **as a matter of law**. They also cautioned the trial courts not to use reliability (the basis for knowing the reputation) as a ground for excluding evidence it believes is not credible (coming from someone not worthy of belief). In other words, as with all questions of credibility, it is a factual one for the jury.

People v. Shawn Hunter
Court of Appeals
2011 WL 2149509
June 2, 2011

Here the Court unanimously reiterated its 1987 holding in *People v. Stith* (69 NY2d 313) that courts will not consider the People’s argument that the **defendant lacked standing** to challenge the legality of a search or seizure if it is raised for the first time at the appellate level.

Any claim by the prosecution that the defendant lacked standing must be asserted to the **trial court**, or it is not preserved and the appellate courts should not entertain it.

People v. Owen Steward
Court of Appeals
2011 WL 2183309
June 7, 2011

This case reversed the trial court and the Appellate Division on a **voir dire** issue. The trial court had imposed a 5-minute limitation on the questioning of the prospective jurors by counsel. However, this Court reversed, not because the limit was per se invalid, but because it became so on the facts of this case.

So, it cannot be argued from this holding that this sort of restriction is reversible. It can be argued, though, that the trial court must take into consideration the following: the number of jurors and alternate jurors to be selected; the number of peremptory challenges available; the number, nature and seriousness of the pending charges; any notoriety the case has received; any special legal issues, including anticipated defenses; any unique concerns emanating from the identity or characteristics of the defendant, the victim, the witnesses or counsel; and the extent to which the court will examine the prospective jurors on relevant topics.

Finally, the Court found that it is **incumbent upon counsel** to advise the court if any temporal limitation imposed on juror questioning is proving, in practice, to be **unduly restrictive and prejudicial**.