

CASES OF INTEREST
November 2009

People v. Abney and Allen
Court of Appeals
2009 WL 3425059
October 27, 2009

These were both eyewitness identification cases, in which the court below excluded **expert testimony** on the issue of the unreliability of **eyewitness testimony**. In Abney, because the case turned on the accuracy of that identification, and there was little or no corroborating evidence, the Court found that it was an abuse of discretion and not harmless error to exclude the proffered expert testimony.

However, the Court found that the Allen case was more akin to their previous decisions in Lee [96 NY2d 157 (2001)] and Young [7 NY3d 40 (2006)], and because the case did not depend exclusively on the eyewitness testimony, the Court refused to second-guess the lower court's decision to exclude the expert testimony.

People v. Oscar Garcia-Gual
Appellate Division, Fourth Department
2009 WL 3790553
November 13, 2009

In this case it was good to see the Appellate Division reiterating the fact that pursuant to CPL 470.15(6)(b) they have the discretion **both** to reverse or modify a sentence in the interest of justice, and to review any sentence despite the fact that what the defendant received was bargained-for.

People v. Daniel Rose
Appellate Division, Fourth Department
2009 WL 3791841
November 13, 2009

Continuing a long line of cases that began back in 1997 with Byer v. Jackson (241 AD2d 943) the Court said that **police stops of automobiles** in this State are legal **only** pursuant to:

- 1) routine nonpretextual traffic checks to enforce traffic regulations; or
- 2) where there exists at least a reasonable suspicion that the driver or occupants of the vehicle have committed, are committing, or are about to commit a crime; or
- 3) where the police have probable cause to believe that the driver has committed a traffic violation.

In this case there were no allegations of criminal activity, so the Court said that the stop was valid only if it was supported by probable cause to believe that the defendant had committed a traffic violation. The defendant here had flashed his high beams “for particularly no reason” which the officer cited as a violation of VTL section 375(3).

However, the Court found that the mere flashing of lights alone, did not constitute a violation of the statute, and thus the stop of the vehicle was based on a mistake of law. The Court reversed, vacated the guilty plea, and granted the motion suppressing all the evidence that had lead to the indictment for a felony DWI.

[**N.B.** This goes well beyond the Ingle standard that a stop is lawful so long as it is not the product of mere whim or caprice, and is based on articulable facts.]

People v. John Gayden
Appellate Division, Fourth Department
2009 WL 3790925
November 13, 2009

Here, the Court found that although the defendant had consented to accompany the police to the location of his reported robbery, once the officers doubted his version of the facts and transported him to the police station there was **no proof that his consent continued**, i.e. that his accompanying the officers to the station was voluntary.

Therefore, since a reasonable person innocent of any crime would have felt his presence at the police station was custodial, it became the equivalent of an arrest. Since that arrest was without probable cause, statements made to the investigating officers should have been suppressed.

People v. Dylan Bianco
Appellate Division, Fourth Department
2009 NY Slip Op 08371
November 13, 2009

In this case the Court dismissed an indictment charging defendant with criminally negligent homicide. While the defendant had left the decedent in his car, where he later died, the Court found that this was not a **sufficiently direct cause of that death**.

They held instead that the decedent’s death was attributable solely to a drug overdose, and that he had both obtained and used the drugs himself, outside the presence of the defendant.