

CASES OF INTEREST
October 2009

People v. Jose Mejia
Appellate Division, Fourth Department
64 AD3d 1144
July 2, 2009

Contrary to the conclusion of the trial court, this Court found that the **defendant was in custody** when he was interrogated. Although the defendant did agree to accompany the officers to the police station, he was then frisked and handcuffed. The cuffs were not removed until the defendant was placed in a secure interview room, and he was escorted any time he left the room thereafter.

The Court agreed with the defense argument that a reasonable person, innocent of any crime, would have believed under those circumstances that he or she was in custody. The opinion cited many cases for this proposition, including People v. Yukl, 25 NY2d 585, which established this standard in **1969**.

People v. Thomas Edwards
Appellate Division, Fourth Department
65 AD3d 829
August 28, 2009

In this case a vehicle was stopped for excessively tinted windows. Having exhausted that investigation, however, the deputies continued to **extend the traffic stop** to further investigate the crumbs of crack cocaine allegedly seen in the defendant's palm.

This Court found that the scope, including length, of any detention must be carefully tailored to its underlying justification. Because the deputies had enough information to issue a traffic summons before observing any indicia of criminality, they lacked reasonable suspicion, and any further detention was unlawful.

Therefore, they were no longer engaged in the performance of a lawful duty when the charges of assault, obstructing governmental administration and resisting arrest arose, and all should have been dismissed. In addition, the unlawful detention caused the suppression of the almost nine ounces of cocaine found after the car was impounded.

People v. Timothy C. Darrisaw
Appellate Division, Fourth Department
2009 WL 3153941
October 2, 2009

Here, the Fourth Department reaffirmed the Pacer decision (21 AD3d 192, affd 6 NY3d 504), and concluded that the “Affidavit of Regularity/Proof of Mailing” issued by the Department of Motor Vehicles **constituted testimonial evidence** and did not fall within the business records exception to the hearsay rule.

Therefore, admitting this affidavit as the only evidence that the defendant had the requisite notice of his driver’s license suspension was a confrontation clause (Crawford) violation and necessitated reversal.

People v. Robert E. Bush
Appellate Division, Fourth Department
2009 WL 3152888
October 2, 2009

The defendant’s right to confrontation was not violated, however, by admission of a certified abstract of a defendant’s registration record. This Court found that because the record contained only objective facts, its content was not directly accusatory and it did not reflect the exercise of fallible human judgment, it was **not testimonial**.

People v. James Kobza
Appellate Division, Fourth Department
2009 WL 3153337
October 2, 2009

The Court agreed here that a hotel room guest has a **legitimate expectation of privacy** in that room. However, that expectation is “lost” if the guest fails to check out of the hotel by the required time, making the search of that room lawful if it was based on the apparent authority of the hotel owner to consent to same.

It is worth noting that the Court was unconcerned with the fact that the defendant’s tenancy expired while he was being detained after having been arrested.