

Decisions of Interest

OCTOBER 30, 2023

CRIMINAL

COURT OF APPEALS

People v Douglas | October 24, 2023

INVENTORY SEARCH PROTOCOL | CONSTITUTIONAL | DISSENT

The defendant appealed from a First Department order affirming his 2nd degree CPW conviction. The Court of Appeals affirmed, holding that the NYPD's inventory search protocol is constitutional. One judge dissented. In the dissent's view, the protocol is unconstitutional because it fails to instruct officers about how much time may pass between an inventory search and the invoicing of property or how the property must be safeguarded during the process. Without those instructions, the protocol cannot facilitate the narrow permissible purposes of inventory searches: protecting property, ensuring against theft claims, and protecting officers.

[People v Douglas \(2023 NY Slip Op 05350\)](#)

People v Lovett | October 24, 2023

PEOPLE'S APPEAL | SPEEDY TRIAL | TRAFFIC INFRACTION | AFFIRMED

The People appealed from a County Court order that affirmed the dismissal of a simplified traffic information charging a single traffic infraction. The Court of Appeals affirmed, with one judge dissenting. The People's erroneous concession in Town Court that CPL 30.30 applied in this case rendered the issue unreviewable. The dissent disagreed and would have reversed and remitted. Although CPL 30.30 (1) (e) was amended before commencement, during the pendency of the direct appeal the Court of Appeals decided *People v Galindo* (38 NY3d 199 [2022]), which held that a standalone traffic infraction is not subject to statutory speedy trial time limits.

[People v Lovett \(2023 NY Slip Op 05348\)](#)

FIRST DEPARTMENT

People v Savage | October 26, 2023

MIRANDA VIOLATION | TAINT | NEW TRIAL

The defendant appealed from a Bronx County Supreme Court judgment convicting him of 2nd degree murder after a jury trial. The First Department reversed, suppressed certain evidence, and ordered a new trial. The defendant sought to suppress two statements he made to police and an ADA. After reading the defendant his *Miranda* rights, officers told him that his statements might not be used against him and that he would benefit by confessing. The defendant admitted to stabbing his wife in self-defense and gave information that led police to the knife. Hours later, an ADA again *Mirandized* the defendant, who repeated the account he told police. While Supreme Court properly suppressed the first statements to police, it should have also suppressed the knife and

the statements to the ADA. The break between the interrogations was insufficient to dispel the taint of the initial *Miranda* violation. The Legal Aid Society of NYC (Nao Terai, of counsel) represented the appellant.

[People v Savage \(2023 NY Slip Op 05452\)](#)

THIRD DEPARTMENT

People v Van Alstyne | October 26, 2023

GUILTY PLEA | POSSIBLE DEFENSE | REVERSED

The defendant appealed from a Columbia County Court judgment convicting him of 2nd degree assault. The Third Department reversed, vacated the plea, and remitted. The defendant's guilty plea was not knowing, voluntary, and intelligent. At sentencing, the defendant stated that he was remorseful for injuring the victim; they had consumed significant amounts of alcohol and she was being physically combative; and he wanted to present evidence about the "sequence of events." Although the People voiced concern that his statements raised the possibility of a defense, the court proceeded with sentencing without further inquiry or providing the defendant an opportunity to withdraw his plea. Lisa A. Burgess represented the appellant.

[People v Van Alstyne \(2023 NY Slip Op 05423\)](#)

APPELLATE TERM

People v Walker | 2023 WL 6968769

FACIAL INSUFFICIENCY | DISMISSED

The defendant appealed from a Bronx County Criminal Court judgment convicting her of providing inadequate shelter for dogs left outside based on her guilty plea. The Appellate Term, First Department reversed and dismissed the accusatory instrument as facially insufficient. The defendant was charged with violating Agriculture and Markets Law § 353 (overdriving, torturing and injuring animals; failure to provide proper sustenance) after two emaciated and unsanitary dogs were found in an apartment. But there were no facts alleged in the complaint connecting the defendant to either the dogs or the apartment.

[People v Walker \(2023 NY Slip Op 51119\[U\]\)](#)

TRIAL COURTS

People v Cabezas | 2023 WL 7010003

CPL 30.30 | INVALID COC | DISMISSAL MANDATORY

The defendant sought dismissal of an accusatory instrument charging him with 3rd degree assault and related offenses based on CPL 30.30. Kings County Criminal Court granted the motion. The People's lack of due diligence, failure to disclose certain discoverable items, and redaction of other discoverable items absent a protective order rendered their COC invalid. The People's request for a CPL 245.80 sanction instead of dismissal was misplaced. CPL 245.80 was designed to address compliance issues when the People only violate the 20- or 30-day discovery deadlines of CPL 245.10. CPL 245.80 sanctions are discretionary, while dismissal under CPL 30.30 is mandatory when the People fail to file a valid COC within their speedy trial time. The Legal Aid Society of NYC (Michael Teitel, of counsel) represented the defendant.

[People v Cabezas \(2023 NY Slip Op 51132 \[U\]\)](#)

***People v Yu* | 2023 WL 6967295**

CANNABIS | PURE WEIGHT STANDARD | DISMISSED

The defendant moved to dismiss an indictment charging him with 2nd degree CPCS and other related offenses. Kings County Supreme Court dismissed the counts relating to cannabis possession. Penal Law article 222 uses a pure weight standard in criminalizing the possession of cannabis in certain amounts. Because the grand jury evidence only established an aggregate weight of the tested substance, it was legally insufficient to support the cannabis-related charges. The Lazzaro Law Firm, P.C. (James Kirshner, of counsel) represented the defendant.

[People v Yu \(2023 NY Slip Op 51121\[U\]\)](#)

***People v Luke* | 2023 WL 6967288**

CPL 30.30 | DISCOVERY | DISMISSED

The defendant moved to dismiss the accusatory instrument on speedy trial grounds. Queens County Criminal Court granted the motion. The People filed their COC/SOR on the last day of CPL 30.30 time even though they were aware that they had not disclosed all known discovery and had not ascertained whether other discoverable material existed. The People made no efforts to obtain the materials and information until three days before their speedy trial deadline. Nor did they petition the court for relief. Rather, it appeared that the People filed their COC “only because it was their last day on their readiness clock, not because they had actually complied with their discovery obligations.” Todd Greenberg represented the defendant.

[People v Luke \(2023 NY Slip Op 51122\[U\]\)](#)

***People v Salguero-Saavedra* | 2023 WL 7010035**

SUPPRESSION | STATEMENT | SOBRIETY TESTS

The defendant sought suppression of statements and evidence in relation to DWI charges filed against him. The First District Court of Nassau County partially granted the motion. The People presented no evidence that one of two statements made by the defendant to police was voluntary, requiring suppression of that statement. Further, the proof showed that an officer failed to continually observe the defendant, as required, for 20 minutes before administering a portable breath test (PBT). The officer also failed to ask if the defendant was taking any of the medications that could affect horizontal gaze nystagmus (HGN) before administering an HGN test. Because of these errors, the results of the PBT and HGN test were suppressed.

[People v Salguero-Saavedra \(2023 NY Slip Op 51133\[U\]\)](#)

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