

# Decisions of Interest

AUGUST 12, 2022

## CRIMINAL

### SECOND DEPARTMENT

#### ***People v Lewis*** | August 10, 2022

WALLET SEARCH | UNJUSTIFIED

The defendant appealed from a judgment of Queens County Supreme Court, convicting him of numerous crimes, following a nonjury trial. The Second Department modified. The appeal brought up for review an order denying suppression. The defendant allegedly confronted the complainant on a street corner, said that he had a weapon, took the complainant's wallet, and fled the scene. Since the defendant was found in the distinctive vehicle in which the robbery perpetrator had fled, the officers reasonably suspected that he had committed that crime. But there was no justification for searching his pocket and removing his wallet after he was caught and a protective pat-down yielded no weapon. The officers committed an additional constitutional violation in opening the wallet, searching its contents, and determining that it belonged to the victim. The suppression error was not harmless as to the robbery-related counts. Where the complainant did not see the perpetrator's masked face, it was reasonably possible that the admission of the powerful corroborating evidence contributed to the robbery-related convictions. Thus, a new trial was ordered on those counts. Appellate Advocates (Sarah Cohen, of counsel) represented the appellant.

[People v Lewis \(2022 NY Slip Op 04920\)](#)

#### ***People v Richards*** | August 10, 2022

COUNSEL | EFFECTIVE

The defendant appealed from a judgment of Queens County Supreme Court, convicting him of multiple offenses. The Second Department affirmed. The defendant was not denied effective assistance of counsel. His attorney's decision to cross-examine the complainant about her application to obtain a visa under the Violence Against Women Act—opening the door to testimony about the defendant's prior bad acts—was a matter of trial strategy. Counsel was attempting to undermine the complainant's credibility by showing a motive to lie. Unsuccessful trial tactics did not constitute ineffective assistance. In addition, counsel's performance was not defective regarding the failure to move for a trial order of dismissal as to several counts, on the ground that the element of physical injury had not been established. Such motion had little or no chance of success.

[People v Richards \(2022 NY Slip Op 04921\)](#)

# SUPREME COURT

## ***People v Jian Lin*** | 2022 WL 3206284

ILLUSORY SOR | REARGUMENT

At issue was whether a court's determination of the People's readiness pursuant to CPL 30.30 (5) was subject to subsequent re-evaluation. In this case, New York County Supreme Court said no. Since the 2020 reforms, if the SOR occurred on the record, judicial inquiry occurred immediately; and if by notice, at the appearance thereafter. The readiness inquiry included an opportunity for the defendant to challenge discovery compliance. Although the Budget Bill lacked legislative history, the goals identified in floor debates included the free exchange of information, open discovery, and a speedy trial. The law required the court to *contemporaneously* determine issues of discovery compliance and readiness—rather than letting a case drag on and on, only to fall prey to violations that could have been resolved earlier. Here the prosecutor did not challenge the defendant's complaint about the lack of medical records; address concerns as to the list of disclosed materials; or request a second call to gather more information. Based on uncontested defense allegations and the apparently incomplete COC, Supreme Court determined that the SOR was invalid. The People moved to reargue, asserting that, because discovery had been turned over prior to the readiness inquiry, there should be no CPL 245.80 sanctions. But finding the SOR illusory was not a discovery sanction; it was a statutorily mandated determination. Further, it was of no moment that the People could now show that they were indeed ready—the statutory time for such showing had passed. Subjecting a CPL 30.30 (5) determination to collateral attack would undermine statutory goals by prolonging the resolution of discovery and readiness issues. The motion to reargue was therefore denied. John Yong represented the defendant.

[People v Jian Lin \(2022 NY Slip Op 22243\)](#)



### **Cynthia Feathers**

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