

Decisions of Interest

AUGUST 28, 2023

CRIMINAL

SECOND CIRCUIT

United States v Krivoi | August 22, 2023

KIDNAPPING | DURATION OF DETENTION

The defendant appealed from a District Court—EDNY judgment convicting him of, among other things, kidnapping, kidnapping conspiracy, and extortion conspiracy after a jury trial. The Second Circuit affirmed. A detention must be for an appreciable length of time to distinguish kidnapping from a detention that is simply incidental to a different crime. After analyzing the Third Circuit's test in *Government of the Virgin Islands v Berry* (604 F2d 221 [3d Cir 1979]), which has been adopted by other circuits, the Second Circuit opted for a more simplified test—if a defendant is charged with kidnapping and another offense, the conduct will constitute kidnapping only if the detention is for an appreciably longer period than is required to commit the other offense. While the detention at issue here was relatively brief (30 minutes at most), the defendants beat the victim, threatened him and his family with injury and death, and moved him to several different locations while extorting him for money. The victim was held for an appreciably longer time than was necessary to extort him and, even after he agreed to pay the defendants, they continued to detain him and transport him against his will.

[United States v Krivoi \(21-1439\)](#)

TRIAL COURTS

People v Dorado | 2023 WL 5493765

CPL 30.30 AND 245 | MOTION TO RENEW | GRANTED

The defendant renewed his motion to invalidate the People's COC and SOR based on a change in the law. Kings County Criminal Court granted the motion. The People's failure to timely disclose underlying police disciplinary records rendered the COC and SOR invalid and illusory under a recent Appellate Term, Second Department decision requiring the People to disclose all information tending to impeach witness credibility (*see People v Hamizane*, 2023 NY Slip Op 23233 [App Term, 2d Dept, 9th & 10th Jud Dists 2023]). As 177 days were attributable to the People, the misdemeanor accusatory instruments were dismissed. Brooklyn Defender Services (Jeremy Gross, Esq. of counsel) represented the defendant.

[People v Dorado \(2023 NY Slip Op 23261\)](#)

People v Andrews | 2023 WL 5356339

CPL 30.30 AND 245 | DISMISSAL | LACK OF DUE DILIGENCE

The defendant moved to dismiss the charges against him pursuant to CPL 30.30. Bronx County Criminal Court granted the motion. Defense counsel notified the People that images listed in the People's COC were missing from the discovery provided. In response, the People asserted that the reference was inadvertent and that the images did not exist. The People later insisted again that the images did not exist, and the court denied the defendant's request to invalidate the COC in reliance on the People's representations. The People subsequently disclosed the images with a supplemental COC. The initial COC was invalid because the People did not exercise due diligence in ascertaining the existence of the images within police possession. The defect could not be cured by a supplemental COC. Caitlyn Forrester-Johnson, Esq. represented the defendant.

[People v Andrews \(2023 NY Slip Op 50867\[U\]\)](#)

People v Cashwell | 2023 WL 5341624

DISCOVERY | SHOTSPOTTER | MOTION DENIED

The defendant challenged the People's COC and SOR as invalid and illusory based on their failure to disclose certain ShotSpotter materials. New York County Supreme Court denied the motion. The People satisfied their obligation by turning over ShotSpotter records during their initial disclosure and providing a newly generated report as supplemental disclosure upon the defendant's request. Information about the reliability of ShotSpotter technology is accessible to the defense and it is the defendant's responsibility to obtain it when challenging its scientific reliability.

[People v Cashwell \(2023 NY Slip Op 50860\[U\]\)](#)

The ILS Decisions of Interest summaries are for informational purposes only and are not intended to provide legal advice to any individual or entity. While every effort has been made to ensure their accuracy, the summaries are provided on an "as is" basis with no express or implied guarantees of completeness, accuracy, or timeliness.



Statewide Appellate Support Center

New York State Office of Indigent Legal Services

80 S Swan St, Ste 1147, Albany, NY 12210 | www.ils.ny.gov

(518) 486-6602 | SASC@ils.ny.gov