

Lawfulness of Stop, Arrest, Search or Seizure

Note: Absent the prosecution of a crime that requires a determination of whether an officer was performing a “lawful duty” involving a stop, arrest, search or seizure [e.g. Penal Law § 120.05(3)], evidence of the lawfulness of such conduct is normally not admissible and the lawfulness of such conduct is not a question for the jury. People v Scott, 145 AD3d 555 [1st Dept 2016].

In the words of Scott at 555-56: "The court did not err by instructing the jury that the lawfulness of the police stop of defendant was not a question for the jury to decide (see e.g. People v Murphy, 284 AD2d 120 [1st Dept 2001]). The court's brief and neutral instruction. . . was suitably balanced by other instructions relating to credibility. Nothing in the instruction suggested that the jury should credit the police testimony, or that the court had made a finding in that regard."

Should a court decide that there is reason to believe from the evidence that is presented or other conduct during the trial that the jury may consider the lawfulness of such conduct, the court may give the following instruction.

Caveat: While the lawfulness of a stop, arrest, search or seizure is not an issue for the jury, the credibility of the officer is. Thus, for example, the officer's testimony at a suppression hearing that the Suppression Court does not credit is a subject for impeachment. See Guide to NY Evidence rule 6.16(3)(b), Impeachment of Law Enforcement Officer ["A judicial determination that a law enforcement witness testified falsely in a proceeding, while not binding on the question of the witness's credibility in the proceeding in which the witness is testifying, constitutes a good faith basis for an impeachment inquiry of that witness with respect to that determination"].

The instruction on Credibility should precede the giving of this instruction.

[Members of the jury,] you have (heard evidence of (and/or) seen a video of] a police officer's [(specify: e.g.: stop, arrest, search, seizure of property] of/from the defendant.

The lawfulness of a [(specify: e.g.: stop, arrest, search, seizure of property] of/from the defendant is not a question for a jury to decide.

So, while you may, as I have explained, consider all the evidence presented regarding a witness's actions in order to evaluate the believability of that witness's testimony, you must not decide whether the [(*specify: e.g.:* stop, arrest, search, seizure of property)] of/from the defendant was lawful. Your sole responsibility is to decide whether the People have, or have not, proven the defendant guilty of a charged crime beyond a reasonable doubt.