State of New York
Court of Appeals

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Chief Clerk and
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Clerk's Office
20 Eagle Street
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COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed
by the Court of Appeals Clerk's Office

February 11, 2022 through February 17, 2022

Each week the Clerk's Office prepares a list of recently-filed appeals, indicating short title, jurisdictional predicate, subject matter and key issues. Some of these appeals may not reach decision on the merits because of dismissal, on motion or sua sponte, or because the parties stipulate to withdrawal. Some appeals may be selected for review pursuant to the alternative procedure of Rule 500.11. For those appeals that proceed to briefing in the normal course, the briefing schedule generally will be: appellant's brief to be filed within 60 days after the appeal was taken; respondent's brief to be filed within 45 days after the due date for the filing of appellant's brief; and a reply brief, if any, to be filed within 15 days after the due date for the filing of respondent's brief.

The Court welcomes motions for amicus curiae participation from those qualified and interested in the subject matter of these newly filed appeals. Please refer to Rule 500.23 and direct any questions to the Clerk's Office.

MATTER OF CURRY-MALCOLM v NYS DIVISION OF HUMAN RIGHTS:
4th Dept. App. Div. order of 11/12/21; dismissal; sua sponte examination of whether any jurisdictional basis exists for the appeal;
Civil Rights--State Division of Human Rights--Dismissal of complaints.
New York State Division of Human Rights determination dismissed the complaints of petitioner; App. Div. confirmed the determination and dismissed the petition.

PEOPLE v SERRANO (LUIS):
3rd Dept. App. Div. order of 12/16/21; affirmance; leave to appeal granted by Colangelo, J., 2/1/22; Rule 500.11 review pending;
Crimes--Right to Remain Silent--Whether defendant was denied his right to a fair trial as a result of the People eliciting testimony that defendant invoked his right to

counsel and his right against self-incrimination; Crimes--Identification of Defendant-- Whether People improperly elicited testimony that photograph of defendant in a photo array was a mug shot; Crimes--Lesser Included Offense--Whether the trial court properly denied request to charge assault in the third degree as a lesser included offense.
County Court, Schenectady County, convicted defendant of assault in the first degree, criminal possession of a weapon in the third degree and criminal mischief in the fourth degree, and imposed sentence; App. Div. affirmed.

PEOPLE v STROUD (KYSEAN):
4th Dept. App. Div. order of 12/23/21; affirmance; leave to appeal granted by Whalen, J., 1/28/22; Rule 500.11 review pending;
Crimes–Unlawful Search and Seizure--Whether police were justified in stopping a car based on the odor of marihuana alone; whether the officers' act of stopping the car was based on a hunch (*see People v Sobotker*, 43 NY2d 559 [1978]); whether police testimony was inconsistent and incredible; whether there was adequate foundation to establish police were qualified to detect odor of marihuana.
County Court, Erie County, convicted defendant upon his plea of guilty of criminal possession of a weapon in the second degree and unlawful possession of marihuana in the second degree; App. Div. affirmed and remitted for proceedings pursuant to CPL 460.50 (5).

SUN v KELLY:
1st Dept. App. Div. order of 12/16/21; dismissal; sua sponte examination of whether any jurisdictional basis exists for the appeal;
Appeal--Dismissal
Supreme Court, Bronx County, granted defendants' motion to dismiss the complaint; App. Div. dismissed the appeal.