

COURT OF APPEALS NEW FILINGS

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

July 3, 2015 through July 9, 2015

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.

BANK (HERMAN), PEOPLE v:

4TH Dept. App. Div. order of 1/2/15; affirmance; leave to appeal granted by Lippman, Ch.J., 6/22/15;

CRIMES - RIGHT TO COUNSEL - EFFECTIVE REPRESENTATION - CLAIM THAT DEFENDANT WAS DEPRIVED OF OPPORTUNITY TO PLEAD TO LESSER SENTENCE BY COUNSEL'S MISUNDERSTANDING OF LAW AND INCORRECT ADVICE DURING PLEA NEGOTIATIONS - WHETHER THE APPELLATE DIVISION ERRED IN CONCLUDING THAT DEFENDANT WAS NOT DEPRIVED OF THE EFFECTIVE ASSISTANCE OF COUNSEL DURING PLEA NEGOTIATIONS;

County Court, Monroe County, denied defendant's motion to vacate the judgment of conviction pursuant to CPL 440.10; App. Div. affirmed.

BOND v LICHTENSTEIN:

1ST Dept. App. Div. order of 6/16/15; affirmance; sua sponte examination whether the order appealed from finally determines the action within the meaning of the Constitution and whether a substantial constitutional question is directly involved to support an appeal as of right;

JUDGMENTS - FOREIGN JUDGMENT - COMITY - SUMMARY JUDGMENT BASED ON A HONG KONG JUDGMENT AWARDING CHILD SUPPORT;

Supreme Court, New York County, granted plaintiff's motion for summary judgment in lieu of a complaint, and denied defendant's motion to disqualify plaintiff's attorneys; Supreme Court then awarded plaintiff the total sum of \$599,644.76; App. Div. affirmed.

CLARK (PRINCE), PEOPLE v:

2ND Dept. App. Div. order of 4/29/15; affirmance with dissents; leave to appeal granted by Miller, J., 6/29/15;

CRIMES - RIGHT TO COUNSEL - EFFECTIVE REPRESENTATION - TRIAL COUNSEL'S FAILURE TO REQUEST THAT THE COURT CHARGE THE JURY ON THE POTENTIAL ALTERNATIVE DEFENSE OF JUSTIFICATION - TRIAL COURT'S FAILURE TO MAKE A JUSTIFICATION CHARGE TO THE JURY SUA SPONTE; CLAIMED DUE PROCESS VIOLATION;

Supreme Court, Kings County, convicted defendant, upon a jury verdict, of murder in the second degree and assault in the second degree, and imposed sentence; App. Div. affirmed.

CHARITE, et al. v DUANE READE, INC., et al.:

2ND Dept. App. Div. order of 9/24/14; reversal; leave to appeal granted by Court of Appeals, 6/30/15;

CIVIL RIGHTS - ELECTION OF REMEDIES - RETALIATION IN EMPLOYMENT - PRIOR ACTION - WHETHER THE APPELLATE DIVISION ERRED IN DETERMINING THAT PLAINTIFF'S CAUSE OF ACTION FOR UNLAWFUL RETALIATION IN EMPLOYMENT IN VIOLATION OF ADMINISTRATIVE CODE OF THE CITY OF NEW YORK §8-107 WAS BARRED BY THE ELECTION OF REMEDIES PROVISION IN LABOR LAW §740(7);

Supreme Court, Kings County, in an action to, among other things, recover damages for unlawful retaliation in employment in violation of Administrative Code of the City of New York §8-107, denied, without prejudice, so much of the motion by defendants Duane Reade, Inc., Walgreen Company, Inc., Walgreen Eastern Co., Inc. that, pursuant to CPLR 3211(a), sought to dismiss the first cause of action as asserted against them; App. Div. reversed, granted that branch of defendants' motion which was to dismiss the first cause of action as asserted against them.

HARDEE (STANLEY), PEOPLE v:

1ST Dept. App. Div. order of 3/26/15; affirmance; leave to appeal granted by Acosta, J., 6/18/15; Rule 500.11 review pending;

CRIMES - UNLAWFUL SEARCH AND SEIZURE - WHETHER LIMITED SEARCH OF CAR STOPPED FOR TRAFFIC VIOLATIONS WAS JUSTIFIED AFTER DEFENDANT HAD BEEN REMOVED FROM THE CAR AND FRISKED - PEOPLE v TORRES (74 NY2d 224 [1989]);

Supreme Court, New York County, convicted defendant of criminal possession of a weapon in the second degree, and sentenced him, as a persistent violent felony offender, to a term of 16 years to life; App. Div. affirmed.

MILLER (JAMES), PEOPLE v:

1ST Dept. App. Div. order of 11/18/14; affirmance; leave to appeal granted by Abdus-Salaam, J., 7/1/15;

CRIMES - JURORS - SELECTION OF JURY - QUESTIONING OF PROSPECTIVE JURORS - WHETHER THE TRIAL COURT ERRED IN PRECLUDING DEFENDANT FROM QUESTIONING PROSPECTIVE JURORS DURING VOIR DIRE REGARDING WHETHER THEY COULD DISREGARD A CONFESSION IF THEY FOUND IT TO BE INVOLUNTARY WHERE THE PEOPLE HAD NOT YET DECIDED WHETHER THEY WOULD INTRODUCE DEFENDANT'S STATEMENTS AT TRIAL; RIGHT TO COUNSEL - EFFECTIVE REPRESENTATION - WHETHER DEFENSE COUNSEL WAS INEFFECTIVE FOR FAILING TO OBJECT TO VARIOUS COMMENTS MADE BY THE PROSECUTOR IN SUMMATION;

Supreme Court, Bronx County, convicted defendant, after a jury trial, of manslaughter in the first degree, and sentenced him to a term of 25 years; App. Div. affirmed.

PULLMAN v SILVERMAN, et al.:

1ST Dept. App. Div. order of 2/26/15; affirmance; leave to appeal granted by App. Div., 6/30/15;

PHYSICIANS AND SURGEONS - MALPRACTICE - SUMMARY JUDGMENT - WHETHER DEFENDANT DOCTOR WAS ENTITLED TO SUMMARY JUDGMENT DISMISSING COMPLAINT ALLEGING THAT DOCTOR'S NEGLIGENT ADMINISTRATION OF LIPITOR OR THE COMBINATION OF LIPITOR AND AZITHROMYCIN CAUSED PLAINTIFF'S ATRIOVENTRICULAR HEART BLOCK - WHETHER THE COURTS BELOW CORRECTLY HELD THAT PLAINTIFF FAILED TO SUBMIT EVIDENCE SUFFICIENT TO RAISE A TRIABLE ISSUE OF FACT THAT HIS EXPERTS' OPINIONS REGARDING PROXIMATE CAUSATION WERE GENERALLY ACCEPTED IN THE MEDICAL COMMUNITY - NECESSITY FOR PEER REVIEWED RESEARCH DIRECTLY ON POINT;

Supreme Court, New York County, dismissed the complaint against defendant Silverman; App. Div. affirmed.

ROMERO (ANTHONY) (a/k/a ROBERT ROSA), PEOPLE v:

2ND Dept. App. Div. order of 12/31/14; affirmance; leave to appeal granted by Lippman, Ch.J., 7/1/15; Rule 500.11 review pending;

CRIMES - HARMLESS AND PREJUDICIAL ERROR - IMPROPER ADMISSION OF STATEMENTS MADE WITHOUT BENEFIT OF MIRANDA WARNINGS - WHETHER EVIDENCE OF GUILT WAS OVERWHELMING; IDENTIFICATION OF DEFENDANT - WHETHER THE HEARING COURT PROPERLY DENIED SUPPRESSION OF SHOW-UP IDENTIFICATION - WHETHER THE EVIDENCE WAS LEGALLY SUFFICIENT TO ESTABLISH DEFENDANT'S IDENTITY AS THE PERPETRATOR;

Supreme Court, Queens County, convicted defendant, upon a jury verdict, of robbery in the first degree and criminal possession of a weapon in the third degree, and imposed sentence; App. Div. affirmed.

YOUNG (TERRENCE), PEOPLE v:

App. Term, 2nd, 11th and 13th Judicial Districts, order of 2/17/15;
affirmance; leave to appeal granted by Lippman, Ch.J., 6/23/15;
CRIMES - RIGHT TO SPEEDY TRIAL - PEOPLE'S SECOND STATEMENT OF
READINESS NOT ILLUSORY - WHETHER THE PEOPLE'S SUBSEQUENT
STATEMENT OF UNREADINESS RENDERED THEIR SECOND OFF-CALENDAR
CERTIFICATE OF READINESS ILLUSORY; WHETHER THE TRIAL-COURT ERRED
IN CURTAILING DEFENSE COUNSEL'S CROSS-EXAMINATION OF A POLICE
WITNESS;

Criminal Court of the City of New York, Kings County, convicted
defendant, after a nonjury trial, of disorderly conduct; App.
Term affirmed.