

COURT OF APPEALS NEW FILINGS

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

July 17, 2015 through July 23, 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.

CHERY (LYXON), PEOPLE v:

1ST Dept. App. Div. order of 4/16/15; affirmance; leave to appeal granted by Fahey, J., 7/13/15;

CRIMES - DEFENDANT AS WITNESS - CROSS-EXAMINATION OF DEFENDANT - IMPEACHMENT - WHETHER THE TRIAL COURT ERRED IN ALLOWING THE PEOPLE TO IMPEACH DEFENDANT WITH OMISSIONS FROM DEFENDANT'S SPONTANEOUS POST-ARREST, PRE-MIRANDA STATEMENT;

Supreme Court, New York County, convicted defendant, after a jury trial, of one count of robbery in the first degree and two counts of robbery in the second degree and sentenced him to an aggregate term of five years' incarceration; App. Div. affirmed.

PERKINS (ANTHONY), PEOPLE v:

2ND Dept. App. Div. order of 1/28/15; affirmance; leave to appeal granted by Read, J., 7/2/15;

CRIMES - IDENTIFICATION OF DEFENDANT - LINEUP - WHETHER LINEUP IS UNDULY SUGGESTIVE WHERE ONLY ONE LINEUP SUBJECT HAS A PARTICULAR PHYSICAL FEATURE (DREADLOCKS) DESCRIBED BY SOME BUT NOT ALL OF THE IDENTIFYING WITNESSES; FAILURE OF PROSECUTION TO PRESERVE A 911 TAPE RECORDING CONTAINING POTENTIALLY EXCULPATORY INFORMATION; CLAIMED FAILURE OF TRIAL JUDGE TO MAKE FACTUAL FINDINGS REGARDING REASONS PROFFERED FOR A PEREMPTORY CHALLENGE BEFORE CONCLUDING THAT THE CHALLENGE TO A JUROR WAS NOT RACIALLY MOTIVATED;

Supreme Court, Queens County, convicted defendant, after a jury trial, of two counts of robbery in the first degree and imposed sentence; App. Div. affirmed.

SHERIDAN v SHERIDAN:

4TH Dept. App. Div. order of 6/19/15; affirmance with dissents; sua sponte examination whether the order appealed from finally determines the action within the meaning of the Constitution and whether the two-justice dissent is on a question of law;

PARENT AND CHILD - CUSTODY - WHETHER A SOUND AND SUBSTANTIAL BASIS EXISTED IN THE RECORD FOR SUPREME COURT'S DETERMINATION TO AWARD SOLE LEGAL AND PHYSICAL CUSTODY TO MOTHER WITH VISITATION TO FATHER;

Supreme Court, Onondaga County, awarded plaintiff mother sole legal and physical custody of the parties' child, set a visitation schedule, allocated attorneys' fees for the attorney for the child, and awarded plaintiff attorneys' fees against defendant father; App. Div. affirmed.