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COURT OF APPEALS NEW FILINGS

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

August 21, 2015 through August 27, 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 H.), PEOPLE v:
4TH Dept. App. Div. order of 6/12/15; modification; leave to appeal granted by Lippman, Ch.J., 8/13/15;
CRIMES - RIGHT TO COUNSEL - EFFECTIVE REPRESENTATION - CHOICE TO PURSUE DEFENSE BASED ON MENTAL DISEASE OR DEFECT - DILIGENCE OF COUNSEL - WHETHER DEFENDANT WAS DEPRIVED OF THE EFFECTIVE ASSISTANCE OF COUNSEL BY COUNSEL'S CHOICE TO PURSUE A DEFENSE BASED ON MENTAL DISEASE OR DEFECT WHILE RELYING ON THE TESTIMONY OF A PHARMACOLOGICAL WITNESS;

County Court, Monroe County, convicted defendant, after a nonjury trial, of two counts of manslaughter in the second degree, vehicular manslaughter in the first degree, two counts of vehicular manslaughter in the second degree, vehicular assault in the second degree, driving while ability impaired by drugs, and one-way violation; App. Div. modified by vacating the convictions of two counts of vehicular manslaughter in the second degree, and driving while ability impaired by drugs, and dismissing counts four, five and seven of the indictment.

HERNANDEZ (RODOLFO), PEOPLE v:
2ND Dept. App. Div. order of 4/15/15; affirmance; leave to appeal granted by Pigott, J., 8/14/15;
CRIMES - RIGHT OF CONFRONTATION - ADMISSION OF CHILD'S OUT-OF-COURT COMMUNICATIONS, AS TESTIFIED TO BY HER PARENTS - EXCITED UTTERANCE EXCEPTION TO THE HEARSAY RULE - WHETHER CHILD'S COMMUNICATIONS WERE NONTESTIMONIAL IN NATURE; WHETHER VERDICT WAS AGAINST THE WEIGHT OF THE EVIDENCE;
Supreme Court, Richmond County, convicted defendant, upon a jury verdict, of sexual abuse in the first degree and endangering the welfare of a child, and imposed sentence; App. Div. affirmed.

INGRAM (TYRELL), PEOPLE v:
1ST Dept. App. Div. order of 2/24/15; affirmance; leave to appeal granted by Read, J., 8/14/15;
CRIMES - WITNESSES - IMPEACHMENT - POLICE OFFICER - WHETHER THE TRIAL COURT CORRECTLY PRECLUDED DEFENSE COUNSEL FROM CROSS EXAMINING POLICE OFFICER WITNESS ABOUT AN UNRELATED FEDERAL CIVIL RIGHTS LAWSUIT IN WHICH THE POLICE OFFICER WAS NAMED AS A DEFENDANT;
Supreme Court, Bronx County, convicted defendant, after a jury trial, of criminal possession of a weapon in the second degree, and sentenced him, as a second felony offender, to a term of 12 years; App. Div. affirmed.

PARRILLA (ELLIOT), PEOPLE v:
1ST Dept. App. Div. order of 12/19/13; affirmance; leave to appeal granted by Read, J., 8/17/15;
CRIMES - POSSESSION OF WEAPON - WHETHER THE TRIAL COURT ERRED IN INSTRUCTING THE JURY THAT TO BE GUILTY OF POSSESSING A "GRAVITY KNIFE" (PENAL LAW § 265.01[1]), DEFENDANT HAD TO KNOW THAT HE HAD A KNIFE IN HIS POSSESSION, AND NOT THAT THE KNIFE HAD THE CHARACTERISTICS OF A "GRAVITY KNIFE" (PENAL LAW § 265.00[5]) - MENS REA; RIGHT TO IMPARTIAL JURY - TRIAL COURT'S REFUSAL TO DISCHARGE A JUROR WHO REPORTED THAT LIVING NEAR DEFENDANT'S EX-GIRLFRIEND COULD AFFECT HER JUDGMENT IN THE CASE;
Supreme Court, New York County, convicted defendant, after a jury trial, of criminal possession of a weapon in the third degree, and sentenced him, as a second felony offender, to a term of 2 1/2 to 5 years; App. Div. affirmed.