

COURT OF APPEALS NEW FILINGS

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

August 17, 2018 through August 23, 2018

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.

ALMONTE (EMMANUEL), PEOPLE v:

1ST Dept. App. Div. order of 4/26/18; affirmance; leave to appeal granted by Rivera, J., 8/9/18;

Crimes--Evidence--Excited Utterances--Whether trial court properly admitted a recording of a 911 call between the victim and dispatcher under the excited utterance exception to the hearsay rule; Crimes—Lesser Included Offense--whether court properly denied defendant's request to submit third-degree assault as a lesser included offense of second-degree assault;

Supreme Court, Bronx County, convicted defendant of two counts of robbery in the second degree, attempted assault in the first degree and assault in the second degree, and imposed sentence; App. Div. affirmed.

BRECKENRIDGE (TRAVIS), PEOPLE v:

1ST Dept. App. Div. order of 6/7/18; modification; sua sponte examination whether the Appellate Division order of modification "was on the law alone or upon the law and such facts, which, but for the determination of law, would not have led to ... modification"; **Crimes--Instructions--Whether trial court's charge failed to convey that acquittal on top count of attempted second-degree murder based on a finding of justification would preclude consideration of the count of first-degree assault; whether any error in failing to properly instruct jury on justification was harmless;** Supreme Court, New York County, convicted defendant of assault in the first degree and two counts of criminal possession of a weapon in the second degree, and imposed sentence; App. Div. modified by vacating the assault conviction and remanding for a new trial on that count and, as so modified.

BRITT (CLINTON), PEOPLE v:

1ST Dept. App. Div. order 4/5/18; affirmance; leave to appeal granted by Wilson, J., 7/31/18; **Crimes--Possession of Forged Instrument--Defendant's possession of counterfeit bills in public—whether there was legally sufficient evidence of defendant's "intent to defraud, deceive or injure another," as required by Penal Law § 170.30 for criminal possession of a forged instrument in the first degree; suspect's running away compared to "active flight";** Supreme Court, New York County, convicted defendant of 17 counts of criminal possession of a forged instrument in the first degree and criminal possession of a controlled substance in the seventh degree, and sentenced him, as a second felony offender, to an aggregate term of three to six years; App. Div. affirmed.

MINTZ, MATTER OF v BOARD OF ELECTIONS OF THE CITY OF NEW YORK et al.:

1ST Dept. App. Div. order of 8/22/18; affirmance with dissents; **Elections--Designating Petitions--Cover Sheets--Whether respondent Board of Elections' Designating Petition Rule E may be applied to nullify petitioner's candidacy 21 days after she filed her designating petition and cover sheet--whether petitioner's failure to state on her designating petition that the office sought was "Female Member, Democratic Party State Committee" should be invalidated even though her name is a typically female name and there was no position open for a male member of the committee;** Supreme Court, New York County, denied respondent Board of Elections' motion to dismiss the petition for lack of jurisdiction; denied petitioner's application for an order declaring her designating petition valid and directing respondent Board of Elections to place her name on the primary election voting machines and ballots, and dismissed the petition; App. Div. affirmed.

PEOPLE ex rel. FRANCIS o/b/o MUNIZ v BRANN:

2ND Dept. App. Div. order of 7/26/18; sustained writ of habeas corpus; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

Habeas Corpus--Petition--Whether the equal protection and due process clauses of the state and federal constitutions require that a court consider a detainee's ability to pay when it sets bail; bail—amount of bail;

App. Div. sustained the writ of habeas corpus to the extent that bail in petitioner's pending criminal prosecution was reduced to the sum of \$12,000, and otherwise denied the writ, and ordered release of defendant upon posting of a bail bond or cash bail alternate.

NEULANDER (M. ROBERT), PEOPLE v:

4TH Dept. App. Div. order of 6/29/18; reversal; leave to appeal granted by Smith, J., 8/7/18;

Crimes--Jurors--Misconduct of Jurors--Whether the trial court improperly denied defendant's CPL 330.30 motion to set aside verdict on basis of juror misconduct; during trial, juror exchanged text messages with third parties regarding the trial;

County Court, Onondaga County, convicted defendant, upon a jury verdict, of murder in the second degree and tampering with physical evidence, imposed sentence; App. Div. reversed and granted a new trial.

PEOPLE ex rel. RICHARDS v NEW YORK STATE DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION:

Supreme Court, Wyoming County, order of 7/5/18; denial of writ of habeas corpus; sua sponte examination whether any basis exists for an appeal as of right;

Habeas Corpus--When Remedy Available;

Supreme Court denied relator's petition for a writ of habeas corpus.

MATTER OF VEGA (POSTMATES INC. et al.):

3RD Dept. App. Div. order of 6/21/18; reversal with dissents; sua sponte examination whether the order appealed from finally determines the action within the meaning of the Constitution;

Unemployment Insurance--Employee or Independent Contractor--Whether claimant, who was engaged as a courier for Postmates Inc., was an employee of the company for unemployment insurance purposes—whether there is substantial evidence of an employer-employee relationship;

App. Div. reversed, and remitted the matter to the Unemployment Insurance Appeal Board for further proceedings not inconsistent with the court's decision.