

NEW FILINGS DIGEST - QUARTERLY UPDATE

This report lists, by title and subject matter, pending appeals previously published as "Court of Appeals New Filings."

Contact the Clerk's Office for additional information.

ADIRONDACK WILD: FRIENDS OF THE FOREST PRESERVE et al., MATTER OF v NEW YORK STATE ADIRONDACK PARK AGENCY et al.:

Environmental Conservation--Judicial Review--in CPLR article 78 proceeding challenging Department of Environmental Conservation's approval of Essex Chain Lakes Complex Unit Management Plan, whether certain causes of action were ripe for judicial review; whether a rational basis exists for the determination of the Department of Environmental Conservation that the Wild, Scenic and Recreational Rivers System Act permits establishment of snowmobile trail on a road that is located in a wild river area; whether Supreme Court properly dismissed the fourth cause of action on the basis that respondents are not bound by guidance document for the siting, construction and maintenance of snowmobile trails that was adopted by Department of Environmental Conservation in 2009;

ALAMIN, MATTER OF, A LICENSED LEGAL CONSULTANT:

Attorney and Client--Disciplinary Proceedings--Licensed legal consultant--revocation of license;

ALMONTE (EMMANUEL), PEOPLE v:

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;

ALTAMIRANO (MAURICIO), PEOPLE v:

Crimes--Instructions--Whether defendant was denied the right to a fair trial when the trial court provided the jury with a charge on the defense of temporary and innocent possession of a weapon without first informing counsel and without permitting counsel to reopen his summation; whether harmless error analysis applies;

AMERICAN INTERNATIONAL SPECIALTY LINES INSURANCE COMPANY v ALLIED CAPITAL CORPORATION, et al.:

Arbitration--Award in Excess of Arbitrator's Powers--Whether the arbitration panel exceeded its authority when it reconsidered the partial final award it had previously issued--common law doctrine of *functus officio*; arbitration proceeding arising out of litigation involving an insurance claim payment; summary judgment;

ANDREW CAROTHERS, M.D., P.C., &c. v PROGRESSIVE INSURANCE COMPANY, et al.:

Insurance--No-Fault Automobile Insurance--Payment withheld by insurance carrier for medical services provided by a professional corporation which has been "fraudulently incorporated" to allow nonphysicians to share in its ownership and control--elements necessary to establish the defense of fraudulent incorporation recognized in State Farm Mut. Auto. Ins. Co. v Mallela (4 NY3d 313 [2005]); jury instructions--adverse inference--nonparties' invocation of Fifth Amendment privilege against self-incrimination;

ANONYMOUS, PEOPLE v:

Crimes--Sealing of Records--Whether prosecution was entitled, pursuant to CPL 160.50 (1)(d)(ii), to an order unsealing record for the purpose of making sentencing recommendation; prosecution sought to have sentencing court consider defendant's testimony from another criminal case where defendant admitted to engaging in illegal activity, which was a violation of his plea agreement; if unsealing was improper, whether defendant is entitled to resentencing;

BALGOBIN v STATE OF NEW YORK:

State--Claim Against State--Court of Claims--Claim seeking \$1,500 per week for life in satisfaction of instant scratch-off lottery ticket; lotteries; summary judgment;

BATTICKS (JONATHAN), PEOPLE v:

Crimes--Jurors--Challenge to trial court's handling of situation involving juror who made an outburst during cross-examination of a witness by co-defendant's counsel--whether trial court erred in failing to conduct an inquiry of the juror pursuant to People v Buford (69 NY2d 290);

BILL BIRDS, INC., et al. v STEIN LAW FIRM, P.C. et al.:

Attorney and Client--Misconduct by Attorney--Whether plaintiffs raised a triable issue of fact on their claim alleging a violation of Judiciary Law § 487; plaintiffs alleged that defendants engaged in a pattern of legal delinquency;

BOHLEN, MATTER OF v DiNAPOLI:

Civil Service--Retirement and Pension Benefits--Whether New York State Retirement System properly excluded longevity allowance payments from petitioners' final average salaries in calculating retirement benefits; application of Retirement and Social Security Law § 431;

BRITT (CLINTON), PEOPLE v:

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";

BROWN (BORIS), PEOPLE v:

Attorney and Client--Conflicts of Interest--Defendant's attorney paid by another suspect in the crime who was represented by the attorney on an unrelated criminal matter--whether defendant validly waived his counsel's conflict of interest--whether such conflict was waivable in any event; whether trial court erred in denying defendant's CPL 440.10 motion without setting forth findings of fact and conclusions of law (CPL 440.30 [7]); propriety of consecutive sentences for murder and gun possession charges;

BROWN (DARRYL), PEOPLE v:

Crimes--Justification--Whether trial court erred in denying defendant's request to instruct the jury on the defense of justification;

BURSCH, MATTER OF v PURCHASE COLLEGE OF THE STATE UNIVERSITY OF NEW YORK, et al.:

Colleges and Universities--Disciplinary Proceedings--Whether respondent violated petitioner's right to due process or abused its discretion in denying petitioner's request for a three-hour adjournment of the disciplinary hearing so that petitioner's attorney could attend;

CARTER, MATTER OF v ANNUCCI:

Prisons and Prisoners--Discipline of Inmates--Prisoner charged with using a controlled substance--claimed due process violations in tier III disciplinary hearing;

CAYUGA NATION, &c. v CAMPBELL, et al.:

Native Americans--Internal Tribal Affairs--Dispute over which of two competing factions should have control as the lawful governing body of the Cayuga Nation, a sovereign Indian Nation; subject matter jurisdiction--whether determination of the controversy is beyond the authority of the courts of New York as usurping the sovereign right of the people of the Cayuga Nation to determine their own leadership;

CENTER FOR JUDICIAL ACCOUNTABILITY, INC. et al. v CUOMO, &c., et al.:

Constitutional Law--Appropriations--Action seeking a declaratory judgment that the bill establishing the budgets for the Legislature and the Judiciary for the 2016-2017 fiscal year was unconstitutional, and seeking an injunction permanently enjoining respondents from making certain disbursements under the bill, including judicial salary increases;

CENTI v MCGILLIN:

Contracts--Illegal Contracts--Dispute over money accumulated from illegal bookmaking business--whether loan agreement involving funds is enforceable;

CITY OF NEW YORK v TRI-RAIL CONSTRUCTION, INC., et al.:

Parties--Capacity to Sue--Whether plaintiff City of New York has capacity to sue for negligent destruction of property; City sought money damages for injury to trees caused by defendants;

CNH DIVERSIFIED OPPORTUNITIES MASTER ACCOUNT, L.P. v CLEVELAND UNLIMITED, INC.:

Secured Transactions--Security Agreements--Whether Supreme Court properly dismissed plaintiffs' breach of contract claim based on parties' indenture, which tracked the language of section 316(b) of the Trust Indenture Act of 1939 (15 USC § 77ppp[b]) and provided that bondholder's right to receive payment or to bring enforcement suit shall not be impaired without holder's consent; whether collateral trustee was authorized to pursue default remedy of strict foreclosure;

COLLAZO, et al. v NETHERLAND PROPERTY ASSETS LLC, et al.:

Landlord and Tenant--Rent--Tenants' claims of rent overcharge by landlord allegedly taking advantage of luxury decontrol provisions of the Rent Stabilization Law while simultaneously receiving tax incentives under the City of New York's J-51 program—whether Supreme Court abused its discretion in determining that most of plaintiffs' claims were within the specialized expertise of the New York State Division of Housing and Community Renewal and dismissing those claims under the primary jurisdiction doctrine;

COOK (TYRELL), PEOPLE v:

Crimes--Suppression Hearing--Whether trial court properly reopened a suppression hearing, before rendering a decision, to permit the People to call an officer with additional information tending to establish reasonable suspicion for defendant's detention; Legal Sufficiency—whether the evidence was legally sufficient to establish that the victim suffered a physical injury; Right to a Fair Trial—whether defendant was denied his right to a fair trial based on alleged juror misconduct;

CUBERO (MICHAEL), PEOPLE v:

Crimes--Appeal--Preservation of constitutional challenge to statute creating Justice Center for the Protection of People with Special Needs; whether Appellate Division, pursuant to its interest of justice jurisdiction or by its inherent authority, may remit matter for further factual findings as to whether Special Prosecutor acted with consent of District Attorney; crimes—right to counsel—effective representation—whether defendant’s counsel was ineffective for failing to raise constitutional argument challenging authority of Special Prosecutor;

CUNNINGHAM v TRUSTEES OF ST. PATRICK'S CATHEDRAL et al.:

Dead Bodies--Disinterment--Whether Supreme Court properly determined that good and substantial reasons existed to disinter Archbishop’s remains, interred in a crypt in St. Patrick’s Cathedral in New York City, and transfer them to St. Mary’s Cathedral in Peoria, Illinois; alleged violation of the Religious Liberty clause and Free Exercise clause of the First Amendment;

TOWN OF DELAWARE v LEIFER, &c.:

Municipal Corporations--Zoning--Variance--Action by town to enjoin defendant landowner from holding outdoor festival on his land without applying for a use variance—whether the outdoor festival with presentation of music falls within the zoning code definition of a “theater” prohibited in the town’s Rural District; claimed violations of defendant’s First Amendment rights;

DELEON (OMAR), PEOPLE v:

Crimes--Larceny--Whether evidence before grand jury was sufficient to support the charges of attempted grand larceny in the third and fourth degrees; defendant placed “fishing device” in mailbox into which joint police-postal service task force had inserted more than \$3000 in money orders; no evidence presented as to the value of the mail defendant attempted to remove;

DELORBE (JOSE), PEOPLE v:

Crimes--Plea of Guilty--Whether defendant was required to preserve Peque claim (see People v Peque, 22 NY3d 168 [2013]) where defendant was served with a notice of immigration consequences form at arraignment; crimes--vacatur of judgment of conviction--whether Supreme Court properly denied defendant’s CPL 440.10 motion without a hearing;

DEUTSCHE BANK NATIONAL TRUST COMPANY v BARCLAYS BANK;
DEUTSCHE BANK NATIONAL TRUST v HSBC BANK USA:

Limitations of Actions--What Statute Governs--Whether plaintiff trustee's breach of contract claims were barred by California's four-year statute of limitations, pursuant to the borrowing statute of CPLR 202; defendant banks alleged to have breached representations and warranties made in connection with the sale of residential mortgage-backed securities pooled in trust; whether claim accrued in California or New York;

DIXON, MATTER OF v CUOMO:

Prisons and Prisoners--Discipline of Inmates--CPLR article 78 proceeding to review a determination by respondent Acting Commissioner of the Department of Corrections and Community Supervision finding, after a tier III hearing, that petitioner had violated an inmate rule; claimed due process violations;

ELLIS (ARTHUR W., JR.), PEOPLE v:

Crimes--Sex Offenders--Sex Offender Registration Act (SORA)--Whether Corrections Law § 168 requires a registered sex offender to register his Facebook account with the Division of Criminal Justice Services as an internet identifier;

ESPOSITO (MONIQUE), PEOPLE v:

Crimes--Accusatory Instrument--Whether misdemeanor information was jurisdictionally defective because it failed to establish that defendant was driving the vehicle in question--defendant found two blocks away from vehicle collision site made statement to police officer that she was chasing her boyfriend and hit a tree; motor vehicles--operating vehicle while under influence of alcohol;

FASOLAS &c.. v BOBCAT OF NEW YORK, INC., et al.:

Products Liability--Strict Liability--Whether an exception to strict products liability as set forth in Scarangella v Thomas Built Buses (93 NY2d 655 [1999]) is applicable where the allegedly defectively designed product was sold without optional safety equipment to a rental company that planned to rent the product to the general public; wrongful death;

MATTER OF TYRELL FF. (JAQUASISA GG.):

Appeal--Academic and Moot Questions--Whether mootness exception applies to appeal from Family Court order continuing temporary removal of subject child; parent, child and family--abused or neglected child--whether a respondent in a proceeding under Family Court Article 10 may consent to the temporary removal of the subject child absent an admission of imminent risk;

WILL OF FIELDS, DECEASED, MATTER OF (FIELDS v PALMERI):

Appeal--Dismissal--Order dismissing appeal in Surrogate's Court proceeding; dismissal of objections to probate;

FORBES (JAMES), PEOPLE v:

Crimes--Evidence--Hearsay Evidence--“Identity” or “modus operandi” exception to the Molineux rule—defendant convicted of two separate theft incidents in one trial--whether his identity in both incidents was “conclusively established” for purposes of the Molineux identity exception to the hearsay rule for admission of evidence of prior bad acts; whether CPL 200.20 eliminates the discretionary analysis by the trial court as to whether the probative value of the evidence outweighs the potential for prejudice to the defendant;

FOSTER-BEY (ELIJAH), PEOPLE v:

Crimes--Evidence--Whether trial court providently exercised its discretion in failing to hold a Frye hearing regarding admission of Low Copy Number DNA testing and the Forensic Statistical Tool used by the Office of the Chief Medical Examiner; whether admission of DNA evidence violated defendant's right to confront witnesses against him; instructions--whether trial court's Allen charge was coercive;

FRANCIS (GERALD), PEOPLE v:

Crimes--Sentence--Whether CPL 470.15 (1) prevents an intermediate appellate court from reviewing the denial of a defendant's CPL 440.20 motion for resentencing if it finds that the denial of the motion was not "adverse" to defendant; defendant who received an illegally low sentence moved for resentencing with the ultimate intention to withdraw his guilty plea on the basis that it was not knowing and voluntary;

FRANKLIN STREET REALTY CORP., MATTER OF v NEW YORK CITY ENVIRONMENTAL CONTROL BOARD, et al. (AND FOUR OTHER PROCEEDINGS):

Municipal Corporations--Regulation of Billboards--Challenge to determinations of the New York City Environmental Control Board (ECB) which found that petitioners engaged in unauthorized outdoor advertising--buildings displaying signs promoting the law offices of the attorney shareholder of the corporate building owners--whether the ECB’s determinations are arbitrary and capricious or contrary to the plain language of the applicable sections of the City Administrative Code;

GIUCA (JOHN), PEOPLE v:

Crimes--Vacatur of Judgment of Conviction--Whether the People violated their obligation to disclose material information favorable to defendant (Brady v Maryland, 373 US 83);

GREEN (NICOLE), PEOPLE v:

Crimes--Appeal--Waiver of Right to Appeal--Whether defendant knowingly, voluntarily and intelligently waived right to appeal; waiver colloquy inaccurately stated rights defendant was waiving;

GREGORY (KENDEL), PEOPLE v:

Crimes--Right to Representation Pro Se--Whether the trial court erred in denying defendant's application to proceed pro se; defendant sought to present defense theory that court lacked jurisdiction to prosecute him because he was a secured party creditor under the Uniform Commercial Code; suppression Hearing—whether court properly denied suppression of knapsack defendant discarded during police pursuit;

GROVER, MATTER OF v STATE INSURANCE FUND, et al.:

Workers' Compensation--Injuries Arising out of and in Course of Employment--Claimant injured shoulder on her way to work by reaching out car window to scan parking pass to enter garage located in her employer's building;

HE (RONG), PEOPLE v:

Crimes--Confession--Whether statement obtained from defendant following a Payton violation (*see Payton v New York*, 455 US 573 [1980]) was sufficiently attenuated from illegal arrest; evidence--whether the People committed a Brady violation (*see Brady v Maryland*, 373 US 83 [1963]) by failing to disclose the contact information of potential witnesses;

HE v TROON MANAGEMENT, et al.:

Negligence--Maintenance of Premises--Whether New York City Administrative Code § 2-710 imposes a nondelegable duty on out-of-possession landlord to keep sidewalk free of ice and snow; commercial lease assigned the duty to clear snow and ice to tenant;

HENRY v HAMILTON EQUITIES, INC., et al.:

Negligence--Maintenance of Premises--Liability of out-of-possession landlords for condition of nursing home premises where plaintiff nurse was injured in a slip and fall incident--whether exception to out-of-possession landlord rule set forth in Putnam v Stout (38 NY2d 607 [1976]) applies where the owner has a duty to repair under its contract with and regulations promulgated by HUD;

HEWITT v PALMER VETERINARY CLINIC, P.C.:

Animals--Knowledge of Vicious Propensity--Whether strict liability rule applies where plaintiff seeks to recover from a defendant who maintained the premises where the injury occurred but did not own the animal that caused the injury; plaintiff attacked by another patron's dog at defendant veterinarian's office;

HILL (NICHOLAS), PEOPLE v:

Crimes--Suppression Hearing--Police retained defendant's proffered identification while investigating defendant's explanation about who he was visiting in a particular apartment building--whether the trial court properly denied defendant's motion to suppress physical evidence on the basis that the police officer's retention of defendant's identification constituted a significant interruption of his freedom of movement so as to constitute an unreasonable seizure;

HILL (RAYHEAME), PEOPLE v:

Crimes--Suppression Hearing--Whether defendant had standing to challenge search of apartment and vehicle; whether People met burden of proving that consent to search was voluntary; whether illegal search of defendant's bags at hospital impermissibly tainted subsequent searches of apartment and vehicle; application of independent source rule;

HOLZ (DAVID M.), PEOPLE v:

Crimes--Appeal--Whether Supreme Court's denial of suppression of evidence relating to a burglary count to which defendant did not plead guilty was reviewable on appeal from a judgment rendered on separate burglary count charged in the same indictment; application of CPL 710.70(2);

JOHNSON v BILOW:

Appeal--Appealable Paper--Order denying motion for poor person relief;

JOHNSON v UHLER, &c.:

Habeas Corpus--Petition--Motion for poor person relief;

JORDAN, et al., MATTER OF v NEW YORK CITY HOUSING AUTHORITY, et al.:

Civil Service--Reinstatement--Whether Civil Service Law § 71 applies to labor class employees; parties—necessary parties—whether Department of Citywide Administrative Services is a necessary party to proceeding that challenged New York City Housing Authority's denial of petitioner's application for reinstatement; pleading—answer; whether respondent New York City Housing Authority should have been permitted an opportunity to answer the petition following the denial of its cross motion to dismiss;

KLEIN v KLEIN:

Appeals--Appealable paper--Whether an appeal lies from an order to show cause signed by an individual Justice of the Appellate Division;

KOSMIDER, MATTER OF v WHITNEY, et al.:

Records--Freedom of Information Law--Whether electronic images of ballots cast in an election are accessible under the Freedom of Information Law (Public Officers Law art 6 [FOIL])--exemption from disclosure of certain documents under Election Law § 3-222 (2); elections--ballots;

KRUG, MATTER OF v CITY OF BUFFALO:

Proceeding Against Body or Officer--CPLR article 78 proceeding to annul respondent's denial of petitioner's request to be defended in a civil action alleging that petitioner police officer assaulted a civilian; whether the denial of petitioner's request for a defense was arbitrary and capricious; whether conduct occurred while petitioner was acting within the scope of his public employment or duties;

KUZMICH, et al. v 50 MURRAY STREET ACQUISITION LLC:

Landlord and Tenant--Rent Regulation--Whether plaintiffs' apartments in a building receiving Real Property Tax Law § 421-g tax benefits are subject to rent stabilization--effect of luxury vacancy control provisions of Rent Stabilization Law of 1969 [Administrative Code of City of NY] § 26-504.2(a);

LANG (DAVID R.), PEOPLE v:

Crimes--Disclosure--Whether defendant was entitled to a curative instruction where the police failed to conduct a timely blood alcohol level test; jurors--discharge of juror--whether the trial court engaged in reasonably thorough inquiry prior to discharging sworn juror; argument and conduct of counsel-- whether prosecutor's comments during summation deprived defendant of a fair trial;

LANG (STORM U.), a/k/a STORM U.J. LANG, a/k/a STORM LANG, PEOPLE v:

Crimes--Appeal--Whether defendant's waiver of the right to appeal was valid; Crimes--Sentence--Youthful Offender--whether defendant waived or forfeited his right to challenge sentencing court's denial of youthful offender status;

LARCHMONT PANCAKE HOUSE, MATTER OF v BOARD OF ASSESSORS &c., et al.:

Taxation--Assessment--Proceeding pursuant to Real Property Tax Law article 7 brought by petitioner, nonowner of subject property, to review real property tax assessments; whether petitioner is an aggrieved party within the meaning of the Real Property Tax Law; whether petitioner failed to satisfy condition precedent set forth in RPTL 524(3) because grievance was not filed by property owner, thereby depriving court of subject matter jurisdiction to review assessments;

LEGGIO, MATTER OF v DEVINE:

Social Services--Food Stamp Allowance--Whether Suffolk County Department of Social Services properly determined that child support payments for two of petitioner's children, both full-time college students, counted as household income for purposes of determining eligibility for Supplemental Nutrition Assistance Program benefits;

LI (STAN XUHUI), PEOPLE v:

Crimes--Manslaughter--Whether legally sufficient evidence supports defendant's convictions for second degree manslaughter; defendant physician prescribed a combination of opioids and alpraxolam to the victims, who overdosed; whether a homicide charge may be based on the sale of a controlled substance; Crimes—Reckless Endangerment—whether legally sufficient evidence exists that defendant's prescribing practices placed patients at imminent risk of death;

LONEY (JAVON), PEOPLE v:

Crimes--Possession of Weapon--Whether trial court erred in declining defendant's request to instruct the jury that voluntariness is an element of the charged criminal possession of a weapon; suppression of physical evidence--whether trial court erred in denying defendant's motion to suppress firearm and marihuana evidence found when police entered apartment where defendant's blood trail lead; alleged prosecutorial misconduct in summation to jury;

LOPEZ-MENDOZA (JAIME), PEOPLE v:

Crimes--Right to Counsel--Effective Representation--Whether defendant's ineffective assistance of counsel claim is reviewable on direct appeal; whether counsel was ineffective for failing to adequately review surveillance evidence and advising the jury, during opening statements, that defendant would testify in a manner inconsistent with the evidence; evidence—whether error in admission of DNA evidence was harmless; whether carpet fiber evidence was properly admitted;

LUBONTY v U.S. BANK NATIONAL ASSOCIATION, &c.:

Mortgages--Foreclosure--Whether six-year statute of limitations for defendant's foreclosure action was tolled pursuant to CPLR 204(a) because of plaintiff's two bankruptcy filings, which invoked the automatic stay under 11 USC § 362(a); limitation of actions; RPAPL 1501(4) action to cancel and discharge mortgage on real property;

LYNCH, &c., et al. v CITY OF NEW YORK, et al.:

Civil Service--Retirement and Pension Benefits--Whether police officers employed by the New York City Police Department who are tier 3 and tier 3 revised plan members of the New York City Police Pension Fund are eligible for the child care leave credit set forth in Administrative Code § 13-218(h); summary judgment; declaratory judgment;

MADDICKS v BIG CITY PROPERTIES:

Landlord and Tenant--Rent Regulation--Whether pre-answer dismissal regarding class action allegations was premature; putative class of rent-stabilized tenants alleged that defendants engaged in systematic effort to avoid compliance with rent-stabilization law; whether Supreme Court's sua sponte dismissal of complaint based on arguments not raised by defendants was improper;

MAFFEI (ROBERT), PEOPLE v:

Crimes--Right to Counsel--Effective Representation--Whether counsel's failure to challenge a juror who stated he was not certain he could be impartial deprived defendant of the effective assistance of counsel; whether defendant raised a "mixed claim" of ineffective assistance of counsel that should have been raised in a CPL 440.10 motion rather than on direct appeal;

MALLOY (EDWARD) a/k/a EB, PEOPLE v:

Crimes--Selection of Jury--*Batson* Inquiry--Whether trial court erred in denying defendant's *Batson* challenge; whether trial court failed to make adequate record reflecting the basis for its denial of defendant's *Batson* challenge;

Crimes—Verdict—Sufficiency of the Evidence—whether the verdict convicting defendant of murder in the second degree and criminal possession of a weapon is supported by legally sufficient evidence; Grand Jury—Defective Proceeding—whether integrity of grand jury was impaired; Right of Confrontation—whether defendant was denied his right to a fair trial when trial court refused to allow witness to take the stand solely for the purpose of invoking his privilege against self-incrimination in the presence of the jury; Sentencing—whether Supreme Court properly imposed consecutive sentences;

MAIRENA (DAVID), PEOPLE v:

Crimes--Justification--Whether trial court erred by informing the parties, prior to summations, that it would instruct the jury on the specific instrumentality of death in its charge of manslaughter in the first degree, and then failing to include that language in its charge following summations; whether harmless error applies to the alleged error;

MANKO v LENOX HILL HOSPITAL:

Appeal--Appellate Division--Denial of motion to vacate prior order;

MANKO v LENOX HILL HOSPITAL:

Appeal--Appellate Division--Denial of motions to vacate prior orders;

McCULLUM (RAMEE), PEOPLE v:

Crimes--Possession of Weapon--Whether a defendant maintains a reasonable expectation of privacy in goods bailed as the result of a landlord's "legal possession" of an apartment, sufficient to establish standing to challenge a search under the Fourth Amendment of the United States Constitution--whether, where the People and the court both commit an error of fact, the defendant is justified in relying on that error for purposes of preservation of an argument;

McCURDY, PEOPLE ex rel. v WARDEN:

Crimes--Sex Offenders--Whether Department of Corrections and Community Supervision had authority to place a level three sex offender who already completed more than six months of postrelease supervision into Residential Treatment Facility where sex offender was unable to locate housing compliant with the Sexual Assault Reform Act; application of Penal Law § 70.45(3), Correction Law § 73(10), Executive Law § 259-c(14);

McINTOSH (JAMES R.), PEOPLE v:

Crimes--Lesser Included Offense--Whether County Court's error in failing to charge jury on lesser included offenses was harmless; defendant requested to charge manslaughter in the second degree and criminally negligent homicide as lesser included offenses of murder in the second degree and manslaughter in the first degree; application of People v Boettcher (69 NY2d 174 [1987]);

MENDOZA (DAVID), PEOPLE v:

Crimes--Right to Counsel--Effective Representation--Whether defendant was denied the effective assistance of counsel when his attorney advanced a jury nullification defense at trial;

MEYERS (VINCENT), PEOPLE v:

Crimes--Trial--Jury Notes--Whether trial court failed to comply with CPL 310.30 and People v O'Rama requirements with regard to note from the jury belatedly discovered in the court file--whether there was a mode of proceedings error; whether verdict was against the weight of the evidence; whether there was ineffective assistance of counsel regarding a suppression hearing;

MIDDLETON (DONNA), PEOPLE v:

Crimes--Official Misconduct--Whether the information sufficiently established the "intent to obtain a benefit" element of Penal Law § 195.00 (1)--whether the acts charged fell outside defendant's "official duties"; prisons and prisoners;

MYERS, MATTER OF v FIALA, &c.:

Proceeding Against Body or Officer--Mandamus--CPLR article 78 proceeding against Commissioner of New York State Department of Motor Vehicles to, among other things, compel restoration of petitioner's drivers license;

MYERS v STATE FARM INSURANCE:

Appeal--Appealable Paper--Order denying a motion to reargue and renew;

NADKOS, INC. v PREFERRED CONTRACTORS INSURANCE COMPANY RISK RETENTION GROUP LLC, et al.:

Statutes--Construction--Whether federal Liability Risk Retention Act of 1986 (15 USC § 3901) preempts the application of Insurance Law § 3420(d)(2) to foreign risk retention groups (RRG), such that an RRG need not comply with section 3420(d)(2)'s timely notice of disclaimer requirement;

NAPPI v COMMUNITY ACCESS, INC.:

Landlord and Tenant--Eviction--Whether plaintiff subtenant had established right to rent apartment; whether plaintiff's sublease was properly terminated; alleged constitutional violations;

NATIONAL ENERGY MARKETERS ASSOCIATION, MATTER OF v NEW YORK STATE PUBLIC SERVICE COMMISSION:

Public Utilities--Rate Making--Whether respondent New York State Public Service Commission has the authority to impose rate-making limitations on petitioner energy service companies; challenge to "Order Resetting Retail Energy Markets and Establishing Further Process," which imposed various requirements on new and renewal contracts between energy service companies and mass market customers; whether energy service companies have a property interest in continued access to utility systems, and thus are entitled to procedural due process;

NATIONAL FUEL GAS SUPPLY CORP., MATTER OF v SCHUECKLER et al.:

Eminent Domain--Exemption from Public Hearing--Whether petitioner natural gas company held qualifying federal permit under Eminent Domain Procedure Law (EDPL) 206(A), thereby exempting it from standard hearing and findings procedure of EDPL article 2; Federal Energy Regulatory Commission granted petitioner's application for a certificate of public convenience and necessity to construct 97-mile natural gas pipeline across respondents' land, but State Department of Environmental Conservation denied petitioner's application for water quality certification (WQC); federal certificate of public convenience allowed construction of pipeline subject to various conditions, including State's issuance of WQC;

NEULANDER (M. ROBERT), PEOPLE v:

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;

O'DONNELL, MATTER OF v ERIE COUNTY, et al.:

Workers' Compensation--Voluntary Withdrawal from Labor Market--Whether the Appellate Division erred in affirming the Workers' Compensation Board's determination on the basis that an April 2017 amendment to Workers' Compensation Law § 15(3)(w) no longer requires a claimant to demonstrate an ongoing attachment to the labor market;

159 MP CORP., et al. v REDBRIDGE BEDFORD, LLC:

Landlord and Tenant--Lease--Action for a judgment declaring that two commercial leases are in full force and effect and that plaintiffs are not in violation of their obligations under the leases--Yellowstone injunction to prevent landlord from terminating leases or commencing summary proceeding for eviction (First National Stores v Yellowstone Shopping Ctr., 21 NY2d 630 [1968])--whether written leases negotiated at arm's length by commercial tenants may include a waiver of the right to declarative relief that is enforceable at law, or whether such a waiver is void and unenforceable as a matter of public policy;

PEREZ (JOSE), PEOPLE v:

Crimes--Sex Offenders--Sex Offender Registration Act (SORA)--Whether Supreme Court erred when it assessed defendant 30 points for purposes of risk factor 9 based on a prior conviction of lewdness in New Jersey--whether prior New Jersey conviction for public lewdness constituted a "misdemeanor sex crime" under New York law;

PETTUS, MATTER OF v BOARD OF DIRECTORS, et al.:

Condominiums and Cooperatives--Common Charges and Special Assessments--Proceeding to challenge cooperative board's determination to increase maintenance fees;

PEYTON, MATTER OF v NEW YORK CITY BOARD OF STANDARDS AND APPEALS:

Administrative Law--Collateral Estoppel--Whether doctrine of collateral estoppel barred CPLR article 78 proceeding challenging respondent New York City Board of Standards and Appeals' resolution upholding New York City Department of Buildings' decision granting permit for construction of a nursing home on multiple-building zoning lot where petitioners reside; Municipal Corporations--Zoning--Whether respondent erred in calculating zoning lot's open space ratio by including as open space roof-top garden to which petitioners did not have access;

PLASTIC SURGERY GROUP, P.C., MATTER OF v COMPTROLLER OF THE STATE OF NEW YORK:

Disclosure--Medical Records and Reports--Whether CPLR 3122(a)(2), which generally requires that a subpoena requesting the production of a patient's medical records be accompanied by a written authorization by the patient, applies to a subpoena duces tecum served by the Comptroller during the course of an audit of a medical provider;

PRIESTON, PEOPLE ex rel. v NASSAU COUNTY SHERIFF'S DEPARTMENT:

Bail--Bail Bonds--Whether Supreme Court properly disapproved a bail package on the ground that the amount of collateral posted to secure the insurance company bail bond was insufficient;

PURCELL, et al., MATTER OF v NEW YORK STATE TAX APPEALS TRIBUNAL, et al.:

Taxation--Notice of Deficiency--Whether Tax Law § 16 (f)(2)(C) requires that the income taxes attributable to a New York S corporation's out-of-state income be excluded when calculating a resident shareholder's Qualified Empire Zone Enterprise tax reduction credit;

RADEN, et al. v W 7879, LLC, et al.:

Landlord and Tenant--Rent--Whether look-back period for rent overcharge claim is limited to four years before overcharge complaint is filed; whether defendants engaged in fraud in deregulating apartment and whether deviation from rent stabilization was willful; whether plaintiffs are entitled to treble damages or attorneys' fees;

RAMLALL (GANESH), PEOPLE v:

Crimes--Right to Speedy Trial--Whether a CPL 30.30 dismissal on statutory speedy trial grounds of a misdemeanor charge of driving while intoxicated (Vehicle and Traffic Law § 1192[3]) affects the CPL 30.20 speedy trial analysis of the delays related to the traffic infraction charge of "driving while ability impaired" (Vehicle and Traffic Law § 1192[1]) based on the same underlying conduct;

RETAIL ENERGY SUPPLY ASSOCIATION, et al., MATTER OF v PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK:

Public Utilities--Rate Making--Whether respondent New York State Public Service Commission has the authority to impose rate-making limitations on petitioner energy service companies; challenge to "Order Resetting Retail Energy Markets and Establishing Further Process," which imposed various requirements on new and renewal contracts between energy service companies and mass market customers; whether energy service companies have a property interest in continued access to utility systems, and thus are entitled to procedural due process;

RIVERA v STATE OF NEW YORK:

Employment Relations--Respondent Superior--Vicarious Liability--Whether the Court of Claims properly concluded that the State was not vicariously liable for the actions of a corrections officer; whether corrections officer, who assaulted inmate, was acting outside the scope of officer's employment; Pleading--Answer--whether the Court of Claims abused its discretion in allowing State to amend its answer to include affirmative defense;

JORDAN R., MATTER OF (ORANGE COUNTY DEPARTMENT OF SOCIAL SERVICES; YON R.-W.) (AND ANOTHER PROCEEDING):

Parent and Child--Abused or Neglected Child--Claimed fraud and impartiality in court proceedings;

RKEIN (HASSAN), PEOPLE v:

Crimes--Justification--Whether trial court properly denied defendant's request for a justification charge regarding second-degree assault count; defendant struck unarmed initial aggressor in head with pint glass;

RODRIGUEZ (ALEXIS), PEOPLE v:

Crimes--Plea of Guilty--Withdrawal of Plea; sentence--concurrent and consecutive terms—whether the trial court erred in imposing consecutive sentences upon a finding that defendant violated the terms of the parties' cooperation agreement by refusing to testify for the prosecution concerning a home invasion incident preceding the incident leading to the murder conviction;

RODRIGUEZ (MANUEL), PEOPLE v:

Crimes--Larceny--Whether evidence was legally sufficient to establish grand larceny in the third degree where defendant exercised dominion and control over proceeds of stolen check, but not over the stolen check itself;

ROUSE (CLARENCE), PEOPLE v:

Crimes--Witnesses--Whether trial court's restriction of cross-examination of a police witness concerning prior bad acts deprived defendant of his right to confrontation; whether the trial judge's denigration of defense counsel in front of the jury deprived defendant of a fair trial; whether trial court properly excluded evidence including 911 recordings; whether the verdict was based on legally sufficient evidence;

LUIS S., MATTER OF v STATE OF NEW YORK, et al.:

Crimes--Sex Offenders--Proceeding pursuant to Mental Hygiene Law article 10 seeking an order discharging petitioner or releasing him to the community under a regimen of strict and intensive supervision and treatment after service of his sentence for a sex offense--claim by petitioner that reliance on a diagnosis of "Unspecified Paraphilic Disorder" to support a judicial finding of mental abnormality violated his due process rights; whether the finding of mental abnormality was against the weight of the evidence;

SEON, MATTER OF v NEW YORK STATE DEPARTMENT OF MOTOR VEHICLES, et al.:

Administrative Law--Judicial Review--Whether there is substantial evidence in the record to support the determination of the Administrative Law Judge that petitioner, New York City Transit bus driver, failed to exercise due care and that such failure caused pedestrian serious physical injury (Vehicle and Traffic Law § 1146);

SHAWE v KRAMER LEVIN NAFTALIS & FRANKEL LLP, et al.:

Libel and Slander--Opinions--Fair Comment--Action against lawyers commenting on litigation matters; pre-answer motion to dismiss the complaint;

SMITH (SAMUEL J.), PEOPLE v:

Crimes--Instructions--Missing witness charge--whether the proponent of a missing witness charge has the initial burden of proving that the missing witness has noncumulative testimony to offer on behalf of the opposing party—only other witness identifying defendant as shooter was the victim; right to counsel—claimed ineffective representation;

VILLAGE OF SOLVAY v ZAHRAN, et al.:

Injunctions--Preliminary Injunction--Action by village to prevent renovation and occupancy of a commercial building without permits and approvals required by the village code and zoning law; claimed constitutional violations;

MATTER OF STEINBERG:

Attorney and Client--Disciplinary Proceedings--Suspension of attorney--claimed due process violations;

SUTTON 58 ASSOCIATES, LLC v PILEVSKY et al.:

United States--Federal Preemption--Whether plaintiff's state law claims are preempted by federal law; sole damages sought by plaintiff were losses resulting from the delay of a real estate project due to bankruptcy filing of two nonparty entities;

TAPIA (CARLOS), PEOPLE v:

Crimes--Verdict--Sufficiency of the Evidence--whether the evidence was legally sufficient to support verdict of attempted assault in the first degree; charge based on use of dangerous instrument under an acting-in-concert theory, but no dangerous instrument recovered from crime scene and no evidence that defendant knew other perpetrator possessed a dangerous instrument; identification of defendant--showup--whether Supreme Court properly denied defendant's motion to suppress a showup identification --evidence--whether admission of police officer's grand jury testimony as a past recollection recorded violated the Confrontation Clause or the rule against hearsay;

TAYLOR et al. v 72A REALTY ASSOCIATES, L.P., et al.:

Landlord and Tenant--Rent Regulation--Action to recover rent overcharges for apartment leased as exempt from rent regulation while landlord received tax incentives under the City's J-51 program--Whether the Appellate Division erred in recognizing a residential rent overcharge computation starting more than four years before the action was commenced, and failing to dismiss the plaintiffs' claim for treble damages; effect of expiration of landlord's tax exemption/abatement (J-51) status in the 2002/2003 tax year;

MATTER OF EIGHTH JUDICIAL DISTRICT ASBESTOS LITIGATION

(TERWILLIGER, &c., v BEAZER EAST, INC., &c, et al.):

Products Liability--Exposure to Toxic Substances--Injuries to decedent exposed to asbestos and coke oven emissions while employed at the Bethlehem Steel plant--whether the coke oven batteries constructed at the Bethlehem Steel plant were "products" subject to products liability theories rather than structures resulting from performance of a contract for construction services; negligence--duty to warn about product hazards; summary judgment;

THIAM (MOUHAMED), PEOPLE v:

Crimes--Accusatory Instrument--Where a defendant is charged only with misdemeanors or lesser charges in a multi-count accusatory instrument and at least one misdemeanor count is facially sufficient, does the trial court have jurisdiction over the defendant such that it may accept a plea to any count in the accusatory instrument, even those that are facially insufficient--whether a defendant may plead to a misdemeanor that is of an equal or higher grade than the misdemeanor charge that is facially sufficient;

THOMAS (VICTOR), PEOPLE v:

Crimes--Appeal--Waiver of Right to Appeal—whether defendant's waiver of the right to appeal was valid; crimes—confession—whether defendant's statement to police, made after a detective showed defendant an incriminating photograph, was the product of custodial interrogation requiring *Miranda* warnings;

TOMHANNOCK, LLC v ROUSTABOUT RESOURCES, LLC:

Specific Performance--When Remedy Appropriate--Whether plaintiff, which entered into an option agreement whereby buyers of a parcel of real property agreed to reconvey a portion of the parcel to plaintiff upon plaintiff's request, was entitled to specific performance of the option agreement despite that plaintiff was unable to record the necessary deed due to a failure to obtain subdivision approval;

TOWNS (AGAPE A.), PEOPLE v:

Crimes--Conduct of Trial Judge--Whether the trial court's conduct in personally negotiating and entering into a cooperation agreement with a prosecution witness deprived defendant of a fair trial; whether witness testimony should have been precluded as fruit of the poisonous tree because the police learned of the identity of the witness from defendant after violating his right to counsel;

TSINTZELIS (GEORGE), PEOPLE v:

Crimes--Evidence--DNA Identification Tests--Whether the trial court erred in denying defendant's discovery request pursuant to CPL 240.20(1)(c) for the electronic raw data used to develop his DNA profile; whether the admission of DNA lab reports through the testimony of an analyst who didn't perform or supervise the DNA testing violated defendant's confrontation rights;

UDEKE (SIXTUS), PEOPLE v:

Crimes--Plea of Guilty--Whether guilty plea was knowing and voluntary where trial court told defendant during plea allocution that he would have no right to a jury trial if the prosecution proceeded on a B misdemeanor, and did not address the issue of a right to jury trial based on his immigrant status and possible deportation upon conviction; retroactivity of People v Suazo decided 11/27/18;

ULETT (DERRICK), PEOPLE v:

Crimes--Disclosure--Failure to Disclose Exculpatory Material--alleged violation of Brady v Maryland (373 US 83)--People's failure to disclose a surveillance video of the lobby of the building outside of which the crime occurred—materiality of evidence--whether defendant demonstrated a reasonable probability that the trial result would have been different had the video been disclosed prior to trial—possibility that video would have led to additional exculpatory or impeaching evidence;

VANYO v BUFFALO POLICE BENEVOLENT ASSOCIATION, INC. et al.:

Limitation of Actions--Claim in Amended Pleading--Action by former police officer alleging improper termination following arbitration conducted pursuant to collective bargaining agreement; whether Supreme Court properly dismissed the first and second causes of action alleged in the amended complaint as time-barred; whether relation-back doctrine of CPL 203(f) applies to the first and second causes of action; dismissal of complaint--whether Supreme Court exceeded its authority in sua sponte dismissing original complaint with prejudice pursuant to CPLR 306-b; whether defendants waived any objection based upon lack of service of the original complaint;

VEGA (FIDEL), PEOPLE v:

Crimes--Justification--Whether trial court's justification charge properly instructed the jury to apply the deadly force standard if it found that defendant used a dangerous instrument; Evidence—whether trial court properly precluded defense counsel from questioning the victim and defendant about the victim’s mental health; Verdict—Sufficiency of the Evidence—whether verdict convicting defendant of first-degree burglary was supported by legally sufficient evidence;

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

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;

VELEZ (JOSE), PEOPLE v:

Crimes--Evidence--DNA Identification Tests--Whether electronic raw data underlying results of DNA test conducted by the New York City Office of the Chief Medical Examiner is discoverable in a criminal proceeding;

WALSH, MATTER OF v NEW YORK STATE COMPTROLLER et al.:

Civil Service--Retirement and Pension Benefits--in CPLR article 78 proceeding challenging the denial of performance of duty disability retirement benefits under Retirement and Social Security Law § 607-c, whether substantial evidence supports the Comptroller’s determination that petitioner failed to demonstrate that her injuries were the “natural and proximate result of [] an act of any inmate” within the meaning of section 607-c--injury occurring when inmate impaired by alcohol or drugs fell on petitioner correction officer--involuntary versus deliberate act by inmate;

WEGMANS FOOD MARKETS, INC., MATTER OF v TAX APPEALS TRIBUNAL OF THE STATE OF NEW YORK:

Taxation--Sales and Use Taxes--Whether an ambiguous tax exclusion should be construed in favor of the taxpayer or the government—whether the Appellate Division correctly concluded that the information services provided to appellant by a nonparty were excluded from sales tax liability under Tax Law § 105 (c)(1) —whether the Appellate Division properly made factual determinations not addressed by the Tax Appeals Tribunal;

WESLOWSKI v ZUGIBE, &c., et al.:

Employment Relationships--Constructive Discharge--Action by attorney formerly employed in the Rockland County Attorney’s office, alleging breach of collective bargaining agreement, breach of oral promise to pay accumulated leave, and violations of the New York Human Rights Law and various rights under the New York State Constitution; dismissal and nonsuit;

WEST v B.C.R.E. - 90 WEST STREET, LLC:

Landlord and Tenant--Rent Regulation--Whether plaintiffs' apartments in buildings receiving Real Property Tax Law § 421-g tax benefits are subject to the luxury vacancy decontrol provisions of the Rent Stabilization Law of 1969 (Administrative Code of the City of NY) § 26-504.2; building also received low-interest mortgage financing from New York City Housing Development Corporation; interpretation of Private Housing Finance Law § 654-d(18);

WHEELER (DAMON), PEOPLE v:

Crimes--Obstructing Governmental Administration--Whether an accusatory instrument asserting a violation of Penal Law § 190.05 must allege sufficient facts, which if true, establish that the underlying governmental function was authorized; facial sufficiency of accusatory instrument; sufficiency of evidence to prove charged offense beyond a reasonable doubt; various claims of violation of due process at trial;

WHITE, MATTER OF v ANNUCCI, &c., et al.:

Prisons and Prisoners--Discipline of Inmates--Claimed due process violations with regard to a tier III disciplinary hearing involving a charge of violating facility correspondence procedures;

WILLIAMS et al. v BEEMILLER, INC., &c., et al.:

Courts--Jurisdiction--Long Arm Jurisdiction--Whether exercise of personal jurisdiction over defendant under New York's long-arm statute (*see* CPLR 302[a][3]) comports with federal due process; defendant, out-of-state dealer of firearms, sold a gun in Ohio that was transported to New York and used in a shooting that injured plaintiff; whether jurisdiction over defendant can be obtained under an agency or alter ego theory;

WILLIAMS (CADMAN), PEOPLE v:

Crimes--Evidence--Whether trial court abused its discretion in failing to hold a *Frye* hearing regarding admission of Low Copy Number Typing and the Forensic Statistical Tool used by the Office of the Chief Medical Examiner; Crimes—Right to Counsel—Effective Representation—whether counsel was ineffective for failing to challenge court's justification instruction; Crimes—Evidence—whether recordings of defendant's phone calls, made while defendant was in pretrial detention, were admissible;

WILLIAMS v STATE OF NEW YORK:

Appeal--Appealable Paper--Appellate Division order denying motion for reversal of a prior order of that court;