

COURT OF APPEALS NEW FILINGS

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

August 7 through August 13, 2009

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.

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.

DIAZ (TEOFILO), PEOPLE v:

2ND Dept. App. Div. order of 3/17/09; affirmance; leave to appeal granted by Smith, J., 7/29/09;

CRIMES - DISCLOSURE - NOTICE OF INTENTION TO OFFER PSYCHIATRIC EVIDENCE - LAY TESTIMONY IN SUPPORT OF AFFIRMATIVE DEFENSE OF EXTREME EMOTIONAL DISTURBANCE (EED) - WHETHER A DEFENDANT WHO INTENDS TO RELY ON HIS OWN TESTIMONY TO SUPPORT AN EED DEFENSE MUST (1) GIVE NOTICE TO THE PROSECUTION UNDER CPL 250.10, WHICH REQUIRES SUCH NOTICE WHERE THE DEFENDANT PLANS TO OFFER EVIDENCE OF "MENTAL DISEASE OR DEFECT" IN SUPPORT OF AN EED DEFENSE, AND (2) SUBMIT TO AN EXAMINATION BY A PROSECUTION PSYCHIATRIST; WHETHER THE PEOPLE'S EXPERT PSYCHIATRIST IMPROPERLY TESTIFIED AS TO MATTERS OF CREDIBILITY - HARMLESS ERROR;

Supreme Court, Kings County convicted defendant, upon a jury verdict, of murder in the second degree, two counts of criminal contempt in the first degree, and endangering the welfare of the child, and imposed sentence; App. Div. affirmed.

FRANCOIS (JERRY), PEOPLE v:

1ST Dept. App. Div. order of 4/16/09; affirmance; leave to appeal granted by Catterson, J., 7/21/09;

CRIMES - POSSESSION OF STOLEN PROPERTY - STOP AND DETENTION BY POLICE BASED ON DEFENDANT'S SUSPICIOUS ACTIVITY WITH CREDIT CARD AT SUBWAY METROCARD MACHINE - WHETHER POLICE CONDUCT ELEVATED THE ENCOUNTER TO A SEIZURE REQUIRING REASONABLE SUSPICION; SUPPRESSION MOTION;

Supreme Court, New York County convicted defendant, upon his guilty plea, of criminal possession of stolen property in the fourth degree and sentenced him, as a second felony offender, to a term of 1 1/2 to 3 years; App. Div. affirmed.

FREDERICK (TREVOR), PEOPLE v:

1ST Dept. App. Div. order of 5/28/09; affirmance; leave to appeal granted by Ciparick, J., 7/29/09;

CRIMES - INDICTMENT - WHETHER SUPREME COURT PROPERLY REINSTATED INDICTMENT THAT HAD BEEN DISMISSED PURSUANT TO CPL 200.80 AS SUPERSEDED BY A NEW INDICTMENT WHERE THE COURT DISMISSED THE SUPERSEDING INDICTMENT AS PROCEDURALLY DEFECTIVE;

Supreme Court, New York County convicted defendant, after a nonjury trial, of murder in the second degree, and sentenced him to a term of 25 years to life; App. Div. affirmed.

HURRELL-HARRING, et al. v STATE OF NEW YORK, et al.:

3RD Dept. App. Div. order of 7/16/09; reversal;

DISMISSAL AND NONSUIT - NONJUSTICIABLE CONTROVERSY - COMPLAINT ALLEGING SYSTEMIC VIOLATIONS OF THE RIGHT OF INDIGENT DEFENDANTS TO APPOINTED COUNSEL; CONSTITUTIONAL LAW - RIGHT TO COUNSEL;

Supreme Court, Albany County (in two orders dated 8/12/08) denied defendant State's motion to dismiss the complaint and directed plaintiffs to serve a second amended complaint adding certain Counties as parties defendant; and denied defendant State's motion to declare the attorney-client privilege waived as to certain of the named plaintiffs; App. Div. reversed the 8/12/08 Supreme Court order that denied defendant State's motion to dismiss the complaint, granted the motion, and dismissed the complaint; and dismissed as academic the appeal from the 8/12/08 Supreme Court order that denied defendant State's motion to declare the attorney-client privilege waived as to certain of the named plaintiffs.

PERKINS (NAYSHAWN), PEOPLE v:

2ND Dept. App. Div. order of 4/14/09; affirmance; leave to appeal granted by Pigott, J., 8/3/09;

CRIMES - IDENTIFICATION OF DEFENDANT - CPL 60.30 - WHETHER TRIAL COURT COMMITTED REVERSIBLE ERROR BY ADMITTING TESTIMONY FROM SOLE WITNESS TO IDENTIFY DEFENDANT AT TRIAL CONCERNING, AMONG OTHER THINGS, THAT WITNESS'S PRETRIAL PHOTO ARRAY IDENTIFICATION OF DEFENDANT WHERE THE PHOTO ARRAY WAS CONDUCTED AFTER DEFENDANT

REFUSED TO PARTICIPATE IN A LINEUP EVEN THOUGH DEFENDANT
ULTIMATELY WAS IDENTIFIED IN A LINEUP NINE MONTHS AFTER THE CRIME
- WHETHER POLICE TESTIMONY IMPROPERLY BOLSTERED DEFENDANT'S
IDENTIFICATION;

Supreme Court, Kings County convicted defendant of attempted
murder in the second degree and robbery in the first degree, upon
a jury verdict, and imposed sentence, bringing up for review the
denial, after a hearing, of that branch of defendant's omnibus
motion which was to suppress identification testimony; App. Div.
affirmed.

TARONE v TARONE:

2nd Dept. App. Div. order of 7/2/09; denial of motion to vacate
prior App. Div. order; 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;
HUSBAND AND WIFE - DIVORCE - CHALLENGE TO APPELLATE DIVISION
ORDER DENYING PLAINTIFF-HUSBAND'S MOTION TO VACATE AN APPELLATE
DIVISION ORDER GRANTING DEFENDANT-WIFE'S MOTION TO DIRECT THE
SUFFOLK COUNTY TREASURER TO RELEASE \$50,000 TO HER ATTORNEY;
App. Div. denied plaintiff-husband's motion, among other things,
to vacate a decision and order on motion dated 4/3/09, which
granted defendant-wife's motion to direct the Treasurer of
Suffolk County to release to her attorney the sum of \$50,000,
upon husband's default in opposing the motion, on appeals from
three orders of the Supreme Court, Suffolk County, dated
10/31/07, 12/10/07 and 1/15/08, which were determined by decision
and order dated 2/3/09.