

COURT OF APPEALS NEW FILINGS

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

June 21, 2013 through June 27, 2013

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.

COUNTY OF ERIE v M/A-COM, INC., et al.:

4TH Dept. App. Div. order of 3/15/13; affirmance with dissents; leave to appeal granted by App. Div., 6/7/13;

COUNTIES - COUNTY EXECUTIVE - POWER TO COMMENCE ACTION TO RECOVER DAMAGES FROM FORMER COUNTY EMPLOYEE - ABSENCE OF RESOLUTION BY COUNTY LEGISLATURE AUTHORIZING COMMENCEMENT OF ACTION; FRAUD - SUFFICIENCY OF PLEADING;

Supreme Court, Erie County denied in part defendant Comerford's motion to dismiss the first amended complaint as against him; App. Div. affirmed.

FRATANGELO (PATRICIA), PEOPLE v:

County Court, Seneca County order of 2/21/13; affirmance; leave to appeal granted by Read, J., 6/11/13;
CRIMES - INSTRUCTIONS - DRIVING WHILE INTOXICATED - WHETHER THE TRIAL COURT ERRED IN REFUSING TO CHARGE THE JURY THAT "UNDER OUR LAW, EVIDENCE THAT THERE WAS LESS THAN .08 OF 1 PER CENTUM BY WEIGHT OF ALCOHOL IN THE DEFENDANT'S BLOOD, IS PRIMA FACIE EVIDENCE THAT THE DEFENDANT WAS NOT IN AN INTOXICATED CONDITION" - BASED UPON THE NUMBER OF DRINKS DEFENDANT CLAIMED TO HAVE HAD AND THE TIME BETWEEN THE STOP AND BREATH TEST, WHICH RESULTED IN A BLOOD ALCOHOL CONTENT (BAC) OF .09%, DEFENDANT'S EXPERT OPINED AT TRIAL THAT DEFENDANT'S BAC AT THE TIME OF THE STOP WOULD HAVE BEEN ONLY .03 TO .04% - VEHICLE AND TRAFFIC LAW §1195(2);
Justice Court, Town of Ovid convicted defendant, after a jury trial, of speeding and common law driving while impaired; County Court affirmed.

KANE v GALTIERI:

2ND Dept. App. Div. notice marked "received" by App. Div. 5/24/13; sua sponte examination whether the Papers Rejection Notice from the App. Div. is an appealable paper pursuant to CPLR 5512(a), and whether any basis exists to support an appeal as of right;
APPEALS - APPEALABLE PAPER - CHALLENGE TO APPELLATE DIVISION NOTICE REJECTING APPELLANT'S BRIEFS FOR FILING.

REID (GRAHAM), PEOPLE v:

1ST Dept. App. Div. order of 1/3/13; affirmance; leave to appeal granted by Lippman, Ch.J., 6/13/13;
CRIMES - UNLAWFUL SEARCH AND SEIZURE - WHETHER THE LOWER COURTS ERRED IN DENYING A SUPPRESSION MOTION REGARDING A SWITCH BLADE KNIFE FOUND BY A POLICE OFFICER IN A PAT-DOWN AFTER PULLING DEFENDANT OVER FOR ERRATIC DRIVING BUT BEFORE ANY ARREST WAS INTENDED;
Supreme Court, New York County convicted defendant, upon his guilty plea, of criminal possession of a weapon in the third degree and sentenced him, as a second felony offender, to a term of 2 to 4 years; App. Div. affirmed.