

COURT OF APPEALS NEW FILINGS

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

October 6, 2017 through October 12, 2017

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.

HILL (NICHOLAS), PEOPLE v:

1ST Dept. App. Div. order of 5/30/17; affirmance; leave to appeal granted by Gesmer, J., 8/22/17; Rule 500.11 review pending; 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; Supreme Court, New York County, convicted defendant, upon his guilty plea, of criminal possession of a controlled substance in the third degree, and sentenced him, as a second felony drug offender, to a term of two years; App. Div. affirmed.

MARTIN (TIMOTHY), PEOPLE v:

1ST Dept. App. Div. order of 2/21/17; affirmance; leave to appeal granted by Rivera, J., 9/28/17;

Crimes--Suppression Hearing--Whether the trial court erred in admitting evidence of defendant's response to a police officer that he lived in the apartment being searched, to prove defendant's constructive possession of the drugs found--whether defendant's response fell within the pedigree exception to the *Miranda* rule;

Supreme Court, New York County, convicted defendant, after a jury trial, of criminal possession of a controlled substance in the third and fifth degrees and two counts of criminally using drug paraphernalia in the second degree, and sentenced him, as a second felony drug offender, to an aggregate term of two years; App. Div. affirmed.

SCHNAPP v MILLER'S LAUNCH, INC.:

1ST Dept. App. Div. order of 3/23/17; reversal; leave to appeal granted by App. Div., 8/29/17; Rule 500.11 review pending;

Workers' Compensation--Longshore and Harbor Workers' Compensation Act--Plaintiff maritime surveyor injured while attempting to board vessel by jumping from bulkhead to vessel deck; whether questions of fact exist as to whether defendant vessel owner violated the turnover duty and duty to intervene under the Longshore and Harbor Workers' Compensation Act (33 USC § 901 et seq); application of Scinda Steam Nav. Co. v De los Santos (451 US 156 [1981]);

Supreme Court, New York County, granted defendant's motion for summary judgment dismissing the complaint; App. Div. reversed and denied the motion.

TAPIA (CARLOS), PEOPLE v:

1ST Dept. App. Div. order of 6/6/17; affirmance with dissents; leave to appeal granted by Kapnick, J., 9/26/17; Rule 500.11 review pending;

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;

Supreme Court, New York County, convicted defendant, upon a jury verdict, of attempted assault in the first degree, and sentenced him to a term of five years imprisonment, with three years' post release supervision; App. Div. affirmed.