

COURT OF APPEALS NEW FILINGS

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

April 29 through May 5, 2011

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.

CRUZ (GERALDO), PEOPLE v:

2ND Dept. App. Div. order of 12/28/10; affirmance; leave to appeal granted by Pigott, J., 4/18/11;

TRIAL - PHYSICALLY RESTRAINED DEFENDANT - LEG SHACKLES - WHETHER TRIAL COURT CONDUCTED SUFFICIENT INQUIRY ON FACTS WARRANTING RESTRAINT; JURY NOTE - WHETHER TRIAL COURT GAVE MEANINGFUL RESPONSES TO JURY'S WRITTEN REQUESTS DURING DELIBERATIONS; Suffolk County Court convicted defendant, upon a jury verdict, of burglary in the second degree, and imposed sentence; App. Div. affirmed.

LESHER, MATTER OF v HYNES et al.:

2ND Dept. App. Div. order of 1/11/11; reversal; leave to appeal granted by Court of Appeals, 4/28/11;

RECORDS - FREEDOM OF INFORMATION LAW (FOIL) - MATERIALS EXEMPT FROM DISCLOSURE - WHETHER DOCUMENTS EXCHANGED BETWEEN DISTRICT ATTORNEY'S OFFICE AND THE FEDERAL GOVERNMENT, WHICH RELATE TO THE EXTRADITION FROM ISRAEL OF INDIVIDUAL INDICTED IN KINGS COUNTY ON MULTIPLE COUNTS OF SEXUAL ABUSE OF A CHILD, ARE EXEMPT FROM DISCLOSURE UNDER PUBLIC OFFICERS LAW § 87(2)(e), AS DOCUMENTS THAT WOULD INTERFERE WITH LAW ENFORCEMENT INVESTIGATIONS OR AS DOCUMENTS SPECIFICALLY EXEMPTED FROM DISCLOSURE BY STATE STATUTE, NAMELY CIVIL RIGHTS LAW § 50-b, WHICH PROHIBITS DISCLOSURE OF DOCUMENTS THAT WOULD IDENTIFY THE VICTIMS OF A SEX OFFENSE; Supreme Court, Kings County judgment that, in a CPLR article 78 proceeding seeking to compel respondents to comply with petitioner's October 17, 2007 FOIL request, granted the petition only to the extent of directing respondents to provide copies of all correspondence, memoranda or other documents between the District Attorney's Office and agencies or departments of the federal government regarding the extradition of Avrohom Mondrowitz; App. Div. reversed the judgment insofar as appealed from, denied those branches of the petition that were to direct respondents to provide petitioner with all correspondence, memoranda, and other documents exchanged between the office of the District Attorney, Kings County, and agencies and departments of the United States government regarding the extradition of Avrohom Mondrowitz from Israel, and dismissed that portion of the proceeding.

MILLER (JEFFREY H.), PEOPLE v:

4TH Dept. App. Div. order of 5/7/10; reversal; leave to appeal granted by Read, J., 4/15/11;

CRIMES - JURORS - JURY INSTRUCTIONS - WHETHER ANNOTATIONS ON THE VERDICT SHEET INSTRUCTING THE JURY THAT, IF IT CONVICTED DEFENDANT OF INTERNATIONAL MURDER, IT WAS TO DETERMINE WHETHER "THE DEFENDANT ESTABLISHED BY A PREPONDERANCE OF THE EVIDENCE THAT HE ACTED UNDER EXTREME EMOTIONAL DISTURBANCE," EXCEEDED THE BOUNDS OF CPL 310.20(2) - IF SO, WHETHER THE CORRECT REMEDY WAS REVERSAL OF THE COUNTS UNRELATED TO THE MURDER CHARGE; HARMLESS ERROR;

Supreme Court, Monroe County, after a jury trial, convicted defendant of murder in the second degree, assault in the second degree, criminal possession of a weapon in the second degree, and criminal possession of a weapon in the third degree; App. Div. reversed and granted a new trial on counts one, five, six and seven of the indictment.

SIMKIN v BLANK:

1ST Dept. App. Div. order of 1/4/11; reversal; leave to appeal granted by App. Div., 4/21/11;

CONTRACTS - MISTAKE - REFORMATION OF 2006 DIVORCE SETTLEMENT AGREEMENT DIVIDING MARITAL PROPERTY VALUED AS OF SEPTEMBER 2004 AND CONTAINING MUTUAL RELEASES AND A MERGER CLAUSE - CAUSE OF ACTION FOR REFORMATION BASED UPON ALLEGED MUTUAL MISTAKE INVOLVING PLAINTIFF'S PURPORTED INVESTMENT ACCOUNT WITH BERNARD L. MADOFF INVESTMENT SECURITIES; CONTRACTS - QUASI CONTRACTS - UNJUST ENRICHMENT - AVAILABILITY WHERE NEITHER PARTY TO AGREEMENT ENGAGED IN WRONGDOING; WHETHER DOCTRINE OF FINALITY IN DIVORCE CASES AND/OR RELEASE AND INTEGRATION CLAUSE IN AGREEMENT BARS PLAINTIFF FROM SEEKING REFORMATION OF THE AGREEMENT; Supreme Court, New York County granted defendant's motion to dismiss the amended complaint pursuant to CPLR 3211; App. Div. reversed, denied the motion and reinstated the amended complaint.