

COURT OF APPEALS NEW FILINGS

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

September 2 through September 8, 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.

ALFARO (JOSE), PEOPLE v:

1ST Dept. App. Div. order of 6/30/11; affirmance; leave to appeal granted by Ciparick, J., 8/30/11;

CRIMES - EVIDENCE - ADMISSION OF IMITATION PISTOL, HANDCUFFS AND HANDCUFF KEYS AS CIRCUMSTANTIAL EVIDENCE OF INTENT TO COMMIT ROBBERY AND ASSAULT CRIMES - POSSESSION OF ITEMS NOT INTRINSICALLY UNLAWFUL AND NOT USED, DISPLAYED OR THREATENED TO BE USED IN COMMISSION OF CRIMES - ABSENCE OF LIMITING INSTRUCTION - ALLEGED MOLINEAUX VIOLATION; ALLEGED DENIAL OF A FAIR TRIAL DUE TO TRIAL COURT RULINGS AND PROSECUTORIAL MISCONDUCT; SUFFICIENCY OF THE EVIDENCE OF A COMPLETED ROBBERY;

Supreme Court, New York County convicted defendant, after a jury trial, of robbery in the first and second degrees, assault in the first degree, and gang assault in the second degree, and sentenced him to an aggregate term of 15 years; Supreme Court then resentenced defendant to an aggregate term of 15 years, with 2 1/2 years' post-release supervision; App. Div. affirmed.

CARUSO et al. v NORTHEAST EMERGENCY MEDICAL ASSOCIATES, P.C.:

3RD Dept. App. Div. order of 6/30/11, bringing up for review 3rd Dept. App. Div. order of 8/21/08; modification with dissents; Rule 500.11 review pending;

RELEASE - SCOPE OF RELEASE - WHETHER GENERAL RELEASE BARRED ACTION FOR CONTRACTUAL INDEMNIFICATION; ASSIGNMENT OF CONTRACTUAL INDEMNIFICATION RIGHTS - WHETHER THE ACTION AND ASSIGNMENT ARE BARRED BY LANGUAGE THAT LIMITED THE ASSIGNMENT "TO THE EXTENT OF ANY INSURANCE COVERAGE PROVIDING BENEFITS OR COVERAGE TO [HOSPITAL DEFENDANT IN PRIOR MALPRACTICE ACTION]" - WHETHER ASSIGNMENT IS BARRED BY PUBLIC POLICY;

Supreme Court, Schenectady County granted defendant's motion for summary judgment dismissing the complaint; App. Div. modified by reversing so much of the Supreme Court order as granted defendant's motion and denied the motion.

MOX (MICHAEL), PEOPLE v:

4TH Dept. App. Div. order of 5/6/11; reversal; leave to appeal granted by Nancy E. Smith, J., 8/8/11; Rule 500.11 review pending;

CRIMES - PLEA OF GUILTY - WITHDRAWAL OF PLEA - WHETHER TRIAL COURT MADE A SUFFICIENT INQUIRY TO ENSURE THAT GUILTY PLEA WAS KNOWINGLY AND VOLUNTARILY ENTERED AND THAT DEFENDANT'S STATEMENTS DURING THE PLEA COLLOQUY ESTABLISHED ALL OF THE ELEMENTS OF THE CRIME - DEFENDANT'S STATEMENTS THAT HE WAS IN PSYCHOTIC STATE AT TIME OF KILLING - PRESERVATION;

Monroe County Court convicted defendant, upon his guilty plea, of manslaughter in the first degree; App. Div. reversed, vacated the plea and remitted the matter to Monroe County Court for further proceedings on the indictment.