

COURT OF APPEALS NEW FILINGS

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

April 25, 2014 through May 1, 2014

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.

DERBY v BITAN:

2ND Dept. App. Div. orders of 12/26/13 and 3/27/14; affirmance and denial of motion; sua sponte examination whether the 3/27/14 App. Div. order appealed from finally determines the action within the meaning of the Constitution and whether a substantial constitutional question is otherwise directly involved to support an appeal as of right;
JUDGMENTS - SUMMARY JUDGMENT - TIMELINESS OF MOTION FOR SUMMARY JUDGMENT (CPLR 3212[a]); RENEWAL OF MOTION FOR SUMMARY JUDGMENT; Supreme Court, Dutchess County, granted defendant's motion for leave to renew his prior motion for summary judgment dismissing the complaint and, upon renewal, granted defendant's prior motion for summary judgment dismissing the complaint; App. Div. affirmed and thereafter denied plaintiff's motion for reargument or for leave to appeal to the Court of Appeals.

GONZALEZ (RICHARD), PEOPLE v:

1ST Dept. App. Div. order of 12/5/13; affirmance; leave to appeal granted by Pigott, J., 4/21/14;

CRIMES - POSSESSION OF WEAPON - WHETHER THE TRIAL COURT ERRED IN INSTRUCTING THE JURY THAT TO BE GUILTY OF POSSESSING A "GRAVITY KNIFE" (PENAL LAW 265.01[1]), DEFENDANT HAD TO KNOW ONLY THAT HE HAD A KNIFE IN HIS POSSESSION, AND NOT THAT THE KNIFE HAD THE CHARACTERISTICS OF A "GRAVITY KNIFE" (PENAL LAW 265.00[5]) - SCIENTER ELEMENT OF CRIME; SEARCH - WHETHER POLICE STOP AND SEARCH OF DEFENDANT WAS JUSTIFIED;

Supreme Court, New York County, convicted defendant, after a jury trial, of criminal possession of a weapon in the third degree and sentenced him, as a second felony offender, to a term of 3 1/2 to 7 years; App. Div. affirmed.

SCOTT (HAKIM B.), PEOPLE v:

2ND Dept. App. Div. order of 5/22/13; modification; leave to appeal granted by Rivera, J., 4/21/14;

CRIMES - MANSLAUGHTER - WHETHER THE EVIDENCE WAS SUFFICIENT TO SUPPORT THE CONVICTION OF DEFENDANT FOR MANSLAUGHTER IN THE FIRST DEGREE - WHETHER THERE WAS EVIDENCE OF "A COMMUNITY OF PURPOSE" WITH THE CODEFENDANT WHO RETRIEVED AND USED THE BASEBALL BAT TO BEAT THE VICTIM WHILE DEFENDANT CHASED ANOTHER VICTIM; JURY INSTRUCTIONS - WHETHER DEFENDANT WAS DEPRIVED OF HIS RIGHT TO BE PRESENT FOR ALL MATERIAL STAGES OF HIS TRIAL - JURY INSTRUCTION CORRECTING DATES OF CRIMES GIVEN WITHOUT COUNSEL OR DEFENDANT IN COURTROOM;

Supreme Court, Kings County, upon a jury verdict, convicted defendant of manslaughter in the first degree and attempted assault in the first degree, and sentenced him to a determinate term of imprisonment of 25 years plus a period of 5 years of postrelease supervision on the conviction of manslaughter in the first degree and a determinate term of imprisonment of 12 years plus a period of 5 years postrelease supervision on the conviction of attempted assault in the first degree, to run consecutively; App. Div. modified by reducing the term of imprisonment on the conviction of attempted assault in the first degree from a determinate term of 12 years to a determinate term of 4 years.