

COURT OF APPEALS NEW FILINGS

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

**June 25 through July 1, 2010**

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 60 days after the appeal was taken; respondent's brief to be filed 45 days after the filing of appellant's brief; and a reply brief, if any, to be filed 15 days after 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.**

BRUN (RAYMOND), PEOPLE v:

2<sup>ND</sup> Dept. App. Div. order of 7/7/09; denial of application for writ of error coram nobis; leave to appeal granted by Jones, J., 6/18/10; Rule 500.11 review pending;

CRIMES - RIGHT TO COUNSEL - DEFENDANT'S RIGHT TO COUNSEL ON PEOPLE'S APPEAL TO APPELLATE DIVISION FROM ORDER SETTING ASIDE VERDICT; RULE OF APPELLATE DIVISION, SECOND DEPARTMENT (22 NYCRR 671.3[f]);

App. Div. denied application for writ of error coram nobis.

FERNANDEZ (JOSE), PEOPLE:

1<sup>ST</sup> Dept. App. Div. order of 3/24/09; affirmance; leave to appeal granted by Read, J., 6/15/10;

CRIMES - UNLAWFUL SEARCH AND SEIZURE - WHETHER POLICE LACKED REASONABLE SUSPICION, BASED ON OBSERVING A CLIP ATTACHED TO THE OUTSIDE OF DEFENDANT'S POCKET AND THE PROTRUDING TOP OF A KNIFE, THAT DEFENDANT POSSESSED A GRAVITY KNIFE; SUPPRESSION MOTION; WHETHER THE LACK OF MENS REA REQUIREMENT IN PENAL LAW § 265.01 VIOLATES DUE PROCESS;

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.

GUAY (DEAN), PEOPLE v:

3<sup>RD</sup> Dept. App. Div. order of 4/18/10; modification; leave to appeal granted by Ciparick, J., 6/16/10;

CRIMES - JURORS - SELECTION OF JURY - BATSON CHALLENGE - WHETHER THE TRIAL COURT ERRED IN GRANTING THE PEOPLE'S CHALLENGE FOR CAUSE WITH RESPECT TO PROSPECTIVE JUROR WITH A SLIGHT HEARING IMPAIRMENT - DEFENDANT'S STANDING TO INVOKE THE AMERICANS WITH DISABILITIES ACT ON PROSPECTIVE JUROR'S BEHALF; ALLEGED PROSECUTORIAL MISCONDUCT; ALLEGED INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL;

Supreme Court, Clinton County convicted defendant of rape in the first degree, sexual abuse in the first degree and endangering the welfare of a child; App. Div. modified by vacating the sentences imposed and remitted to Supreme Court for resentencing.

HAYES (KENNETH), PEOPLE v:

1<sup>ST</sup> Dept. App. Div. order of 4/6/10; affirmance; leave to appeal granted by Ciparick, J., 6/17/10;

CRIMES - EVIDENCE - JUSTIFICATION DEFENSE - POLICE OFFICER AT CRIME SCENE OVERHEARD TWO WITNESSES SAY THAT THE WOUNDED MAN FIRST ATTACKED WITH A KNIFE, BUT DID NOT QUESTION THEM FURTHER OR RECORD NAMES OR CONTACT INFORMATION FOR FURTHER INVESTIGATION - CLAIMED BRADY VIOLATION; CROSS-EXAMINATION - WHETHER TRIAL COURT ERRED IN LIMITING CROSS-EXAMINATION OF POLICE OFFICER REGARDING THE ADEQUACY OF POLICE INVESTIGATION INTO CENTRAL DISPUTED FACTUAL ISSUE OF ORIGINAL KNIFE POSSESSION;

Supreme Court, New York County, after a jury trial, convicted defendant of assault in the second degree and criminal possession of a weapon in the fourth degree, and sentenced him to an aggregate term of two years; App. Div. affirmed.

REYNOLDS et al. v KNIBBS et al.:

4<sup>th</sup> Dept. App. Div. order of 5/7/10; reversal with dissents; Rule 500.11 review pending;

NEGLIGENCE - MAINTENANCE OF PREMISES - ACTUAL OR CONSTRUCTIVE NOTICE OF DEFECTIVE CONDITION - SUMMARY JUDGMENT - ACTION FOR DAMAGES TO PLAINTIFF FROM FALLING WHILE DESCENDING STAIRS IN RESIDENCE RENTED FROM DEFENDANTS WHERE STAIRS ALLEGEDLY DETACHED FROM THE WALL AND COLLAPSED;

Supreme Court, Ontario County denied defendants' motion for summary judgment dismissing the complaint; App. Div. reversed, granted defendants' motion for summary judgment dismissing the complaint and dismissed the complaint.

RIVERA (PETER), PEOPLE v:

2<sup>ND</sup> Dept. App. Div. order of 3/2/10; affirmance; leave to appeal granted by Graffeo, J., 6/23/10;

CRIMES - AGGRAVATED UNLICENSED OPERATION OF MOTOR VEHICLE - WHETHER DEFENDANT, WHOSE DRIVER'S LICENSE WAS REVOKED FOR SIX MONTHS FOLLOWING A DWI CONVICTION, BUT WHO WAS ISSUED A CONDITIONAL LICENSE, CAN BE CHARGED WITH AGGRAVATED UNLICENSED OPERATION OF A MOTOR VEHICLE OR CAN ONLY BE CHARGED WITH A TRAFFIC INFRACTION UNDER VEHICLE AND TRAFFIC LAW § 1196(7)(f), THE STATUTE AUTHORIZING ISSUANCE OF CONDITIONAL LICENSES;

Supreme Court, Westchester County granted that branch of defendant's motion which was to dismiss count two of the indictment, charging aggravated unlicensed operation of a motor vehicle in the first degree, on the ground that the evidence presented to the grand jury was legally insufficient; App. Div. affirmed.

RIVERA (JOSE), PEOPLE v:

1<sup>ST</sup> Dept. App. Div. order of 4/27/10; affirmance; leave to appeal granted by Acosta, J., 6/22/10; Rule 500.11 review pending;

CRIMES - JURORS - JURY INSTRUCTIONS - WHETHER TRIAL COURT ERRED IN REFUSING TO SUBMIT FOURTH DEGREE POSSESSION OF A WEAPON AS A LESSER INCLUDED OFFENSE OF SECOND DEGREE POSSESSION OF A WEAPON; JUSTIFICATION DEFENSE REGARDING HOMICIDE CHARGE OF WHICH DEFENDANT WAS ACQUITTED; CLAIMED INEFFECTIVENESS OF TRIAL COUNSEL FOR FAILURE TO REQUEST JUSTIFICATION JURY CHARGE REGARDING WEAPON POSSESSION COUNT OF INDICTMENT;

Supreme Court, Bronx County, after a trial, convicted defendant of criminal possession of a weapon in the second degree, and sentenced him, as a second violent felony offender, to a term of 15 years, to be followed by five years of postrelease supervision; App. Div. affirmed.

STRANGIO v SEVENSON ENVIRONMENTAL SERVICES, INC. et al. (AND A THIRD-PARTY ACTION):

4<sup>TH</sup> Dept. App. Div. order of 6/18/10; affirmance; Rule 500.11 reviewing pending;

TORTS - LABOR LAW § 240(1) - WHETHER PLAINTIFF'S INJURIES WERE DIRECTLY CAUSED BY APPLICATION OF THE FORCE OF GRAVITY TO AN OBJECT AS A MATTER OF LAW WHEN PLAINTIFF WAS STRUCK IN THE FACE BY THE HANDLE OF A HAND-OPERATED HOISTING MECHANISM WHILE RAISING A SCAFFOLD THAT DESCENDED UNEXPECTEDLY; SUMMARY JUDGMENT;

Supreme Court, Niagara County granted those part of the motions of third-party plaintiffs and third-party defendant for summary judgment dismissing the Labor Law § 240(1) claim and the Labor Law § 241(6) claim insofar as it is based on the alleged violation of 12 NYCRR 23-6.1(j); App. Div. affirmed.