

COURT OF APPEALS NEW FILINGS

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

January 6, 2012 through January 12, 2012

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.

LAMB et al. v GOVERNOR FOR NEW YORK STATE, et al.:
2ND Dept. App. Div. order of 12/13/11; affirmance; sua sponte examination whether a substantial constitutional question is directly involved;
JUDGMENTS - RES JUDICATA; DISMISSAL AND NONSUIT;
Supreme Court, Suffolk County, among other things, granted defendants' motion insofar as it sought dismissal of the complaint on the ground of res judicata; App. Div. affirmed.

McFADDEN (BRANDON), PEOPLE v:

2ND Dept. App. Div. order of 8/2/11; reversal; leave to appeal granted by Pigott, J., 12/28/11;

CRIMES - DOUBLE JEOPARDY - AT FIRST TRIAL, DEFENDANT CONVICTED OF THE MISDEMEANOR OF CRIMINAL POSSESSION OF A CONTROLLED SUBSTANCE IN THE SEVENTH DEGREE, AND JURY DEADLOCKED ON TWO FELONY CHARGES - AFTER MISTRIAL GRANTED AS TO THE TWO FELONIES, DEFENDANT WAS RETRIED AND CONVICTED OF FELONY CRIMINAL POSSESSION OF A CONTROLLED SUBSTANCE IN THE THIRD DEGREE - WHETHER RETRIAL AND SUBSEQUENT FELONY CONVICTION VIOLATED DOUBLE JEOPARDY PRINCIPLES; CLAIMED WAIVER OF DOUBLE JEOPARDY PROTECTIONS;

Supreme Court, Queens County convicted defendant, upon a jury verdict, of criminal possession of a controlled substance in the third degree, and imposed sentence; App. Div. reversed and dismissed the first count of the indictment charging criminal possession of a controlled substance in the third degree.

SHENENDEHOWA CENTRAL SCHOOL DISTRICT BOARD OF EDUCATION v CIVIL SERVICE EMPLOYEES ASSOCIATION, INC. &c. et al.:

3RD Dept. App. Div. order of 12/1/11; reversal with dissents; ARBITRATION - JUDICIAL REVIEW - ARBITRATION AWARD REINSTATING A BUS DRIVER WHO TESTED POSITIVE FOR MARIJUANA AFTER DRIVING CHILDREN TO SCHOOL - STANDARD OF REVIEW FOR VACATUR OF ARBITRATION AWARD;

Supreme Court, Saratoga County, among other things, granted petitioner's application pursuant to CPLR 7511 to vacate an arbitration award; App. Div. reversed, denied the petition, granted the counterclaim, and confirmed the arbitration award.

WATSON (CARL), PEOPLE v:

2ND Dept. App. Div. order of 5/17/11; affirmance; leave to appeal granted by Lippman, Ch.J., 12/30/11;

CRIMES - JUSTIFICATION - ADMISSIBILITY OF EVIDENCE OF HOMICIDE VICTIM'S PRIOR SPECIFIC CRIMINAL ACTS OF VIOLENCE AS RELEVANT TO THE ISSUE OF WHO WAS THE INITIAL AGGRESSOR WHERE DEFENDANT DID NOT KNOW ABOUT SUCH ACTS IN COMMITTING THE HOMICIDE;

Supreme Court, Kings County convicted defendant of manslaughter in the first degree and criminal possession of a weapon in the second degree, upon a jury verdict, and imposed sentence; App. Div. affirmed.