

COURT OF APPEALS NEW FILINGS

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

October 3, 2014 through October 9, 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.

BARDEN (SCOTT), PEOPLE v:

1ST Dept. App. Div. order of 4/10/14; modification; leave to appeal granted by Pigott, J., 9/23/14;
CRIMES - POSSESSION OF STOLEN PROPERTY - INTANGIBLES - CREDIT CARD NUMBERS - WHETHER A PERSON MAY BE CONVICTED FOR CRIMINAL POSSESSION OF STOLEN PROPERTY IN THE FOURTH DEGREE OR USING A CREDIT CARD NUMBER TO MAKE UNAUTHORIZED CHARGES WHERE THE RIGHTFUL OWNER RETAINS PHYSICAL POSSESSION OF THE CREDIT CARD (PENAL LAW § 165.45[2]) - CONSTRUCTIVE POSSESSION OF CREDIT CARD NUMBER; ALLEGED VIOLATION OF DEFENDANT'S STATUTORY SPEEDY TRIAL RIGHTS;

Supreme Court, New York County, convicted defendant of identity theft in the first degree, criminal possession of stolen property in the fourth degree, and two counts of theft of services, and imposed sentence; App. Div. modified, to the extent of vacating the identity theft conviction and dismissing that count.

BILAL (RASHID), PEOPLE v:

1ST Dept. App. Div. order of 6/5/14; affirmance; leave to appeal granted by Rivera, J., 9/25/14;

CRIMES - RIGHT TO COUNSEL - EFFECTIVE REPRESENTATION - WHETHER THE APPELLATE DIVISION CORRECTLY DETERMINED THAT COUNSEL'S ERROR IN FAILING TO MOVE TO SUPPRESS A WEAPON DEFENDANT DISCARDED WHILE BEING CHASED BY PLAINCLOTHES POLICE DID NOT CAUSE DEFENDANT PREJUDICE BECAUSE DEFENDANT WOULD NOT HAVE PREVAILED ON A SUPPRESSION MOTION BASED UPON THE COURT'S CONCLUSION THAT "THE UNDISPUTED FACTS ESTABLISH THAT, WHEN ADDED TO THE INFORMATION ALREADY KNOWN TO THE POLICE, DEFENDANT'S FLIGHT CREATED REASONABLE SUSPICION WARRANTING PURSUIT" AND "THE SEIZURE WAS LAWFUL, IN ANY EVENT, UNDER THE DOCTRINE OF ABANDONMENT";

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

DAVIS et al. v SOUTH NASSAU COMMUNITIES HOSPITAL, et al.:

2ND Dept. App. Div. order of 7/2/14; affirmance; leave to appeal granted by Court of Appeals, 9/23/14;

NEGLIGENCE - DUTY - WHETHER DEFENDANTS OWED A DUTY OF CARE TO PLAINTIFF WHO WAS INJURED WHEN THE BUS HE WAS OPERATING WAS STRUCK BY A VEHICLE DRIVEN BY DEFENDANT'S PATIENT AFTER SHE ALLEGEDLY BECAME UNCONSCIOUS AS A RESULT OF NARCOTIC MEDICATIONS ADMINISTERED TO HER AT DEFENDANT HOSPITAL'S EMERGENCY ROOM; PHYSICIANS AND SURGEONS;

Supreme Court, Nassau County, granted defendants' separate motions to dismiss the complaint, denied that branch of plaintiffs' cross motion which was for leave to amend the complaint, and denied, in effect, as academic that branch of plaintiffs' cross motion which was to consolidate the action with two related actions; App. Div. affirmed.

PAVONE (ANTHONY), PEOPLE v:

3RD Dept. App. Div. order of 5/29/14; affirmance; leave to appeal granted by Pigott, J., 9/24/14;

CRIMES - HARMLESS AND PREJUDICIAL ERROR - VIOLATION OF DEFENDANT'S RIGHT TO REMAIN SILENT BY, AMONG OTHER THINGS, PEOPLE'S ELICITING OF TESTIMONY IN ITS CASE-IN-CHIEF THAT DEFENDANT FAILED TO MENTION EXTREME EMOTIONAL DISTURBANCE WHEN HE WAS APPREHENDED - WHETHER THE APPELLATE DIVISION, AFTER CONCLUDING THAT THE ISSUE WAS LARGELY UNPRESERVED, ERRED IN

HOLDING THAT, IN ANY EVENT, THE ADMISSION OF THE CHALLENGED EVIDENCE WAS HARMLESS "IN LIGHT OF THE OVERWHELMING EVIDENCE ESTABLISHING BOTH DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT AND HIS CORRESPONDING FAILURE TO PROVE HIS AFFIRMATIVE DEFENSE OF EXTREME EMOTIONAL DISTURBANCE BY A PREPONDERANCE OF THE EVIDENCE"; RIGHT TO COUNSEL - ALLEGED INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL IN FAILING, WITH ONE EXCEPTION, TO OBJECT TO TESTIMONY AND ARGUMENT CONCERNING DEFENDANT'S PRETRIAL SILENCE REGARDING EXTREME EMOTIONAL DISTURBANCE, IN FAILING TO REQUEST A LIMITING INSTRUCTION ON THAT ISSUE, AND IN FAILING TO PROVIDE THE DEFENSE EXPERT WITH MATERIALS NEEDED TO ADEQUATELY PREPARE AN EXTREME EMOTIONAL DISTRESS DEFENSE;

County Court, Clinton County, convicted defendant of two counts of murder in the first degree and criminal possession of a weapon in the second degree; App. Div. affirmed.

ROSSBOROUGH (RONALD D.), PEOPLE v:

4TH Dept. App. Div. order of 1/3/14; affirmance; leave to appeal granted by Smith, J., 9/24/14;

CRIMES - SENTENCE - VALIDITY OF DEFENDANT'S WAIVER OF HIS RIGHT TO BE PRESENT DURING SENTENCING; APPEAL - WAIVER OF RIGHT TO APPEAL - WHETHER DEFENDANT'S WAIVER OF THE RIGHT TO APPEAL INCLUDES DEFENDANT'S CONTENTION THAT COUNTY COURT ERRED IN SENTENCING HIM IN ABSENTIA;

County Court, Wyoming County, convicted defendant, upon his guilty plea, of grand larceny in the third degree; App. Div. affirmed.