

COURT OF APPEALS NEW FILINGS

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

September 11, 2015 through September 17, 2015

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.

ALLARD (DRU), PEOPLE v:

2ND Dept. App. Div. order of 5/27/15; reversal; leave to appeal granted by Fahey, J., 9/3/15;

CRIMES - RIGHT TO SPEEDY TRIAL - PRESERVATION OF ISSUE FOR REVIEW - WHETHER THE APPELLATE DIVISION CORRECTLY HELD THAT DEFENDANT'S CPL 30.30 CLAIM WAS PRESERVED FOR APPELLATE REVIEW;

Supreme Court, Kings County, denied defendant's CPL 30.30 motion to dismiss the indictment (9/19/08 order), and convicted defendant of two counts of menacing in the second degree as a hate crime, upon a jury verdict, and imposed sentence (6/9/10 judgment); App. Div. reversed the judgment, granted defendant's CPL 30.30 motion to dismiss the indictment on the ground that he was denied his statutory right to a speedy trial, dismissed the indictment, and remitted the matter to Supreme Court for entry of an order in its discretion pursuant to CPL 160.50.

BROOKE S.B., MATTER OF, v ELIZABETH C.C.:

4TH Dept. App. Div. order of 6/19/15; affirmance; leave to appeal granted by Court of Appeals, 9/1/15;

PARENT, CHILD AND FAMILY - VISITATION - CUSTODY - WHETHER FORMER SAME-SEX PARTNER OF CHILD'S BIOLOGICAL MOTHER, WHO DID NOT ADOPT CHILD, HAS STANDING TO SEEK VISITATION OR CUSTODY UNDER ARTICLE 5 OF THE DOMESTIC RELATIONS LAW;

Family Court, Chautauqua County, dismissed the petition for custody and visitation; App. Div. affirmed.

MANUFACTURERS AND TRADERS TRUST CO., &c. v BERTHOLE, et al.:

2ND Dept. App. Div. order of 7/22/15; affirmance; sua sponate examination whether a substantial constitutional question is directly involved to support an appeal as of right and whether the order appealed from finally determines the action within the meaning of the Constitution;

TRUSTS - CONSTRUCTIVE TRUST - ALLEGED DUE PROCESS VIOLATION ARISING FROM SUPREME COURT'S DENIAL OF MOTION TO DISTRIBUTE TO MOVANT SURPLUS FUNDS FROM SALE OF PROPERTY IN A MORTGAGE FORECLOSURE ACTION WITHOUT A HEARING AND BASED UPON A REVIEW OF FILE IN SEPARATE GUARDIANSHIP PROCEEDING;

Supreme Court, Queens County, in an action to foreclose a mortgage, denied so much of defendant Gladys Menardy's motion as sought distribution to her of surplus funds from the sale of real property which had been subject to the mortgage; App. Div. affirmed.

McGHEE (ISMA), PEOPLE v:

1ST Dept. App. Div. order of 2/24/15; affirmance; leave to appeal granted by Abdus-Salaam, J., 9/4/15;

CRIMES - WITNESSES - RIGHT OF CONFRONTATION AND TO PRESENT A DEFENSE - WHETHER DEFENDANT SHOULD HAVE BEEN PERMITTED TO CROSS EXAMINE SUPERVISING DETECTIVE ABOUT AN UNRELATED FEDERAL CIVIL RIGHTS LAWSUIT IN WHICH THE DETECTIVE WAS NAMED AS A DEFENDANT; PROOF OF OTHER CRIMES - WHETHER THE TRIAL COURT PROPERLY EXERCISED ITS DISCRETION IN RULING THAT DEFENDANT'S IMPEACHMENT OF THE DETECTIVE REGARDING A DISCREPANCY IN A DOCUMENT PREPARED BY HIM OPENED THE DOOR TO EVIDENCE OF THE DETECTIVE'S KNOWLEDGE OF DEFENDANT'S INVOLVEMENT IN UNCHARGED DRUG SALES THAT WERE PART OF THE SAME INVESTIGATION; SENTENCE - SECOND FELONY DRUG OFFENDER - PRIOR VIOLENT FELONY - WHETHER DEFENDANT'S CONVICTION OF CRIMINAL POSSESSION OF A WEAPON IN THE THIRD DEGREE QUALIFIES AS A VIOLENT FELONY;

Supreme Court, New York County, convicted defendant, after a jury trial, of 10 counts of criminal sale of a controlled substance in the third degree, and sentenced him, as a second felony drug offender whose prior felony conviction was a violent felony, to concurrent terms of 12 years; App. Div. affirmed.