

COURT OF APPEALS NEW FILINGS

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

**January 1, 2016 through January 7, 2016**

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.**

ANDUJAR (JOHN), PEOPLE v:

App. Term, 1<sup>st</sup> Dept. order of 8/14/15; reversal; leave to appeal granted by Fahey, J., 12/16/15;

CRIMES - ACCUSATORY INSTRUMENT - WHETHER VEHICLE AND TRAFFIC LAW § 397 APPLIES ONLY TO A POLICE SCANNER OR RADIO RECEIVING SET THAT IS ATTACHED TO THE MOTOR VEHICLE OR APPLIES TO SUCH A DEVICE CARRIED IN THE DRIVER'S CLOTHING WHILE DRIVING A MOTOR VEHICLE - DEFINITION OF "EQUIP" AS WORD IS USED IN STATUTE;

New York City Criminal Court, Bronx County, granted defendant's motion to dismiss the accusatory instrument for facial insufficiency; App. Term reversed, reinstated the accusatory instrument and remanded the matter for further proceedings.

GARVIN (SEAN), PEOPLE v:

2<sup>ND</sup> Dept. App. Div. order of 7/1/15; affirmance; leave to appeal granted by Hall, J., 12/9/15; Rule 500.11 review pending; CRIMES - ARREST - WHETHER DEFENDANT'S WARRANTLESS ARREST VIOLATED PAYTON v NEW YORK (445 US 573), WHERE DEFENDANT LIVED IN THE UPSTAIRS APARTMENT OF A BUILDING CONTAINING TWO SEPARATE APARTMENTS AND WAS ARRESTED IN THE DOORWAY TO HIS APARTMENT AFTER HE OPENED THE DOOR IN RESPONSE TO A KNOCK BY A POLICE OFFICER; ALLEGED VIOLATION OF DEFENDANT'S RIGHT TO REMAIN SILENT; ALLEGED VIOLATION OF APPRENDI v NEW JERSEY (530 US 466) BY DEFENDANT'S SENTENCING AS A PERSISTENT FELONY OFFENDER; Supreme Court, Queens County, convicted defendant, after a nonjury trial, of four counts of robbery in the third degree, and imposed sentence; App. Div. affirmed.

GAYDEN (JOHN), PEOPLE v:

4<sup>TH</sup> Dept. App. Div. order of 3/27/14; affirmance; leave to appeal granted by Lippman, Ch.J., 12/28/15; CRIMES - SUPPRESSION HEARING - WHETHER TRIAL COURT ERRED IN REFUSING TO SUPPRESS THE GUN DEFENDANT DISCARDED WHILE HE WAS BEING PURSUED BY THE POLICE - WHETHER RADIO DISPATCH BASED ON AN ANONYMOUS TIP PROVIDED BASIS FOR REASONABLE SUSPICION OF CRIMINAL ACTIVITY WARRANTING PURSUIT OF DEFENDANT; County Court, Monroe County, convicted defendant, upon his guilty plea, of two counts of criminal possession of a weapon in the second degree and criminal possession of a weapon in the third degree; App. Div. affirmed.

GEORGETOWN UNSOLD SHARES, LLC, MATTER OF v LEDET a/k/a SOLKOFF, et al.:

2nd Dept. App. Div. order of 6/17/15; reversal; leave to appeal granted by App. Div., 12/3/15; Rule 500.11 review pending; LANDLORD AND TENANT - RENT REGULATION - PRIMARY RESIDENCE - WHETHER A LANDLORD'S ACCEPTANCE OF UNSOLICITED RENT IN THE PERIOD BETWEEN THE EXPIRATION DATE OF LEASE AND THE COMMENCEMENT OF A HOLDOVER PROCEEDING NULLIFIES THE LANDLORD'S PREVIOUS SERVICE OF NOTICE OF INTENTION NOT TO RENEW THE LEASE; Civil Court of City of New York, Queens County, denied petitioner landlord's motion for leave to conduct discovery and thereupon to compel tenant to produce certain documents, and granted respondent tenant's cross motion to dismiss the petition insofar as asserted against her; App. Term for the 2<sup>nd</sup>, 11<sup>th</sup> and 13<sup>th</sup> Judicial Districts affirmed; App. Div. reversed, denied tenant's cross motion to dismiss the petition, and granted landlord's motion for leave to conduct discovery and thereupon to compel tenant to produce requested documents.

GLATZER v MICHAEL F. HANLEY MOVING & STORAGE, INC., et al.:

1<sup>ST</sup> Dept. App. Div. order of 9/8/15; denied motion to transfer appeals; sua sponte examination of whether the order appealed from finally determines the action within the meaning of the Constitution, whether a substantial constitutional question is directly involved to support an appeal as of right pursuant to CPLR 5601(b)(1), and whether any basis exists for an appeal as of right pursuant to CPLR 5601(d);

MOTIONS AND ORDERS - CHALLENGE TO APPELLATE DIVISION ORDER THAT DENIED SO MUCH OF PLAINTIFF'S MOTION AS SOUGHT AN ORDER TRANSFERRING HIS APPEALS TO ANOTHER APPELLATE DIVISION DEPARTMENT;

App. Div. granted so much of plaintiff's motion as sought an enlargement of time to perfect appeals from four orders of Supreme Court, Bronx County, entered on or about 3/20/14 and 3/31/14, and denied so much of plaintiff's motion as sought an order transferring the appeals to the App. Div., 2<sup>ND</sup> Dept.

ESTATE OF EDMUND FELIX HENNEL, MATTER OF:

3<sup>RD</sup> Dept. App. Div. order of 11/25/15; affirmance with a two-Justice dissent; sua sponte examination of whether the order appealed from finally determines the proceeding within the meaning of the Constitution;

CONTRACTS - AGREEMENT TO SATISFY MORTGAGE OUT OF ESTATE ASSETS - WHETHER THE APPELLATE DIVISION CORRECTLY HELD THAT, ALTHOUGH DECEDENT REVOKED PRIOR WILL DIRECTING ESTATE TO PAY MORTGAGE ON PROPERTY HE TRANSFERRED BY DEED TO HIS GRANDCHILDREN, GRANDCHILDREN ESTABLISHED THEIR CLAIM AGAINST THE ESTATE FOR PAYMENT OF THE MORTGAGE BASED UPON THE DOCTRINE OF PROMISSORY ESTOPPEL, AND THAT THE ESTATE WAS ESTOPPED FROM INVOKING THE STATUTE OF FRAUDS DEFENSE BECAUSE APPLICATION OF THAT DEFENSE WOULD CREATE AN UNCONSCIONABLE RESULT;

Surrogate's Court, Schenectady County, in a proceeding pursuant to SCPA 1809, granted petitioners' motion for summary judgment to the extent of determining that their claim against the Estate was valid and enforceable, directed the Executor of the Estate to satisfy petitioners' claim from the assets of the Estate in the amount of the outstanding balance of the mortgage on property conveyed by deed from decedent to petitioners, and to reimburse petitioners the total amount of mortgage payments they paid since decedent's death, with statutory interest; denied petitioners' request for attorneys' fees; and denied the Executor's cross motion for summary judgment; App. Div. affirmed.

PRINDLE (MICHAEL E.), PEOPLE v:

4<sup>TH</sup> Dept. App. Div. order of 6/12/15; affirmance; leave to appeal granted by Lippman, Ch.J., 12/28/15;

CRIMES - SENTENCE - PERSISTENT FELONY OFFENDER - WHETHER THE INCREASE IN DEFENDANT'S PRESCRIBED MINIMUM TERM BASED ON HIS ADJUDICATION AS A PERSISTENT FELONY OFFENDER AND A JUDICIAL FINDING THAT "THE HISTORY AND CHARACTER OF THE DEFENDANT AND THE NATURE AND CIRCUMSTANCES OF HIS CRIMINAL CONDUCT ARE SUCH THAT EXTENDED INCARCERATION AND LIFETIME SUPERVISION OF THE DEFENDANT ARE WARRANTED TO BEST SERVE THE PUBLIC INTEREST" (PENAL LAW § 70.10[2]) CONSTITUTES AN INCREASE IN THE PRESCRIBED MINIMUM PREDICATED ON NON-JURY FINDINGS IN VIOLATION OF APPRENDI v NEW JERSEY (530 US 466 [2000]) OR ALLEYN v UNITED STATES (\_\_\_ US \_\_\_, 133 S Ct 2151 [2013]); CHALLENGE TO CONSTITUTIONALITY OF PENAL LAW § 70.10 AND CPL 400.20;

Supreme Court, Monroe County, upon remittal from Court of Appeals, adjudicated defendant a persistent felony offender and resented him to an indeterminate term of imprisonment of 15 years to life; App. Div. affirmed.

SPARKS (YUSUF), PEOPLE v:

1<sup>ST</sup> Dept. App. Div. order of 10/15/15; affirmance; leave to appeal granted by Pigott, J., 12/23/15;

CRIMES - JUSTIFICATION - WHETHER THE TRIAL COURT ERRED IN REFUSING TO INSTRUCT THE JURY ON DEFENDANT'S ASSERTED JUSTIFICATION DEFENSE; DEFENDANT'S TESTIMONY - WHETHER THE TRIAL COURT ERRED IN PERMITTING THE PEOPLE TO CROSS EXAMINE DEFENDANT REGARDING A PRIOR, UNRELATED ROBBERY CONVICTION;

Supreme Court, New York County, convicted defendant, after a jury trial, of assault in the second degree, and sentenced him, as a second violent felony offender, to a term of 7 years; App. Div. affirmed.