

COURT OF APPEALS NEW FILINGS

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

**January 8, 2016 through January 14, 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.**

BOONE (OTIS), PEOPLE v:

2<sup>ND</sup> Dept. App. Div. order of 6/24/15; modification; leave to appeal granted by Rivera, J., 12/22/15;

CRIMES - IDENTIFICATION OF DEFENDANT - WHETHER THE TRIAL COURT ERRED IN DENYING DEFENDANT'S REQUEST FOR A JURY INSTRUCTION ON CROSS-RACIAL IDENTIFICATIONS;

Supreme Court, Kings County, convicted defendant, upon a jury verdict, of two counts of robbery in the first degree, and sentenced him to consecutive determinate terms of imprisonment of 10 years and 15 years, respectively, followed by periods of postrelease supervision; App. Div. modified by reducing the determinate terms of imprisonment imposed on the convictions of robbery in the first degree from 10 years and 15 years to 5 years and 10 years, respectively, and affirmed the judgment as so modified.

CARRION v FAULKNER, et al.:

1<sup>ST</sup> Dept. App. Div. order of 6/9/15; affirmance; leave to appeal granted by Court of Appeals, 12/17/15; Rule 500.11 review pending;

NEGLIGENCE - MAINTENANCE OF PREMISES - TRIP AND FALL ON MARBLE STAIRS DUE TO ALLEGED "WORN AND ROUNDED" CONDITION OF MARBLE STEP - WHETHER SUMMARY JUDGMENT WAS PROPERLY GRANTED TO DEFENDANT UPON THE GROUND THAT, AS A MATTER OF LAW, THE WEAR ON THE STEP WAS A TRIVIAL DEFECT AND NOT ACTIONABLE;

Supreme Court, Bronx County, granted defendant's motion for summary judgment dismissing the complaint; App. Div. affirmed.

CARTER, PEOPLE ex rel. v SMITH, &c.:

3<sup>RD</sup> Dept. App. Div. order of 12/17/15; affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

HABEAS CORPUS - WHEN READY AVAILABLE; DUE PROCESS CLAIMS; Supreme Court, Greene County, dismissed petitioner's application for a writ of habeas corpus in a proceeding pursuant to CPLR article 70; App. Div. affirmed.

GLASS, MATTER OF v NEW YORK STATE DEPARTMENT OF MOTOR VEHICLES APPEALS BOARD:

Supreme Court, Albany County, judgment of 12/3/15; denial of motion; sua sponte examination whether the order appealed from finally determines the proceeding within the meaning of the Constitution and whether any basis exists for an appeal as of right;

PROCEEDING AGAINST BODY OR OFFICER - CERTIORARI - CPLR ARTICLE 78 PROCEEDING TO CHALLENGE A DETERMINATION OF RESPONDENT NEW YORK STATE DEPARTMENT OF MOTOR VEHICLES APPEALS BOARD AFFIRMING A PRIOR DETERMINATION FINDING PETITIONER GUILTY OF VIOLATING THE VEHICLE AND TRAFFIC LAW; CLAIMED DUE PROCESS VIOLATIONS; STATUTE OF LIMITATIONS;

Supreme Court denied petitioner's motion to extend the statute of limitations for commencement of a CPLR article 78 proceeding.

JACKSON (THOMAS), PEOPLE v:

3<sup>RD</sup> Dept. App. Div. order of 5/14/15; affirmance; leave to appeal granted by Lippman, Ch.J., 12/28/15;

CRIMES - PROOF OF PRIOR CONVICTIONS - WHETHER THE APPELLATE DIVISION ERRED IN CONCLUDING THAT SANDOVAL ERROR BY SUPREME COURT IN ALLOWING CROSS EXAMINATION REGARDING DEFENDANT'S JUVENILE DELINQUENCY ADJUDICATION WAS HARMLESS; RIGHT TO BE PRESENT AT TRIAL - VALIDITY OF DEFENDANT'S WAIVER TO BE PRESENT AT SIDEBAR CONFERENCES;

Supreme Court, Schenectady County, upon a jury verdict, convicted defendant of predatory sexual assault and criminal sexual assault in the first degree, and imposed sentence; App. Div. affirmed.

LEONARD (RICHARD M.), PEOPLE v (2 APPEALS):

4<sup>TH</sup> Dept. App. Div. orders of 6/19/15; affirmances; leave to appeal granted by Lippman, Ch.J., 12/29/15;  
CRIMES - RIGHT TO COUNSEL - TRIAL STRATEGY - DEFENSE COUNSEL'S FAILURE TO USE WITNESS'S PRIOR, ALLEGEDLY INCONSISTENT STATEMENTS AT TRIAL AND TO REQUEST LIMITING INSTRUCTION REGARDING PROOF OF UNCHARGED CRIME ALLEGEDLY COMMITTED AGAINST THE SAME COMPLAINANT; CHALLENGE TO DENIAL OF CPL 440 MOTION WITHOUT A HEARING UPON THE GROUND THAT TRIAL COUNSEL WAS DECEASED AND WAS THE ONLY PERSON WHO COULD HAVE PROVIDED ANY MATERIAL INFORMATION NOT ALREADY BEFORE THE COURT; PROOF OF OTHER CRIMES - ALLEGED MOLINEUX VIOLATION - WHETHER THE TRIAL COURT ABUSED ITS DISCRETION IN ADMITTING TESTIMONY REGARDING PRIOR UNCHARGED CRIME OF SEXUAL ABUSE OF VICTIM WHILE UNCONSCIOUS AS PROBATIVE OF DEFENDANT'S MOTIVE AND INTENT AND AS PROVIDING NECESSARY BACKGROUND INFORMATION;

County Court, Monroe County, convicted defendant, upon a jury verdict, of sexual abuse in the first degree and unlawfully dealing with a child in the first degree; thereafter, County Court denied defendant's CPL 440.10 motion to vacate the judgment of conviction; App. Div. affirmed in separate orders.

RETAMOZZO v FRIEDLAND, et al.:

1<sup>ST</sup> Dept. App. Div. order of 10/22/15; denial of motion; sua sponte examination whether the order appealed from finally determines the action within the meaning of the Constitution and whether a substantial constitutional question is directly involved to support an appeal as of right;  
MOTIONS AND ORDERS - APPELLATE DIVISION ORDER DENYING PLAINTIFF'S MOTION FOR REARGUMENT OR LEAVE TO APPEAL TO THE COURT OF APPEALS FROM AN APPELLATE DIVISION ORDER THAT DENIED PLAINTIFF'S MOTION TO VACATE AN ORDER AND ENSUING JUDGMENT DISMISSING THE VERIFIED AMENDED COMPLAINT AS A SANCTION FOR WILFULLY REFUSING TO COMPLY WITH DISCOVERY ORDERS;

Supreme Court, New York County, denied plaintiff's motion to vacate an order and ensuing judgment dismissing plaintiff's verified amended complaint as a sanction for willfully refusing to comply with discovery orders; App. Div. affirmed and thereafter denied plaintiff's motion for reargument or leave to appeal to the Court of Appeals.

SCHULMAN v MILLER:

1<sup>ST</sup> Dept. App. Div. order of 12/29/15; affirmance with a two-Justice dissent; sua sponte examination whether the order appealed from finally determines the action within the meaning of the Constitution;  
PARENT, CHILD AND FAMILY - SUPPORT - EFFECT OF EMANCIPATION OF ONE CHILD ON FATHER'S UNALLOCATED SUPPORT OBLIGATION FOR TWO CHILDREN - INTERPRETATION OF PROVISIONS OF PARTIES' STIPULATION OF SETTLEMENT; COUNSEL FEES;

Supreme Court, New York County, as relevant here, denied plaintiff's motions for a declaration that the parties' older child was emancipated upon ceasing to be a full-time student at age 21, or, alternatively, that she would be emancipated on her 22<sup>nd</sup> birthday in December 2014, and a recomputation of his support obligations accordingly, and to compel financial disclosure by defendant, and granted defendant's motion to direct plaintiff to resume payment of all basic child support and add-on expenses pursuant to the parties' stipulation of settlement, and reserved decision on defendant's application for counsel fees pending her submission of an affidavit in support thereof; App. Div. affirmed.

SIVERTSON (SHAWN J.), 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 - UNLAWFUL SEARCH AND SEIZURE - WARRANTLESS ENTRY INTO RESIDENCE - WHETHER EXIGENT CIRCUMSTANCES JUSTIFIED THE WARRANTLESS ENTRY INTO DEFENDANT'S APARTMENT WHERE THE SUBJECT WEAPON WAS A KNIFE, NOT A GUN; RIGHT TO COUNSEL - EFFECTIVE REPRESENTATION - WHETHER TRIAL COUNSEL PROVIDED INEFFECTIVE ASSISTANCE OF COUNSEL BY FAILING TO OBJECT TO CERTAIN COMMENTS MADE BY THE PROSECUTOR DURING SUMMATION, INCLUDING THAT DEFENDANT'S SILENCE UPON HIS ARREST EVIDENCED HIS GUILT; Supreme Court, Erie County, convicted defendant, upon a jury verdict, of robbery in the first degree; App. Div. affirmed.