

COURT OF APPEALS NEW FILINGS

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

**August 18, 2017 through August 24, 2017**

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.**

CUMMINGS v MANVILLE:

4<sup>TH</sup> Dept. App. Div. order of 7/7/17; reversal with two-Justice dissent; sua sponte examination of whether the order appealed from finally determines the action within the meaning of the Constitution;

Negligence--Maintenance of Premises--Whether defendant established as a matter of law entitlement to immunity under General Obligations Law § 9-103; plaintiff injured while operating a four-wheel all-terrain vehicle on a road owned by defendant; whether road was suitable for recreational use of ATV riding;

Supreme Court, Monroe County, granted defendant's motion for summary judgment; App. Div. reversed, denied the motion for summary judgment, and reinstated the complaint.

MYERS (STEVEN), PEOPLE v:

4<sup>TH</sup> Dept. App. Div. order of 12/23/16; affirmance; leave to appeal granted by Rivera, J., 7/28/17;

Crimes--Indictment--Waiver of indictment by grand jury--Whether the trial court failed to protect defendant's rights by not speaking with him prior to entering his guilty plea to ensure defendant understood the written waiver document he had signed; County Court, Onondaga County, convicted defendant, upon his plea of guilty, of burglary in the third degree; App. Div. affirmed.

RUSH (TERRIE J.), PEOPLE v:

4<sup>TH</sup> Dept. App. Div. order of 3/24/17; affirmance; leave to appeal granted by Stein, J., 8/7/17;

Crimes--Identity Theft--Sufficiency and Weight of Evidence--whether the evidence was legally sufficient to support defendant's conviction of identity theft in the first degree; whether, under Penal Law § 190.80(3), the assumption of a person's identity is a discrete element that must be proved; whether use of the term "thereby" in Penal Law § 190.80(3) requires that the assumption of a person's identity precede commission of another felony--Right to Public Trial--whether closure of the courtroom was trivial and therefore did not violate defendant's right to a public trial;

County Court, Monroe County, convicted defendant of identify theft in the first degree and criminal possession of a forged instrument in the second degree; App. Div. affirmed.