

COURT OF APPEALS NEW FILINGS

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

August 31, 2018 through September 6, 2018

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.

ELLIS (ARTHUR W., JR.), PEOPLE v:

3RD Dept. App. Div. order of 5/31/18; reversal; leave to appeal granted by Feinman, J., 8/17/18;

Crimes--Sex Offenders--Sex Offender Registration Act (SORA)--Whether Corrections Law § 168 requires a registered sex offender to register his Facebook account with the Division of Criminal Justice Services as an internet identifier;

County Court, Essex County, convicted defendant, upon his guilty plea, of the crime of failure to register or verify as a sex offender; App. Div. reversed, granted defendant's motion, among other things, to dismiss the indictment, and dismissed the indictment.

FOSTER-BEY (ELIJAH), PEOPLE v:

2ND Dept. App. Div. order of 2/7/18; affirmance; leave to appeal granted by Wilson, J., 8/23/18;

Crimes--Evidence--Whether trial court providently exercised its discretion in failing to hold a Frye hearing regarding admission of Low Copy Number DNA testing and the Forensic Statistical Tool used by the Office of the Chief Medical Examiner; whether admission of DNA evidence violated defendant's right to confront witnesses against him; instructions--whether trial court's Allen charge was coercive;

Supreme Court, Kings County, convicted defendant of assault in the first degree and criminal possession of a weapon in the second degree, and imposed sentence; App. Div. affirmed.

McINTOSH (JAMES R.), PEOPLE v:

4TH Dept. App. Div. order of 6/15/18; modification with dissents; leave to appeal granted by Lindley, J., 8/15/18;

Crimes--Lesser Included Offense--Whether County Court's error in failing to charge jury on lesser included offenses was harmless; defendant requested to charge manslaughter in the second degree and criminally negligent homicide as lesser included offenses of murder in the second degree and manslaughter in the first degree; application of People v Boettcher (69 NY2d 174 [1987]);

County Court, Monroe County, convicted defendant of murder in the second degree and manslaughter in the first degree; App. Div. modified by reversing that part of the judgment convicting defendant of manslaughter in the first degree and dismissing count two of the indictment, and, as so modified, affirmed.

RAMLALL (GANESH), PEOPLE v:

App. Term for the 2nd, 11th and 13th Judicial Districts order of 4/6/18; affirmance; leave to appeal granted by Rivera, J., 8/2/18;

Crimes--Right to Speedy Trial--Whether a CPL 30.30 dismissal on statutory speedy trial grounds of a misdemeanor charge of driving while intoxicated (Vehicle and Traffic Law § 1192[3]) affects the CPL 30.20 speedy trial analysis of the delays related to the traffic infraction charge of "driving while ability impaired" (Vehicle and Traffic Law § 1192[1]) based on the same underlying conduct;

Criminal Court of the City of New York, Kings County, convicted defendant, upon his guilty plea, of driving while ability impaired, and imposed sentence; Criminal Court of the City of New York then vacated the fine that had been imposed and resentenced defendant to, among other things, a term of imprisonment; App. Term affirmed the judgment of conviction and dismissed the appeal from the amended sentence as abandoned.

TSINTZELIS (GEORGE), PEOPLE v:

2ND Dept. App. Div. order of 8/2/17; affirmance; leave to appeal granted by Feinman, J., 7/30/18;

Crimes--Evidence--DNA Identification Tests--Whether the trial court erred in denying defendant's discovery request pursuant to CPL 240.20(1)(c) for the electronic raw data used to develop his DNA profile; whether the admission of DNA lab reports through the testimony of an analyst who didn't perform or supervise the DNA testing violated defendant's confrontation rights;

Supreme Court, Queens County, convicted defendant, upon a jury verdict, of criminal mischief in the third degree and petit larceny, and imposed sentence; App. Div. affirmed.