

October 16, 2014

**CASES**

3                    No. 152

The People &c.,  
    Appellant,  
    v.  
Earl Coleman,  
    Respondent.

Order affirmed.  
Opinion by Judge Abdus-Salaam.  
Chief Judge Lippman and Judges Graffeo, Read,  
Smith, Pigott and Rivera concur.

2                    No. 150

In the Matter of Colin Realty Co., LLC,  
    Appellant,  
    v.  
Town of North Hempstead, et al.,  
    Respondents.

Order affirmed, with costs.  
Opinion by Judge Read.  
Chief Judge Lippman and Judges Graffeo, Smith,  
Pigott, Rivera and Abdus-Salaam concur.

2                    No. 148

The People &c.,  
    Respondent,  
    v.  
Benjamin Jenkins,  
    Appellant.

Order reversed, that branch of defendant's motion to  
suppress the physical evidence granted and the  
indictment dismissed.  
Opinion by Judge Pigott.  
Chief Judge Lippman and Judges Graffeo, Read,  
Smith, Rivera and Abdus-Salaam concur.

2                    No. 151

In the Matter of Town of North Hempstead,  
    Appellant-Respondent,  
    v.  
County of Nassau,  
    Respondent-Appellant.

Order modified, with costs to the County of Nassau,  
to declare in favor of the County of Nassau in  
accordance with the opinion herein and, as so  
modified, affirmed.  
Opinion by Chief Judge Lippman.  
Judges Graffeo, Read, Smith, Pigott, Rivera and  
Abdus-Salaam concur.

2                    No. 229 SSM 21  
Jason Pelletier,  
    Appellant,  
    v.  
Brittany Lahm et al.,  
    Respondents.

On review of submissions pursuant to section 500.11 of the Rules, order affirmed, with costs, and the certified question not answered as unnecessary. The Appellate Division did not err in concluding that the giving of the emergency doctrine charge was proper because "[i]t was for the jury to find whether [defendant driver] was faced with a sudden and unforeseen emergency not of her own making and, if so, whether her response to the situation was that of a reasonably prudent person" (111 AD3d 807, 809 [2d Dept 2013]).  
Chief Judge Lippman and Judges Graffeo, Read, Smith, Pigott, Rivera and Abdus-Salaam concur.

2                    No. 147  
The People &c.,  
    Respondent,  
    v.  
John Rossi,  
    Appellant.

Order affirmed, in a memorandum.  
Chief Judge Lippman and Judges Graffeo, Read, Smith, Pigott, Rivera and Abdus-Salaam concur.

                          No. 42  
The People &c.,  
    Respondent,  
    v.  
Diane Wells,  
    Appellant.

Order reversed and the order of Criminal Court of the City of New York reinstated, in a memorandum.  
Chief Judge Lippman and Judges Graffeo, Read, Smith, Pigott, Rivera and Abdus-Salaam concur.

## MOTIONS

3                    Mo. No. 2014-817  
In the Matter of Talib Alsaifullah,  
Appellant,  
v.  
Brian Fischer, &c.,  
Respondent.

Motion for leave to appeal denied.

1                    Mo. No. 2014-603  
Amalgamated Bank,  
Respondent,  
v.  
Helmsley-Spear, Inc.,  
Defendant,  
Schneider & Schneider, Inc.,  
et al.,  
Appellants.

Motion to vacate this Court's May 29, 2014 dismissal order granted.

2                    Mo. No. 2014-985  
The People &c.,  
Respondent,  
v.  
Nugene Ambers,  
Appellant.

Motion for assignment of counsel granted and Lynn W. L. Fahey, Esq., Appellate Advocates, 111 John Street, 9th Floor, New York, NY 10038 assigned as counsel to the appellant on the appeal herein.

2                    SSD 63  
Kelly Ashmore,  
Respondent,  
v.  
Benjamin Ashmore,  
Appellant.

Appeal dismissed without costs, by the Court sua sponte, upon the ground that the order appealed from does not finally determine the action within the meaning of the Constitution.

3                    Mo. No. 2014-848  
Robert B.,  
    Respondent,  
    v.  
Linda B.,  
    Appellant.

Motion for leave to appeal denied with one hundred dollars costs and necessary reproduction disbursements.

1                    Mo. No. 2014-1004  
The People &c.,  
    Respondent,  
    v.  
Jose Martinez Baxin,  
    Appellant.

Motion for poor person relief granted.

2                    SSD 70  
In the Matter of C., an Applicant for  
Admission to the Bar of the State of New  
York,  
    Appellant.

Appeal dismissed without costs, by the Court sua sponte, upon the ground that no substantial constitutional question is directly involved.

3                    Mo. No. 2014-828  
In the Matter of Thomas Cross,  
    Appellant,  
    v.  
Brian Fischer, &c., et al.,  
    Respondents.

Motion for leave to appeal denied.

4                    Mo. No. 2014-860  
Danielle Downie,  
    Appellant,  
    v.  
Shawn T. McDonough,  
    Respondent.

Motion for leave to appeal denied with one hundred dollars costs and necessary reproduction disbursements.

4 Mo. No. 2014-975  
The People &c.,  
Respondent,  
v.  
Everett M. Durant,  
Appellant.

Motion for assignment of counsel granted and Timothy P. Donaher, Esq., Monroe County Public Defender, 10 N. Fitzhugh Street, Rochester, NY 14614 assigned as counsel to the appellant on the appeal herein.

4 Mo. No. 2014-769  
Gaetano Farruggia et al.,  
Appellants,  
v.  
Town of Penfield,  
Respondent,  
et al.,  
Defendants.

Motion for leave to appeal denied with one hundred dollars costs and necessary reproduction disbursements.

3 Mo. No. 2014-808  
In the Matter of Jamel Floyd,  
Appellant,  
v.  
Brian Fischer, &c.,  
Respondent.

Motion for leave to appeal denied.

2 Mo. No. 2014-715  
In the Matter of Yamilette M.G.  
(Anonymous), &c.

Motion for leave to appeal denied.

Little Flower Children and Family Services,  
et al.,  
Respondents;  
Marlene M. (Anonymous);  
Respondent;  
Edwin G. (Anonymous),  
Appellant.

3                    Mo. No. 2014-870  
In the Matter of Tadia R. Goddard,  
                         Respondent.  
Summit Health, Inc.,  
                         Appellant.  
Commissioner of Labor,  
                         Respondent.

Motion for leave to appeal dismissed upon the ground that the order sought to be appealed from does not finally determine the proceeding within the meaning of the Constitution.

1                    Mo. No. 2014-1007  
The People &c.,  
                         Respondent,  
                         v.  
Pettis Hardy,  
                         Appellant.

Motion for assignment of counsel granted and Richard M. Greenberg, Esq., Office of the Appellate Defender, 11 Park Place, Suite 1601, New York, NY 10007 assigned as counsel to the appellant on the appeal herein.

4                    Mo. No. 2014-886  
In the Matter of Anthony J. Hensel,  
                         Appellant,  
                         v.  
City of Utica, et al.,  
                         Respondents.

Motion for reargument of motion for leave to appeal denied.  
Motion for poor person relief dismissed as academic.

4                    SSD 69  
In the Matter of Nathaniel Jay,  
                         Appellant,  
                         v.  
Brian Fischer &c.,  
                         Respondent.

Appeal dismissed without costs, by the Court sua sponte, upon the ground that no substantial constitutional question is directly involved.

1                    Mo. No. 2014-1012  
The People &c.,  
                         Respondent,  
                         v.  
Mark Jurgins,  
                         Appellant.

Motion for assignment of counsel granted and Robert S. Dean, Esq., Center for Appellate Litigation, 120 Wall Street, 28th Floor, New York, NY 10005 assigned as counsel to the appellant on the appeal herein.

1                    Mo. No. 2014-816  
Michael Lambe,  
    Appellant,  
    v.  
Lenox Hill Hospital,  
    Respondent,  
et al.,  
    Defendants.

Motion for leave to appeal denied with one hundred dollars costs and necessary reproduction disbursements.

2                    Mo. No. 2014-842  
The People &c.,  
    Respondent,  
    v.  
Angel M. LaPorte,  
    Appellant.

Motion for leave to appeal denied.

1                    Mo. No. 2014-744  
Peter A. Leidel et al.,  
    Appellants,  
    v.  
John P. Annicelli, &c., et al.,  
    Respondents.

Motion for leave to appeal dismissed upon the ground that the Appellate Division order sought to be appealed from does not finally determine the action within the meaning of the Constitution and the stipulation does not qualify as a final judgment within the meaning of CPLR 5602(a)(1)(ii) to bring up for review the prior nonfinal Appellate Division order because it was entered into "without prejudice."

                    SSD 65  
The People &c. ex rel. David Loyd,  
    Appellant,  
    v.  
John R. Demars, &c.,  
    Respondent.

Appeal transferred without costs, by the Court sua sponte, to the Appellate Division, Third Department, upon the ground that a direct appeal does not lie when questions other than the constitutional validity of a statutory provision are involved (see NY Const, art VI, §§ 3[b][2], 5[b]; CPLR 5601[b][2]).

4 Mo. No. 2014-839  
The People &c.,  
Respondent,  
v.  
Jon C. Martin,  
Appellant.

Motion for leave to appeal denied.

1 Mo. No. 2014-242  
Suarna Mehulic,  
Appellant,  
v.  
New York Downtown Hospital,  
Respondent.

Motion for leave to appeal dismissed upon the ground that the order sought to be appealed from does not finally determine the action within the meaning of the Constitution.

1 Mo. No. 2014-326  
Suarna Mehulic,  
Appellant,  
v.  
New York Downtown Hospital,  
Respondent.

Motion for a stay dismissed as academic.

3 SSD 64  
The People &c. ex rel. Gary H. Moore,  
Appellant,  
v.  
Superintendent of Cocksackie Correctional  
Facility,  
Respondent.

Appeal dismissed without costs, by the Court sua sponte, upon the ground that no substantial constitutional question is directly involved.

2 Mo. No. 2014-1024  
The People &c.,  
Respondent,  
v.  
Julio Negrón,  
Appellant.

Motion for assignment of counsel granted and Joel B. Rudin, Esq., c/o Law Offices of Joel B. Rudin, 600 Fifth Ave., 10th Floor, New York, NY 10020 assigned as counsel to the appellant on the appeal herein.

1                    Mo. No. 2014-1040  
In the Matter of New York City Asbestos  
Litigation.

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Doris Kay Dummitt, Individually and as  
Executrix of the Estate of Ronald Dummitt,  
Deceased,

Respondent,

v.

A.W. Chesterton, et al.,  
Defendants,

Crane Co.,

Appellant.

Motion by Business Council of New York State et al.  
for leave to file a brief amici curiae on the appeal  
herein granted and the proposed brief is accepted as  
filed.

3                    Mo. No. 2014-977  
In the Matter of Noel Olmosperez,  
Appellant,

v.

Andrea W. Evans, &c.,  
Respondent.

Motion for assignment of counsel denied.

4                    Mo. No. 2014-981  
The People &c.,  
Appellant,

v.

Dwight R. DeLee,  
Respondent.

Motion by New York State Association of Criminal  
Defense Lawyers et al. for leave to file a brief amici  
curiae on the appeal herein granted and the proposed  
brief is accepted as filed. Three copies of the brief  
must be served and an original and nine copies filed  
within seven days.

4                    Mo. No. 2014-959  
The People, &c.,  
Respondent,

v.

Todd R. Heatley,  
Appellant.

Motion for assignment of counsel granted and David  
M. Abbatoy, Jr., c/o The Abbatoy Law Firm, PLLC,  
339 East Ave., Suite 300, Rochester, NY 14606  
assigned as counsel to the appellant on the appeal  
herein.

2 Mo. No. 2014-892  
The People &c.,  
Appellant,  
v.  
Vinod Patel,  
Respondent.

Motion for reargument denied.

1 Mo. No. 2014-773  
The People &c.,  
Respondent,  
v.  
Shahid Rashad,  
Appellant.

Motion for leave to appeal denied.  
Motion for poor person relief dismissed as academic.

2 Mo. No. 2014-832  
In the Matter of Carlos Rodriguez,  
Appellant,  
v.  
Barbara G. Zambelli, &c.,  
Respondent.

On the Court's own motion, appeal dismissed,  
without costs, upon the ground that no substantial  
constitutional question is directly involved.  
Motion for leave to appeal denied.  
Motion for poor person relief dismissed as academic.

1 Mo. No. 2014-967  
The People &c.,  
Respondent,  
v.  
Luciano Rosario,  
Appellant.

Motion for assignment of counsel granted and Robert  
S. Dean, Esq., Center for Appellate Litigation, 120  
Wall Street, 28th Floor, New York, NY 10005  
assigned as counsel to the appellant on the appeal  
herein.

4 Mo. No. 2014-819  
In the Matter of Eden S. et al.

Motion for leave to appeal denied.

Cayuga County Department of Health and  
Human Services,  
Respondent;  
Joshua S.,  
Appellant.

Mo. No. 2014-979  
In the Matter of Mary Veronica Santiago-  
Monteverde.

Mary Veronica Santiago-Monteverde,  
Appellant,  
v.  
John S. Pereira, &c.,  
Respondent.

4 Mo. No. 2014-815  
The People &c.,  
Respondent,  
v.  
Robert D. Scott,  
Appellant.

3 Mo. No. 2014-818  
In the Matter of Tony Singh,  
Appellant,  
v.  
Andrea W. Evans, &c.,  
Respondent.

3 Mo. No. 2014-867  
In the Matter of Mark S. Wallach, as Chapter  
7 Trustee for Norse Energy Corp. USA,  
Appellant,  
v.  
Town of Dryden et al.,  
Respondents.

Motion by City of New York for leave to file a brief  
amicus curiae on consideration of the certified  
question herein granted and the proposed brief is  
accepted as filed.

Motion for leave to appeal denied.  
Motion for poor person relief dismissed as academic.

Motion for leave to appeal denied.

Motion for reargument denied with one hundred  
dollars costs and necessary reproduction  
disbursements.

1                    Mo. No. 2014-976  
The People &c.,  
    Respondent,  
    v.  
Kareem Washington,  
    Appellant.

Motion for assignment of counsel granted and  
Richard M. Greenberg, Esq., Office of the Appellate  
Defender, 11 Park Place, Suite 1601, New York, NY  
10007 assigned as counsel to the appellant on the  
appeal herein.