



State of New York
Court of Appeals

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Heather Davis, Esq.
Chief Clerk and
Legal Counsel to the Court

Clerk's Office
20 Eagle Street
Albany, New York 12207-1095
518-455-7700

COURT OF APPEALS NEW FILINGS

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

January 10, 2025 through January 16, 2025

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.

PEOPLE v ALBA (DARLING):

APL-2024-00180

1st Dept. App. Div. order of 2/8/24; affirmance; leave to appeal granted by Troutman, J., 12/30/24;

Crimes—Whether a waiver of the right to be present at jury-selection sidebar conferences limited to those where jurors want to “talk privately” allows the court to exclude defendant from sidebar conferences where there is no indication that the prospective juror has privacy concerns; whether it is an error of law to refuse a defendant’s request to rescind his waiver of the right to be present at jury-selection sidebar conferences before a single juror is questioned, the scope of the sidebar questioning exceeds what had been explained to defendant, and the court offers no reason for its denial;

Supreme Court, New York County, convicted defendant, after a jury trial, of attempted

burglary in the second degree, and sentenced him, as a second violent felony offender, to a term of five years; App. Div. affirmed.

PEOPLE v SMITH (MARK A.):

APL-2024-00181

4th Dept. App. Div. order of 6/14/24; affirmance; leave to appeal granted by Singas, J., 12/30/24;

Crimes—Robbery—Whether a defendant charged with first-degree robbery under Penal Law § 160.15 (4) is entitled to a statutory affirmative defense instruction when there is evidence that the defendant used a BB gun to commit the robbery; whether admitting evidence of a second planned robbery erroneously under *Molineux* was harmless error;

County Court, Monroe County, convicted defendant, upon a jury verdict, of robbery in the first degree (Penal Law § 160.15 [4]); App. Div. affirmed.