

COURT OF APPEALS NEW FILINGS

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

October 11, through October 17, 2019

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.

GAWORECKI (RICHARD B.), PEOPLE v:

3RD Dept. App. Div. order of 7/18/19; modification with dissents; leave to appeal granted by Mulvey, J., 8/29/19;

Crimes--Indictment--Sufficiency of Evidence before Grand Jury--Whether the evidence presented to the grand jury was legally sufficient to establish that defendant committed manslaughter in the second degree or the lesser included offense of criminally negligent homicide; indictment alleged that defendant sold victim heroin, which resulted in victim's subsequent overdose and death;

County Court, Broome County, partially granted defendant's motion to dismiss the indictment by dismissing the count of second degree manslaughter,; App. Div. modified the order of the County Court of Broome County by reversing so much thereof as partially granted defendant's motion to dismiss the indictment, denied the motion in its entirety, and, as so modified, affirmed.

HYMES (JUSTIN), PEOPLE v:

4TH Dept. App. Div. order of 7/5/19; affirmance with dissents; leave to appeal granted by Smith, J., 9/24/19; Rule 500.11 review pending;

Crimes--Right to be Present at Trial--Right to be Present at Trial--Whether defendant was denied his Antommarchi right to be present during material sidebar conferences; Crimes--Proof of Other Crimes--Whether County Court should have given Molineux limiting instruction; Crimes--Witnesses--Whether County erred in allowing improper bolstering testimony and failing to give a limiting instruction regarding said testimony; Crimes--Right to Counsel--Whether defense counsel was ineffective;

County Court, Onondaga County, convicted defendant of predatory sexual assault against a child and endangering the welfare of a child, and imposed sentence; App. Div. affirmed.

IVERSON (ERIC J.), PEOPLE v:

App. Term, 9TH and 10TH Judicial Districts order of 6/6/19; reversal; leave to appeal granted by Fahey, J., 10/3/19;

Motor Vehicles--Traffic Infractions--Whether hearing officer properly entered default judgments against defendant when defendant pleaded not guilty to charges alleging violations of the Vehicle and Traffic Law and requested trial but failed to appear for trial and no trial was held;

District Court of Suffolk County, Suffolk County Traffic and Parking Violations Agency, convicted defendant, upon his failure to appear at trial, of uninsured operation of a motor vehicle and operating a motor vehicle upon a public highway while using a mobile telephone, and imposed sentences; App. Term reversed the judgments of conviction, remitted any paid fines and surcharges, and remitted the matter to District Court for further proceedings.

PRESTON, &c. v APCH, INC. et al.:

4TH Dept. App. Div. order of 8/22/19; reversal with dissents; Rule 500.11 review pending;

Labor--Safe Place to Work--Whether worker was engaged in covered activity under Labor Law § 240(1) at the time of accident; worker, welder at industrial facility, was assisting in fabrication of rotor compartment, which fell on worker and resulted in his death;

Supreme Court, Allegany County, denied defendants' motion for summary judgment dismissing the amended complaint and granted plaintiff's cross motion for partial summary judgment on the issue of liability; App. Div. reversed, denied plaintiff's cross motion for partial summary judgment, granted defendants' motion for summary judgment, and dismissed the amended complaint.

SECURITY PACIFIC NATIONAL BANK v EVANS:

1ST Dept. App. Div. order of 8/13/19; affirmance with dissents; sua sponte examination whether the order appealed from finally determines the action within the meaning of the Constitution and whether the dissent at the Appellate Division is on a question of law; **Contracts--Implied Covenants--Whether Supreme Court's findings of fact concerning the alleged breach of the implied covenant of good faith were against the weight of evidence;**

Supreme Court, New York County, vacated and cancelled an order of the same court entered 2/27/07, reinstated an order of the same court entered 6/7/02, and referee's deed of sale, and awarded CitiMortgage, Inc., as successor in interest to the named plaintiff, \$357,000 less any monies defendant Tracie Evans had paid to nonparty Berkman, Henoeh, Peterson & Peddy, P.C. or into court after April 2007; App. Div. affirmed.