

COURT OF APPEALS NEW FILINGS

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

February 12 through February 18, 2010

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 60 days after the appeal was taken; respondent's brief to be filed 45 days after the filing of appellant's brief; and a reply brief, if any, to be filed 15 days after 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.

CAMPBELL (WILLIAM), PEOPLE v:

1ST Dept. App. Div. order of 10/29/09; affirmance; leave to appeal granted by Pigott, J., 2/5/10;

CRIMES - RIGHT TO PUBLIC TRIAL - CLOSURE OF COURTROOM - TRIAL COURT EXCLUDED TWO MEMBERS OF DEFENDANT'S FAMILY FROM THE COURTROOM DURING THE TESTIMONY OF AN UNDERCOVER POLICE OFFICER - FAMILY MEMBERS LIVED IN THE "ROUGH VICINITY" WHERE THE UNDERCOVER OFFICER WORKED; SUFFICIENCY OF EVIDENCE;

Supreme Court, New York County convicted defendant of criminal sale of a controlled substance in the third degree; App. Div. affirmed.

MUHAMMAD (SHAHID), PEOPLE v:

4TH Dept. App. Div. order of 10/2/09; affirmance; leave to appeal granted by Lippman, Ch.J., 1/27/10;

CRIMES - VERDICT - WHETHER JURY VERDICT FINDING DEFENDANT GUILTY OF ASSAULT IN THE FIRST DEGREE IN CONNECTION WITH THE USE OF A WEAPON WHILE SIMULTANEOUSLY FINDING DEFENDANT NOT GUILTY OF CRIMINAL POSSESSION OF A WEAPON IS REPUGNANT; EXPERT WITNESS - DENIAL OF DEFENDANT'S REQUEST TO PRESENT EXPERT TESTIMONY ON THE RELIABILITY OF EYEWITNESS IDENTIFICATION;

Supreme Court, Erie County convicted defendant, upon a jury verdict, of assault in the first degree; App. Div. affirmed.

PORTO (WILLIAM), PEOPLE v:

1ST Dept. App. Div. order of 10/6/09; affirmance; leave to appeal granted by Pigott, J., 2/5/10;

CRIMES - RIGHT TO COUNSEL - CHALLENGE TO APPELLATE DIVISION ORDER CONCLUDING THAT THE TRIAL "COURT PROPERLY DENIED DEFENDANT'S DAY-OF-TRIAL MOTION FOR ASSIGNMENT OF NEW COUNSEL SINCE HIS PAPERS LACKED SPECIFIC FACTUAL ALLEGATIONS AND DID NOT CONTAIN ANY SERIOUS COMPLAINT REQUIRING INQUIRY BY THE COURT" AND BECAUSE "THE COURT ENGAGED IN A COLLOQUY WITH DEFENSE COUNSEL THAT DID NOT REVEAL ANY REASON FOR SUBSTITUTION OR FURTHER INQUIRY";

Supreme Court, New York County convicted defendant of burglary in the second degree; App. Div. affirmed.

WAGGONER, et al. v CARUSO, et al.:

1ST Dept. App. Div. order of 9/29/09; affirmance; leave to appeal granted by App. Div., 1/26/10; Rule 500.11 review pending;

ATTORNEY AND CLIENT - MALPRACTICE - WHETHER THE COMPLAINT STATED A CAUSE OF ACTION FOR LEGAL MALPRACTICE AND WHETHER THE APPELLATE DIVISION IMPROPERLY APPLIED A SUMMARY JUDGMENT STANDARD ON A PRE-ANSWER MOTION TO DISMISS IN DETERMINING THAT "PLAINTIFFS HAVE NOT DEMONSTRATED THAT THEY WOULD HAVE PREVAILED IN ANY UNDERLYING PROCEEDING BUT FOR DEFENDANTS' ALLEGED NEGLIGENCE"; AMENDMENT OF COMPLAINT; TORTS - BREACH OF FIDUCIARY DUTY - DISMISSAL OF BREACH OF FIDUCIARY DUTY CLAIM AS REDUNDANT OF THE LEGAL MALPRACTICE CAUSE OF ACTION;

Supreme Court, New York County granted defendants' CPLR 3211 motion to dismiss the complaint alleging, among other things, legal malpractice; App. Div. affirmed.

WILLIAMS (JAIR), PEOPLE v:

2ND Dept. App. Div. order of 7/21/09; affirmance; leave to appeal granted by Lippman, Ch.J., 2/5/10;

CRIMES - JURORS - JURY INSTRUCTIONS - WHETHER TRIAL COURT ERRED IN FAILING TO AFFORD THE DEFENSE NOTICE AND AN OPPORTUNITY TO BE HEARD BEFORE IT REJECTED AS REPUGNANT THE INITIALLY ANNOUNCED

JURY VERDICT, AND IN THEREAFTER GIVING EXTENSIVE SUPPLEMENTAL
JURY INSTRUCTIONS AND RESUBMITTING THE CASE FOR FURTHER
DELIBERATIONS - VERDICT SHEET COMPLETED BY JURY IN THE COURTROOM
WITH OPEN COURT DISCUSSIONS AMONG THE JURORS; DUE PROCESS;
EFFECTIVE ASSISTANCE OF COUNSEL;
Supreme Court, Kings County convicted defendant of murder in the
second degree, attempted murder in the second degree and criminal
possession of a weapon in the second degree; App. Div. affirmed.

