

June 12, 2014

CASES

2                    No. 93  
The People &c.,  
    Respondent,  
    v.  
Churchill Andrews,  
    Appellant.

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

2                    No. 102  
Daniel Capruso, et al.,  
    Respondents,  
    v.  
Village of Kings Point, et al.,  
    Appellants.

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

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State of New York,  
    Respondent,  
    v.  
Village of Kings Point,  
    Appellant.

4                    No. 114  
Shawn Giles, &c.,  
    Appellant,  
    v.  
A. Gi Yi, et al.,  
    Respondents,  
et al.,  
    Defendants.

Order modified, without costs, by remitting to  
Supreme Court, Monroe County, for further  
proceedings in accordance with the opinion herein  
and, as so modified, affirmed, and certified question  
answered in the negative.  
Opinion by Chief Judge Lippman.  
Judges Graffeo, Read, Pigott, Rivera and Abdus-  
Salaam concur.  
Judge Smith dissents and votes to affirm for the  
reasons stated in the memorandum of the Appellate  
Division (105 AD3d 1313 [2013]).

3                    No. 100  
The People &c.,  
    Appellant-Respondent,  
    v.  
Hazel E. Gordon,  
    Respondent-Appellant.

Order modified by reinstating defendant's conviction of robbery in the first and second degrees and remitting the case to the Appellate Division, Third Department, for consideration of the facts (CPL 470.25[2][d]; 470.40[2][b]) and, as so modified, affirmed.

Opinion by Judge Rivera.  
Judges Graffeo, Read, Smith and Pigott concur.  
Chief Judge Lippman dissents in part in an opinion in which Judge Abdus-Salaam concurs.

4                    No. 113  
Christopher Hamilton,  
    Appellant,  
    v.  
John Miller et al.,  
    Respondents.

Order modified, without costs, by remitting to Supreme Court, Monroe County, for further proceedings in accordance with the opinion herein and, as so modified, affirmed, and certified question answered in the negative.

Opinion by Chief Judge Lippman.  
Judges Graffeo, Read, Pigott, Rivera and Abdus-Salaam concur.  
Judge Smith dissents and votes to affirm for the reasons stated in the memorandum of the Appellate Division (106 AD3d 1476 [2013]).

2                    No. 94  
The People &c.,  
    Respondent,  
    v.  
Kevin Kruger,  
    Appellant.

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

1                    No. 118  
The People &c.,  
    Respondent,  
    v.  
Lionel McCray,  
    Appellant.

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

2                    No. 115  
In the Matter of Thomas P. O'Neill, et al.,  
    Appellants-Respondents,  
    v.  
Ann Pfau, &c.,  
    Respondent-Appellant.

Order affirmed, without costs, and certified question  
answered in the affirmative, in a memorandum.  
Judges Graffeo, Read, Smith, Pigott, Rivera and  
Abdus-Salaam concur.  
Chief Judge Lippman took no part.

2                    No. 120  
The People &c.,  
    Appellant,  
    v.  
Vinod Patel,  
    Respondent.

Order reversed and defendant's application for a writ  
of error coram nobis denied.  
Opinion by Judge Graffeo.  
Chief Judge Lippman and Judges Read, Smith,  
Pigott, Rivera and Abdus-Salaam concur.

2                    No. 111  
The People &c.,  
    Respondent,  
    v.  
Jamel Walston,  
    Appellant.

Order modified by vacating defendant's conviction of  
manslaughter in the first degree, with leave to the  
People, if they be so advised, to resubmit that charge  
to a grand jury, and remitting to Supreme Court,  
Kings County, for resentencing on the conviction of  
criminal possession of a weapon in the second degree  
and, as so modified, affirmed, in a memorandum.  
Chief Judge Lippman and Judges Graffeo, Read,  
Smith, Pigott, Rivera and Abdus-Salaam concur,  
Judge Smith in a separate concurring opinion in  
which Judge Abdus-Salaam concurs.

## MOTIONS

4                    Mo. No. 2014-491  
The People &c. ex rel. Ronald Ackridge,  
Appellant,  
v.  
Michael Sheahan, &c., et al.,  
Respondents.

Motion for leave to appeal denied.

2                    Mo. No. 2014-448  
Andrew Avellino,  
Appellant,  
v.  
City of New York,  
Respondent.

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

2                    Mo. No. 2014-421  
In the Matter of Christopher Basile,  
Appellant,  
v.  
Francis A. Nicolai, &c. et al.,  
Respondents.

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

1                    Mo. No. 2014-422  
Adrianna Becerril,  
Appellant,  
v.  
City of New York Department of Health and  
Mental Hygiene et al.,  
Respondents.

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

4                    Mo. No. 2014-461  
In the Matter of Anthony Bottom,  
Appellant,  
v.  
Anthony Annucci, &c.,  
Respondent.

Motion for leave to appeal granted.

3                    Mo. No. 2014-442  
Sharen Branch, &c.,  
    Appellant,  
    v.  
County of Sullivan,  
    Respondent.

Motion for leave to appeal granted.

1                    Mo. No. 2014-460  
In the Matter of Gina C.,  
    Respondent,  
    v.  
Augusto C.,  
    Appellant.

Motion for leave to appeal denied.

1                    Mo. No. 2014-407  
Estelle A. Carr, &c.,  
    Appellant,  
Dennis Beaver, &c.,  
    Respondent,  
    v.  
Rose A. Caputo, &c.,  
    Defendant,  
Henry Alpizar, &c., et al.,  
    Respondents.

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.  
Judge Abdus-Salaam took no part.

1                    Mo. No. 2014-471  
Brenda Cornell,  
    Respondent,  
    v.  
360 West 51st Street Realty, LLC, et al.,  
    Defendants,  
360 West 51st Street Corp.,  
    Appellant.

Motion for reargument denied with one hundred dollars costs and necessary reproduction disbursements.  
Judge Abdus-Salaam took no part.

2 Mo. No. 2014-430  
Iain Curtis-Shanley,  
Appellant,  
v.  
Bank of America,  
Respondent.

Motion for reargument denied.

3 Mo. No. 2014-402  
In the Matter of Noach Dear,  
Appellant,  
v.  
New York State and Local Retirement  
System,  
Respondent.

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

2 Mo. No. 2014-431  
The People &c. ex rel. Michael Dollison,  
Appellant,  
v.  
Michael J. Sposato, &c.,  
Respondent.

Motion for leave to appeal denied.

2 Mo. No. 2014-341  
Eastern Savings Bank, FSB,  
Respondent,  
v.  
106 Rockaway Owners Corp.,  
et al.,  
Defendants,  
Anthony Modica,  
Appellant.

Motion for leave to appeal denied.  
Motion for ancillary relief dismissed upon the  
ground that this Court does not have jurisdiction to  
entertain the motion (see NY Const, art VI, §3).

4                    Mo. No. 2014-479  
In the Matter of GM Components Holdings,  
LLC,  
                  Appellant,  
          v.  
Town of Lockport Industrial Development  
Agency,  
                  Respondent.

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

2                    Mo. No. 2014-446  
In the Matter of Gospel Faith Mission  
International, Inc.,  
                  Respondent,  
          v.  
David P. Weiss, &c., et al.,  
                  Appellants.

Motion, insofar as it seeks leave to appeal from the Appellate Division order denying reargument or leave to appeal to this Court, dismissed upon the ground that such order does not finally determine the proceeding within the meaning of the Constitution; motion for leave to appeal otherwise denied.

2                    Mo. No. 2014-424  
Guan Tou Market, Inc.,  
                  Respondent,  
          v.  
373 Wythe Avenue Realty, Inc., &c.,  
                  Appellant.

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

3                    Mo. No. 2014-484  
John D. Justice,  
                  Appellant,  
          v.  
State of New York,  
                  Respondent.

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

1                    Mo. No. 2014-417  
Resat Keles,  
                  Appellant,  
          v.  
Zvi Galil, et al.,  
                  Respondents.  
(And Two Other Actions.)

Motion for leave to appeal denied with one hundred dollars costs and necessary reproduction disbursements.  
Judges Rivera and Abdus-Salaam took no part.

1                    Mo. No. 2014-429  
The People &c. ex rel. Desiree Lassiter, on  
behalf of Yadira Hernandez,  
                  Appellant,  
          v.  
Dora B. Schriro, &c.,  
                  Respondent.

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

3                    Mo. No. 2014-418  
In the Matter of Robert B. Launer,  
                  Appellant,  
          v.  
Euro Brokers et al.,  
                  Respondents.  
Workers' Compensation Board,  
                  Respondent.

Motion for leave to appeal denied.

4                    Mo. No. 2014-419  
In the Matter of the Estate of Robyn R. Lewis,  
Deceased.  
  
James Robert Simmons,  
                  Respondent;  
Meredith M. Stewart, et al.,  
                  Appellants.

Motion for leave to appeal granted.

2 Mo. No. 2014-438  
In the Matter of John Marsala,  
et al.,  
Appellants,  
v.  
City of Long Beach, et al.,  
Respondents.

Motion for leave to appeal denied.

1 Mo. No. 2014-410  
In the Matter of Karen Matseoane, Deceased.  
  
Karen Matseoane,  
Respondent,  
v.  
Subtle Engineering Company,  
Appellant.

Motion for reargument of motion for leave to appeal denied.

1 Mo. No. 2014-401  
Errol McDonald,  
Appellant,  
v.  
Edelman & Edelman, P.C., et al.,  
Respondents.

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. 2014-472  
James L. Melcher,  
Appellant,  
v.  
Greenberg Traurig, LLP, et al.,  
Respondents.

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

4 Mo. No. 2014-433  
The People &c. ex rel. Richard Mills,  
Appellant,  
v.  
John Lempke, &c., et al.,  
Respondents.

Motion for reargument of motion for leave to appeal denied.  
Motion for poor person relief dismissed as academic.  
Judge Pigott took no part.

1 Mo. No. 2014-489  
Nader & Sons, LLC, et al.,  
Respondents,  
v.  
Dan Shavolian, &c.,  
Appellant,  
Robert Flink, &c.,  
Defendant.

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.

4 Mo. No. 2014-481  
One Flint St., LLC et al.,  
Respondents,  
v.  
Exxon Mobil Corporation, et al.,  
Appellants,  
et al.,  
Defendants.

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. 2014-477  
Maria Park, &c.,  
Appellant,  
v.  
Dr. Thomas Kovachevich, et al.,  
Respondents,  
et al.,  
Defendants.

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

1 Mo. No. 2014-427  
The People &c.,  
Respondent,  
v.  
Augusto Rojas,  
Appellant.

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

2                    Mo. No. 2014-426  
The People &c.,  
    Respondent,  
    v.  
Nikoll Shkreli,  
    Appellant.

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

2                    Mo. No. 2014-444  
The People &c.,  
    Respondent,  
    v.  
Brian M. Soevyn,  
    Appellant.

Motion for leave to appeal denied.

4                    Mo. No. 2014-400  
In the Matter of Richard Tyes,  
    Appellant,  
    v.  
Brian Fischer, &c.,  
    Respondent.

Motion for leave to appeal denied.