

COURT OF APPEALS NEW FILINGS

Preliminary Appeal Statements processed  
by the Court of Appeals Clerk's Office  
**October 5 through October 11, 2007**

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.

**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.**

ALLEN (BRANDON), PEOPLE v:

1<sup>ST</sup> Dept. App. Div. order of 7/12/07; affirmance; leave to appeal granted by McGuire, J., 10/2/07; Rule 500.11 review pending; CRIMES AND CRIMINAL PROCEDURE - SEARCH AND SEIZURE - DEFENDANT FRISKED FOR WEAPONS AFTER VEHICLE STOP FOR TRAFFIC VIOLATION - WHETHER DEFENDANT'S CONDUCT AFTER TRAFFIC STOP GAVE POLICE OFFICER A REASONABLE SUSPICION THAT DEFENDANT MIGHT BE CONCEALING A WEAPON;

Supreme Court, New York County convicted defendant, upon his guilty plea, of criminal possession of a controlled substance in the fourth degree, and sentenced him, as a second felony offender, to a term of 3 1/2 to 7 years; App. Div. affirmed.

AZAZ (NAGMELDEEN), PEOPLE v:

2<sup>ND</sup> Dept. App. Div. order of 6/12/07; affirmance; leave to appeal granted by Ciparick, J., 9/26/07;

CRIMES AND CRIMINAL PROCEDURE - MURDER - DEPRAVED INDIFFERENCE MURDER - LEGAL SUFFICIENCY OF THE EVIDENCE; RIGHT TO REMAIN SILENT - CHALLENGE TO INSTRUCTION GIVEN TO PANEL OF PROSPECTIVE JURORS, THREE OF WHOM SAT ON THE JURY, THAT DEFENDANT HAD THE RIGHT NOT TO TESTIFY "AGAINST HIMSELF";

Supreme Court, Kings County convicted defendant of two counts of murder in the second degree, upon a jury verdict, and imposed sentence; App. Div. affirmed.

CONROY, et al. v STATE COMMITTEE OF THE INDEPENDENCE PARTY et al.:

2<sup>ND</sup> Dept. App. Div. order of 9/10/07; modification and affirmance; sua sponte examination whether a substantial constitutional question is directly involved to support an appeal as of right;

ELECTIONS - POLITICAL PARTIES - ELECTION LAW § 6-120(3) - VALIDITY OF POLITICAL PARTY RULES INsofar AS THEY VEST THE EXECUTIVE COMMITTEE OF THE STATE COMMITTEE OF THE INDEPENDENCE PARTY OF NEW YORK WITH THE POWER TO ISSUE CERTIFICATES AUTHORIZING THE DESIGNATION OR NOMINATION OF CANDIDATES NOT ENROLLED AS MEMBERS OF THE INDEPENDENCE PARTY OF NEW YORK FOR PUBLIC OFFICES IN THE CITY OF NEW YORK WHICH ARE NOT TO BE FILLED BY ALL THE VOTERS OF THE CITY OF NEW YORK;

Supreme Court, Kings County granted a petition for an order declaring invalid Article VI, Section 11, of the New York State Independence Party by-laws, as adopted on June 10, 2007, and annulled that by-law; App. Div. modified the order by deleting the provision that, in effect, declared the amendment to Article VI, Section 11, of the rules of the New York State Committee of the Independence Party adopted on June 10, 2007 invalid insofar as it vests the Executive Committee of the State Committee of the Independence Party of New York with the power to issue certificates authorizing the designation or nomination of candidates not enrolled as members of the Independence Party of New York for public offices in the City of New York which are not to be filled by all the voters of the City of New York, and substituted therefor a provision declaring valid such portion of the amendment to Article VI, Section 11, of the rules of the New York State Committee of the Independence Party, and affirmed the order as so modified.

MCCULLEY et al v SANDWICK:

3<sup>RD</sup> Dept. App. Div. order of 8/30/07; affirmance with two-justice dissent; sua sponte examination whether the two-justice dissent at the App. Div. is on an issue of law and whether so much of the August 30, 2007 App. Div. order as affirmed the March 14, 2006 Supreme Court order finally determines the action within the meaning of the Constitution;

MOTOR VEHICLES - COLLISION - NEGLIGENCE - PROXIMATE CAUSE - WHETHER PLAINTIFFS' CPLR 4404(a) MOTION TO SET ASIDE THE JURY VERDICT OF "NO CAUSE OF ACTION" SHOULD HAVE BEEN GRANTED WHERE THE JURY DETERMINED DEFENDANT WAS NEGLIGENT IN OPERATION OF HIS VEHICLE BUT THAT SUCH NEGLIGENCE WAS NOT A PROXIMATE CAUSE OF THE COLLISION;

Supreme Court, Albany County entered judgment in defendant's favor for no cause of action and struck plaintiffs' complaint; thereafter, the same court denied plaintiffs' motion to set aside the verdict and for a new trial pursuant to CPLR 4404(a); App. Div. affirmed.