



*State of New York*  
*Court of Appeals*

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COURT OF APPEALS NEW FILINGS

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

**June 20, 2025 through June 26, 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 BERRY (DAVID A.):

APL-2025-00079

4th Dept. App. Div. order of 3/14/25; affirmance; leave to appeal granted by Ogden, J., 4/23/25; Rule 500.11 review pending;

**Crimes—Search Warrant—Whether a search warrant application including hearsay information from a confidential informant satisfied the Aguilar-Spinelli test and the warrant was issued upon probable cause;**

Supreme Court, Monroe County, convicted defendant, upon a jury verdict, of criminal possession of a controlled substance in the third degree (six counts), criminal possession of a weapon in the second degree, criminal possession of a weapon in the third degree and

criminally using drug paraphernalia in the second degree (three counts); App. Div., with two Justices dissenting, affirmed.

GENESEE COUNTY FISH AND GAME v SULLIVAN:

APL-2025-00123

4th Dept. App. Div. order of 6/6/25; affirmance; sua sponte examination of whether the order appealed from finally determines the action within the meaning of the Constitution; **Adverse Possession—Whether summary judgment was properly granted on plaintiff's first and third causes of action seeking relief based on adverse possession;** Supreme Court, Genesee County, among other things, granted plaintiff's motion insofar as it sought summary judgment on its first and third causes of action, seeking relief based on adverse possession, and denied defendants' cross-motion for summary judgment on their first counterclaim, seeking to quiet title, and dismissing the complaint; App. Div., with two Justices dissenting, affirmed.

PEOPLE v GUERRA (DIEGO):

APL-2025-00080

2nd Dept. App. Div. order of 10/9/24; reversal; leave to appeal granted by Brathwaite Nelson, J., 4/18/25;

**Crimes—Right to Counsel—Whether defendant was denied the effective assistance of counsel because defense counsel signed and permitted the jury to consider a stipulation containing definitions of the crimes charged that eliminated the required mens rea element;**

Supreme Court, Queens County, convicted defendant of promoting a sexual performance by a child (19 counts) and possessing a sexual performance by a child (49 counts), upon a jury verdict, and imposed sentence; App. Div., with one Justice dissenting, reversed and remitted for a new trial.

JOHNSON v STATE OF NEW YORK:

APL-2025-00084

4th Dept. App. Div. order of 4/1/25; denial of motion; sua sponte examination of whether the order appealed from finally determines the action within the meaning of the Constitution and whether a substantial constitutional question is directly involved in the order appealed from;

**Motions and Orders—Whether the Appellate Division properly denied appellant's motion; alleged constitutional violations;**

App. Div., on appeal from an order of the Court of Claims, dated April 9, 2024, denied appellant's motion for costs, fees, sanctions, and other relief.

BANK OF NEW YORK MELLON v KHAN:

APL-2025-00122

2nd Dept. App. Div. order of 6/4/25; denial of motions; sua sponte examination of whether the order appealed from finally determines the actions within the meaning of the Constitution and whether a substantial constitutional question is directly involved in the order appealed from;

**Motions and Orders;**

App. Div. on appeal from five orders of Supreme Court, Dutchess County, inter alia, denied as academic branches of appellant's motions to consolidate appeals, granted

branches of appellant's motions to extend the time to perfect appeals, and otherwise denied appellant's motions.