

CASE ISSUE STATEMENTS

The calendar is subject to change. Please contact the Clerk's Office for any updated information.

If available, briefs, records and appendices can be viewed and downloaded from the Court of Appeals Public Access and Search System (Court-PASS), which is accessible from the home page on the Court's website.

TUESDAY, OCTOBER 13, 2015

Matter of Sierra Club v Village of Painted Post (Cal. No. 151)

APL-2014-00266

Parties--Standing--Environmental protection--Complaint of train noise newly introduced into neighborhood--Whether the Appellate Division erred in holding that resident lacked standing because he failed to establish injury different from that of public at large--Alleged presumption of standing based upon resident's proximity to a transloading facility and train noise; SEQRA review.

People v Willie L. Wragg (Case No. 152)

APL-2014-00207

Crimes--Sentence--Second child assault felony offender--Whether the People are permitted to seek sentencing enhancement pursuant to Penal Law section 70.07 by filing a CPL 400.19 second child sexual assault felony offender statement after commencement of trial; Right to counsel--Effective representation--Whether defendant received ineffective assistance of counsel when, among other things, his attorney failed to object to the testimony of a police officer who referred to the victim's pre-arrest identification of defendant.

Pegasus Aviation I, Inc. v Varig Logistica S.A. (Case No. 153)

APL-2014-00294

Evidence--Loss or destruction of evidence--Relevance of spoliated documents--Whether MP defendants exercised sufficient control over defendant Varig Logistica to render the MP defendants liable for sanctions for evidence spoliation based on Varig Logistica's loss of its electronically stored information.

People v Matthew P. (Case No. 154)

APL-2014-00134

Crimes--Larceny--Challenge to sufficiency of information--Sufficiency of allegations that defendant improperly used a key that did not belong to him to let two undercover police officers (and himself) into the subway through an emergency exit gate in exchange for money--People v Hightower (18 NY3d 249); Theft of services--Sufficiency of allegations based on the sworn statement of a transit police officer that he observed defendant enter the subway "beyond the turnstiles" and without "paying the required fare" by "walking through an exit gate."

People v Alfred Gary (Case No. 155)

APL-2014-00238

Crimes--Conspiracy--Defendant claims hearsay evidence mistakenly stipulated into evidence with large number of documents should not have been admitted into evidence--Sufficiency of evidence to support conspiracy charge; Claimed repugnancy of verdict due to acquittals on other charges based on the same facts underlying the scheme to defraud.

WEDNESDAY, OCTOBER 14, 2015

People v Frankie Hatton (Case No. 157)

APL-2014-00221

Crimes--Plea of guilty--Forfeiture of right to raise issues on appeal--Jurisdictional sufficiency of accusatory instrument--Whether defendant waived his right to prosecution by information by a blanket waiver of the reading of that right made by his attorney in the context of an unrelated case outside of defendant's presence or by subsequently pleading guilty; Information--Insufficient information charging forcible touching--Whether the accusatory instrument contained sufficient factual allegations related to the "purpose" element of forcible touching.

Matter of Gentil v Margulis (Case No. 158)

APL-2014-00263

Proceeding against body or officer--Prohibition--CPLR article 78 proceeding to prohibit respondents from retrying petitioner on two counts of the indictment in People v Gentil on the ground that to do so would subject him to double jeopardy--Trial court declined to accept a partial verdict--Discharge of juror--Mistrial.

People v Pettis Hardy (Case No. 159)

APL-2014-00197

Crimes--Instructions--Whether the trial court properly declined to give the jury a circumstantial evidence charge on the basis that there was both direct and circumstantial evidence of defendant's guilt; Trial--Mistrial--Denial of mistrial motions--Whether the trial court erred in giving supplemental charges to encourage the jury to reach a verdict in response to two notes from the jury indicating deadlock, where the trial was relatively uncomplicated and the jury deliberations were lengthy; Evidence--Whether the trial court improperly admitted testimony of two prosecution witnesses narrating surveillance videotapes.

People v Antonio Martinez (Case No. 160)

APL-2014-00014

Crimes--Sentence--Imposition after trial of maximum sentence of imprisonment where people previously offered a plea with a probationary sentence--Challenge to sentence as unconstitutionally penalizing defendant for exercising his right to trial.

THURSDAY, OCTOBER 15, 2015

People v Alma Caldavado (Case No. 162)

APL-2014-00206

Crimes--Right to counsel--Effective representation--Whether defendant was entitled to an evidentiary hearing on her CPL 440.10 motion asserting ineffective assistance of trial counsel in light of growing body of medical evidence, not introduced at trial, suggesting that "shaken baby syndrome" can be explained by a medical condition unrelated to physical mistreatment of the child.

Davis v South Nassau Communities Hospital (Case No. 163)

APL-2014-00245

Negligence--Duty--Whether defendants owed a duty of care to plaintiff who was injured when the bus he was operating was struck by a vehicle driven by defendants' patient after she allegedly became unconscious as a result of narcotic medications administered to her at defendant hospital's emergency room; Physicians and surgeons.

People v Davon Harris (Case No. 164)

APL-2014-00212

Crimes--Right to counsel--Effective representation--Whether defendant received effective assistance of counsel when his trial attorney failed to raise a statute of limitations defense that would have barred prosecution on one of the two indicted crimes; Sufficiency of evidence of defendant's intent to steal property when he entered the dwelling; Failure of trial court to grant defendant's for-cause challenge to a juror; Claimed due process violations.

People v Nugene Ambers (Case No. 165)

APL-2014-00234

Crimes--Right to counsel--Effective representation--Whether defendant was denied the right to effective assistance of counsel where his counsel failed to raise a statute of limitations defense as to certain counts and failed to object to certain statements by the prosecutor, move for a mistrial or request curative instructions.

TUESDAY, OCTOBER 20, 2015

People v Everett M. Durant (Case No. 166)

APL-2014-00121

Crimes--Robbery--Jury instructions--Whether County Court properly denied defendant's request for an adverse inference charge requested because the police, although capable of doing so, failed to videotape defendant's confession.

People v Joseph Conceicao (Case No. 167)

APL-2014-00122

Crimes--Plea of guilty--Whether the guilty plea was voluntary, knowing and intelligent where defendant was not informed of the rights he was waiving before making his guilty plea--Whether defendant was required to preserve his challenge to the guilty plea for appellate review--Retroactive application of People v Tyrell (22 NY3d 359).

People v Federico Perez (Case No. 168)

APL-2014-00273

Crimes--Plea of guilty--Sufficiency of allocution--Whether a guilty plea to a violation, which required only the payment of a \$100 fine, must be vacated under People v Tyrell (22 NY3d 359) because defendant was not advised of his Boykin rights.--Whether Boykin applies where defendant pleads to a violation without jail time.

People v Javier Sanchez (Case No. 169)

APL-2015-00144

Crimes--Plea of guilty--Sufficiency of allocution--Whether defendant charged with misdemeanor of Driving While Intoxicated knowingly, voluntarily and intelligently waived his Boykin rights--applicability of Tyrell to misdemeanor cases where defendant faces no jail time.

People v Abdelouahad Afilal (Case No. 170)

APL-2015-00038

Crimes--Plea of guilty--Sufficiency of allocution--Whether the record established that defendant knowingly, voluntarily and intelligently waived his Boykin rights where defense counsel waived "formal allocution," and defendant stated that he was pleading guilty because he was in fact guilty, he understood that he was giving up his right to a trial, and he had a chance to fully discuss the plea and its possible consequences with his lawyer; Criminal possession of marihuana in the fifth degree--Sufficiency of factual allegations in accusatory instrument.

WEDNESDAY, OCTOBER 21, 2015

People v Daniel Israel (Case No. 175)

APL-2014-00149

Crimes--Evidence--Other uncharged crimes--Whether the trial court erred in permitting the People to introduce rebuttal evidence of two uncharged crimes where the witnesses lacked direct knowledge of provocation (People v Santarelli, 49 NY2d 241); Whether, in the context of an extreme emotional disturbance defense, incidents of uncharged violence may be admissible even if the degree of violence is not commensurate with the conduct underlying the charges.

Matter of Echevarria v Wambua (Case No. 172)

APL-2014-00260

Parties--Standing--Challenge to public housing occupancy waiver--Whether petitioner, as head of a five-person household living in a two-bedroom apartment, lacked standing to challenge the Department of Housing Preservation and Development's (HPD) waiver of the six-person occupancy requirement for a four-bedroom apartment in a Mitchell-Lama building, where the waiver was granted to another five-person family who filed an application for the apartment, petitioner had not submitted an application, and HPD later determined that it did not have authority to grant such a waiver.

Matter of Fizzinoglia, Deceased (Case No. 173)

APL-2014-00265

Wills--Elective share of surviving spouse--Whether a prenuptial agreement disqualified surviving spouse as a distributee of decedent's estate--Whether the prenuptial agreement was

invalid and unenforceable on the grounds that an essential term was omitted from the agreement and the agreement was unconscionable or procured through fraud, duress, overreaching or other inequitable conduct.

People v Julio Negron (Case No. 174)

APL-2014-00230

Crimes--Right to counsel--Effective representation--Whether defendant was denied his right to effective assistance of counsel when his trial counsel failed to object to the trial court's improper use of the "clear link" standard for the introduction of third-party culpability evidence, among other failures; Disclosure--Failure to disclose exculpatory material--Whether the People committed prejudicial Brady violations by failing to disclose that defendant's neighbor fled with a cache of weapons the night of the shooting, which included the same caliber of ammunition used in the shooting.

THURSDAY, OCTOBER 22, 2015

People v Ally Golo (Case No. 175)

APL-2014-00178

Crimes--Sentence--Drug Law Reform Act of 2009--Resentencing denied based on substantial justice--Whether the trial court has authority to deny a motion for resentencing without holding a hearing.

People v Samuel Small (Case No. 176)

APL-2014-00211

Crimes--Grand Jury--Right to appear before Grand Jury--Defendant in custody for one burglary when felony complaint issued charging him with another burglary was not arrested or arraigned on the second charge--Whether defendant was entitled to notice that the second charge would be presented to the Grand Jury; Second violent felony offender status--Tolling of time to extend 10-year limitation on prior felonies (Penal Law § 70.04 [1]) where defendant was granted habeas corpus relief from incarceration for prior parole violation.

Matter of Hawkins v Berlin (Case No. 177)

APL-2014-00188

Social services--Public assistance--Whether petitioner is entitled to distribution of child support arrears collected by respondents to reimburse public assistance provided to petitioner's household during a period when the child support beneficiary was not part of the household; Social Services Law § 158 (5); Whether respondents' determinations were arbitrary and capricious.

People v Mark Jurgins (Case No. 178)

APL-2014-00183

Crimes--Sentence--Second felony offender--Equivalency of foreign felony conviction--Whether a defendant can raise a challenge to the equivalency of a foreign felony conviction for the first

time in a CPL 440.20 motion--Equivalency of prior Washington, D.C. conviction for robbery under a statute that defines robbery to include "stealthy seizure or snatching."