

## 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, FEBRUARY 9, 2016**

#### **Matter of NYS Correctional Officers v GOER (Case No. 23)**

APL-2015-00111

Labor unions--Grievances--Out-of-title work grievance; Proceeding against a body or officer--CPLR article 78 proceeding to review denial of an out-of-title work grievance of a safety and security officer with the office of mental health; Civil service classification standards.

#### **People v Cedeno (Assad) (Case No. 24)**

APL-2014-00236

Crimes--Right of confrontation--Whether the Appellate Division erred in concluding that admission into evidence of a co-defendant's redacted statement to police did not violate the Bruton rule "because the subject redaction would not have caused the jurors to realize that the confession refers specifically to the defendant"; Proof of other crimes--Whether the trial court improperly admitted prior uncharged crime evidence against defendant without first evaluating its reliability.

#### **People v Johnson (Keith) (Case No. 25)**

APL-2015-00050

Crimes--Harmless and prejudicial error--Admission in evidence at joint trial of co-defendant's statements implicating defendant--Facially incriminating statement--Whether the Appellate Division correctly held that the confession of the non-testifying co-defendant introduced at their joint trial was facially incriminating such that defendant was deprived of his Sixth Amendment right of confrontation under Bruton; Whether the alleged error was harmless.

#### **People v Berry (Oliver) a/k/a Tucker (Chris) (Case No. 26)**

APL-2014-00291

Crimes--Witnesses--Whether witness for the prosecution's invocation of the Fifth Amendment privilege against self-incrimination added critical weight to the prosecution's case--Inferences drawn by witness's silence; Whether trial court properly precluded defendant's expert witness from testifying about the effects of stress on the accuracy of identification.

**WEDNESDAY, FEBRUARY 10, 2016**

**Government Employees Ins. Co. v Avanguard Med. Group (Case No. 27)**

APL-2015-00130

Insurance--No-fault automobile insurance--Necessary expenses--Facility fee for office-based surgery--Whether the Appellate Division correctly concluded that Insurance Law § 5102 and 11 NYCRR 68.5 do not require insurers to pay facility fees to office-based surgery practices.

**Matter of Aoki v Aoki (Case No. 28)**

APL-2015-00052

Powers--Power of appointment--Validity of irrevocable partial release--Constructive fraud--Whether the Appellate Division erred in determining that (1) the burden-shifting framework for constructive fraud by a fiduciary applies only where the fiduciary was a party to or had an interest in the subject transaction and (2) the constructive fraud doctrine did not apply because decedent's attorneys were not parties to nor had an interest in the releases at issue, where the attorneys allegedly benefitted indirectly from the signing of the releases.

**People v John (Sean) (Case No. 29)**

APL-2014-00267

Crimes--Unlawful search and seizure--Plain view doctrine--Whether the Appellate Division correctly held that the police validly seized a box marked "Smith and Wesson" under the plain view doctrine and lawfully opened the box, which contained a handgun and ammunition, because such contents could be inferred from the "Smith and Wesson" marking on the outside of the box; Warrantless entry into basement of brownstone--Probable cause to obtain DNA sample from defendant; Evidence--Whether the trial court erred in allowing evidence of defendant's alleged assault on his girlfriend; Alleged prosecutorial misconduct in summation; Alleged ineffective assistance of trial counsel.

**Matter of NYC C.L.A.S.H. v NYS Office of Parks (Case No. 46)**

APL 2015-00033

Administrative Law--Validity of regulation--Separation of powers--Regulation exceeding delegated authority--Whether respondent New York State Office of Parks, Recreation and Historic Preservation exceeded its delegated authority, and thus violated the Separation of Powers Doctrine, by promulgating a rule establishing smoke-free areas in certain outdoor locations under its jurisdiction.

**THURSDAY, FEBRUARY 11, 2016**

**Charite v Duane Reade, Inc.**

APL-2015-00176

Civil Rights--Election of remedies--Retaliation in employment--Prior action--Whether the Appellate Division erred in determining that plaintiffs' cause of action for unlawful retaliation in employment in violation of Administrative Code of the City of New York section 8-107 was barred by the election of remedies provision in Labor Law section 740 (7).

**People v Bilal (Rashid) (Case No. 31)**

APL-2014-00252

Crimes--Right to counsel--Effective representation--Whether the Appellate Division correctly determined that counsel's error in failing to move to suppress a weapon defendant discarded while being chased by plainclothes police did not cause defendant prejudice because defendant would not have prevailed on a suppression motion based upon that court's conclusion that "the undisputed facts establish that, when added to the information already known to the police, defendant's flight created reasonable suspicion warranting pursuit" and "the seizure was lawful, in any event, under the doctrine of abandonment."

**People v Gray (Roy) (Case No. 32)**

APL-2015-00003

Crimes--Right to counsel--Effective representation--Failure to move to reopen suppression hearing after trial testimony established that defendant had "a stronger argument that his written statement was not attenuated" than the Appellate Division believed when it previously reversed the trial court's grant of defendant's motion to suppress that statement; Evidence--Ammunition of type capable of being used in homicide--Whether defendant was prejudiced by the admission into evidence of live ammunition found when his half-brother was arrested.

**People v Miranda (Nelson) (Case No. 33)**

APL-2015-00015

Crimes--Unlawful search and seizure--Search of backpack incident to lawful arrest--Whether the warrantless search incident to arrest was reasonable; Whether the accusatory instrument was jurisdictionally defective.

**TUESDAY, FEBRUARY 16, 2016**

**Spoleta Construction, LLC v Aspen Insurance UK Limited (Case No. 34)**

APL-2014-00280

Insurance--Coverage--Whether plaintiff general contractor on a construction project provided timely notice of an "occurrence" such that it was entitled to coverage as an additional insured under the commercial general liability insurance policy issued by defendant Aspen to a subcontractor; Declaratory judgment action seeking defense and indemnification in underlying personal injury action by injured worker.

**Yaniveth R. v LTD Realty Co. (Case No. 35)**

APL-2014-00315

Landlord and Tenant--Landlord's duty to remove lead paint--Whether infant exposed to lead paint resided in apartment--Infant cared for in her grandmother's apartment 10-12 hours per day; Negligence--Violation of statutory duty--Administrative Code of the City of New York §§ 27-2056.3, 27-2056.5; Summary judgment.

**People v Williams (Christian) (Case No. 36)**

APL-2015-00032

Crimes--Plea of guilty--Withdrawal of plea--Illegality of agreed upon sentence--Whether the Appellate Division correctly held that defendant's judgment of conviction, entered upon a guilty plea, must be vacated because the record disclosed that neither the court nor the parties realized that the agreed upon sentence, to be imposed if defendant complied with the conditions of the plea, was illegal; Crimes--Appeal--Preservation of issue for review--Constitutional claim that guilty plea violated due process--Whether defendant was required to preserve his constitutional claim by moving to withdraw his plea.

**People v Johnson (Marcellus) (Case No. 37)**

APL-2015-00070

Crimes--Evidence--Tape recordings--Telephone call made by defendant from correction facility--Whether Supreme Court erred in admitting into evidence portions of telephone calls made by defendant from Rikers Island that were routinely recorded by the Department of Corrections.

**WEDNESDAY, FEBRUARY 17, 2016**

**Matter of Perlbinder Holdings, LLC v Srinivasan (Case No. 39)**

APL-2014-00270

Municipal Corporations--Zoning--Variance--Outdoor advertising--Whether the Appellate Division erred in construing petitioner's appeal to the Board of Standards and Appeals of the City of New York (BSA) as a variance application and directing BSA, on remand, to consider the variance requests under New York City Charter § 666(7)--Whether petitioner was entitled to maintain its advertising sign, without a variance, based on its good-faith reliance on a permit issued by the New York City Department of Buildings (DOB) and a 2008 determination by the Manhattan Borough Building Commissioner approving the erection of the sign--Whether the Appellate Division erred in finding as a matter of law that petitioner's reliance on a permit was in good faith.

**Matter of Kenneth S. (Case No. 40)**

APL-2015-00018

Crimes--Unlawful assembly--Whether police may lawfully take a juvenile into custody for violating a parole condition set by a court as a condition for release pending trial; Whether police may transport a minor for truancy to a police station rather than to a school; Suppression hearing -- Denial of motion--Whether police were justified in conducting warrantless search of suspected truant's bag.

**Matter of Springer v Board of Education (Case No. 41)**

APL-2015-00085

Schools--Teachers--Withdrawal of resignation by tenured staff--Whether the Appellate Division erred in holding that petitioner failed to comply with the procedure for withdrawing his resignation as a tenured teacher, where he applied and was hired for a teaching position under his prior license number and at the same salary he was paid when he resigned several months earlier; Entitlement to hearing pursuant to Education Law section 3020-a.

**People v Reginald Powell**

APL-2015-142

Crimes--Evidence--Third-party culpability--Whether the Appellate Division correctly held that Supreme Court properly precluded defendant from presenting evidence that the murder victim had a \$500,000 life insurance policy naming defendant's brother as the primary beneficiary on the ground that such evidence was "based on mere speculation" because defendant had not stated that he was actually accusing his brother of committing the murder; lesser included offense--whether the trial court erred in denying defendant's request for a jury charge on manslaughter in the first degree as a lesser-included offense of murder in the first degree and on criminal trespass as a lesser-included offense of burglary in the second degree; confession--whether statements defendant made after waiving his Miranda rights were sufficiently attenuated from inadmissible pre-Miranda statements so that they were properly admitted at trial; Sufficiency of the evidence of defendant's intent to remain unlawfully in victim's home to support conviction of burglary in the second degree; alleged prejudicial testimony from defendant's parole officer; Trial court's alleged failure to meaningfully respond to jury note regarding clarification of intent element as to murder count;

sentence—Whether Supreme Court improperly considered uncharged crimes in imposing sentence.

## **THURSDAY, FEBRUARY 18, 2016**

### **PAF-PAR LLC v Silberberg (Case No. 42)**

APL-2014-00309

Suretyship and Guarantee--Guarantee of promissory note--Borrower's full payment of modified loan amount--Guarantor not liable for more--Whether the guarantor is liable for the full original loan amount where the borrower satisfied its obligations under a modification agreement and the guaranty states that the guarantor's obligations shall not be affected by "modification, alteration or rearrangement."

### **Matter of Ranco Sand & Stone Corp. v Vecchio (Case No. 43)**

APL-2015-00079

Courts--Ripeness doctrine--Proceeding to review determination of Town Board approving resolution issuing positive declaration pursuant to State Environmental Quality Review Act--Whether, under Matter of Gordon v Rush (100 NY2d 236 [2003]), the Town Board's positive declaration is ripe for judicial review.

### **Chanko v American Broadcasting Companies (Case No. 44)**

APL-2015-00086

Torts--Wrongful disclosure of confidential information--Whether plaintiffs stated a claim for breach of the duty not to disclose personal medical information; Intentional infliction of emotional distress--Extreme and outrageous conduct--Whether defendant's conduct in producing and televising a show depicting medical care provided at defendant hospital, which included pixelated image of plaintiffs' decedent, constituted extreme and outrageous conduct supporting a claim for intentional infliction of emotional distress.

### **People v Nelson (Joel) (Case No. 45)**

APL-2015-00090

Crimes--Fair trial--Photo of deceased victim depicted on family members' t-shirts during trial--Whether defendant was deprived of a fair trial due to the allegedly prejudicial conduct by spectators in the courtroom; Whether defendant was deprived of the effective assistance of trial counsel; Whether the sentencing court violated defendant's due process rights.