

## 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.**

### **MONDAY, NOVEMBER 14**

#### **Stonehill Capital Management, LLC v Bank of the West (Case No. 191)**

APL-2015-00269

Contracts--Formation of contracts--Offer and acceptance--Whether defendant bank clearly and unequivocally accepted plaintiffs' offer to purchase a loan where defendant stated it would not be bound without an executed writing.

#### **Matter of Henry v Fischer (Case No. 192)**

APL-2014-00269

Prisons and Prisoners--Discipline of inmates--Whether petitioner's challenges to alleged violations of his rights to present documentary evidence and call witnesses at his disciplinary hearing were preserved for judicial review; Waiver of petitioner's rights to present documentary evidence and call witnesses.

#### **People v James Brown (Case No. 193)**

APL-2015-00171

Crimes--Right to speedy trial--Whether the People's subsequent statement of unreadiness rendered their off-calendar certificate of readiness illusory; Courts--Court of Appeals--Application of plurality opinions--People v Sibblies (22 NY3d 1174 [2014]).

#### **People v Terrence Young (Case No. 194)**

APL-2015-00181

Crimes--Right to speedy trial--Whether the People's subsequent statement of unreadiness rendered their second off-calendar certificate of readiness illusory; Whether the trial Court erred in curtailing defense counsel's cross-examination of a police witness.

#### **People v Earl Canady (Case No. 195)**

APL-2016-00107

Crimes--Right to speedy trial--Whether trial court improperly calculated the time chargeable to the People, by charging them with time before the off-calendar statement of readiness was filed, instead of only the time after the declaration; Whether the People's off-calendar readiness declaration was illusory.

## **TUESDAY, NOVEMBER 15**

### **Turturro v City of New York (Case No. 196)**

APL-2015-00265

Municipal Corporations--Tort liability--Whether the municipal defendant established its entitlement to qualified immunity for its traffic planning decision regarding a roadway for which it had received complaints of speeding and lack of traffic signals; Whether plaintiffs failed to establish that any act or omission by the municipal defendant was a proximate cause of the injuries to an infant plaintiff hit by a speeding car; Whether plaintiffs were properly allowed to address at trial the manner in which the municipal defendant responded to complaints of speeding as a law enforcement matter.

### **People v Immanuel Flowers (Case No. 197)**

APL-2015-00147

Crimes--Sentence--Resentence--Due Process Clause of State Constitution--Whether the People v Van Pelt (76 NY2d 156 [1990]) "presumption of institutional vindictiveness" applies where the trial court, which improperly considered during the original sentencing a crime that was dismissed at trial for lack of legally sufficient evidence, imposes an identical sentence upon remittitur from the Appellate Division for resentencing; Right to counsel--Effective representation--No duty to make futile argument--Whether defense counsel's failure to register an objection to the trial court's imposition of a resentence identical to the original sentence constituted ineffective assistance of counsel.

### **M/O Newcomb &c. v Middle Country Central School District (Case No. 198)**

APL-2015-00246

Municipal Corporations--Notice of claim--Late notice--Proceeding for leave to serve a late notice of claim or to deem a late notice of claim timely served--Burden of establishing prejudice under General Municipal Law § 50-e--Whether courts below abused their discretion in denying petitioner's application.

### **People v Robert Patterson (Case No. 199)**

APL-2015-00212

Crimes--Identification of defendant--Authenticated records admitted as circumstantial evidence of defendant's identity--Whether the trial court, pursuant to the business records exception to the hearsay rule, properly admitted subscriber information from pre-paid cellular phone records, which the account holders were not obligated to provide and which the cell phone company did not independently verify.

### **People v Rodolfo Hernandez (Case No. 200)**

APL-2015-00229

Crimes--Right of Confrontation--Admission of child's out-of-court communications, as testified to by her parents--Excited utterance exception to the hearsay rule--Whether child's communications were nontestimonial in nature; Whether verdict was against the weight of the evidence.

## **WEDNESDAY, NOVEMBER 16**

### **Hain v Jamison (Case No. 201)**

APL-2015-00271

Animals--Roaming on highway--Person struck by vehicle while allegedly helping baby calf--Whether the Appellate Division erred in holding that defendant farm's alleged negligence in allowing a calf to escape the farm was not a proximate cause of the motor vehicle accident.

### **People v Anthony Perkins (Case No. 202)**

APL-2015-00182

Crimes--Identification of defendant--Lineup--Whether lineup is unduly suggestive where only one lineup subject has a particular physical feature (dreadlocks) described by some but not all of the identifying witnesses; Failure of prosecution to preserve 911 tape recording containing potentially exculpatory information; Claimed failure of trial judge to make factual findings regarding reasons proffered for a peremptory challenge to a juror before concluding that the challenge was not racially motivated.

### **People v Brandon Warrington (Case No. 203)**

APL-2015-00255

Crimes--Jurors--Selection of jury--Whether trial court erred in denying defendant's motion to dismiss prospective juror for cause--Whether trial court elicited a "personal, unequivocal assurance of impartiality" after prospective juror volunteered a difficulty being fair in the trial involving a five-year-old victim.

### **People v Patrick Morgan (Case No. 204)**

APL-2015-00123

Crimes--Instructions--Deadlocked jury--Whether the trial court's deadlock charge in response to a defective verdict was improperly coercive; Whether defendant was deprived of the effective assistance of trial counsel.

### **People v Prince Clark (Case No. 205)**

APL-2015-00183

Crimes--Right to counsel--Effective representation--Trial counsel's failure to request that the court charge the jury on the potential alternative defense of justification--Trial court's failure to give a justification charge to the jury sua sponte; Claimed due process violation.

## **THURSDAY, NOVEMBER 17**

### **People v Steven Finkelstein (Case No. 206)**

APL-2015-00242

Crimes--Coercion--Whether defendant's conviction of Coercion in the First Degree violates his rights to trial by jury, equal protection and due process--Distinction between Coercion in the First and Second Degrees as articulated in People v Eboli (34 NY2d 281 [1974]) and People v Discala

(45 NY2d 38 [1978])--Heinousness; Lesser included offense--Charge to the jury--Whether defendant was entitled to have Coercion in the Second Degree submitted to the jury as a lesser included offense of Coercion in the First Degree; Proof of other crimes--Whether the trial court properly exercised its discretion in admitting evidence establishing victim's knowledge of defendant's coercion of a former girlfriend; Sufficiency of the evidence supporting conviction of Coercion in the First Degree; Right to representation pro se--Whether court properly revoked defendant's pro se status during portions of the proceedings on the ground that he forfeited his right of self-representation by his conduct.

**People v Joseph Bridgeforth (Case No. 207)**

APL-2015-00099

Crimes--Jurors--Selection of jury--Batson application--Failure to show prosecutor's misconduct--Whether defendant met his prima facie burden of establishing that the prosecutor exercised peremptory challenges to remove prospective jurors on the basis of their membership in a constitutionally cognizable protected class; Right to be present at trial--Failure to rebut presumption of regularity--Whether defendant was denied his right to be present at all material stages of the trial.

**People v James Miller (Case No. 208)**

APL-2015-00188

Crimes--Jurors--Selection of jury--Questioning of prospective jurors--Whether the trial court erred in precluding defendant from questioning prospective jurors during voir dire regarding whether they could disregard a confession if they found it to be involuntary where the People had not yet decided whether they would introduce defendant's statements at trial; Right to counsel--Effective representation--Whether defense counsel was ineffective for failing to object to various comments made by the prosecutor in summation.

**People v Cristian Morales (Case No. 209)**

APL-2015-00312

Crimes--Appeal--Dismissal of appeal--Involuntarily deported defendant--Whether the Appellate Term abused its discretion or violated the rule set forth in People v Ventura (17 NY3d 675 [2011]) by dismissing defendant's appeal from the judgment of conviction on the ground, "among others," that he had been deported and was unable to obey the mandate of the court.