

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 of the Court's website

TUESDAY, SEPTEMBER 6

People v Steven Henderson

APL-2015-00075

Crimes--Appeal--Right to speedy trial--Preservation of issue for review--Whether the prosecution's delay in seeking the testing of DNA is an exceptional circumstance excludable from speedy trial computation under CPL 30.30.

People v Nnamdi Clarke

APL-2015-00076

Crimes--Right to speedy trial--Whether the prosecution's delay in seeking the testing of DNA is an exceptional circumstance excludable from speedy trial computation under CPL 30.30.

People v Dru Allard

APL-2015-000241

Crimes--Right to speedy trial--Preservation of issue for review--whether the Appellate Division correctly held that defendant's CPL 30.30 claim was preserved for appellate review.

Matter of Yoga Vida NYC, Inc. v Commissioner of Labor

APL-2014-00285

Unemployment Insurance--Employee or independent contractor--Sufficient control over instructors to create employment relationship--whether substantial evidence supports the Board's determination that non-staff instructors, who taught yoga classes at Yoga Vida and other various locations, were in fact Yoga Vida's employees rather than independent contractors, thus requiring Yoga Vida to make additional unemployment insurance contributions.

Three Amigos SJL Rest., Inc. v O'Neill

APL-2015-00238

Libel and Slander--Actionable words--Whether defendants' motion to dismiss libel claims asserted by certain individual plaintiffs was properly granted upon the ground that the challenged statements were not "of and concerning" those plaintiffs.

WEDNESDAY, SEPTEMBER 7

Rivera v Montefiore Medical Center

APL-2015-00064

Disclosure--Scope of disclosure--Medical expert--adequacy of response to demand for information concerning expert witness--challenge to Appellate Division holding that trial court properly denied as untimely plaintiff's application during trial to preclude defendant's expert from testifying that a sudden heart attack, rather than pneumonia, caused decedent's death on the ground that such testimony came as a surprise because defendant's expert disclosure statement pursuant to CPL 3101(d) lacked specificity as to the expert's opinion on causation--whether trial motion was untimely because plaintiff failed to object to lack of specificity upon receipt of that document--whether expert testimony concerning heart attack should have been precluded as unduly speculative.

People v Antonio Aragon

APL-2015-00055

Crimes--Accusatory instrument--Facial sufficiency--possession of a weapon--brass metal knuckles--whether the accusatory instrument was facially sufficient where it alleged that police recovered from defendant "one set of brass knuckles."

People v Alexis Ocasio

APL-2015-00254

Crimes--Accusatory instrument--Facial sufficiency--Criminal Possession of a Weapon in the Fourth Degree--whether a "rubber-gripped, metal, extendable baton" is a "Billy" for purposes of Penal Law § 265.01 (1).

Matter of Hon. Alan M. Simon

JCR-2016-00001

SCJC removal determination--Spring Valley Village Court, Ramapo Town Court and Hillburn Village Court, Rockland County

Matter of County of Chemung v Shah (and 7 other related cases)

APL-2015-00088, 89, 115, 116, 140, 141, 195, 196

Health--Medicaid reimbursement payments--Reimbursement of overburden expenditures--whether the 2012 amendment to the Medicaid Cap Statute (L 2012, CH 56, PART D, § 61) extinguishes the State's obligation under Social Services Law § 368-a(1)(h) to reimburse the County for overburden expenditures accrued prior to 1/1/06, but not submitted to the State for payment until on or after the amendment's effective date of 4/1/12--necessity for imposition of six-month grace period to satisfy due process; mandamus--whether the County is entitled to mandamus relief directing the State to identify, calculate and pay all pre-2006 overburden expenditures even without any claims being made for such expenditures.

THURSDAY, SEPTEMBER 8

People v Louis Speaks

APL-2015-00059

Crimes--Identification of defendant--Lineup--whether lineup was unduly suggestive--whether lineup participants must be nearly identical to defendant; evidence--whether the admission of testimony of a detective recounting description of perpetrator given by nontestifying witness violated the hearsay rule or defendant's right of confrontation; right to counsel--effective representation--alleged ineffective assistance of counsel for failing to object to prosecutor's purportedly improper comments during summation.

People v Lerio Guerrero

APL-2015-00216

Crimes--Indictment--Identification of defendant by DNA profile--validity of DNA indictment and its amendment to add the name of defendant once he was identified as the source of the DNA; plea of guilty--whether defendant forfeited the right to challenge the indictment by pleading guilty.

Matter of Jamal S.

APL-2015-00041

Crimes--Unlawful search and seizure--Whether the police search, which involved requiring the juvenile to remove his shoes while he was held in temporary detention pending his mother's arrival at the police station, was reasonable.

People v Charles K. Wilson

APL-2015-00118

Crimes--Confession--Voluntary nature of statements--whether the People should have been precluded from cross-examining defendant with statements he made to police officer after invoking his Miranda rights--claim that police unlawfully continued to question defendant knowing that his post-Miranda statements could be used for impeachment purposes; identification of defendant--photographic array--inclusion of single suspect's photograph in successive arrays--whether the Appellate Division correctly held that identification evidence did not have to be suppressed where different photographs of defendant were used in each photo array and were placed in a different location within each array, and the fillers were very similar in appearance to defendant.

TUESDAY, SEPTEMBER 13

Utica Mutual Insurance Company v Style Management Associates

APL-2015-00169

Subrogation--Right of subrogation--Whether the Style Management defendants were entitled to summary judgment dismissing the complaint as against them upon the ground that they were not the general contractor on the underlying renovation project even though one of those defendants was listed as the contractor on the work permit.

People v Roni Smith

APL-2016-00034

Crimes--Sentence--Second violent felony offender--retroactive application of People v Catu (4 NY3d 242 [2005])--whether a conviction by guilty plea was obtained in violation of defendant's rights under the Federal Constitution and therefore could not be counted as a predicate felony (see CPL 400.15 [7] [b]), where the defendant was not advised at the time of the plea that the sentence would include postrelease supervision and the plea was accepted before Catu was decided--whether defendant was precluded from relying on Catu challenge to invalidate the use of the prior conviction as a predicate felony where the Catu error had been cured by a Sparber resentencing proceeding.

People v Keith Fagan

APL-2016-00089

Crimes--Sentence--Resentence--second violent felony offender--retroactive application of People v Catu (4 NY3d 242 [2005])--whether defendant's 2000 conviction by guilty plea was obtained in violation of his federal constitutional rights and therefore could not be used for predicate felony purposes within the meaning of CPL 400.15 where defendant was not advised at the time of that plea that the sentence would include postrelease supervision.

Pullman v Silverman

APL-2015-00185

Physicians and Surgeons--Malpractice--Summary judgment--Whether defendant doctor was entitled to summary judgment dismissing complaint alleging that doctor's negligent administration of Lipitor or the combination of Lipitor and Azithromycin caused plaintiff's atrioventricular heart block--whether the courts below correctly held that plaintiff failed to submit evidence sufficient to raise a triable issue of fact that his expert's opinions regarding proximate causation were generally accepted in the medical community--necessity for peer reviewed research directly on point.

Matter of Cortorreal v Annucci

OGLCA

Ready

APL-2015-00083

Prisons and prisoners--Discipline of inmates--Right to present witnesses--whether further inquiry into the reason for a requested inmate witness's refusal to testify is required where the requested inmate witness signs a form indicating, without further explanation, that the witness does not wish to testify--Matter of Barnes v LeFevre (69 NY2d 649 [1986]); whether and to what extent a hearing officer must inquire into the circumstances surrounding a requested inmate's refusal to testify in a second administrative hearing on the ground that he had no knowledge of the matter, where that witness signed an affidavit stating he was coerced by an identified prison staff person not to testify to an earlier, administratively-reversed proceeding involving the same disciplinary charge, after that proceeding terminated and before the second proceeding began.

TUESDAY, SEPTEMBER 13 (cont.)

Villar v Howard

APL-2015-00163

Municipal corporations--Notice of claim--Notice not required for claim against sheriff arising out of sexual assault of inmate--no duty by County to indemnify sheriff--whether the Appellate Division erred in holding that plaintiff was not required to serve a notice of claim under General Municipal Law § 50-e; negligence--duty to protect inmate from sexual assault by fellow jail inmate--potential liability for deputies' negligent training and supervision--whether the Appellate Division erred in concluding that defendant owed a duty of care to plaintiff; sheriffs and constables--no immunity for allegedly discretionary acts of sheriff--whether the Appellate Division erred in holding that the issue whether defendant's alleged acts of negligence were discretionary and thus immune from liability constituted a factual question that cannot be determined at the pleading stage.

WEDNESDAY, SEPTEMBER 14

People v Ronel Joseph

APL-2015-00108

Crimes--Burglary--Burglary of dwelling--Intrusion into nonresidential part of apartment building--Whether, under People v McCray (23 NY3d 621 [2014]), defendant was properly convicted of second-degree burglary, which requires entry into a "dwelling," based on his entry into the basement of a store on the ground floor of a seven-floor apartment building; Whether the evidence was legally sufficient to establish defendant's entry with the intent to commit a crime.

Justinian Capital SPC v WestLB AG

APL-2015-00231

Contracts--Breach or performance of contract--Fraud--agreement to purchase notes--whether plaintiff's purported purchase of notes from nonparty bank was sufficient basis for plaintiff to avail itself of the Safe Harbor provision of the champerty statute (Judiciary Law section 489 [1])--if not, whether plaintiff's acquisition of the notes was champertous.

People v Luis A. Pabon

APL-2015-00165

Crimes--Timeliness of prosecution--Toll of limitations period for sexual offenses committed against minor--whether the Appellate Division correctly concluded that the indictment was not time-barred; harmless and prejudicial error--permitting detective to testify that defendant lied during interview--whether the Appellate division properly held that the detective's testimony was harmless; witnesses--extrinsic evidence not permitted to contradict witness's answers concerning collateral matters solely to impeach credibility; argument and conduct of counsel--prosecutor's comments during summation; evidence--whether the Appellate Division correctly rejected defendant's claim that the trial court's refusal to sequester certain evidence deprived him of the appellate review of his mistrial motion based on the trial court's alleged misconduct.

WEDNESDAY, SEPTEMBER 14 (cont.)

People v Roy S. Kangas

APL-2015-00180

Crimes--Evidence--Business records--electronic records--whether the trial court improperly admitted breath test documents into evidence under the business records exception to the hearsay rule.

Pink v Rome Youth Hockey Association, Inc.

APL-2015-00073

Negligence--Duty--Whether the duty of a youth hockey association as the facility lessor to hockey spectators included the duty to protect plaintiffs from assault by a fellow spectator--foreseeability of fight breaking out in light of hostile environment in the arena; summary judgment--whether an issue of fact exists.

THURSDAY, SEPTEMBER 15

People v Lyxon Chery

APL-2015-00192

Crimes--Defendant as witness--Cross-examination of defendant--impeachment--whether the trial court erred in allowing the People to impeach defendant with omissions from defendant's spontaneous post-arrest, pre-Miranda statement.

People v Herman Bank

APL-2015-00175

Crimes--Right to counsel--Effective representation--Claim that defendant was deprived of opportunity to plead to lesser sentence by counsel's misunderstanding of law and incorrect advice during plea negotiations--whether the Appellate Division erred in concluding that defendant was not deprived of the effective assistance of counsel during plea negotiations.

People v Herman H. Bank

APL-2015-00222

Crimes--Right to counsel--Effective representation--Choice to pursue defense based on mental disease or defect--diligence of counsel--whether defendant was deprived of the effective assistance of counsel by counsel's choice to pursue a defense based on mental disease or defect while relying on the testimony of a pharmacological witness.

THURSDAY, SEPTEMBER 15 (cont.)

Matter of Brandes, a Disbarred Attorney

APL-2016-00044

Attorney and client--Reinstatement--Whether the Appellate Division, in denying reinstatement, erred in concluding that disbarred attorney engaged in the practice of law in violation of Judiciary Law § 90 (2); claimed constitutional violations.

Killon v Parrotta

APL-2015-00095

Trial--Verdict--Setting verdict aside--Battery--Justification defense--Challenge to Appellate Division order setting aside a jury verdict and ordering a new trial on the ground that no fair interpretation of the evidence supported the conclusion that defendant's use of deadly physical force was justified.

6/7/16