

## **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, JANUARY 3**

#### **People v Gregory Vining (Case No. 1)**

APL-2016-00011

Evidence—Admission against interest—Admission by silence—whether a recording of a phone call placed by defendant from prison to complainant, in which defendant was silent in the face of complainant's accusation of physical abuse, was properly admitted against defendant as an adoptive admission by silence; claimed violation of constitutional rights.

#### **Marin v Constitution Realty/Menkes v Golomb (Case No. 2)**

APL-2015-00205

Attorney and Client—Compensation--Fee-sharing agreement--Whether the Appellate Division erred in granting motions to fix attorneys' fees at certain stated percentages upon the ground that the agreements at issue unambiguously provided for the sharing of fees at those percentages.

#### **People v Shawn J. Sivertson (Case No. 3)**

APL-2016-00010

Crimes--Unlawful search and seizure--Warrantless entry into residence--Whether exigent circumstances justified the warrantless entry into defendant's apartment where the subject weapon was a knife, not a gun; Right to counsel--Effective representation--Whether trial counsel provided ineffective assistance of counsel by failing to object to certain comments made by the prosecutor during summation, including that defendant's silence upon his arrest evidenced his guilt.

### **THURSDAY, JANUARY 5**

#### **Matter of Corrigan v NYS Office of Children & Family Servs. (Case No. 4)**

APL-2015-00245

Social Services--Register of Child Abuse and Maltreatment--Expungement hearing--Social Services Law § 427-a--Whether the Office of Children and Family Services may expunge a report made to the statewide Central Register of Child Abuse and Mistreatment which has been assigned by a local Social Services to the Family Assessment Response (FAR) track rather than to the traditional investigation track--Constitutionality of Social Services Law § 427-a.

**Artibee v Home Place Corporation (Case No. 5)**

APL-2016-00018

Negligence--Comparative negligence--Jury instructions--Apportionment of liability for injuries caused by falling branch between defendant property owner and State of New York, a nonparty which was being sued separately by plaintiffs in the Court of Claims--Whether the trial court erred in denying defendant's motion for a jury charge on apportionment.

**People v Rafael Then (Case No. 6)**

APL-2015-00210

Crimes--Fair trial--Whether defendant was deprived of his right to a fair trial when he appeared wearing orange prison pants during jury selection; Whether Supreme Court erred in admitting testimony that defendant possessed a gun during the month of the crime; Whether the prosecutor's summation deprived defendant of a fair trial.

**TUESDAY, JANUARY 10**

**People v Zachary T. Guerin (Case No. 7)**

APL-2015-00101

Crimes--Trespassing--Defendant ticketed for walking on posted land--Challenge to ticket based on grounds that signs posted where defendant was walking did not comply with Environmental Conservation Law § 11-2111(2)'s requirement that signs state the name and address of the lawful owners of land.

**Tara N. P. v Western Suffolk BOCES (Case No. 8)**

APL-2015-00320

Municipal Corporations--Tort liability--Special relationship--Whether the Appellate Division erred in concluding as a matter of law that the County was not liable either (1) for its referral of a sex offender to work at the school plaintiff attended or (2) as landlord of the building where plaintiff was assaulted; Governmental immunity--Special duty; Summary judgment.

**Oddo v Queens Village Committee for Mental Health (Case No. 9)**

APL-2016-00067

Negligence--Duty--Substance abuse treatment facility--Criminal acts committed by resident outside of facility--Whether defendant substance abuse treatment facility owed a duty of care to a third party against whom a resident commits a violent act after the resident's termination from the program.

**WEDNESDAY, JANUARY 11**

**People v Hao Lin (Case No. 10)**

APL-2015-00189

Crimes--Right of Confrontation--Whether a police officer who observed the administration of a breathalyzer test to defendant by another officer, who was also qualified to administer the test, and who testified at trial because the testing officer was unavailable, satisfied the standards for qualifying as a substitute witness under Bullcoming v New Mexico (564 US 647 [2011]).

**Lend Lease (US) Construction LMB Inc. v Zurich American Ins. Co. (Case No. 11)**

APL-2016-00016

Insurance--Builder's risk policy--Whether the Appellate Division correctly held as a matter of law that tower crane affixed to building for use in the performance of construction work was not "covered property" because it did not fall within the policy's definition of "temporary works," and that, even if the crane was "covered property," it was excluded from coverage under the policy's contractor's tools, machinery, plant and equipment exclusion.

**People v Fernando Maldonado (Case No. 12)**

APL-2015-00173

Crimes--Larceny--Whether legally sufficient evidence supported defendant's conviction for grand larceny of real property based on a forged deed--Sufficiency of evidence to support possession and attempt charges; Effectiveness of counsel.

**THURSDAY, JANUARY 12**

**People v William Flanagan (Case No. 13)**

APL-2015-00295

Crimes--Official misconduct--Penal Law § 195.00(1)--Unauthorized exercise of official function--Whether an official misconduct charge based on alleged malfeasance must be premised on an act that is itself unauthorized, or whether the defendant's improper purpose in performing an otherwise authorized act suffices to constitute the crime of official misconduct; Penal Law § 195.00(2)--Knowingly refraining from a duty imposed by law--Whether an official misconduct charge based on nonfeasance can be premised on the defendant's failure to perform a discretionary duty; Evidence--hearsay--Whether statements by co-conspirators are admissible only when made during the time periods involved in the conspiracy.

**People v Michael Pena (Case No. 14)**

APL-2015-00297

Crimes--Sentence--Concurrent and Consecutive Terms--Challenge to aggregate sentence of 75 years to life as so disproportionate to sentences imposed for similar and greater offenses that it constitutes cruel and unusual punishment.

**People v Kevin Fisher (Case No. 15)**

APL-2015-00261

Crimes--Hindering prosecution--Whether defendant should have been permitted to withdraw his plea of guilty to Hindering Prosecution where the assisted person was acquitted of the underlying felony at trial before judgment was entered against defendant; Whether defendant's guilty plea was knowing, intelligent and voluntary where the prosecution allegedly withheld Brady material.

11/16/16