

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 16, 2015

M/O Cisse v Graham (Case No. 190)

APL-2014-00283

Parent, Child and Family--Custody--Change of custody--Family Court order modifying prior custody order to change custody from mother to father; Whether Family Court's affirmed finding that a sufficient change in circumstances occurred warranting modification of its prior custody order in the child's best interests has a sufficient basis in the record.

People v Luciano Rosario (Case No. 191)

APL-2014-00239

Crimes--Appeal--Denial of application for a writ of error coram nobis--Alleged ineffective assistance of appellate counsel for failing to inform defendant about the appellate process or filing a notice of appeal from defendant's guilty plea.

People v Marcos Llibre (Case No. 192)

APL-2014-00303

Crimes--Right to counsel--Effective representation--Counsel's failure to inform defendant of his right to appeal and to file a notice of appeal--Whether the Appellate Division erred in denying defendant's application for a writ of error coram nobis seeking leave to file a late notice of appeal--People v Syville (15 NY3d 391 [2010]).

People v Natanael Sagastumeal Varenga (Case No. 193)

APL-2014-00226

Crimes--Right to counsel--Effective representation--whether the trial court erred in denying defendant a hearing on his motion to vacate his conviction on the ground that he was deprived of his right to the effective assistance of counsel by his attorney's alleged failure to advise him of the immigration consequences of his guilty plea--finality of defendant's conviction in relation to timing of U.S. Supreme Court decision in Padilla v Kentucky (559 US 356); retroactive effect of Padilla decision.

People v Victor Soto (Case No. 206)

APL-2014-00233

Crimes--Evidence--Declaration against interest--Whether a statement in which an individual admits to conduct constituting an offense is a statement against penal interest, where the declarant believes that the conduct may be illegal but does not know whether it is illegal.

TUESDAY, NOVEMBER 17, 2015

People v Kaity Marshall (Case No. 195)

APL-2014-00196

Crimes--Identification of defendant--Trial court held limited hearing to determine whether the single photo identification procedure that the People conducted with the complaining witness over a year after the incident was permissible as "trial preparation"--pre-Wade hearing pursuant to People v Herner (85 NY2d 877 [1995]); due process.

People v Todd Holley (Case No. 196)

APL-2014-00201

Crimes--Identification of defendant--Photographic array--whether the Appellate Division erred in concluding that the procedure by which a witness identified defendant from a series of photo arrays generated by the police photo manager computer system was not unduly suggestive and that a different conclusion was not warranted because the police failed to preserve the photo arrays viewed by the witness; lineup--whether the Appellate Division correctly determined that the record supported the hearing court's finding that the lineup was not unduly suggestive.

People v Dennis P. Smalls (Case No. 197)

APL-2014-00210

Crimes--Accusatory instrument--Sufficiency--criminal possession of controlled substance--whether confirmatory scientific testing is required for an information to adequately allege that the residue on a crack pipe contains cocaine (People v Kalin, 12 NY3d 225 [2009]).

M/O Suarez v Williams (Case No. 198)

APL-2015-00154

Parent and child--Custody--Award of custody to grandparents--extraordinary circumstances--whether the Appellate Division erred in concluding that petitioner grandparents failed to demonstrate extraordinary circumstances sufficient to deprive respondent mother of custody of her child.

WEDNESDAY, NOVEMBER 18

People v Anthony Pavone (Case No. 199)

APL-2014-00251

Crimes--Harmless and prejudicial error--Violation of defendant's right to remain silent by, among other things, People's eliciting of testimony in its case-in-chief that defendant failed to mention extreme emotional disturbance when he was apprehended--whether the Appellate Division, after concluding that the issue was largely unpreserved, erred in holding that, in any event, the admission of the challenged evidence was harmless "in light of the overwhelming evidence establishing both defendant's guilt beyond a reasonable doubt and his corresponding failure to prove his affirmative defense of extreme emotional disturbance by a preponderance of the evidence; right to counsel--alleged ineffective representation of trial counsel in failing, with one exception, to object to testimony and argument concerning defendant's pretrial silence regarding

extreme emotional disturbance, in failing to request a limiting instruction on that issue, and in failing to provide the defense expert with materials needed to adequately prepare an extreme emotional distress defense.

Cusimano v Schnurr (Case No. 200)

APL 2014-00287

Arbitration--Federal Arbitration Act (FAA)--Agreements involving interstate commerce--commercial real estate--whether the Appellate Division erred in concluding that the FAA applied to the contracts at issue by looking beyond the four corners of the agreements and considering transactions that occurred after the agreements were executed; waiver of the right to arbitrate--whether plaintiffs waived their right to arbitration by filing an action in court and participating in litigation before filing for arbitration--lack of prejudice to defendants.

People v Luis Ortiz (Case No. 201)

APL-2015-00004

Crimes--Collateral estoppel--Whether the People were barred from presenting on defendant's retrial evidence that defendant held a razor blade to the victim's neck--Defendant was acquitted of burglary in the first degree and the first trial but convicted of robbery in the second degree, and the only difference between the two offenses was whether defendant used or threatened use of a dangerous instrument--Whether the case is distinguishable from People v O'Toole (22 NY3d 335 [2013]).

Matter of RAM I v NYS Division of Housing and Community Renewal (Case No. 202)

APL-2015--00019

Landlord and Tenant--Rent regulation--Luxury deregulation of rent-controlled apartment unavailable following acceptance of certain tax benefits--whether an apartment that was subject to rent control prior to receiving J-51 tax benefits remains exempt from luxury deregulation by virtue of its rent-controlled status after the J-51 benefits expire, notwithstanding that it was otherwise qualified for luxury deregulation; whether DHCR's interpretation of Administrative Code of the City of NY 26-403(e)(2)(j), as applied to this case, violates the owner's equal protection rights.