

CRIMINAL LAW

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INTRODUCTION

This *Survey* covers developments in New York criminal law and procedure during the period of June 30, 2017 to July 1, 2018. Given the large number of cases, the *Survey* focuses on decisions from the Court of Appeals and, where appropriate, discusses cases from trial and intermediate appellate courts. The *Survey* also includes a brief review of new significant legislative enactments pertaining to criminal law, criminal procedure, and the vehicle and traffic law.

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I. APPELLATE REVIEW SCOPE AND JURISDICTION

In *People v. Bailey*, the defendant challenged his conviction by arguing that the trial court erred in failing to question a juror's impartiality and fairness under the standard set out by the Court in *People v. Buford*.¹ The Court held that defense counsel's referring to the juror at issue as "grossly unqualified," while failing to join in the codefendant's request for a *Buford* inquiry was insufficient to preserve the defendant's claim for appellate review.² The Court also rejected the defendant's argument that "he preserved the issue for appellate review by way of his codefendant's objection."³

In *People v. Novak*, the defendant argued that a county court judge's failure to recuse himself from adjudicating the defendant's appeal taken from the same judge's prior judgment in city court was reversible error.⁴ The Court agreed with the defendant in holding that absent "opportunity for independent scrutiny by a new decision-maker," the appellate process was compromised, resulting in a violation of the defendant's due process rights.⁵ Key to the Court's reasoning was the fact that "the same Judge ruled upon the defendant's pretrial motions, served as the trier of fact, convicted the defendant, sentenced the defendant, and then proceeded to serve as the sole reviewing Judge on appeal."⁶

In *People v. Flores*, the Court held that the intermediate appellate court was without jurisdiction to hear the defendant's appeal based on the defendant's failure to file an affidavit of errors with the criminal court in a case where the underlying proceedings were not recorded by a court stenographer, as required by Criminal Procedure Law (CPL) § 460.10.⁷

1. 32 N.Y.3d 70, 72, 110 N.E.3d 489, 490, 85 N.Y.S.3d 377, 378 (2018) (citing 69 N.Y.2d 290, 506 N.E.2d 901, 514 N.Y.S.2d 191 (1987)).

[T]he trial court must question each allegedly unqualified juror individually in camera in the presence of the attorneys and [the] defendant. Counsel should be permitted to participate if they desire. In a probing and tactful inquiry, the court should evaluate the nature of what the juror has seen, heard, or has acquired knowledge of, and assess its importance and its bearing on the case. In this context, the court should carefully consider the juror's answers and demeanor to ascertain whether her state of mind will affect her deliberations. The trial court's reasons for its ruling should be placed on the record.

Buford, 69 N.Y.2d at 299, 506 N.E.2d at 905–06, 514 N.Y.S.2d at 195–96.

2. *Bailey*, 32 N.Y.3d at 78, 110 N.E.3d at 494, 85 N.Y.S.3d at 382.

3. *Id.* at 79, 110 N.E.3d at 495, 85 N.Y.S.3d at 383.

4. 30 N.Y.3d 222, 225, 88 N.E.3d 305, 306, 66 N.Y.S.3d 147, 148 (2017).

5. *Id.* at 227; 88 N.E.3d at 308, 66 N.Y.S.3d at 150.

6. *Id.* at 226; 88 N.E.3d at 307, 66 N.Y.S.3d at 149.

7. 30 N.Y.3d 229, 234, 88 N.E.3d 361, 362, 66 N.Y.S.3d 203, 204 (2017) (first citing

Consistent with its holding in *People v. Smith*,⁸ the Court held “that the filing of the affidavit of errors in this circumstance is a jurisdictional prerequisite” and “that the failure to file the required affidavit of errors [as required by CPL § 460.10] render[ed] the intermediate appellate court without jurisdiction to hear the case.”⁹

In *People v. Gates*, the Court held that “[t]he Appellate Division did not err in rejecting the People’s argument that the defendant could not challenge on appeal a suppression ruling that was not reduced to writing.”¹⁰ The Court reasoned that because record evidence existed to support the appellate division’s suppression determination, determination was “beyond the Court’s further review.”¹¹

In *People v. Juarez*, the Court held that the trial court’s order denying a non-party’s motion to quash certain subpoenas served after the criminal action was commenced via the filing of an accusatory instrument was a non-final order for which no direct appellate review was authorized.¹² In so holding, the Court delineated a clear distinction between orders resolving a motion to quash a subpoena issued prior to and after the commencement of a criminal action.¹³ Specifically, the same

N.Y. CRIM. PROC. LAW § 460.10(3)(a) (McKinney 2005)); and then citing *People v. Smith*, 27 N.Y.3d 643, 647–48, 57 N.E.3d 48, 50–51, 36 N.Y.S.3d 856, 858–59 (2016)). Under CPL § 460.10(3)(a) an appellant must file, within thirty days, “either (i) an affidavit of errors, setting forth alleged errors or defects in the proceedings which are the subjects of the appeal, or (ii) a notice of appeal.” N.Y. C.P.L. § 460.10(3)(a).

8. 27 N.Y.3d at 648, 57 N.E.3d at 51, 36 N.Y.S.3d at 859 (“If the appellant chooses to file a notice of appeal, he or she must then file an affidavit of errors . . .”).

9. *Flores*, 30 N.Y.3d at 234, 88 N.E.3d at 362, 66 N.Y.S.3d at 204 (first citing N.Y. C.P.L. § 460.10(3)(a); and then citing *Smith*, 27 N.Y.3d at 648, 57 N.E.3d at 51, 36 N.Y.S.3d at 859). “It is a fundamental precept of the jurisdiction of our appellate courts that “[n]o appeal lies from a determination made in a criminal proceeding unless specifically provided for by statute.” *Id.* at 236, 88 N.E.3d at 363, 66 N.Y.S.3d at 205 (citing *In re 381 Search Warrants Directed to Facebook, Inc.*, 29 N.Y.3d 231, 269, 78 N.E.3d 141, 165, 55 N.Y.S.3d 696, 720 (2017) (Wilson, J., dissenting)).

10. 31 N.Y.3d 1028, 1029, 99 N.E.3d 861, 862, 75 N.Y.S.3d 468, 469 (2018).

11. *Id.*

12. 31 N.Y.3d 1186, 1190, 107 N.E.3d 556, 559, 82 N.Y.S.3d 336, 339 (2018) (citing *People v. Santos*, 64 N.Y.2d 702, 704, 474 N.E.2d 1192, 1193, 485 N.Y.S.2d 524, 525 (1984)).

13. *Id.* at 1188, 107 N.E.3d at 557–58, 82 N.Y.S.3d at 337–38 (first quoting *Santos*, 64 N.Y.2d at 704, 474 N.E.2d at 1193, 485 N.Y.S.2d at 525; and then quoting N.Y. CRIM. PROC. LAW § 1.10(1)(a) (McKinney 2018)). The Court’s holding abrogated the following inconsistent appellate division case law: *People v. Laughing*, 113 A.D.3d 956, 958, 979 N.Y.S.2d 416, 419 (3d Dep’t 2014) (first citing N.Y. CRIM. PROC. LAW § 210.40(1) (McKinney 2007); then citing *People v. Banks*, 100 A.D.3d 1190, 1191, 954 N.Y.S.2d 255, 257 (3d Dep’t 2012); and then citing *People v. Marrow*, 20 A.D.3d 682, 683, 798 N.Y.S.2d 560, 561 (3d Dep’t 2005)); *People v. Bagley*, 279 A.D.2d 426, 426, 720 N.Y.S.2d 454, 455 (1st Dep’t 2001) (first citing *Cunningham v. Nadjari*, 39 N.Y.2d 314, 317, 347 N.E.2d 915, 916, 383 N.Y.S.2d 590, 591 (1976); and then citing *In re Grand Jury Subpoena No. 2573/85*,

order “issued *prior* to the commencement of a criminal action is a final and appealable order inasmuch as it ‘is civil by nature and [thus] not subject to the rule restricting direct appellate review of orders in criminal proceedings.’”¹⁴

In *People v. Perez*, the Court held that there was evidence in the record to support the determination of the lower Court that the conduct of the police in searching the defendant for weapons was lawful under the framework for police intrusion set out by the Court in *People v. De Bour*.¹⁵ Specifically, the determination of the appellate division was supported by evidence that “‘based on all of the attendant circumstances, including the manner in which the defendant was holding his arm and his refusal to state whether he was armed or to show his hands when asked,’ the officers were authorized to search the defendant for a weapon.”¹⁶

II. DEFENSES

In *People v. Boyd*, the defendant argued that the trial court abused its discretion in dismissing a count of unlawful possession of an air pistol from an indictment also charging the defendant with criminal possession of a weapon.¹⁷ The Court rejected the defendant’s argument because the defense that the defendant did not possess the firearm was not removed from the jury’s consideration via a dismissal of the charge related to the air pistol.¹⁸ Specifically, the jury was free to credit the defendant’s theory

11 A.D.2d 891, 891, 491 N.Y.S.2d 29, 29 (2d Dep’t 1985)); *People v. Johnson*, 103 A.D.2d 754, 755, 477 N.Y.S.2d 225, 226 (2d Dep’t 1984) (first citing *Cunningham*, 39 N.Y.2d at 317, 347 N.E.2d at 916, 383 N.Y.S.2d at 591; then citing *In re Abrams*, 62 N.Y.2d 183, 192, 465 N.E.2d 1, 5, 476 N.Y.S.2d 494, 498 (1984); then citing *In re Ryan*, 306 N.Y. 11, 17, 114 N.E.2d 183, 186 (1953); and then citing N.Y. CRIM. PROC. LAW § 1.20(16)–(17) (McKinney 2018)); *People v. Marin*, 86 A.D.2d 40, 42, 448 N.Y.S.2d 748, 750 (2d Dep’t 1982) (citing *Morgenthau v. Hopes*, 55 A.D.2d 255, 257, 390 N.Y.S.2d 109, 111 (1st Dep’t 1977)).

14. *Juarez*, 31 N.Y.3d at 1188, 107 N.E.3d at 557, 82 N.Y.S.3d at 337 (alteration in original) (quoting *Abrams*, 62 N.Y.S. at 192, 465 N.E.2d at 5, 476 N.Y.S.2d at 498) (first citing *Matter of 381 Search Warrants Directed to Facebook, Inc.*, 29 N.Y.3d 231, 243, 78 N.E.3d 141, 146, 55 N.Y.S.3d 696, 701 (2017); and then citing *Santos*, 64 N.Y.2d at 704, 474 N.E.2d at 1193, 485 N.Y.S.2d at 525).

15. 31 N.Y.3d 964, 955–66, 96 N.E.3d 772, 773–74, 73 N.Y.S.3d 508, 509–10 (2018) (quoting 40 N.Y.2d 210, 225, 352 N.E.2d 562, 573, 386 N.Y.S.2d 375, 386 (1976)).

16. *Id.* at 966, 96 N.E.3d at 774, 73 N.Y.S.3d at 509 (quoting *People v. Perez*, 142 A.D.3d 410, 416, 37 N.Y.S.3d 243, 248 (1st Dep’t 2016)).

17. 31 N.Y.3d 953, 955, 96 N.E.3d 765, 766, 73 N.Y.S.3d 500, 501 (2018) (citing *People v. Frumusa*, 29 N.Y.3d 364, 366, 79 N.E.3d 495, 496–97, 57 N.Y.S.3d 103, 104–05 (2017)). CPL § 300.40 provides as follows: “The court may submit to the jury only those counts of an indictment remaining therein at the time of its charge which are supported by legally sufficient trial evidence, and every count not so supported should be dismissed by a trial order of dismissal.” N.Y. CRIM. PROC. LAW § 300.40 (McKinney 2017).

18. *Boyd*, 31 N.Y.3d at 954–55, 96 N.E.3d at 766, 73 N.Y.S.3d at 501 (first citing *People v. Leon*, 7 N.Y.3d 109, 113, 850 N.E.2d 666, 669, 817 N.Y.S.2d 619, 622 (2006); and then

that he possessed the air pistol and not the firearm also recovered in his vicinity.¹⁹ The Court further rejected the defendant's argument that he was denied the right to a fair trial by the trial court's preclusion of evidence consisting of an arrest of another individual who inculpated himself in the crime with which the defendant was charged and later recanted.²⁰ The Court reasoned that, despite said ruling of the trial court, the defendant was permitted to freely pursue his third-party culpability defense.²¹

III. DISCOVERY/DISCLOSURE

In *People v. Bautista*, the defendant argued that he was entitled to disclosure of the notes taken during the interviews of an unindicted alleged co-conspirator under *Brady v. Maryland*.²² The Court rejected the defendant's argument because the notes at issue "were not exculpatory as to the defendant's convictions."²³

IV. EFFECTIVE ASSISTANCE OF COUNSEL

In *People v. Sposito*, the defendant argued that his counsel's out of court statements demonstrated that his counsel's performance was constitutionally deficient.²⁴ The Court rejected the defendant's argument, holding that defense counsel's alleged out of court statements were outside of the record and, therefore, "beyond review" of the Court.²⁵ In so holding, the Court reiterated that "in the typical case it would be better, and in some cases essential, that an appellate attack on the effectiveness

citing N.Y. C.P.L. § 300.40(6)(a)).

19. *Id.*

20. *Id.* at 955, 96 N.E.3d at 766, 73 N.Y.S.3d at 501.

21. *Id.* (citing *Frumusa*, 29 N.Y.3d at 366, 79 N.E.3d at 496–97, 57 N.Y.S.3d at 104–05).

22. 30 N.Y.3d 935, 936, 88 N.E.3d 304, 304–05, 66 N.Y.S.3d 146, 146–47 (2017) (citing 373 U.S. 83, 88 (1963)).

23. *Id.*

24. 30 N.Y.3d 1110, 1111, 93 N.E.3d 881, 881, 70 N.Y.S.3d 156, 156 (2018) (quoting *People v. Jackson*, 29 N.Y.3d 18, 24, 74 N.E.3d 302, 306, 52 N.Y.S.3d 63, 67 (2017)). "[The] [d]efendant 'bears the burden of establishing his claim that counsel's performance is constitutionally deficient . . .'" *Id.* (quoting *People v. Nicholson*, 26 N.Y.3d 813, 831, 48 N.E.3d 944, 956, 28 N.Y.S.3d 663, 675 (2016)) (citing *People v. Baldi*, 54 N.Y.2d 137, 146–47, 429 N.E.2d 400, 405, 444 N.Y.S.2d 893, 898 (1981)). The burden is met "by 'demonstrat[ing] the absence of strategic or other legitimate explanations for counsel's alleged failure[s].'" *Id.* (alterations in original) (quoting *People v. Wragg*, 26 N.Y.3d 403, 409, 44 N.E.3d 898, 902, 23 N.Y.S.3d 600, 604 (2015)) (citing *People v. Barboni*, 21 N.Y.3d 393, 405–06, 994 N.E.2d 820, 827–28, 971 N.Y.S.2d 729, 736–37 (2013)).

25. *Sposito*, 30 N.Y.3d at 1111, 93 N.E.3d at 881, 70 N.Y.S.3d 156 (citing *Jackson*, 29 N.Y.3d at 24, 52 N.Y.S.3d at 67, 74 N.E.3d at 306).

of counsel be bottomed on an evidentiary exploration by collateral or post-conviction proceeding brought under CPL [§] 440.10.”²⁶

In *People v. O’Kane*, the defendant argued that his counsel’s consent to verdict sheet annotations consisting of parenthetical descriptions of the alleged criminal conduct deprived the defendant of effective assistance of counsel.²⁷ The Court rejected the defendant’s argument because defense counsel had a sound strategic reason for consenting to the annotations; to wit: “they encouraged the jury to think about each count and the relevant evidence.”²⁸

In *People v. Smith*, the defendant argued that the trial court committed reversible error by failing to adequately inquire into the defendant’s request to substitute counsel.²⁹ The Court held that the trial court abused its discretion by failing to conduct the same inquiry because the defendant’s request was supported by “specific factual allegations of serious complaints about counsel.”³⁰ As such, the Court concluded that the trial court should have made a “minimal inquiry into the nature of the disagreement or its potential for resolution.”³¹

In *People v. Arjune*, the defendant sought coram nobis relief on the grounds that although his trial counsel filed a timely notice of appeal, he failed to advise the defendant of his right to poor person relief or to take any action when served with a motion to dismiss the appeal years after the notice of appeal was filed.³² The Court rejected the defendant’s argument based on a failure of proof that: (i) the defendant was not made aware of his right to appeal, (ii) defense counsel did not discuss the taking of an appeal with the defendant prior to filing his notice of appeal, and (iii) it was impossible for the defendant to discover the alleged omissions

26. *Id.* (internal quotations omitted) (quoting *Brown*, 45 N.Y.2d at 853–54, 410 N.Y.S.2d at 382 N.E.2d at 1149–50) (citing *Campbell*, 30 N.Y.3d at 942–43, 67 N.Y.S.3d at 125, 89 N.E.3d at 515); see N.Y. CRIM. PROC. LAW § 440.10 (McKinney 2005 & Supp. 2019) (enumerating the grounds upon which a motion to vacate judgment may be brought any time after its entry).

27. 30 N.Y.3d 669, 671–72, 94 N.E.3d 440, 441, 70 N.Y.S.3d 877, 878 (2018).

28. *Id.* at 673, 94 N.E.3d at 442, 70 N.Y.S.3d at 879.

29. See 30 N.Y.3d 1043, 1043–44, 89 N.E.3d 1255, 1255, 67 N.Y.S.3d 575, 575 (2017) (quoting *People v. Sides*, 75 N.Y.2d 822, 824, 551 N.E.2d 1233, 1234–35, 552 N.Y.S.2d 555, 556–57 (1990)).

30. *Id.* at 1044, 89 N.E.3d at 1255, 67 N.Y.S.3d at 575 (quoting *People v. Porto*, 16 N.Y.3d 93, 100, 942 N.E.2d 283, 287, 917 N.Y.S.2d 74, 78 (2010)).

31. *Id.* at 1044, 89 N.E.3d at 1255–56, 67 N.Y.S.3d at 575–76 (quoting *Sides*, 75 N.Y.2d at 825, 551 N.E.2d at 1235, 552 N.Y.S.2d at 557).

32. 30 N.Y.3d 347, 350, 89 N.E.3d 1207, 1208–09, 67 N.Y.S.3d 526, 528 (2017) (citing *People v. Syville*, 15 N.Y.3d 391, 400–01, 938 N.E.2d 910, 916, 912 N.Y.S.2d 477, 483 (2010)).

with reasonable diligence.³³ Prior Court precedent “that [the] defendants are not ‘constitutionally entitled to appointment of counsel to assist in preparing a poor person application,’” also played a key role in the Court’s determination.³⁴

V. EVIDENCE

In *People v. Bailey*, discussed in Part I, the defendant claimed that the trial court erred by permitting extensive and prejudicial testimony about the nature and characteristics of the Bloods gang.³⁵ The Court disagreed, holding that the same evidence was permissible under *People v. Molineux* as probative of motive and intent to participate in the crime, as well as providing necessary background on the nature of the relationship between the codefendants.³⁶

In *People v. Thibodeau*, the Court rejected the defendant’s argument that certain extrajudicial admissions were admissible at a post-conviction hearing under the statements against a declarant’s penal interest exception to the hearsay rule.³⁷ Specifically, the defendant’s evidence consisted of allegations that three others made certain extrajudicial admissions as to their involvement in the same crime underlying the defendant’s conviction.³⁸ Focusing “on the intrinsic trustworthiness of the statements as confirmed by competent evidence independent of the declaration itself,” the Court rejected the defendant’s argument because there was no independent credible evidence that the declarants were

33. *Id.* at 358, 360–61, 89 N.E.3d at 1215–16, 67 N.Y.S.3d at 534–36.

34. *Id.* at 353, 89 N.E.3d at 1211, 67 N.Y.S.3d at 530 (quoting *People v. Perez*, 23 N.Y.3d 89, 99, 12 N.E.3d 416, 422, 989 N.Y.S.2d 418, 420 (2014)) (citing *People v. West*, 100 N.Y.2d 23, 28, 789 N.E.2d 615, 619, 759 N.Y.S.2d 437, 441 (2003)).

35. 32 N.Y.3d 70, 72–73, 110 N.E.3d 489, 490–91, 85 N.Y.S.3d 377, 378–79 (2018) (citing *People v. Buford*, 69 N.Y.2d 290, 506 N.E.2d 901, 514 N.Y.S.2d 191 (1987)).

36. *Id.* at 83, 110 N.E.3d at 498, 85 N.Y.S.3d at 386 (quoting *People v. Dorm*, 12 N.Y.3d 16, 19, 874 N.Y.S.2d 866, 868, 903 N.E.2d 263, 265 (2009)) (citing *People v. Molineux*, 168 N.Y. 264, 293, 61 N.E. 286, 294 (1901)); see also *Dorm*, 12 N.Y.3d at 19, 903 N.E.2d at 265, 874 N.Y.S.2d at 868 (citing *People v. Alvino*, 71 N.Y.2d 233, 242–43, 519 N.E.2d 808, 812, 525 N.Y.S.2d 7, 11 (1987)) (“[T]he People may use such evidence to prove motive, intent, lack of mistake or accident, identity, or common scheme or plan.”).

37. 31 N.Y.3d 1155, 1158, 106 N.E.3d 1145, 1148, 81 N.Y.S.3d 785, 788 (2018). In order to be admissible under the exception for declarations against penal interests, a statement must satisfy the following elements: “first, the declarant must be unavailable as a witness at [the hearing]; second, when the statement was made the declarant must be aware that it was adverse to his penal interest; third, the declarant must have competent knowledge of the facts underlying the statement; and, fourth, and most important, supporting circumstances independent of the statement itself must be present to attest to its trustworthiness and reliability.” *Id.* (citing *People v. Settles*, 46 N.Y.2d 154, 167, 882, 385 N.E.2d 612, 619, 412 N.Y.S.2d 874, 882 (1978)).

38. *Id.* at 1157–58, 106 N.E.3d at 1148, 81 N.Y.S.3d at 788.

involved in the crime underlying the defendant's conviction.³⁹

In *People v. Wilson*, the defendant argued that there was insufficient evidence as a matter of law at the trial court level to sustain his conviction for depraved indifference first degree assault in violation of Penal Law (PL) § 120.10(3).⁴⁰ The Court rejected the defendant's argument based on evidence showing that the victim suffered serious protracted and continuous physical injuries over the course of several months.⁴¹ Based on the nature, location, duration, and severity of the victim's injuries, the Court held that "[v]iewing the evidence in a light most favorable to the People, a rational juror could conclude that [the] defendant was indifferent to whether his victim lived or died, and that he recklessly engaged in conduct creating a grave risk of death."⁴²

In *People v. Brooks*, the Court held that any error in the trial court's use of the *Frye v. United States* procedure to rule on the sufficiency of the foundation of the defense expert's testimony was harmless.⁴³ The Court also held that the trial court erred in admitting the testimony of a witness as to the victim's statement, occurring prior to the alleged crime, that the defendant threatened to kill the victim.⁴⁴ The Court held that said

39. *Id.* at 1160, 106 N.E.3d at 1149, 81 N.Y.S.3d at 789 (quoting *Settles*, 46 N.Y.2d at 169, 485 N.E.2d at 620, 412 N.Y.S.2d at 883–84). In so holding, the Court also rejected [the] defendant's argument that one of the declarant's prior criminal history provided the requisite corroborative evidence. *Id.* Specifically, the Court held that "the reverse *Molineux* evidence of [the declarant's] prior convictions was properly excluded because the similarities of his prior crimes and the kidnapping of [the victim] were not sufficiently unique to establish a particular modus operandi or to identify any one person. *Id.* at 1161–62, 106 N.E.3d at 1151, 81 N.Y.S.3d at 791 (first citing *People v. DiPippo*, 27 N.Y.3d 127, 138–39, 50 N.E.3d 888, 895, 21 N.Y.S.3d 421, 428 (2016); and then citing *People v. Beam*, 57 N.Y.2d 241, 251, 441 N.E.2d 1093, 1098, 455 N.Y.S.2d 575, 580 (1982)).

40. 32 N.Y.3d 1, 6, 109 N.E.3d 542, 547, 84 N.Y.S.3d 393, 398 (2018) (quoting N.Y. PENAL LAW § 120.10(3) (McKinney 2009)). Under PL § 120.10(3), "[a] person is guilty of assault in the first degree when: . . . [u]nder circumstances evincing a depraved indifference to human life, he recklessly engages in conduct which creates a grave risk of death to another person, and thereby causes serious physical injury to another person . . ." PENAL § 120.10(3). "A verdict is legally sufficient when, viewing the facts in a light most favorable the People, there is a valid line of reasoning and permissible inferences from which a rational jury could have found the elements proven beyond a reasonable doubt." *Wilson*, 32 N.Y.3d at 6, 109 N.E.3d at 547, 84 N.Y.S.3d at 398 (citing *People v. Bailey*, 13 N.Y.3d 67, 70, 915 N.E.2d 611, 613, 886 N.Y.S.2d 666, 668 (2009)).

41. *Wilson*, 32 N.Y.3d at 7, 109 N.E.3d at 547–48, 84 N.Y.S.3d at 398–99.

42. *Id.* at 7–8, 109 N.E.3d at 548, 84 N.Y.S.3d at 399.

43. 31 N.Y.3d 939, 941, 96 N.E.3d 206, 208, 73 N.Y.S.3d 110, 112 (2018); see 293 F. 1013, 1014 (D.C. Cir. 1923). "The [*Frye*] process is meant to assess 'whether the accepted techniques, when properly performed, generate results accepted as reliable within the scientific community generally.'" *Id.* (quoting *People v. Wesley*, 83 N.Y.2d 417, 422, 633 N.E.2d 451, 454, 611 N.Y.S.2d 97, 100 (1994)). "Absent a novel or experimental scientific theory, a Frye hearing is generally unwarranted." *Id.*; see *Frye*, 293 F. at 1014.

44. *Brooks*, 31 N.Y.3d at 942, 96 N.E.3d at 208, 73 N.Y.S.3d at 112.

statement was “double hearsay and was not properly admitted pursuant to any exceptions to the hearsay rule.”⁴⁵

In *People v. Cummings*, the Court rejected the defendant’s argument that the law-of-the-case doctrine barred a supreme court justice presiding over his second trial from reconsidering a prior justice’s decision to exclude certain evidence.⁴⁶ The Court held that “[o]n retrial, evidentiary rulings may be reconsidered, but orders determining the result of a suppression hearing generally cannot.”⁴⁷ The Court also held that the trial court committed reversible error by admitting a statement under the excited utterance exception to the hearsay rule, where the record lacked evidence from which the jury “could reasonably infer that the statement was based on the personal observation of the declarant.”⁴⁸

In *People v. Silburn*, the defendant argued that he was denied a fair trial because “the trial court precluded his proffered psychiatric testimony for” a failure to provide the People with notice pursuant to CPL § 250.10.⁴⁹ Specifically, the defendant argued that his challenge to the voluntariness of his confession under CPL § 710.70 was not a “defense”

45. *Id.*

46. 31 N.Y.3d 204, 206, 99 N.E.3d 877, 879, 75 N.Y.S.3d 484, 486 (2018).

47. *Id.* at 208, 99 N.E.3d at 880–81, 75 N.Y.S.3d at 487 (first citing *People v. Evans*, 94 N.Y.2d 499, 504–05, 727 N.E.2d 1232, 1236, 706 N.Y.S.2d 678, 682 (2000); then citing *People v. Malizia*, 62 N.Y.2d 755, 758, 465 N.E.2d 364, 366, 476 N.Y.S.2d 825, 827 (1984); and then citing *People v. Nieves*, 67 N.Y.2d 125, 136, 492 N.E.2d 109, 115, 501 N.Y.S.2d 1, 8 (1986)).

48. *Id.* at 206, 99 N.E.3d at 879, 75 N.Y.S.3d at 486.

Although hearsay, excited utterances may be admissible because, “as the impulsive and unreflecting responses of the declarant to the injury or other startling event, they possess a high degree of trustworthiness, and, as thus expressing the real tenor of said declarant’s belief as to the facts just observed by him, may be received as testimony of those facts.”

Id. at 209, 99 N.E.3d at 881, 75 N.Y.S.3d at 488 (quoting *People v. Caviness*, 38 N.Y.2d 227, 231, 379 N.Y.S.2d 695, 699–700, 342 N.E.2d 496, 499–500 (1975)). “[I]t must be inferable that the declarant had an opportunity to observe personally the event described in the [spontaneous] declaration.” *People v. Fratello*, 92 N.Y.2d 565, 571, 706 N.E.2d 1173, 1175–76, 684 N.Y.S.2d 149, 151–52 (1998). “Direct observation by the person making the excited utterance ensures that the declarant is in fact reacting to and ‘assert[ing] the circumstances of’ the event causing the excitement.” *Cummings*, 31 N.Y.3d at 209, 99 N.E.3d at 882, 75 N.Y.S.3d at 488–89 (alteration in original) (citing *People v. Edwards*, 47 N.Y.2d 493, 496–97, 392 N.E.2d 1229, 1231, 419 N.Y.S.2d 45, 47 (1979)).

49. 31 N.Y.3d 144, 148, 98 N.E.3d 696, 698, 74 N.Y.S.3d 781, 783 (2018). Under CPL § 250.10(2), a defendant may not introduce psychiatric evidence as to his or her mental capabilities at trial “unless the defendant serves upon the people and files with the court a written notice of his intention to present psychiatric evidence. Such notice must be served and filed before trial and not more than thirty days after entry of the plea of not guilty to the indictment.” N.Y. CRIM. PROC. LAW § 250.10(2) (McKinney 2014).

within the meaning of CPL § 250.10(1) and, thus, not subject to the requirements of CPL § 250.10.⁵⁰ The Court rejected the defendant's argument based on prior case law from the Court labeling the defendant's challenge to the voluntariness of his statement pursuant to CPL § 710.70 a "defense" under CPL § 250.10(1).⁵¹

In *People v. Roberts*, the Court decided "whether the People may establish that a defendant 'assumes the identity of another,' within the meaning of New York's identity theft statute, by proof that the defendant used another's personal identifying information, such as that person's name, bank account, or credit card number."⁵² In upholding the defendant's conviction, the Court held "that the law defines the use of personal identifying information of another as one of the express means by which a defendant assumes that person's identity."⁵³

In *People v. Aleynikov*, the defendant argued that there was insufficient legal evidence to support his conviction for unlawful use of secret scientific material under PL § 165.07.⁵⁴ Specifically, the defendant

50. *Silburn*, 31 N.Y.3d at 154, 98 N.E.3d at 703, 74 N.Y.S.3d at 787; see N.Y. C.P.L. § 250.10; N.Y. CRIM. PROC. LAW § 710.70 (McKinney 2011). Under CPL § 250.10(1), the term "psychiatric evidence" is defined as "[e]vidence of mental disease or defect to be offered by the defendant in connection with" either (a) "the affirmative defense of lack of criminal responsibility by reason of mental disease or defect," (b) "the affirmative defense of extreme emotional disturbance," or (c) "any other defense not specified in the preceding paragraphs." N.Y. C.P.L. § 250.10(1)(a)–(c).

51. *Silburn*, 31 N.Y.3d at 154, 98 N.E.3d at 703, 74 N.Y.S.3d at 787–88 (citing *People v. Combest*, 4 N.Y.3d 341, 347, 828 N.E.2d 583, 587, 795 N.Y.S.2d 481, 485 (2005)); see N.Y. C.P.L. § 250.10(1); N.Y. C.P.L. § 710.70.

52. 31 N.Y.3d 406, 411, 104 N.E.3d 701, 704, 79 N.Y.S.3d 597, 600 (2018). Under PL § 190.79(3), an individual commits the crime of second-degree identity theft "when [such person] knowingly and with intent to defraud assumes the identity of another person by presenting [themselves] as that other person, or by acting as that other person or by using personal identifying information of that other person, and thereby . . . commits or attempts to commit a felony." N.Y. PENAL LAW § 190.79(3) (McKinney 2010). "The Penal Law broadly defines 'personal identifying information' to include the type of data commonly used in transacting commercial matters such as a 'person's name; address; telephone number; social security number; checking, savings, debit card, or credit card account number or code; signature,' or 'any other name, number, code or information that may be used alone or in conjunction with other such information to assume the identity of another person.'" *Roberts*, 31 N.Y.3d at 417, 104 N.E.3d at 708, 79 N.Y.S.3d at 604 (quoting PENAL § 190.77(1)).

53. *Roberts*, 31 N.Y.3d at 411, 104 N.E.3d at 704, 79 N.Y.S.3d at 600.

54. 31 N.Y.3d 383, 390, 396, 104 N.E.3d 687, 691, 695, 79 N.Y.S.3d 583, 587, 591 (2018) (citing N.Y. PENAL LAW § 165.07 (McKinney 2010)). "An individual is guilty of the crime 'when, with intent to appropriate . . . the use of secret scientific material, and having no right to do so and no reasonable ground to believe that he [or she] has such right, [the individual] makes a tangible reproduction or representation of such secret scientific material by means of writing, photographing, drawing, mechanically or electronically reproducing or recording such secret scientific material.'" *Id.* at 396, 104 N.E.3d at 694–95, 79 N.Y.S.3d at 590–91 (quoting PENAL § 165.07).

argued that his uploading of proprietary source code to a computer server did not fit within the “intent to appropriate . . . the use of secret scientific material” and “tangible reproduction or representation of such secret scientific material.”⁵⁵ The Court held that “a rational jury could have found that the ‘reproduction or representation’ that [the] defendant made of [the] source code, when he uploaded it to the . . . server, was tangible in the sense of ‘material’ or ‘having physical form.’”⁵⁶ As to the requisite mens rea for intent to appropriate, the Court held that the same element was satisfied by proof that the defendant “intended to exercise control over the source code permanently.”⁵⁷

In *People v. Andujar*, the defendant challenged the reversal of the trial court’s granting of his motion to dismiss as insufficient an accusatory instrument charging the defendant with the misdemeanor offense of equipping the vehicle he was operating with a police radio scanner without having a permit, in violation of Vehicle & Traffic Law (VTL) § 397.⁵⁸ Specifically, the defendant argued that the statute’s prohibition on equipping a motor vehicle with a police radio scanner, or knowingly using a vehicle so equipped, did not apply to a freestanding device found on his person.⁵⁹ The Court concluded that “[g]iven the purpose of the legislation—to reduce access inside motor vehicles to police radio signals—it is irrelevant whether the device is mounted, lying on the seat, or in a defendant’s pocket so long as the device is readily accessible for immediate use in the vehicle.”⁶⁰

VI. GUILTY PLEAS

In *People v. Dodson*, following his guilty plea, the “defendant asked for a new attorney to advise him on whether to move to withdraw his

55. *Id.* at 396, 104 N.E.3d at 694–95, 79 N.Y.S.3d at 590–91 (quoting PENAL § 165.07).

56. *Id.* at 399, 104 N.E.3d at 697, 79 N.Y.S.3d at 593.

57. *Id.* at 403–04, 104 N.E.3d at 700, 79 N.Y.S.3d at 596 (citing PENAL § 165.07).

58. 30 N.Y.3d 160, 163, 88 N.E.3d 309, 310–11, 66 N.Y.S.3d 151, 152–53 (2017) (first citing *People v. Andujar*, 49 Misc. 3d 36, 37–38, 18 N.Y.S.3d 259, 259–60 (1st Dep’t 2015); and then citing *People v. Andujar*, 26 N.Y.3d 1085, 44 N.E.3d 940, 23 N.Y.S.3d 642 (2015)). VTL § 397 provides, in relevant part, as follows:

“A person, not a police officer or peace officer, acting pursuant to his special duties, who equips a motor vehicle with a radio receiving set capable of receiving signals on the frequencies allocated for police use or knowingly uses a motor vehicle so equipped . . . without having first secured a permit so to do . . . is guilty of a misdemeanor.”

N.Y. VEH. & TRAF. LAW § 397 (McKinney 2005).

59. *Andujar*, 30 N.Y.3d at 162, 88 N.E.3d at 310, 66 N.Y.S.3d at 152.

60. *Id.* at 166–67, 88 N.E.3d at 313, 66 N.Y.S.3d at 155.

plea” prior to a sentence being imposed.⁶¹ The Court held that the sentencing court “had a duty to inquire into the defendant’s request for new counsel before it proceeded to sentence [the] defendant.”⁶² As such, the Court reasoned that the “defendant must be afforded the opportunity to decide whether to make a motion to withdraw his guilty plea upon the advice of counsel.”⁶³

In *People v. Estremera*, the defendant argued that CPL § 380.40, requiring the defendant’s personal presence at sentencing, applies to the re-imposition of a defendant’s original prison sentence under PL § 70.85.⁶⁴ The Court agreed with the defendant, holding that CPL § 380.40 “entitles a defendant to be present personally at such a proceeding unless he or she validly forfeits or waives the right to be present.”⁶⁵

61. 30 N.Y.3d 1041, 1042, 89 N.E.3d 1254, 1254, 67 N.Y.S.3d 574, 574 (2017).

62. *Id.* (citing *People v. Sides*, 75 N.Y.2d 822, 824–25, 551 N.E.2d 1233, 1234–35, 552 N.Y.S.2d 555, 556–57 (1990)).

63. *Id.* at 1042, 89 N.E.3d 1254–55, 67 N.Y.S.3d 574.

64. 30 N.Y.3d 268, 269, 88 N.E.3d 1185, 1186, 66 N.Y.S.3d 656, 657 (2017) (quoting N.Y. CRIM. PROC. LAW § 380.40(1) (McKinney 2018)). “CPL [§] 380.40(1) provides that a defendant ‘must be personally present at the time sentence is pronounced.’” *Id.* (quoting N.Y. C.P.L. § 380.40(1)).

Penal Law § 70.85 applies only to determinate sentences imposed between September 1, 1998, and June 30, 2008, and only if a statutorily-required term of [post-release supervision (PRS)] was not pronounced orally at sentencing. Specifically, [§] 70.85 provides that, with the district attorney’s permission, “the court may . . . re-impose the originally imposed determinate sentence of imprisonment without any term of [PRS], which then shall be deemed a lawful sentence.”

Estremera, 30 N.Y.3d at 270, 88 N.E.3d at 1187, 66 N.Y.S.3d at 658 (third alteration in original) (quoting N.Y. PENAL LAW § 70.85 (McKinney 2009)).

65. *Estremera*, 30 N.Y.3d at 269, 88 N.E.3d at 1186, 66 N.Y.S.3d at 657; see N.Y. C.P.L. § 380.40. Every defendant has “a ‘fundamental right to be present at sentencing’ in the absence of a waiver.” *Estremera*, 30 N.Y.3d at 272, 88 N.E.3d at 1188, 66 N.Y.S.3d at 659 (quoting *People v. Rossborough*, 27 N.Y.3d 485, 488–89, 54 N.E.3d 71, 73, 34 N.Y.S.3d 399, 401 (2016)).

[Defendants] have the right to hear the court’s pronouncement of sentence and to address the court, even if it is certain that the sentence is a foregone conclusion unaffected by whatever the defendant might do or say. Even when a defendant is, by agreement, to be sentenced to a statutory minimum, the defendant has a fundamental right to be present.

Estremera, 30 N.Y.3d at 272, 88 N.E.3d at 1188, 66 N.Y.S.3d at 659 (citing N.Y. C.P.L. § 380.40). “[W]here the defendant is convicted of a misdemeanor or petty offense, on motion of the defendant the court may sentence the defendant in absentia.” *Id.* at 273, 88 N.E.3d at 1189, 66 N.Y.S.3d at 660 (citing N.Y. C.P.L. § 380.40(2)). Also, “a defendant convicted of a felony may waive the right to be present at sentencing, provided that the waiver is knowing, voluntary and intelligent.” *Id.* (citing *Rossborough*, 27 N.Y.3d at 488–89, 54 N.E.3d at 73, 34 N.Y.S.3d at 401).

In *People v. Tiger*, the defendant argued that a claim of actual innocence could be brought under CPL § 440.10(1)(h) to vacate a judgment of conviction obtained after the defendant's guilty plea.⁶⁶ The Court rejected the defendant's argument on the grounds that "a voluntary guilty plea is inconsistent with a claim of factual innocence."⁶⁷ Accordingly, the Court reasoned that "in the absence of a motion to withdraw the plea or to bring a postconviction motion to vacate the plea as involuntary, 'the plea and the resulting conviction . . . are presumptively voluntary, valid and not otherwise subject to collateral attack.'"⁶⁸

VII. IDENTIFICATION OF THE DEFENDANT

In *People v. Boone*, the defendant argued that the trial court committed reversible error by denying his request that the jury be instructed on cross-racial identification.⁶⁹ The Court agreed with the defendant, holding that "when identification is an issue in a criminal case and the identifying witness and the defendant appear to be of different races, upon request, a party is entitled to a charge on cross-racial identification."⁷⁰ Specifically,

in a case in which a witness's identification of the defendant is at issue, and the identifying witness and defendant appear to be of different races, a trial court is required to give, upon request, during final instructions, a jury charge on the cross-race effect, instructing (1) that the jury should consider whether there is a difference in race between the defendant and the witness who identified the defendant, and (2) that, if so, the jury should consider (a) that some people have greater difficulty in accurately identifying members of a different race than in

66. 32 N.Y.3d 91, 96, 110 N.E.3d 509, 512, 85 N.Y.S.3d 397, 400 (2018) (citing *People v. Hamilton*, 115 A.D.3d 12, 26, 979 N.Y.S.2d 97, 108 (2014)). "CPL article 440 is our primary postconviction relief statutory scheme and allows collateral attacks on convictions in a framework of delineated procedural limitations. CPL [§] 440.10 provides ten specific grounds upon which a defendant may move to vacate a judgment of conviction and is comprehensive in scope." *Id.* at 98–99, 110 N.E.3d at 514, 85 N.Y.S.3d at 402; see N.Y. CRIM. PROC. LAW § 440.10 (McKinney Supp. 2019).

67. *Id.* at 101, 110 N.E.3d at 515, 85 N.Y.S.3d at 403 (citing *People v. Taylor*, 65 N.Y.2d 1, 5, 478 N.E.2d 755, 757, 489 N.Y.S.2d 152, 154 (1985)).

68. *Id.* (citing *People v. Latham*, 90 N.Y.2d 795, 799, 689 N.E.2d 527, 528, 666 N.Y.S.2d 557, 558 (1997)).

69. 30 N.Y.3d 521, 527, 91 N.E.3d 1194, 1197, 69 N.Y.S.3d 215, 218 (2017).

70. *Id.* at 526, 91 N.E.3d at 1196, 69 N.Y.S.3d at 217. "Mistaken eyewitness identifications are 'the single greatest cause of wrongful convictions in this country' . . . 'responsible for more . . . wrongful convictions than all other causes combined.'" *Id.* at 527, 91 N.E.3d at 1197, 69 N.Y.S.3d at 218 (first quoting *State v. Delgado*, 902 A.2d 888, 895 (N.J. 2006); and then quoting Gary L. Wells et al., *Eyewitness Identification Procedures: Recommendations for Lineups and Photospreads*, 22 L. & HUM. BEHAV. 603, 605 (1998)).

accurately identifying members of their own race and (b) whether the difference in race affected the accuracy of the witness's identification. The instruction would not be required when there is no dispute about the identity of the perpetrator nor would it be obligatory when no party asks for the charge.⁷¹

VIII. JURY TRIAL AND INSTRUCTION

In *People v. Wright*, the defendant challenged his conviction “on the ground that the trial court erred in denying his for-cause challenge to a prospective juror” under CPL § 270.20(1)(b).⁷² The Court held that the defendant's conviction should be reversed because the trial court did not inquire to obtain unequivocal assurance that the juror could be fair and impartial, even though the prospective juror's statements raised serious doubt as to her ability to be unbiased.⁷³

In *People v. Morrison*, a trial court's failure to advise counsel on the record of the contents of a substantive jury note was held by the Court to be a “mode of proceedings error” requiring reversal and a new trial.⁷⁴ Specifically, the trial court failed to provide counsel with meaningful notice of a substantive jury note in that “[a]lthough . . . ‘defense counsel was made aware of the existence of the note, there [was] no indication that the entire contents of the note were shared with counsel.’”⁷⁵ The Court further reasoned that “[i]n the absence of record proof that the trial court complied with its [meaningful notice obligation] under CPL [§]

71. *Boone*, 30 N.Y.3d at 535–36, 91 N.E.3d at 1203, 69 N.Y.S.3d at 224.

72. 30 N.Y.3d 933, 934, 88 N.E.3d 303, 303, 66 N.Y.S.3d 145, 145 (2017) (quoting N.Y. CRIM. PROC. LAW § 270.20 (1)(b) (McKinney 2014)). “Pursuant to CPL [§] 270.20(1)(b), a prospective juror may be challenged for cause if the juror evinces ‘a state of mind that is likely to preclude [the juror] from rendering an impartial verdict based upon the evidence adduced at the trial.’” *Id.* (second alteration in original) (quoting N.Y. C.P.L. § 270.20 (1)(b)).

73. *Id.* at 934, 88 N.E.3d at 303–04, 66 N.Y.S.3d at 145–46 (first citing *People v. Chambers*, 97 N.Y.2d 417, 419, 766 N.E.2d 953, 955, 740 N.Y.S.2d 291, 293 (2002); then citing *People v. Johnson*, 94 N.Y.2d 600, 614, 730 N.E.2d 932, 939, 709 N.Y.S.2d 134, 141 (2000); then citing N.Y. C.P.L. § 270.20(2); and then citing *People v. Nichols*, 98 N.Y.2d 749, 750, 781 N.E.2d 884, 885, 751 N.Y.S.2d 820, 821 (2002)).

74. 32 N.Y.3d 951, 952, 109 N.E.3d 1119, 1120, 84 N.Y.S.3d 819, 820 (2018) (first citing *People v. Mack*, 27 N.Y.3d 534, 538, 36 N.Y.S.3d 68, 55 N.E.3d 1041, 1045, 36 N.Y.S.3d 68, 72 (2016); and then citing *People v. Nealon*, 26 N.Y.3d 152, 157, 41 N.E.3d 1130, 1133, 20 N.Y.S.3d 315, 318 (2015)).

75. *Id.* (quoting *People v. Walston*, 23 N.Y.3d 986, 990, 14 N.E.3d 377, 380, 991 N.Y.S.2d 24, 27 (2014)) (first citing *Mack*, 27 N.Y.3d at 538, 55 N.E.3d at 1045, 36 N.Y.S.3d at 72; and then citing *Nealon*, 26 N.Y.3d at 157, 41 N.E.3d at 1133, 20 N.Y.S.3d at 318); see also *People v. O’Rama*, 78 N.Y.2d 270, 277, 579 N.E.2d 189, 192, 574 N.Y.S.2d 159, 162 (1991) (“[M]eaningful notice means notice of the actual specific content of the jurors’ request.”).

310.30, a mode of proceedings error occurred requiring reversal.”⁷⁶

In *People v. Kuzdzal*, the defendant argued that the trial court committed reversible error by failing to state its express reasons for denying the defendant’s request for a *Buford* inquiry after the examination of a spectator who allegedly overheard two sworn jurors refer to the defendant by a derogatory term.⁷⁷ The Court rejected the defendant’s argument holding that “[w]hile such practice is not required under our precedent, it remains the best practice to enhance appellate review.”⁷⁸ However, the determination of the trial court that the spectator was not credible was not reviewed by the Appellate Division, Fourth Department.⁷⁹ As a result, the Court remitted the case back to the Fourth Department to determine whether the trial court’s finding as to the spectator’s credibility “was supported by the weight of the evidence.”⁸⁰

In *People v. Parker*, the defendants argued that the trial court failed to provide notice to defense counsel of two substantive jury notes, thereby constituting a mode of proceedings error requiring reversal of their convictions and a new trial.⁸¹ The Court agreed with the defendants because there was nothing in the record indicating that defense counsel was informed of the precise contents of the two jury notes at issue.⁸²

76. *Morrison*, 32 N.Y.3d at 952, 109 N.E.3d at 1121, 84 N.Y.S.3d at 821 (quoting *People v. Tabb*, 13 N.Y.3d 852, 853, 920 N.E.2d 90, 90, 891 N.Y.S.2d 686, 686 (2009)).

77. 31 N.Y.3d 478, 480, 105 N.E.3d 328, 330, 80 N.Y.S.3d 189, 191 (2018) (citing *People v. Buford*, 69 N.Y.2d 290, 506 N.E.2d 901, 514 N.Y.S.2d 191 (1987)). CPL § 270.35 governs the procedure for discharge of a sworn juror. See N.Y. C.P.L. § 270.35. CPL § 270.20 governs the procedure to be employed when a prospective juror is challenged for cause. See N.Y. C.P.L. § 270.20; see also *Buford*, 69 N.Y.2d at 298, 506 N.E.2d at 905, 514 N.Y.S.2d at 195 (quoting *People v. West*, 92 A.D.2d 620, 622, 459 N.Y.S.2d 909, 913 (3d Dep’t 1983) (Mahoney, J., dissenting)) (“[T]he standard for discharging a sworn juror [pursuant to CPL § 270.35] . . . is [met] only ‘when it becomes obvious that a particular juror possesses a state of mind which would prevent the rendering of an impartial verdict.’”).

78. *Kuzdzal*, 31 N.Y.3d at 487, 105 N.E.3d at 335, 80 N.Y.S.3d at 196.

79. *Id.* at 486, 105 N.E.3d at 334, 80 N.Y.S.3d at 195.

80. *Id.* “Under our system of appellate review, every litigant is afforded at least one review of the facts.” *Id.* (citing *People v. Bleakley*, 69 N.Y.2d 490, 494, 508 N.E.2d 672, 674, 515 N.Y.S.2d 761, 762 (1987)).

81. 32 N.Y.3d 49, 58, 109 N.E.3d 1138, 1144, 84 N.Y.S.3d 838, 844 (2018). CPL § 310.30 “requires that, in response to a jury request for additional information or instruction ‘with respect to any matter pertinent to the jury’s consideration of the case,’ the trial court ‘must direct that the jury be returned to the courtroom and, after notice to both the people and counsel for the defendant[,] must give such requested information or instruction as the court deems proper.’” *Id.* (alteration in original) (quoting N.Y. CRIM. PROC. LAW § 310.30 (McKinney 2017)).

82. *Parker*, 32 N.Y.3d at 59, 109 N.E.3d at 1145, 84 N.Y.S.3d at 845. The defendants argued that the trial court did not provide counsel with meaningful notice of the contents of the jury notes. The court agreed, concluding that a procedural error occurred, and a new trial should be granted. *Id.* at 52, 109 N.E.3d at 1140, 84 N.Y.S.3d at 840.

IX. RIGHT TO CONFRONTATION AND PUBLIC TRIAL

In *People v. Roberts*, discussed in Part V, the defendant argued that the trial court closed the courtroom during jury selection, thereby excluding a family member in violation of the defendant's Sixth Amendment right to a public trial.⁸³ The Court rejected the defendant's argument, as it was unclear from the record the family member was actually excluded from the courtroom and because counsel for the defendant failed to object or "inform the court of the family member's continued absence."⁸⁴

In *People v. Austin*, the defendant argued that his Sixth Amendment right to confrontation was violated by the introduction of DNA evidence through a testifying witness who had not performed, witnessed, or supervised the generation of DNA profiles used by the People to prove that the defendant was the perpetrator of the charged crimes at issue.⁸⁵ Specifically, on cross-examination, the testifying witness admitted that he was not present for and did not perform the DNA test.⁸⁶ The Court concluded that a reversible Confrontation Clause error occurred as a result of the introduction of hearsay evidence through surrogate testimony to prove a fact essential for a finding of guilt.⁸⁷

83. 31 N.Y.3d 406, 425–27, 104 N.E.3d 701, 714–15, 79 N.Y.S.3d 597, 610–11 (2018). "A defendant's constitutional right to a public trial 'has long been regarded as a fundamental privilege of the defendant in a criminal prosecution.' . . . A violation of the right to an open trial is not subject to harmless error analysis and 'a per se rule of reversal irrespective of prejudice is the only realistic means to implement this important constitutional guarantee.'" *Id.* at 425, 104 N.E.3d at 714, 79 N.Y.S.3d at 610 (quoting *People v. Martin*, 16 N.Y.3d 607, 611, 613, 949 N.E.2d 491, 494, 495, 925 N.Y.S.2d 400, 403, 404 (2011) (citing *People v. Jones*, 47 N.Y.2d 409, 417, 391 N.E.2d 1335, 1341, 418 N.Y.S.2d 359, 365 (1979))).

84. *Id.* at 427, 104 N.E.3d at 715–16, 70 N.Y.S.3d at 611–12.

85. 30 N.Y.3d 98, 100, 86 N.E.3d 542, 543, 64 N.Y.S.3d 650, 651 (2017).

86. *Id.* at 102–03, 86 N.E.3d at 545, 64 N.Y.S.3d at 653.

87. *Id.* at 105–06, 86 N.E.3d at 547, 64 N.Y.S.3d at 655 (citing *People v. Crimmins*, 36 N.Y.2d 230, 237, 326 N.E.2d 787, 791, 367 N.Y.S.2d 213, 218 (1975)). "The Confrontation Clause generally prohibits the admission of testimonial statements made by a nontestifying witness against [the] defendant at trial, unless the witness is unavailable and [the] defendant 'had a prior opportunity for cross-examination.'" *Id.* at 104, 86 N.E.3d at 546, 64 N.Y.S.3d at 654 (quoting *People v. Pealer*, 20 N.Y.3d 447, 453, 985 N.E.2d 903, 905, 926 N.Y.S.2d 592, 595 (2013)). "Thus, in order to satisfy the Confrontation Clause, [the] defendant was entitled to cross-examine the analyst who either 'performed, witnessed or supervised the generation of the critical numerical DNA profile' or who 'used his or her independent analysis on the raw data' to arrive at his or her own conclusions." *Id.* (quoting *People v. John*, 27 N.Y.3d 294, 315, 52 N.E.3d 1114, 1128, 33 N.Y.S.3d 88, 102 (2016)).

X. RIGHT TO COUNSEL

In *People v. Harris*, the Court held that in a “single judge trial on a class B misdemeanor, the trial court’s imposition of a sentence of ninety days in jail required that the defendant be afforded the right to counsel at the trial under the Sixth Amendment.”⁸⁸ Accordingly, the Court concluded that the same “right was violated when the court denied defense counsel the opportunity to present summation.”⁸⁹

In *People v. Henry*, the Court considered whether a defendant, who was represented by counsel, could be questioned about a different crime for which he was unrepresented by counsel.⁹⁰ Specifically, the defendant was represented by counsel on a marijuana charge and was unrepresented by counsel as to murder and robbery charges about which the defendant was questioned by the police.⁹¹ The Court concluded that facts involving the murder and robbery charges did not implicate and were unrelated to the facts of the defendant’s marijuana charge and, as such, the questioning of the defendant regarding the murder and robbery crimes did not violate the defendant’s right to counsel.⁹²

In *People v. Silburn*, discussed in Part V, the defendant also argued that the trial court committed reversible error by denying his request to proceed pro se with “standby counsel.”⁹³ The Court reasoned that, based

88. 31 N.Y.3d 1183, 1185, 107 N.E.3d 541, 542–43, 82 N.Y.S.3d 321, 322–23 (2018) (first citing *Scott v. Illinois*, 440 U.S. 367, 373–74 (1979); and then citing *Argersinger v. Hamlin*, 407 U.S. 25, 37 (1972)).

89. *Id.* at 1185, 107 N.E.3d at 543, 82 N.Y.S.3d at 323 (citing *Herring v. New York*, 422 U.S. 853, 865 (1975)).

90. 31 N.Y.3d 364, 366, 102 N.E.3d 1056, 1057, 78 N.Y.S.3d 275, 276 (2018). Although a defendant who is represented by counsel may be questioned about a different, unrepresented crime, police questioning on an unrepresented crime may violate a defendant’s right to counsel where “the two matters are ‘so closely related transactionally, or in space or time, that questioning on the unrepresented matter would all but inevitably elicit incriminating responses regarding the matter in which there had been an entry of counsel.’” *Id.* at 368, 102 N.E.3d at 1058–59, 78 N.Y.S.3d at 277–78 (quoting *People v. Cohen*, 90 N.Y.2d 632, 638, 687 N.E.2d 1313, 1316, 665 N.Y.S.2d 30, 33 (1997)) (citing *People v. Taylor*, 27 N.Y.2d 327, 329, 266 N.E.2d 630, 631, 318 N.Y.S.2d 1, 3 (1971)).

91. *Id.* at 367–71, 102 N.E.3d at 1058–61, 78 N.Y.S.3d at 277–80.

92. *Id.* at 368–71, 102 N.E.3d at 1059–61, 78 N.Y.S.3d at 278–79 (first citing *Cohen*, 90 N.Y.2d at 638–40, 687 N.E.2d at 1316–17, 665 N.Y.S.2d at 33–34; then citing *People v. Ermo*, 47 N.Y.2d 863, 865, 392 N.E.2d 1248, 1249, 419 N.Y.S.2d 65, 66 (1979); and then citing *People v. Miller*, 54 N.Y.2d 616, 618–19, 425 N.E.2d 879, 881, 442 N.Y.S.2d 491, 493 (1981)).

93. 31 N.Y.3d 144, 147–60, 98 N.E.3d 696, 698–708, 74 N.Y.S.3d 781, 783–93 (2018). “A defendant in a criminal case may invoke the right to defend pro se provided: (1) the request is unequivocal and timely asserted, (2) there has been a knowing and intelligent waiver of the right to counsel, and (3) the defendant has not engaged in conduct which would prevent the fair and orderly exposition of the issues.” *Id.* at 150, 98 N.E.3d at 700, 74 N.Y.S.3d at 785 (citing *People v. McIntyre*, 36 N.Y.2d 10, 17, 364 N.Y.S.2d 837, 844, 324 N.E.2d 322, 327

on the record, the defendant wanted his right to the assistance of counsel at trial and did not seek to waive his constitutional right to counsel.⁹⁴ Accordingly, the Court rejected the defendant's argument because the defendant never unequivocally requested to proceed without counsel.⁹⁵

In *People v. Smith*, the defendant argued that the trial court denied the defendant's right to counsel on the People's motion to compel the defendant to submit to a buccal swab.⁹⁶ Although the defendant stated to the trial court that he had not spoken with his prior attorney about the prosecution's motion and did not wish to consent to giving a sample, the Court rejected the defendant's repeated requests for an attorney to advise him regarding the motion.⁹⁷ As such, the Court reasoned that the defendant was denied counsel during a "critical stage of the proceeding," violating his right to counsel.⁹⁸ As the violation of the defendant's rights occurred post-indictment, the Court held that vacating the defendant's pleas, rather than a dismissal of the indictment, was the appropriate remedy.⁹⁹

XI. SEARCH AND SEIZURE

In *People v. Parker*, discussed in Part VIII, the defendants argued that the police lacked founded suspicion of criminal activity to support a common-law right of inquiry and also lacked reasonable suspicion to justify the defendants' pursuit and forcible stop under the standard set out by the Court in *People v. De Bour*.¹⁰⁰ The Court held that the record

(1974)).

94. *Id.* at 152, 98 N.E.3d at 701, 74 N.Y.S.3d at 786.

95. *Id.* at 152, 98 N.E.3d at 701–02, 74 N.Y.S.3d at 786.

96. 30 N.Y.3d 626, 628–29, 92 N.E.3d 789, 790, 69 N.Y.S.3d 566, 567 (2017).

97. *Id.* at 629, 92 N.E.3d at 790, 69 N.Y.S.3d at 567.

98. *Id.* at 629–30, 92 N.E.3d at 790–91, 69 N.Y.S.3d at 567–68. "[The] [d]efendants have a constitutional right to counsel at every critical stage of the proceedings, meaning those stages that hold significant consequences for the accused." *Id.* at 629, 92 N.E.3d at 790, 69 N.Y.S.3d at 567 (internal quotations omitted) (quoting *Bell v. Cone*, 535 U.S. 685, 696, 122 S. Ct. 1843, 1851, 152 L. Ed. 2d 914, 928 (2002)) (citing *People v. Settles*, 46 N.Y.2d 154, 165, 485 N.E.2d 612, 618, 412 N.Y.S.2d 874, 881 (1978)).

99. *Smith*, 30 N.Y.3d at 631, 92 N.E.3d at 791, 69 N.Y.S.3d at 568. Pursuant to CPL § 470.20, the appellate division may take "such corrective action as is necessary and appropriate both to rectify any injustice to the appellant resulting from the error or defect which is the subject of the reversal or modification and to protect the rights of the respondent." *Id.* (quoting N.Y. CRIM. PROC. LAW § 470.20 (McKinney 2009)).

100. 32 N.Y.3d 49, 55, 109 N.E.3d 1138, 1142, 84 N.Y.S.3d 838, 842 (2018).

Police encounters with the public are evaluated under the four-tiered framework established in *De Bour*. At the first level, law enforcement may engage in minimally-intrusive questioning to request information "when there is some objective credible reason for that interference not necessarily indicative of criminality." The second

supported the trial court's conclusion that the actions of the police were justified.¹⁰¹ As to the common law right of inquiry, the conclusion of the trial court was supported by the fact that the police responded to a radio call of a crime in progress, encountered the defendants shortly thereafter, and the defendants were exiting private property early in the morning on a federal holiday.¹⁰² As to reasonable suspicion for the pursuit, forceable stop, and detainment, the Court held that the trial court's determination was supported by the combination of one of the defendants actively fleeing from police with "the specific circumstances observed by the officers during their initial encounter with [the] defendants."¹⁰³

In *People v. Garvin*, the Court affirmed its long-standing rule under *Payton v. New York* "that a warrantless arrest of a suspect in the threshold of a residence is permissible under the Fourth Amendment, provided that the suspect has voluntarily answered the door and the police have not crossed the threshold."¹⁰⁴ In so holding, the Court rejected the defendant's argument for "a new rule that warrantless

level, the common-law right of inquiry, permits officers "to gain explanatory information, . . . short of a forcible seizure" upon a "founded suspicion that criminal activity is afoot." The third level, "a forcible stop and detention," requires the "officer entertain[] a reasonable suspicion that a particular person has committed, is committing or is about to commit a felony or misdemeanor," and "[a] corollary of the statutory right to temporarily detain for questioning is the authority to frisk if the officer reasonably suspects that [they are] in danger of physical injury by virtue of the detainee being armed." "Finally[,] a police officer may arrest and take into custody a person when [the officer] has probable cause to believe that person has committed a crime, or offense in [the officer's] presence."

Id. at 55–56, 109 N.E.3d at 1142–43, 84 N.Y.S.3d at 842–43 (alterations in original) (quoting *People v. De Bour*, 40 N.Y.2d 210, 223, 352 N.E.2d 562, 572, 386 N.Y.S.2d 375, 384–85 (1976)).

101. *Id.* at 57, 109 N.E.3d at 1144, 84 N.Y.S.3d at 844 (citing *People v. McRay*, 51 N.Y.2d 594, 601, 416 N.E.2d 1015, 1018, 435 N.Y.S.2d 679, 682 (1980)). "[W]hether the particular circumstances of [the] defendants' cases gave rise to a founded or reasonable suspicion constitutes a mixed question of law and fact, which is beyond our review if there is record support for the courts' conclusion that the officers' actions were justified." *Id.* at 55, 109 N.E.3d at 1142, 84 N.Y.S.3d at 842 (citing *McRay*, 51 N.Y.2d at 601, 416 N.E.2d at 1018, 435 N.Y.S.2d at 682).

102. *Id.* at 56, 109 N.E.3d at 1143, 84 N.Y.S.3d at 843.

103. *Id.* (citing *People v. Woods*, 98 N.Y.2d 627, 628, 772 N.E.2d 1107, 1108, 745 N.Y.S.2d 749, 750 (2002)).

104. 30 N.Y.3d 174, 177, 88 N.E.3d 319, 321, 66 N.Y.S.3d 161, 163 (2017); *see* 445 U.S. 573, 585 (1980)). "*Payton* does not prohibit the police from knocking on a suspect's door because, '[w]hen law enforcement officers who are not armed with a warrant knock on a door, they do no more than any private citizen might do. And whether the person who knocks on the door and requests the opportunity to speak is a police officer or a private citizen, the occupant has no obligation to open the door or to speak.'" *Id.* at 180–81, 178, 88 N.E.3d at 323–24, 66 N.Y.S.3d at 165–66 (quoting *Kentucky v. King*, 563 U.S. 452, 469–70 (2011)).

‘threshold/doorway arrests’ violate *Payton* when the only reason the arrestee is in the doorway is that he or she was summoned there by police.”¹⁰⁵

XII. TIME LIMITS AND SPEEDY TRIAL

In *People v. Wiggins*, the Court determined whether a lengthy delay between the defendant’s arrest and guilty plea violated his constitutional right to a speedy trial under the factors set out by the Court in *People v. Taranovich*.¹⁰⁶ Reasoning that: (i) the six-year delay between the crime and the guilty plea was “extraordinary”;¹⁰⁷ (ii) even assuming good faith, the People failed to establish good cause for the extraordinary delay;¹⁰⁸ (iii) the nature of the charges against the defendant included murder and were, therefore, serious;¹⁰⁹ (iv) the defendant was incarcerated during the entirety of the delay;¹¹⁰ and (v) the defendant was not prejudiced by the delay,¹¹¹ the Court concluded “that [the] defendant’s constitutional right to a speedy trial was violated.”¹¹²

XIII. LEGISLATIVE DEVELOPMENTS

During the *Survey* period, the New York State Legislature enacted a variety of changes to the Penal Law, Criminal Procedure Law, and the Vehicle and Traffic Law, the most significant of which are discussed below.

105. *Id.* at 182, 88 N.E.3d at 325, 66 N.Y.S.3d at 167.

106. 31 N.Y.3d 1, 7, 95 N.E.3d 303, 306, 72 N.Y.S.3d 1, 4 (2018) (citing 37 N.Y.2d 442, 445, 335 N.E.2d 303, 306, 373 N.Y.S.2d 79, 81–82 (1975)). “The following factors should be examined in balancing the merits of an assertion that there has been a denial of [the] defendant’s right to a speedy trial: (1) the extent of the delay; (2) the reason for the delay; (3) the nature of the underlying charge; (4) whether or not there has been an extended period of pretrial incarceration; and (5) whether or not there is any indication that the defense has been impaired by reason of the delay.” *Taranovich*, 37 N.Y.2d at 445, 335 N.E.2d at 306, 373 N.Y.S.2d at 81–82. “[N]o one factor or combination of the factors . . . is necessarily decisive or determinative of the speedy trial claim, but rather the particular case must be considered in light of all the factors as they apply to it.” *Id.* at 445, 335 N.E.2d at 305, 373 N.Y.S.2d at 81 (citing *Sortino v. Fisher*, 20 A.D.2d 25, 28, 245 N.Y.S.2d 186, 191 (1st Dep’t 1963)).

107. *Wiggins*, 31 N.Y.3d at 10, 95 N.E.3d at 309, 72 N.Y.S.3d at 7 (first quoting *People v. Wiggins*, 143 A.D.3d 451, 455, 39 N.Y.S.3d, 395, 399 (1st Dep’t 2016); and then quoting *People v. Stanley*, 41 N.Y.2d 789, 792–93, 364 N.E.2d 1111, 1114, 396 N.Y.S.2d 339, 342 (1997)) (citing *People v. Romeo*, 12 N.Y.3d 51, 56, 904 N.E.2d 802, 806, 876 N.Y.S.2d 666, 670 (2009)).

108. *Id.* at 16, 95 N.E.3d at 313, 72 N.Y.S.3d at 11.

109. *Id.*

110. *Id.*

111. *Id.* at 17, 95 N.E.3d at 314, 72 N.Y.S.3d at 12.

112. *Wiggins*, 31 N.Y.3d at 19, 95 N.E.3d at 315, 72 N.Y.S.3d at 13.

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Criminal Law

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A. Penal Law

PL §§ 265.00 and 400.00 were amended in relation to the possession of weapons by domestic violence offenders.¹¹³ PL §§ 130.05 and 130.10, governing lack of consent in sex offenses, were amended with regard to residents or inpatients of a residential facility.¹¹⁴

PL § 135.60 was amended to be defined as coercion in the third, rather than the second, degree.¹¹⁵ The Penal Law was amended by adding a new section, PL § 135.61, defining coercion in the second degree and, further, by redefining coercion in the first degree under PL § 135.65.¹¹⁶

PL § 195.15 governing obstruction of firefighting operations was amended to be gender neutral.¹¹⁷ PL § 240.00, defining “public place,” was amended to include community centers.¹¹⁸ PL §§ 270.00 and 405.00 governing possession and sale of sparkling devices were amended.¹¹⁹

B. Criminal Procedure Law

CPL § 390.20 governing waiver of pre-sentence reports was amended to include the sentence of a conditional discharge.¹²⁰ CPL § 700.05 was amended to add certain animal fighting conduct as a designated offense for an eavesdropping or video surveillance warrant.¹²¹ CPL §§ 370.15, 370.25, 380.97, and 530.14 were amended in relation to the possession of weapons by domestic violence offenders.¹²² CPL §§ 460.10 and 460.70, governing procedures for taking an appeal from a

113. Act of Apr. 12, 2018, 2018 McKinney’s Sess. Laws of N.Y., ch. 60, at 389, 395 (codified at N.Y. PENAL LAW §§ 265.00, 400.00 (McKinney Supp. 2019)).

114. Act of Apr. 12, 2018, 2018 McKinney’s Sess. Laws of N.Y., ch. 55, at 71–72 (codified at N.Y. PENAL LAW §§ 130.05, 130.10 (McKinney Supp. 2019)).

115. *Id.* at 73–74 (codified at N.Y. PENAL LAW § 135.60 (McKinney Supp. 2019)).

116. *Id.* at 74 (codified at N.Y. PENAL LAW §§ 135.61, 135.65 (McKinney Supp. 2019)). The same amendments resulted in changes to CPL § 530.11 and PL §§ 120.40, 240.75, 485.05. N.Y. CRIM. PROC. LAW § 530.11 (McKinney Supp. 2019); N.Y. PENAL LAW §§ 120.40, 240.75, 285.05 (McKinney Supp. 2019).

117. Act of Jul. 25, 2017, 2017 McKinney’s Sess. Laws of N.Y., ch. 124, at 687–88 (codified at N.Y. PENAL LAW § 195.15 (McKinney Supp. 2019)).

118. Act of Aug. 14, 2017, 2017 McKinney’s Sess. Laws of N.Y., ch. 167, at 748 (codified at N.Y. PENAL LAW § 240.00 (McKinney Supp. 2019)).

119. Act of Oct. 23, 2017, 2017 McKinney’s Sess. Laws of N.Y. ch. 371, at 935 (codified at N.Y. PENAL LAW §§ 270.00, 405.00 (McKinney Supp. 2019)).

120. Act of Aug. 21, 2017, 2017 McKinney’s Sess. Laws of N.Y., ch. 194, at 772 (codified at N.Y. CRIM. PROC. LAW § 390.20(ii) (McKinney 2018)).

121. Act of Jul. 24, 2017, 2017 McKinney’s Sess. Laws of N.Y., ch. 91, at 649–50 (codified at N.Y. CRIM. PROC. LAW § 700.05 (McKinney Supp. 2019)).

122. Act of Apr. 12, 2018, 2018 McKinney’s Sess. Laws of N.Y., ch. 60, at 389–93, 395–96 (codified at N.Y. CRIM. PROC. LAW §§ 370.15, 370.25, 380.97 (McKinney 2018); N.Y. CRIM. PROC. LAW § 530.14 (McKinney Supp. 2019)).

court that is not designated a court of record, were amended.¹²³ CPL § 440.50, governing duties of the district attorney to inform victims in writing of case dispositions involving felonies, was amended.¹²⁴ CPL § 1.20, governing jurisdiction of St. Regis Mohawk tribal police officers, was amended.¹²⁵ CPL § 2.10, governing jurisdiction of University of Rochester peace officers, was amended.¹²⁶ CPL § 95.00, dealing with money collected by the district attorney in pre-criminal proceeding settlements, was amended.¹²⁷

C. Vehicle and Traffic Law

The following sections of the Vehicle and Traffic Law were amended: VTL § 603-a—“Accidents; police authorities to investigate” — and VTL § 1194—“Arrest and testing”,¹²⁸ VTL § 502(c-3) requiring a motorcycle safety course prior to issuance of license;¹²⁹ and VTL § 1229-c, requiring a child under the age of two (2) to be secured in a rear-facing child restraints.¹³⁰

123. Act of Aug. 21, 2017, 2017 McKinney’s Sess. Laws of N.Y., ch. 195, at 773 (codified at N.Y. CRIM. PROC. LAW §§ 460.10, 460.70 (McKinney Supp. 2019)).

124. Act of Aug. 21, 2017, 2017 McKinney’s Sess. Laws of N.Y., ch. 193, at 772 (codified at N.Y. CRIM. PROC. LAW § 440.50 (McKinney Supp. 2019)).

125. Act of Jul. 24, 2017, 2017 McKinney’s Sess. Laws of N.Y., ch. 96, at 652–53 (codified at N.Y. CRIM. PROC. LAW § 1.20(e) (McKinney 2018)).

126. Act of Dec. 18, 2017, 2017 McKinney’s Sess. Laws of N.Y., ch. 494, at 1084–85 (codified at N.Y. CRIM. PROC. LAW § 2.10(84) (McKinney 2018)).

127. Act of Apr. 12, 2018, 2018 McKinney’s Sess. Laws of N.Y., ch. 55, at 54–57 (codified at N.Y. CRIM. PROC. LAW § 95.00 (McKinney Supp. 2019)).

128. Act of Apr. 18, 2018, 2018 McKinney’s Sess. Laws of N.Y., ch. 27, at 25–26 (codified at N.Y. VEH. & TRAF. LAW §§ 603-a(1)(b), 1194(2)(b)(1)–(3) (McKinney Supp. 2019)).

129. Act of Oct. 23, 2017, 2017 McKinney’s Sess. Laws of N.Y., ch. 355, at 916–17 (codified at N.Y. VEH. & TRAF. LAW § 502(c-3) (McKinney Supp. 2019)).

130. Act of Oct. 23, 2017, 2017 McKinney’s Sess. Laws of N.Y., ch. 393, at 959 (codified at N.Y. VEH. & TRAF. LAW § 1229-c (McKinney Supp. 2019)).