CRIMINAL LAW

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INTRODUCTION

This *Survey* covers case law decisions in the field of New York criminal law and procedure during the period of June 30, 2020 to July 1, 2021. The *Survey* focuses on decisions from the Court of Appeals (hereinafter "the Court") during the relevant survey period 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 the penal law (hereinafter "PL"), the criminal procedure law (hereinafter "CPL"), and the vehicle and traffic law (hereinafter "VTL").

I. ACCUSATORY INSTRUMENTS

In *People v. Hardy*, defendant argued that the trial court erred in allowing an amendment of erroneous facts in an information charging

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the defendant with harassment and contempt in the second degree.[1] Abrogating *People v. Easton*, 307 N.Y. 336, 121 N.E.2d 357 (1954), the Court held that the "CPL displaced Easton and precluded prosecutors from curing factual errors or deficiencies in informations and misdemeanor complaints via amendment."[2] The Court reasoned that, although the CPL authorizes the amendments permitted by the trial court for a select subset of accusatory instruments, the same "does not include misdemeanor complaints or informations, for which the CPL licenses amendments to the nonfactual portion of the accusatory instrument only."[3] The Court agreed with defendant and concluded that the trial court lacked the authority to permit the amendment as, in this instance, pursuant to the CPL, a superseding accusatory instrument supported by a sworn statement containing the correct factual allegations was required.[4]

In *People v. Epakchi*, the Court rejected a rule of criminal procedure followed by the Appellate Term for the Ninth and Tenth Judicial Districts pursuant to which, absent special circumstances, the prosecution was not permitted to "reprosecute a defendant by filing a new simplified traffic information after the original simplified traffic information was dismissed for facial insufficiency under CPL 100.40(2) for failure to provide a requested supporting deposition in a timely manner."[5] The Court reasoned that the same rule was without basis in the CPL and, further, contravened the Court's holding in *People v. Nuccio*.[6]

II. APPELLATE REVIEW SCOPE AND JURISDICTION

In *People v. Olds*, defendant argued that the sentence imposed by the trial court was presumptively vindictive and violated Due Process protection under state law.[7] The Court held that defendant failed to preserve his arguments for appellate review, on the grounds that

1. *See* 35 N.Y.3d 466, 468, 157 N.E.3d 117, 117, 132 N.Y.S.3d 394, 394 (2020).
2. *Id.* at 468–69, 157 N.E.3d at 118, 132 N.Y.S.3d at 395.
3. *Id.* at 476, 157 N.E.3d at 123, 132 N.Y.S.3d at 400 (first citing N.Y. CRIM. PROC. LAW § 200.70(1) (McKinney 2007 & Supp. 2021); then citing N.Y. CRIM. PROC. LAW § 100.45(2), (3) (McKinney 2016 & Supp. 2021)).
4. *Id.*
5. 37 N.Y.3d 39, 41–42, 169 N.E.3d 931, 933, 146 N.Y.S.3d 561, 563 (2021) (citing N.Y. CRIM. PROC. LAW § 100.20, 100.25, 100.40(2) (McKinney 2019 & Supp. 2021)).
6. *Id.* (citing People v. Nuccio, 78 N.Y.2d 102, 575 N.E.2d 111, 571 N.Y.S.2d 693 (1991)).
7. *See* 36 N.Y.3d 1091, 1091–92, 167 N.E.3d 920, 920–21, 143 N.Y.S.3d 664, 664 (2021).

defendant's arguments against the imposition of the challenged sentence at the trial court level (1) "made no specific reference to the principle of vindictiveness or any potential constitutional violation"; (2) "[d]efendant also failed to either object to the sentence actually imposed or move to withdraw his guilty plea"; and (3) the record failed to support defendant's claim that the sentence imposed was "illegal."[8]

In *People v. Brown*, defendant waived his right to appeal and, thereafter, argued that his conviction should be overturned because he was denied his statutory right to an opportunity to make a personal statement at sentencing pursuant to CPL Section 380.50(1).[9] The Court rejected defendant's argument on the grounds that defendant's contention was "not reviewable because such a claim did not survive the valid appeal waiver."[10]

II. EVIDENCE

In *People v. Anderson*, a fourteen year old defendant challenged the decision of the trial court denying defendant's request, without a *Frye* hearing, to introduce expert testimony regarding "the science of adolescent brain development and behavior," to aid the jury in determining whether the prosecution disproved the defense of justification.[11] The Court rejected defendant's argument on the

8. *Id.* at 1092, 167 N.E.3d at 921, 143 N.Y.S.3d at 664–65 (first citing People v. Pena, 28 N.Y.3d 727, 730, 71 N.E.3d 930, 931, 49 N.Y.S.3d 342, 343, (2017); and then citing People v. Nieves, 2 N.Y.3d 310, 315, 778 N.Y.S.2d 751, 754–55, 811 N.E.2d 13, 16–17 (2004)).

9. 37 N.Y.3d 940, 941, 170 N.E.3d 439, 440, 147 N.Y.S.3d 565, 565–66 (2021).

10. *Id.* "Although the statutory right is 'deeply rooted' and 'substantial,' its value is largely personal to defendant." *Id.* (citing People v. McClain, 35 N.Y.2d 483, 491, 364 N.Y.S.2d 143, 148, 323 N.E.2d 685, 689 (1974)). "Defendant's claim does not fall among the narrow class of nonwaivable defects that undermine 'the integrity of our criminal justice system . . . [or] implicate . . . a public policy consideration that transcends the individual concerns of a particular defendant to obtain appellate review." (citing People v. Muniz, 91 N.Y.2d 570, 574, 673 N.Y.S.2d 358, 361, 696 N.E.2d 182, 185 (1998)).

11. 36 N.Y.3d 1109, 1110–111, 168 N.E.3d 851, 852, 144 N.Y.S.3d 678, 679 (2021) (first citing Frye v. United States, 293 F. 1013 (D.C. Cir. 1923); and then citing People v. Wesley, 83 N.Y.2d 417, 423–29, 633 N.E.2d 451, 455, 611 N.Y.S.2d 97, 100 (1994)). Using deadly physical force upon another person is justified only if defendant "reasonably believes that [the] other person is using or about to use deadly physical force" and only "when and to the extent [the defendant] reasonably believes such [force] to be necessary to defend himself, herself or a third person." N.Y. PENAL LAW §35.15(1), (2)(a) (McKinney 2004 & Supp. 2021).

grounds that "[t]he admissibility and limits of expert testimony lie primarily in the sound discretion of the trial court."[12]

In *People v. Perez*, defendant challenged the trial court's denial of a motion to suppress evidence consisting of cell site location information from defendant's cell phone.[13] The Court rejected defendant's argument on the grounds that, even omitting the disputed evidence, (1) the evidence of defendant's guilt was overwhelming and (2) there was no reasonable possibility that admission of the disputed evidence "contributed to defendant's conviction."[14]

In *People v. Vasquez*, defendant claimed error on grounds that "the prosecutor's questioning of a defense witness and summation remarks improperly associated defendant with uncharged crimes."[15] As in *Perez*, *supra*, The Court held that defendant's claimed error was harmless because evidence of defendant's guilt was overwhelming and there was no "significant probability, rather than only a rational possibility," that defendant would have been acquitted "but for the prosecutor's references to the uncharged crimes."[16]

In *People v. McGhee*, defendant argued that the prosecutor's failure to disclose a witness statement prior to trial was a *Brady* violation that undermined the fairness of defendant's trial and tainted the jury's verdict.[17] The Court rejected defendant's argument on the grounds that (1) "the undisclosed witness statement lacked sufficient

12. *Anderson*, 36 N.Y.3d at 1111, 168 N.E.3d at 852, 144 N.Y.S.3d at 679 (quoting People v. Lee, 96 N.Y.2d 157, 162, 750 N.E.2d 63, 66, 726 N.Y.S.2d 361, 364, (2001)).

13. *See* 36 N.Y.3d 1093, 1094,167 N.E.3d 919, 919, 143 N.Y.S.3d 663,663 (2021).

14. *Id.* at 1093–94, 167 N.E.3d at 919, 143 N.Y.S.3d at 663 (first citing People v. Mairena, 34 N.Y.3d 473, 484–85, 144 N.E.3d 340, 347, 121 N.Y.S.3d 731, 738 (2019); and then citing People v. Crimmins, 36 N.Y.2d 230, 237, 326 N.E.2d 787, 791, 367 N.Y.S.2d 213, 218, (1975).

15. 36 N.Y.3d 1066, 1067, 166 N.E.3d 1040, 1040–41, 142 N.Y.S.3d 862, 862–63 (2021).

16. *Id.* at 1067, 166 N.E.3d at 1041, 142 N.Y.S.3d at 863 (quoting *Crimmins*, 36 N.Y.2d at 242, 326 N.E.2d at 794, 367 N.Y.S.2d at 222).

17. 36 N.Y.3d 1063, 1064, 166 N.E.3d 1041, 1042, 142 N.Y.S.3d 863, 864 (2021). "To make out a successful *Brady* claim, 'a defendant must show that (1) the evidence is favorable to the defendant because it is either exculpatory or impeaching in nature; (2) the evidence was suppressed by the prosecution; and (3) prejudice arose because the suppressed evidence was material.'" *Id.* at 1064–65, 166 N.E.3d at 1042, 142 N.Y.S.3d at 864 (first quoting People v. Garrett, 23 N.Y.3d 878, 885, 18 N.E.3d 722, 728, 994 N.Y.S.2d 22, 28 (2014); and then quoting People v. Fuentes, 12 N.Y.3d 259, 263, 907 N.E.2d 286, 289, 879 N.Y.S.2d 373, 376, (2009)).

impeachment value to cast any doubt on the fairness of defendant's trial"; (2) there was "no reasonable possibility that the statement supported an alternative theory of defense"; and (3) defendant failed to demonstrate "any likelihood that the statement would have led to additional admissible evidence."[18]

In *People v. Lendof-Gonzales*, defendant argued that there was insufficient evidence to sustain his conviction for attempted murder.[19] The Court agreed with defendant, holding "[t]he People's evidence . . . was insufficient to support defendant's convictions for attempted murder in the first and second degrees because it failed to prove that defendant . . . took any actual step toward accomplishing defendant's plan to kill his wife and mother-in-law beyond mere conversations and planning."[20]

In *People v. Slade*, three defendants argued that the prosecution failed to convert a misdemeanor complaint into an information by failing to submit certificates of translation with respect to certain statements made by non-English speaking first-party witnesses, thereby, creating an impermissible layer of hearsay.[21] In the first two cases, the Court rejected defendant's arguments on the grounds that "no facial defect was evident within the four corners of the accusatory instrument."[22] As to the third defendant, where the participation of a translator was documented within the witness's supporting affidavit, the Court concluded that "no additional layer of hearsay was created by the use of the translator" and, as such, the accusatory instrument was not insufficient.[23] Key to the Court's reasoning was that the Court, from a public policy perspective, "decline[d] to impose additional barriers to participation in the process for victims with limited-English proficiency."[24]

18. *McGhee*, 36 N.Y.3d at 1065–66, 166 N.E.3d at 1043, 142 N.Y.S.3d at 865.

19. *See* 36 N.Y.3d 87, 91, 163 N.E.3d 15, 18, 139 N.Y.S.3d 84, 87 (2020).

20. *Id.* at 89, 163 N.E.3d at 17, 139 N.Y.S3d at 86. "[A] person is guilty of an attempt to commit a crime if the person's conduct comes 'dangerously close' to committing the intended crime." *Id.* at 89, 163 N.E.3d at 17, 139 N.Y.S.3d at 86 (first quoting People v. Mahboubian, 74 N.Y.2d 174, 191, 543 N.E.2d 34, 42, 544 N.Y.S.2d 769, 777 (1989); and then quoting People v. Moran, 123 N.Y. 254, 257, 25 N.E. 412, 412–13 (1890)).

21. *See* 37 N.Y.3d 127, 132, 170 N.E.3d 1189, 1192, 148 N.Y.S.3d 413, 416 (2021).

22. *Id.*

23. *Id.*

24. *Id.*

In *People v. Badji*, the Court considered whether the definition of a credit card for purposes of PL Section 155.00(7) includes a credit card account number; to wit: whether the prosecution must prove that a "defendant physically possessed the tangible credit card in order to support a conviction for grand larceny."[25] Specifically, defendant argued that his conviction of grand larceny in the fourth degree must be overturned because there was no evidence that defendant possessed the physical card itself, as only the victim's credit card account number was used to purchase goods.[26] The Court concluded that,

> [T]he definition of credit card in General Business Law §511(1), as supplemented by General Business Law §511–a, is the controlling definition as designated by Penal Law §155.00(7) and, as a result, the evidence [was] legally sufficient to support defendant's conviction of grand larceny for stealing an intangible credit card account number.[27]

IV. GUILTY PLEAS/CONVICTIONS

In *People v. Walley*, defendant entered a plea of guilty to a second-degree criminal possession of a weapon charge and, thereafter, challenged the same on the grounds that the indictment was defective because it failed to allege the approximate time that the same crime allegedly occurred.[28] The Court held that "any 'omission from the indictment waiver form of non-elemental factual information that is not necessary for a jurisdictionally-sound indictment is [] forfeited by a guilty plea' and 'must be raised in the trial court.'"[29] Key to the Court's reasoning was the fact that time of incident is not an element of second-degree criminal possession of a weapon and that, ". . . defendant was on notice of the crime charged."[30]

In *People v. Iverson*, two defendants charged with certain traffic infractions appealed their default judgments of conviction after they timely plead not guilty, demanded a trial, but "failed to timely appear for trial."[31] Specifically, defendants argued that VTL Section 1806–a

25. 36 N.Y.3d 393, 395, 165 N.E.3d 1068, 1069, 142 N.Y.S.3d 128, 129 (2021).

26. *See id.*

27. *Id.* (first citing N.Y. GEN. BUS. LAW § 511(1) (McKinney 2021); then citing GEN. BUS. § 511-a; and then citing N.Y. PENAL LAW § 155.00(7) (McKinney 2021)).

28. 36 N.Y.3d 967, 968, 162 N.E.3d 101, 102, 137 N.Y.S.3d 812, 813 (2020).

29. *Id.* (first quoting People v. Thomas, 34 N.Y.3d 545, 569, 144 N.E.3d 970, 986, 122 N.Y.S.3d 226, 242 (2019); and then quoting People v. Milton, 21 N.Y.3d 133, 138, 989 N.E.2d 962, 965, 967 N.Y.S.2d 680, 683, (2013)).

30. *Walley*, 36 N.Y.3d at 968, 162 N.E.3d at 102, 137 N.Y.S.3d at 813.

31. 37 N.Y.3d 98, 101, 170 N.E.3d 728, 729, 148 N.Y.S.3d 173, 174 (2021).

did not authorize the trial court to "render a default judgment upon defendant's failure to timely appear for trial."[32] The Court reversed the default judgments entered on the grounds that the statute permits a default judgment only where a defendant "does not answer within the time specified;" to wit: when the defendant fails to enter a plea on the charge by the date specified in the uniform traffic ticket.[33] As such, the Court concluded that the trial court was without jurisdiction to render a default judgment where the defendant timely answers the charge by entering a plea.[34]

In *People v. Bisono*, the Court held that waivers of the right to appeal for a number of defendants were "invalid and unenforceable," where the rights encompassed by the appeal waiver were mischaracterized by indicating that the waiver was an absolute bar to direct appeal and failed to state that any issues survived the waiver.[35] Considering the same deficiency under a totality of the circumstances standard, including, in several cases, defendants' "significant mental health issues," the Court concluded that the defendants at issue did not comprehended the nature, quality, and consequences of their waiver of appellate rights.[36] As such, the Court held that the waivers were invalid and unenforceable.[37]

32. *Id.* at 103, 170 N.E.3d at 730, 148 N.Y.S.3d at 175 (citing N.Y. VEH. & TRAF. LAW §1806–a(1) (McKinney 2021)).

33. *Id.* at 104, 170 N.E.3d at 732, 148 N.Y.S.3d at 177 (quoting VEH. & TRAF. §1806–a(1)).

34. *See id.* at 106, 170 N.E.3d at 733, 148 N.Y.S.3d at 178.

35. 36 N.Y.3d 1013, 1017, 164 N.E.3d 239, 241, 140 N.Y.S.3d 433, 435 (N.Y. 2020) (quoting People v. Thomas, 34 N.Y.3d 545, 558, 144 N.E.3d 970, 978, 122 N.Y.S.3d 226, 234 (2019) (first citing People v. Seaberg, 74 N.Y.2d 1, 11, 541 N.E.2d 1022, 1026–27, 543 N.Y.S.2d 968, 972–73 (1989); then citing People v. Callahan, 80 N.Y.2d 273, 280, 604 N.E.2d 108, 112, 590 N.Y.S.2d 46, 50 (1992); and then citing People v. Hansen, 95 N.Y.2d 227, 230–31, 738 N.E.2d 773, 776, 715 N.Y.S.2d 369, 372 (2000)).

36. *Bisono*, 36 N.Y.3d at 1018, 164 N.E.3d at 241, 140 N.Y.S.3d at 435 (first quoting *Thomas*, 34 N.Y.3d at 565–66, 122 N.Y.S.3d at 239, 144 N.E.3d at 983; and then quoting People v. Lopez, 6 N.Y.3d 248, 256, 844 N.E.2d 1145, 1149, 811 N.Y.S.2d 623, 627 (N.Y. 2006)) (citing People v. Bradshaw, 18 N.Y.3d 257, 262, 273, 961 N.E.2d 645, 649, 656, N.Y.S.2d 254, 257, 265 (2011)).

37. *Bisono*, 36 N.Y.3d at 1017, 164 N.E.3d at 241, 140 N.Y.S.3d at 435 (quoting *Thomas*, 34 N.Y.3d at 558, 144 N.E.3d at 979, 122 N.Y.S.3d at 235 (". . . a waiver of the right to appeal is not absolute bar to taking of a first-tier direct appeal.")) (first citing *Seaberg*, 74 N.Y.2d at 11, 543 N.Y.S.2d at 973, 541 N.E.2d at 1027; then citing *Callahan*, 80 N.Y.2d at 280, 590 N.Y.S.2d at 50, 604 N.E.2d at 112; and then citing *Hansen*, 95 N.Y.2d at 230–31, 738 N.E.2d at 773, 715 N.Y.S.2d at 372).

V. JURY TRIAL AND INSTRUCTION

In *People v. J.L.*, defendant argued that the trial court's refusal to instruct the jury on voluntary possession during his trial for criminal possession of a weapon constituted reversible error.[38] The Court agreed with defendant that the trial court committed reversible error by denying his request to instruct the jury on voluntary possession as, ". . . there was a reasonable view of the evidence that, to the extent he possessed the weapon at all, such possession was not voluntary."[39]

In *People v. Batticks*, defendant argued that the trial court abused its discretion, ". . . in giving the jury a curative instruction and forgoing a *Buford* inquiry of a sworn juror after her mid-trial exclamation that she was 'very offen[ded]' by the repetitive use of a racial slur by [][defense] counsel while cross-examining the victim."[40] The Court concluded "that the juror's reaction was triggered by counsel's fifth and gratuitous use of the epithet, and provided no basis to indicate she was grossly unqualified."[41] The Court further held that since the entire incident occurred in open court, a *Buford* inquiry was unnecessary, as the trial court was well able to assess that the juror's "sworn oath to be impartial remained intact."[42] Finally, the Court held that

> [t]he [trial] court's remedy of admonishing the juror and counsel and issuing a carefully crafted curative instruction – which included a mechanism for any juror to advise the court if they could not be fair and impartial due to anything that occurred at trial – was not an abuse of its discretion.[43]

In *People v. Williams*, defendant argued that the trial court committed reversible error by failing to instruct the jury on "temporary

38. *See* 36 N.Y.3d 112, 114, 163 N.E.3d 34, 36, 139 N.Y.S.3d 103, 105 (2020).

39. *Id.* at 119, 163 N.E.3d at 39, 139 N.Y.S.3d at 108 ("A trial court must instruct the jury on 'the material legal principles applicable to the particular case, and, so far as practicable, explain the application of the law to the facts.'"). *Id.* (first quoting N.Y. CRIM. PROC. LAW §300.10(2) (McKinney 2021) ("the material legal principles applicable to the particular case, and, so far as practicable, explain the application of the law to the facts"); and then quoting People v. Baskerville, 60 N.Y.2d 374, 382, 469, N.E.2d 752, 757, N.Y.S.2d 646, 651, 457 (1983) ("[t]he charge 'must be tailored to the facts of the particular case.'")).

40. 35 N.Y.3d 561, 563, 159 N.E.3d 758, 760, 135 N.Y.S.3d 34, 36, (2020) (citation omitted) (citing People v. Buford, 69 N.Y.2d 290, 299, 506 N.E.2d 901, 905–06, 514 N.Y.S.2d 191, 195–96 (1987)).

41. *Batticks*, 35 N.Y.3d at 563, 159 N.E.3d at 760, 135 N.Y.S.3d at 36.

42. *Id.*

43. *Id.*

and lawful possession" of a weapon.[44] Specifically, defendant argued that he was entitled to the same charge, ". . . because he took possession of the weapon with the intent to use it only in self-defense and because his eventual firing of the gun was justified."[45] The Court rejected defendant's argument on the grounds that, "[n]o reasonable view of the evidence presented at trial supported a conclusion that defendant's initial possession of the firearm in question was innocent or excusable."[46]

VI. SEARCH AND SEIZURE

In *People v. Balkman*, defendant challenged the seizure of a gun after a traffic stop that originated based on information received by the police from a mobile data terminal, which notified them, " . . . that there was a 'similarity hit,' indicating that something was similar about the registered owner of the vehicle and a person with an outstanding warrant."[47] The Court held that the evidence obtained by the police should have been suppressed as the fruit of an unlawful vehicle stop because the police failed to articulate facts to support a reasonable suspicion that defendant, as the driver or occupant of the vehicle, committed, was committing, or was about to commit a crime.[48] Key to the Court's decision was the fact that, "[t]he People presented no evidence about the content of the 'similarity hit' – neither what particular data of the registered owner of the vehicle and the person with the warrant matched, nor what kinds of data matches, in

44. 36 N.Y.3d 156, 158, 163 N.E.3d 462, 464, 139 N.Y.S.3d 594, 595–96 (2020).

45. *Id.* at 161, 163 N.E.3d at 466, 139 N.Y.S.3d at 598.

46. *Id.* at 158, 163 N.E.3d at 464, 139 N.Y.S.3d at 595–96. In order to trigger the right to a jury charge concerning the defense of temporary and lawful possession, "there must be proof in the record showing a legal excuse for . . . possession as well as facts tending to establish that, once possession has been obtained, the weapon had not been used in a dangerous manner." *Id.* at 161, 163 N.E.3d at 466, 139 N.Y.S.3d at 597.

47. 35 N.Y.3d 556, 558, 159 N.E.3d 237, 238, 134 N.Y.S.3d 321, 322 (2020).

48. *See id*. "[A] vehicle stop is lawful if based on a reasonable suspicion that the driver or occupants of the vehicle have committed, are committing, or are about to commit a crime." *Id.* at 559, 159 N.E.3d at 239, 134 N.Y.S.3d at 323 (citing People v. Hinshaw, 35 N.Y.3d 427, 430, 156 N.E.3d 812, 814, 132 N.Y.S.3d 90, 92 (2020)). "A stop based on reasonable suspicion will be upheld so long as the intruding officer can point to 'specific and articulable facts which, along with any logical deductions, reasonably prompted the intrusion." *Balkman*, 35 N.Y.3d at 559, 159 N.E.3d at 239, 134 N.Y.S.3d at 323 (quoting People v. Brannon, 16 N.Y.3d 596, 602, 949 N.E.2d 484, 488 N.Y.S.2d 393, 397 (2011)).

general, result in 'similarity hits.'"[49] The Court reasoned that, "[w]ithout such evidence, the suppression court could not independently evaluate whether the officer had reasonable suspicion to make the stop."[50]

In *People v. Duval*, defendant challenged the validity of a search warrant based on an alleged defect in particularity with respect to the description of the place to be searched, along with the trial court's summary denial of his suppression motion.[51] The Court rejected defendant's argument as to particularity on the grounds that defendant "failed to proffer evidence suggesting that the building's outward appearance indicated that it was not a single-family residence."[52] The Court further held that the trial court did not abuse its discretion in denying suppression without a hearing because the factual allegations and records that defendant offered in support of the motion to suppress "did not sufficiently support the legal basis for suppression asserted in his motion papers," thus, permitting summary denial under CPL Section 710.60(1).[53]

In *People v. Schneider*, defendant argued that a Kings County Supreme Court Justice had no "jurisdiction to issue eavesdropping warrants for defendant's cell phones, which were not physically present in New York, for the purpose of gathering evidence in an investigation of enterprise corruption and gambling offenses committed in Kings County."[54] In rejecting defendant's jurisdictional challenge, the Court reasoned that the eavesdropping warrants were "executed" in Kings County within the meaning of CPL Section 700.05(4), as the geographical jurisdiction where the communications

49. *Balkman*, 35 N.Y.3d at 560, 156 N.E.3d at 240, 134 N.Y.S.3d at 324.

50. *Id.*

51. *See* 36 N.Y.3d 384, 387, 165 N.E.3d 209, 210, 141 N.Y.S.3d 439, 440 (2021).

52. *Id.* at 390–91, 165 N.E.3d at 212, 141 N.Y.S.3d at 442. *See* N.Y. CRIM. PROC. LAW §§ 690.15(1)(a), 690.45(5) (McKinney 2021).

53. *Duval*, 36 N.Y.3d at 391, 165 N.E.3d at 213–14, 141 N.Y.S.3d at 442–43. (quoting CRIM. PROC. §710.60(1)) (first citing People v. Mendoza, 82 N.Y.2d 415, 421, 624 N.E.2d 1017, 1018, 604 N.Y.S.2d 922, 923 (1993); then citing CRIM. PROC. §710.60(3)). CPL 710.60 permits summary denial of a suppression motion where the motion papers do not provide adequate "sworn allegations of fact." CRIM. PROC. §710.60(1).

54. 37 N.Y.3d 187, 189–190, 173 N.E.3d 61, 62–63, 151 N.Y.S.3d 1, 2–3 (2021).

were intentionally intercepted by authorized law enforcement officers.[55]

In *People v. Goldman*, the Court considered whether the constitutional right against unreasonable search and seizure and case law authority required that,

> prior to a neutral magistrate's issuance of a search warrant to obtain DNA evidence from a suspect's body by buccal swab, a suspect must receive – in addition to notice and the opportunity to be heard – discovery as to the demonstration of the probable cause in the warrant application and an adversarial hearing.[56]

The Court rejected defendant's constitutional rights violations argument because defendant was "provided with an opportunity to be heard on the issuance of the warrant" and "directed no argument to the issuing magistrate as to the reasonable nature of the bodily intrusion sought."[57]

VII. LEGISLATIVE DEVELOPMENTS

During the *Survey* period, the Legislature enacted numerous changes to the CPL, PL, and the VTL. The most significant changes are summarized below.

A. Criminal Procedure Law

CPL Sections 60.47, 160.10, 170.30, 170.80, 420.35, 720.15, and 720.35 were amended by making technical corrections relating thereto as the result of the repeal of Section 240.37 of the PL relating to loitering for the purpose of engaging in a prostitution offense.[58]

55. *Id.* at 189–190, 173 N.E.3d at 63, 151 N.Y.S.3d at 3 (citing N.Y. CRIM. PROC. LAW § 700.05(4) (McKinney 2021)).

56. 35 N.Y.3d 582, 585, 159 N.E.3d 772, 774, 135 N.Y.S.3d 48, 50 (2020). *See In re* Abe A., 56 N.Y.2d 288, 294, 437 N.E.2d 265, 268, 452 N.Y.S.2d 6, 9 (1982) (first citing CRIM. PROC. §§ 690.05, .10; and then citing People v. Teicher, 52 N.Y. 2d 638, 651, 422 N.E.2d 506, 512, 439 N.Y.S.2d 846, 852 (1981)) (sanctioning the use of a search warrant pursuant to CPL article 690 for seizure of corporeal evidence from an uncharged suspect).

57. *Goldman*, 35 N.Y.3d at 585, 159 N.E.3d at 774, 135 N.Y.S.3d at 50.

58. *See* Act of Feb. 2, 2021, 2021 McKinney's Sess. Laws of N.Y., ch. 23, at §§ 1–10 (codified at N.Y. CRIM. PROC. LAW §§ 60.47, 160.10, 170.80, 420.35, 720.15, 720.35 (McKinney 2021)).

CPL Sections 530.12 and 530.13 were amended in relation to prohibiting a party to an order of protection from remotely controlling any connected devices of a person protected by such order.[59]

CPL Sections 170.15, 180.20, 230.11, and 230.21 were amended in relation to the removal of certain actions to veterans' treatment courts.[60]

CPL Sections 420.30 and 420.35 were amended in relation to allowing a court to waive certain surcharges and fees and to repeal certain provisions of the penal law relating thereto.[61]

CPL Sections 10.40 and 460.90 were amended in relation to the use of electronic means for the commencement and filing of papers in certain actions and proceedings.[62]

CPL Section 380.50 was amended in relation to notifying victims of crimes electronically.[63]

CPL Sections 160.50, 170.56, 440.10, 440.46-a, and 700.05 were amended in relation to persons authorized to cultivate, process, distribute, and sell cannabis and the use of cannabis by persons aged twenty-one or older.[64]

CPL Section 220.50 was amended in relation to voting by formerly incarcerated individuals convicted of a felony.[65] The same amendment now mandates that, prior to accepting a defendant's plea of guilty to an indictment or a superior court information charging any felony offense, the court must advise the defendant, on the record, that conviction will result in loss of the right to vote while defendant is serving a felony sentence in a correctional facility and that defendant's voting right will be restored upon release.[66]

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59. *See* Act of Nov. 11, 2020, 2020 McKinney's Sess. Laws of N.Y., ch. 261, at §§ 8–9 (codified at CRIM. PROC. §§ 530.12, .13).

60. *See* Act of Mar. 29, 2021, 2021 McKinney's Sess. Laws of N.Y., ch. 91, at §§ 2–5 (codified at CRIM. PROC. §§ 170.15, 180.20, 230.11, 230.21).

61. *See* Act of Aug. 24, 2020, 2020 McKinney's Sess. Laws of N.Y., ch. 144, at §§ 1–2 (codified at CRIM. PROC. §§ 420.30, .35).

62. *See* Act of June 11, 2021, 2021 McKinney's Sess. Laws of N.Y., ch. 118, at § 1 (codified at CRIM. PROC. §§ 10.40, 460.90).

63. *See* Act of July 31, 2021, 2021 McKinney's Sess. Laws of N.Y., ch. 210, at § 1 (codified at N.Y. CRIM. PROC. LAW § 380.50 (McKinney 2021)).

64. *See* Act of Mar. 31, 2021, 2021 McKinney's Sess. Laws of N.Y., ch. 92, at §§ 17–18, 22, 24–25 (codified at CRIM. PROC. §§ 160.50, 170.56, 440.10, 440.46a, 700.05).

65. *See* Act of May 4, 2021, 2021 McKinney's Sess. Laws of N.Y., ch. 103, at § 5 (codified at CRIM. PROC. § 220.50).

66. *See id.*

B. Penal Law

PL Sections 221.00, 221.05, 221.10, 221.15, 221.20, 221.25, 221.30, 221.35, 221.40, 221.45, 221.50, 221.55 pertaining to cannabis were all repealed and replaced with new legislation under Article 222, including, as follows: 222.00 Cannabis; definitions; 222.05 Personal use of cannabis; 222.10 Restrictions on cannabis use; 222.15 Personal cultivation and home possession of cannabis; 222.20 Licensing of cannabis production and distribution; defense; 222.25 Unlawful possession of cannabis; 222.30 Criminal possession of cannabis in the third degree; 222.35 Criminal possession of cannabis in the second degree; 222.40 Criminal possession of cannabis in the first degree; 222.45 Unlawful sale of cannabis; 222.50 Criminal sale of cannabis in the third degree; 222.55 Criminal sale of cannabis in the second degree; 222.60 Criminal sale of cannabis in the first degree; and 222.65 Aggravated criminal sale of cannabis.[67]

PL Sections 265.00 and 265.20 were amended in relation to permitting 4-H certified shooting sports instructors to supervise and instruct persons under sixteen years of age at shooting ranges.[68]

PL Section 240.37 relating to loitering for the purpose of engaging in a prostitution offense was repealed and PL Section 230.01 was amended accordingly.[69]

PL Section 190.65 was amended in relation to creating the crime of scheme to defraud by disposal of solid waste.[70]

67. *See* Act of Mar. 31, 2021 § 16 (codified at N.Y. PENAL LAW §§ 220.00, .05, .10, .15, .20, .25, .30, .35, .40, .45, .50, .55, .60, .65 (McKinney 2021)); Act of June 29, 1977, 1977 McKinney's Sess. Laws of N.Y., ch. 360, at §§ 3, 12 (repealed 2021); Act of July 5, 2014, 2014 McKinney's Sess. Laws of N.Y., ch. 90, at § 12 (repealed 2021); Act of June 10, 1995, 1995 McKinney's Sess. Laws of N.Y., ch. 75, at §§ 10–18 (repealed 2021).

68. *See* Act of Aug. 24, 2020, 2020 McKinney's Sess. Laws of N.Y., ch. 150, at 838 (codified at N.Y. PENAL LAW §§ 265.00, .20 (McKinney 2021)); Act of June 11, 2018, 2018 McKinney's Sess. Laws of N.Y., ch. 40, at §§ 19 (amended 2020); Act of Dec. 28, 2018, 2018 McKinney's Sess. Laws of N.Y., ch. 40, at §7, 7-c, 7-d (amended 2020).

69. *See* Act of Feb. 2, 2021, 2021 McKinney's Sess. Laws of N.Y., ch. 23, at §§ 1–3 (codified at PENAL §§ 230.01); Act of Jan. 19, 2016, 2016 McKinney's Sess. Laws of N.Y., ch. 40, at §§ 1–4 (repealed 2021); Act of Nov. 13, 2018, 2018 McKinney's Sess. Laws of N.Y., ch. 40 (amended 2021).

70. *See* Act of Dec. 15, 2020, 2020 McKinney's Sess. Laws of N.Y., ch. 332, at § 6 (codified at PENAL §§ 190.65); Act of Sept. 19, 2008, 2008 McKinney's Sess. Laws of N.Y., ch. 40, at §§ 1–2 (amended 2020).

C. Vehicle & Traffic Law

Although the legislature enacted a number of changes to the VTL during the survey period, the majority of said changes involved amendments to administrative and/or other provisions of the VTL that do not substantively or directly impact upon criminal law or procedure and, as such, the same amendments will not be discussed in this work.