

CRIMINAL LAW

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INTRODUCTION

This *Survey* covers cases in the field of New York criminal law and procedure during the period of June 30, 2021 to July 1, 2022. 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”).

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I. ACCUSATORY INSTRUMENTS

In *People v. Hill*, defendant argued that the allegations in a misdemeanor complaint did not establish reasonable cause to believe that defendant committed the crime of criminal possession of a controlled substance.¹ Specifically, defendant argued that the description of the alleged controlled substance in the factual portion of the accusatory instrument lacked sufficient basis to conclude that the substance he allegedly possessed was illegal.² The Court reversed defendant's conviction on the grounds that the Public Health Law bans only a limited number of synthetic cannabinoids by reference to their specific chemical designation and the accusatory instrument's factual assertions gave no basis for concluding that the substance defendant possessed was a controlled substance, to wit: that the substance possessed was an illegal synthetic cannabinoid as listed with precision in Public Health Law § 3306(g), as opposed to one of the many synthetic cannabinoid substances that are not criminalized in the schedule.³

In *People v. Galindo*, defendant argued that speedy trial time expired for his prosecution under a new amendment to CPL Section 30.30(1)(e), which was made effective while defendant's direct appeal was pending before the Appellate Division.⁴ The amendment required application of CPL Section 30.30(1) and its maximum times for prosecutorial readiness to accusatory instruments charging traffic infractions jointly with a felony, misdemeanor, or violation.⁵ The Court rejected defendant's argument on the grounds that the legislature did not mandate retroactive application of the newly worded statute.⁶

1. *People v. Hill*, 195 N.E.3d 47, 48, 49 (N.Y. 2022) (quoting *People v. Dreyden*, 931 N.E.2d 526, 528 (N.Y. 2010)) (“The standard ‘for whether a flaw in an accusatory instrument is jurisdictional’ is whether the instrument failed to give the defendant ‘sufficient notice of the charged crime to satisfy the demands of due process and double jeopardy.’ ‘Pleading errors involving omission of elements of the charged crime are fundamental. They impair a defendant’s basic rights to fair notice sufficient to enable preparation of a defense and to prevent double jeopardy.’”)

2. *Id.* at 48.

3. *Id.* at 50. “Standing alone, a conclusory statement that a substance seized from a defendant was a particular type of controlled substance does not meet the reasonable cause requirement” *Id.* at 49 (quoting *People v. Kalin*, 12 N.E.2d 381, 382 (N.Y. 2009)) (first citing *Dreyden*, 931 N.E.2d at 528; then citing *People v. Dumas*, 497 N.E.2d 686, 686 (N.Y. 1986)).

4. *People v. Galindo*, 191 N.E.3d 1136, 1137 (N.Y. 2022).

5. *Id.*

6. *Id.*

II. APPELLATE REVIEW SCOPE AND JURISDICTION

In *People v. Bush*, defendant challenged the voluntariness of his guilty plea by arguing that the trial court, in its plea colloquy, failed to advise defendant that community service would be imposed as a condition of his sentence.⁷ The Court rejected defendant's argument because, prior to imposition of sentence, defendant, who had the practical ability to do so, failed to protest or otherwise seek to withdraw his guilty plea.⁸ As a result, the Court held that defendant's claim of an involuntary guilty plea was not preserved for review.⁹

In *People v. Buyund*, the Court addressed "whether the illegal sentence exception to the preservation requirement applies when a defendant first raises on intermediate appeal a challenge to the legality of his certification as a sex offender subject to the requirements of the Sex Offender Registration Act (SORA)."¹⁰ As the consequences of SORA have been adjudicated to be collateral and nonpenal, the Court concluded that SORA certification was not a part of defendant's sentence and, as such, defendant's statutory claim regarding the applicability of Correction Law Section 168-a(2)(a) to defendant's conviction did not fall within the illegal sentence exception to the preservation requirement and was, therefore, unreviewable by the Court.¹¹

7. *People v. Bush*, 187 N.E.3d 1047, 1047–48 (N.Y. 2022).

8. *Id.* "In order to be valid, a plea must be knowing, intelligent, and voluntary." *Id.* at 1055 (Rivera, J., dissenting) (citing *People v. Lopez*, 844 N.E.2d 1145, 1151 (N.Y. 2006) (G.B. Smith, J., concurring). "To that end, the court must ensure that a defendant, before pleading guilty, has a full understanding of what the plea connotes and its consequences." *Id.* (quoting *People v. Louree*, 869 N.E.2d 18, 20 (N.Y. 2007) (first citing *People v. Ford*, 657 N.E.2d 265, 267 (N.Y. 1995); then citing *People v. Turner*, 22 N.E.3d 179, 181 (N.Y. 2014)) (internal quotation marks omitted). "The court must advise the defendant of direct consequences of the plea, which includes the sentence." *Id.* (Rivera, J. dissenting) (citing *People v. Harnett*, 945 N.E.2d 439, 441 (N.Y. 2011)). "A defendant does not have to preserve a challenge to the voluntariness of a plea where they had no actual or practical ability to object to an alleged error to the taking of the plea that was clear from the face of the record." *Id.* at 1057 (Rivera, J., dissenting) (quoting *People v. Conceicao*, 44 N.E.3d 199, 203 (N.Y. 2015)) (internal quotation marks omitted).

9. *Bush*, 187 N.E.3d at 1047–48.

10. *People v. Buyund*, 182 N.E.3d 1068, 1068 (N.Y. 2021) "Because [the] Court's jurisdiction is limited to review of issues of law, [the Court's] first task is to assess whether the arguments raised on appeal present questions that were preserved by specific objection in the trial court. [The Court has] recognized a narrow exception to the preservation rule where a court exceeds its powers and imposes a sentence that is illegal in a respect that is readily discernible from the trial record." *Id.* at 1071 (quoting *People v. Nieves*, 811 N.E.2d 13, 17 (N.Y. 2004)) (internal quotation marks omitted).

11. *Id.* at 1073.

In *People v. Ortiz*, defendant argued that “the police engaged in improper pre-*Miranda* custodial interrogation and, as a result, his post-*Miranda* statements and the gun and ammunition should have been suppressed.”¹² The Court held that the issue of whether subsequent statements and physical evidence were fruit of the unwarned statement was unpreserved for the Court’s review, because defendant failed to raise this particular ground either in a suppression motion or at the suppression hearing at the trial court level.¹³

III. ASSISTANCE OF COUNSEL

In *People v. Sposito*, defendant, who was convicted of rape in the first degree, argued that his counsel was ineffective based on defense counsel’s decision to waive defendant’s statement suppression hearing.¹⁴ The Court rejected defendant’s argument on the grounds that defense counsel’s decision to waive the suppression hearing was reasonable trial strategy.¹⁵ Key to the Court’s reasoning was the fact that the decision to allow defendant’s statements into evidence was consistent with defense counsel’s overall trial strategy to show that defendant consistently maintained that the criminal acts complained of were consensual and to avoid the use of specific defendant’s statements as impeachment material.¹⁶

In *People v. Burgos*, defendant argued that his counsel’s suspension from the practice of law in the United States Court of Appeals rendered his attorney “constructively unlicensed to practice law in New York,” where reciprocal disciplinary proceedings were pending; and that his attorney’s failure to inform him of the disciplinary proceedings deprived defendant of his constitutional right to choice of

12. *People v. Ortiz*, 181 N.E.3d 548, 549 (N.Y. 2022).

13. *Id.* (citing *People v. Pantone*, 57 N.E.3d 1095, 1096 (N.Y. 2016)).

14. *People v. Sposito*, 180 N.E.3d 1053, 1053–54 (N.Y. 2022).

15. *Id.* at 1053–54. “Defendant bears the burden of establishing his claim that counsel’s performance is constitutionally deficient by demonstrating the absence of strategic or other legitimate explanations for counsel’s alleged failures.” *Id.* at 1053–54 (quoting *People v. Sposito*, 93 N.E.3d 881, 881 (N.Y. 2018)). “Under the New York Constitution, ‘[i]n determining whether a defendant has been deprived of effective assistance, a court must examine whether ‘the evidence, the law, and the circumstances of a particular case, viewed in totality and as of the time of the representation, reveal that the attorney provided meaningful representation.’” *Id.* at 1054 (quoting *People v. Oliveras*, 993 N.E.2d 1241, 1245 (N.Y. 2013)). “Under the United States Constitution, a party must ‘demonstrate both that counsel’s performance was deficient and that the deficient performance prejudiced the defendant.’” *Id.* (quoting *People v. Caban*, 833 N.E.2d 213, 222 (N.Y. 2005)).

16. *Sposito*, 180 N.E.3d at 1054.

counsel.¹⁷ The Court rejected defendant's argument on the grounds that defendant's counsel was licensed in the state of New York at the time he represented defendant and there was no statute, court order, or New York Rule of Professional Conduct affirmatively requiring defendant's counsel to disclose his suspension or pending disciplinary proceeding to defendant.¹⁸

In *People v. Dawson*, defendant argued that he was interrogated by the police in violation of his right to counsel.¹⁹ The Court reasoned that defendant's "inquiries and demeanor suggested a conditional interest in speaking with an attorney only if it would not otherwise delay his clearly-expressed wish to speak to the police."²⁰ As such, the Court concluded that defendant did not "unequivocally invoke his right to counsel while in custody."²¹

In *People v. Shanks*, defendant argued that the trial court erred in concluding that defendant's conduct with counsel was so egregious as to constitute a forfeiture of the right to counsel.²² The Court agreed with defendant and overturned his conviction on the grounds that although defendant had a raised voice and exhibited a lack of cooperation with his various counsel, there was no evidence in the record that defendant made threats or engaged in other abusive conduct towards his attorneys.²³

17. *People v. Burgos*, 185 N.E.3d 497, 499 (N.Y. 2022).

18. *Id.* at 503. "[A]ttorneys who are the subject of disciplinary proceedings, including reciprocal disciplinary proceedings, are entitled to due process, which includes notice and an opportunity to be heard." *Id.* at 502 (internal citations omitted). Pending reciprocal disciplinary proceedings are confidential until they are concluded. *Id.* at 503 (citing N.Y. JUD. LAW § 90(10) (McKinney 2022)).

19. *People v. Dawson*, 190 N.E.3d 1151, 1152 (N.Y. 2022).

20. *Id.* "Once a defendant in custody unequivocally requests the assistance of counsel, the right to counsel may not be waived outside the presence of counsel." *Id.* at 1151 (citing *People v. Glover*, 661 N.E.2d 155, 156 (N.Y. 1995)). "But a suggestion that counsel might be desired; a notification that counsel exists; or a query as to whether counsel ought to be obtained will not suffice to unequivocally invoke the indelible right to counsel." *Id.* (quoting *People v. Mitchell*, 810 N.E.2d 879, 882 (N.Y. 2004)) (first citing *People v. Fridman*, 522 N.E.2d 1035, 1036 (N.Y. 1988); then citing *People v. Hicks*, 509 N.E.2d 343, 343 (N.Y. 1987)) (internal quotation marks and brackets omitted). "Furthermore, whether a particular request is or is not unequivocal is a mixed question of law and fact that must be determined with reference to the circumstances surrounding the request including the defendant's demeanor, manner of expression and the particular words found to have been used by the defendant." *Id.* at 1152 (quoting *Glover*, 661 N.E.2d at 156) (internal quotation marks and brackets omitted).

21. *Dawson*, 190 N.E.3d at 1152.

22. *People v. Shanks*, 176 N.E.3d 682, 688–89 (N.Y. 2021).

23. *Id.* at 689–90. "[E]gregious conduct by a defendant can lead to a deemed forfeiture of the fundamental right to counsel, but only as a matter of extreme, last-

In *People v. Duarte*, defendant argued that the trial court erred by failing to make judicial inquiry as to defendant's request for self-representation based on defendant's statement as follows: "I would love to go pro se."²⁴ The Court held that defendant's equivocal statement did "not reflect a definitive commitment to self-representation that would trigger a searching inquiry by the trial court."²⁵

IV. EVIDENCE

In *People v. Deverow*, defendant argued that the trial court's erroneous evidentiary rulings to preclude certain evidence offered by the defendant in support of his justification defense deprived defendant of his constitutional right to present a defense.²⁶ The Court determined that the evidence at issue was not extrinsic evidence on a collateral matter solely used to impeach credibility because the evidence was "clearly probative of [a] witness's ability to accurately recall or to observe the details of the relevant event. . . ."²⁷ In overturning defendant's conviction, the Court also held that the trial court erred in excluding certain admissible evidence consisting of three 911 calls under the present sense impression exception to the hearsay rule.²⁸

In *People v. Guevara*, defendant argued that the trial court erred by admitting expert testimony at trial based on a psychiatric

resort . . . analysis. . . . There can also be forfeiture of the right to counsel without assault or other physical aggression. Threatening or verbally abusive conduct may be sufficient. A defendant may forfeit the right to counsel because of a persistent course of egregious conduct toward successive assigned counsel, consisting of threats and other abusive behavior." *Id.* at 688–89 (internal citations, quotation marks, and brackets omitted).

24. *People v. Duarte*, 183 N.E.3d 1205, 1206 (N.Y. 2022).

25. *Id.* (internal citations, quotation marks, and brackets omitted).

26. *People v. Deverow*, 190 N.E.3d 1161, 1164 (N.Y. 2022). "Criminal defendants must be afforded 'a meaningful opportunity to present a complete defense.'" *Id.* at 1167 (quoting *Crane v. Kentucky*, 476 U.S. 683, 690 (1986)). "This fundamental right is guaranteed by the Due Process Clause of the Fourteenth Amendment and the Compulsory Process and Confrontation Clauses of the Sixth Amendment." *Id.*

27. *Deverow*, 190 N.E.3d, 1161, 1167 (N.Y. 2022) (quoting *People v. Jenkins*, 501 N.E.2d 586, 586–87 (N.Y. 1986)).

28. *Id.* at 1168. "The present sense impression exception to the hearsay rule applies to statements that are (1) made by a person perceiving the event as it is unfolding or immediately afterward and (2) corroborated by independent evidence establishing the reliability of the contents of the statement. Descriptions of events made by a person who is perceiving the event as it is unfolding are deemed reliable . . . because the contemporaneity of the communication minimizes the opportunity for calculated misstatement as well as the risk of inaccuracy from faulty memory." *Id.* (internal citations, quotation marks, and brackets omitted).

examination of defendant at which defense counsel was not allowed be present.²⁹ The Court reasoned that a pretrial psychiatric examination was a “critical stage of the prosecution” and, as such, precluding defense counsel from attending said examination violated defendant’s right to counsel resulting in reversible error.³⁰

In *People v. Huertas*, defendant argued that the trial court erred by reserving its decision on the People’s pre-trial *Molineux* application until after defendant’s testimony, so that the trial court could determine whether, and to what extent, defendant opened the door to such inquiry.³¹ The testimony at issue sought to cross-examine defendant regarding the underlying facts of his prior gun-related convictions.³² The Court held that the trial court did not abuse its discretion and that any error that may have occurred was harmless.³³

In *People v. Rodriguez*, defendant argued that certain screenshots of text messages containing sexual content were not properly authenticated prior to being admitted into evidence by the trial court.³⁴ The Court rejected defendant’s argument on the grounds that a witness to the conversation with defendant testified that the screenshots offered by the prosecution “fairly and accurately represented text messages sent to and from defendant’s phone.”³⁵

29. *People v. Guevara*, 174 N.E.3d 1240, 1240 (N.Y. 2021).

30. *Id.* at 1240–41. “[A] defendants’ Sixth Amendment right to counsel applies at pre-trial psychiatric examinations to make more effective a defendant’s basic right of cross-examination. . . . [A] critical stage of the prosecution . . . [is] any stage of the prosecution, formal or informal, in court or out, where the presence of his counsel is necessary to preserve the defendant’s basic right to a fair trial as affected by his right meaningfully to cross-examine the witnesses against him and to have effective assistance of counsel at the trial itself.” *Id.* at 1241 (internal citations and quotation marks omitted).

31. *People v. Huertas*, 192 N.E.3d 1139, 1140 (N.Y. 2022).

32. *Id.*

33. *Id.*

34. *People v. Rodriguez*, 190 N.E.3d 36, 37 (N.Y. 2022).

35. *Id.* at 38. “Technologically generated documentation is ordinarily admissible under standard evidentiary rubrics and this type of ruling may be disturbed by this Court only when no legal foundation has been proffered or when an abuse of discretion as a matter of law is demonstrated. . . . [F]or digital photographs, like traditional photographs, the proper foundation may be established through testimony that the photograph accurately represents the subject matter depicted.” *Id.* (first citing *People v. Patterson*, 710 N.E.2d 665, 667 (N.Y. 1999); then citing *People v. Price*, 80 N.E.3d 1005, 1009 (N.Y. 2017) (internal citations, quotations and brackets omitted).

In *People v. Powell*, defendant argued that the trial court erred by denying defendant's request to admit expert testimony on false confessions after holding a *Frye* and *Huntley* hearing.³⁶ The Court rejected defendant's argument on the grounds that the proffered testimony would not have aided the jury.³⁷ The Court reasoned that, although defendant's expert was properly qualified by the trial court as an expert in the field, the expert's testimony at the *Frye* hearing revealed difficulty in linking research on the possible causes of false confessions to the case at bar and, as such, failed to explain how the expert's testimony was relevant to the circumstances presented by defendant's interrogation.³⁸

In *People v. Romualdo*, the People appealed the dismissal of an indictment on the grounds of insufficient evidence; to wit: the Appellate Division concluded that "the People presented no evidence placing the defendant at or near the scene of the crime, or linking him in any way to the victim, during the critical time frame in which the murder was believed to have occurred."³⁹ The Court upheld defendant's conviction on the grounds that "a rational jury could have inferred from the medical evidence presented at trial that the victim was sexually assaulted immediately prior to her death."⁴⁰

In *People v. Easley*, defendant argued that the trial court abused its discretion by admitting at trial the results of a DNA analysis conducted using the Forensic Statistical Tool without first holding a *Frye* hearing.⁴¹ Although the Court agreed that the same error was abuse of discretion, the Court upheld the conviction on the grounds that evidence of defendant's guilt was overwhelming.⁴²

In *People v. Wakefield*, defendant argued that the trial court erred in admitting certain DNA mixture interpretation evidence generated by the TrueAllele Casework System.⁴³ The Court rejected defendant's

36. *People v. Powell*, 182 N.E.3d 1028, 1031 (N.Y. 2021).

37. *Id.*

38. *Id.* at 1039.

39. *People v. Romualdo*, 178 N.E.3d 451, 452 (N.Y. 2021).

40. *Id.* In evaluating whether sufficient evidence exists to support the jury's verdict, the court must consider reasonable inferences from the evidence and view them "in the People's favor." *Id.* (quoting *People v. Carr-El*, 784 N.E.2d 71, 72 (N.Y. 2002)).

41. *People v. Easley*, 188 N.E.3d 586, 587 (N.Y. 2022).

42. *Id.* Harmless error occurs when "there is no significant probability that the jury would have acquitted defendant had it not been for this error." *Id.* (internal citations omitted).

43. *People & C v. Wakefield*, 195 N.E.3d 19, 21 (N.Y. 2022).

argument as, following a *Frye* hearing, it was determined that TrueAllele's use of the continuous probabilistic genotyping approach to generate a statistical likelihood ratio—including the use of peak data below the stochastic threshold—of a DNA genotype is generally accepted in the relevant scientific community.⁴⁴ The Court also rejected defendant's argument for error based on the trial court's denial of defendant's request for discovery of the TrueAllele software source code in connection with the *Frye* hearing for the purpose of his Sixth Amendment right to confront the witness against him at trial.⁴⁵

V. JURY TRIAL AND INSTRUCTION

In *People v. Williams*, defendant argued that the trial court erred by using a visualizer to simultaneously display the corresponding text of the law and relevant definitions requested by the jury during a read-back absent the parties' consent as required by CPL section 310.30.⁴⁶ The Court rejected defendant's argument on the grounds that “the jurors viewed the projected instructions under the court's supervision, with defense counsel present, in open court.”⁴⁷

In *People v. Wilkins*, defendant, having explicitly waived his *Antommarchi* right to be present at sidebars in the middle of the voir dire proceeding involving a prospective juror, who was ultimately struck when the co-defendant exercised a peremptory strike, argued that he was entitled to a new trial based on defendant's absence from a pre-waiver sidebar conference with that same prospective juror.⁴⁸ The

44. *Id.*

45. *Id.*

46. *People v. Williams*, 177 N.E.3d 1283, 1284 (N.Y. 2021). “Requests for information by a deliberating jury are governed by CPL 310.30. Juries are permitted to request further instruction or information with respect to the law, with respect to the content or substance of any trial evidence, or with respect to any other matter pertinent to the jury's consideration of the case. Upon such request, the court must first give notice to both the People and defense counsel, return the jury to the courtroom, and give the instruction in the presence of defendant (CPL 310.30). When the jury requests further instruction with respect to a statute, the court may also give to the jury copies of the text of any statute, but only with the consent of the parties. Giving copies of statutory text to jurors without the agreement of counsel is error that cannot be deemed harmless and requires reversal of the conviction.” *Id.* at 1285 (internal citations and quotation marks omitted); see N.Y. CRIM. PROC. LAW § 310.30 (McKinney 2022).

47. *Williams*, 177 N.E.3d at 1287.

48. *People v. Wilkins*, 179 N.E.3d 646, 648 (N.Y. 2021). “When a defendant is not present at a sidebar conference wherein the court actively solicits answers from a prospective juror which relate to issues of bias or hostility, [*Antommarchi*] requires

Court rejected defendant's argument.⁴⁹ Although defendant's protest at the trial court level is generally not required, the Court held that the issue presented "required defendant's protest in the trial court given his acquiescence in the post-waiver voir dire of the prospective juror after being invited to express any objection that he may have had regarding the pre-waiver sidebar conference."⁵⁰

VI. SEARCH AND SEIZURE

In *People v. Walls*, defendant argued that the prosecution failed to establish the reliability of a tip, which was the sole justification for the police to effectuate a vehicle and traffic stop of defendant's car.⁵¹ The Court agreed with defendant and ordered suppression.⁵² Key to the Court's reasoning was the fact that the People offered no relevant information regarding the circumstances surrounding the tip at the suppression hearing, to wit: failed to introduce the 911 call; failed to establish whether the 911 caller was an identified citizen, informant, or an anonymous tipster; and failed to offer any evidence or explanation of the basis of the caller's knowledge.⁵³

In *People v. Ibarguen*, defendant appealed the trial court's denial of his motion to suppress physical evidence recovered from a search of defendant's residence pursuant to a warrant.⁵⁴ The Court rejected defendant's argument pursuant to CPL Section 710.60 on the grounds that the search and seizure allegations in defendant's motion papers were insufficient to warrant a hearing.⁵⁵

a new trial in the absence of defendant's waiver of the right to be present." *Id.* (citing *People v. Antommarchi*, 604 N.E.2d 95, 97 (N.Y. 1992)). "The purpose of the *Antommarchi* rule, as derived from CPL 260.20, is to provide defendant the opportunity to personally assess the juror's facial expressions and demeanor in order to provide meaningful input on the prospective juror's retention or exclusion from the jury." *Id.*; see N.Y. CRIM. PROC. LAW § 260.20 (McKinney 2022).

49. *Wilkins*, 179 N.E.3d at 648.

50. *Id.*

51. *People v. Walls*, 173 N.E.3d 1146, 1146–47 (N.Y. 2021). "[A] vehicle stop in New York is legal when there exists at least a reasonable suspicion that the driver or occupants of the vehicle have committed, are committing, or are about to commit a crime." *Id.* at 1146 (internal citations and quotation marks omitted).

52. *Id.* at 1147.

53. *Id.*

54. *People v. Ibarguen*, 178 N.E.3d 917, 917–18 (N.Y. 2021).

55. *Id.* at 917. "CPL 710.60(1) requires that a motion for suppression of physical evidence must state the ground or grounds of the motion and must contain sworn allegations of fact. CPL 710.60(3) permits summary denial of a suppression motion

In *People v. Blandford*, defendant challenged the denial of his motion to suppress contraband found when the police conducted a canine sniff search of defendant's vehicle exterior during a stop predicated on the observation of traffic violations.⁵⁶ The Court rejected defendant's argument on the grounds that the observations made by police, prior to and during the stop, gave the police the necessary founded suspicion that criminal activity was occurring.⁵⁷ Key to the Court's determination was the fact that defendant did not contest the legality of the traffic stop.⁵⁸

In *People v. Wortham*, defendant argued that while he was in custody, the police illegally obtained pedigree information from him in violation of his *Miranda* rights including his name, date of birth, address, height, and weight.⁵⁹ The Court determined that the pedigree exception to *Miranda* applied and, as such, no *Miranda* warnings were required before the police asked defendant for the same information.⁶⁰

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.

where the motion papers do not provide adequate sworn allegations of fact.” *Id.* at 917; see N.Y. CRIM. PROC. LAW § 710.60 (McKinney 2022).

56. *People v. Blandford*, 176 N.E.3d 1043, 1043–44 (N.Y. 2021).

57. *Id.* at 1044. “A canine sniff search of a vehicle’s exterior is lawful if police possess a founded suspicion that criminal activity is afoot. Determinations regarding the existence of a founded suspicion of criminality involve mixed questions of law and fact. Therefore, [the Court’s] review is limited to whether there is evidence in the record supporting the lower courts’ determinations.” *Id.* at 1043–44 (internal citations and quotation marks omitted).

58. *Id.* at 1043.

59. *People v. Wortham*, 180 N.E.3d 516, 520 (N.Y. 2021). “The primary purpose of *Miranda* is to protect defendants from self-incrimination in response to questions posed as part of the investigation of a crime. The police are entitled to make a reasonable inquiry as to the identity of the person they have taken into custody. As a result, when a defendant challenges the application of the pedigree exception, the proper inquiry for the suppression court is whether the police used pedigree questions as a guise for improperly conducting an investigative inquiry without first providing *Miranda* warnings. *Id.* at 522 (internal citations, quotation marks, and brackets omitted).

60. *Id.* at 522–23.

A. Criminal Procedure Law

CPL Section 220.10, et. seq., was amended in relation to pleas of guilty and removal of adolescent offender proceedings to family court.⁶¹

CPL Section 570.17, et. seq., was amended in relation to protection of abortion service providers.⁶²

CPL Section 440.10, et. seq., was amended in relation to vacating convictions for offenses resulting from sex trafficking, labor trafficking, and compelling prostitution,⁶³ as well as in relation to claims of ineffective assistance of counsel in post-conviction motions.⁶⁴

CPL Section 216.00, et. seq., was amended in relation to a judicial diversion program for certain felony offenders.⁶⁵

CPL Section 60.49, et. seq., was amended in relation to the possession of opioid antagonists.⁶⁶

CPL Section 380.50, et. seq., was amended in relation to notifying victims of crimes electronically.⁶⁷

CPL Section 725.05, et. seq., was amended in relation to consideration for adjustment by the probation service.⁶⁸

CPL Section 720.20, et. seq., was amended in relation to the determination of youthful offender status.⁶⁹

61. See Act of December 29, 2021, 2021 McKinney's Sess. Laws of N.Y., ch. 809, at §§ 1–5 (codified at N.Y. CRIM. PROC. LAW §§ 220.10, 725.10 (McKinney 2022)).

62. See Act of June 13, 2022, 2022 McKinney's Sess. Laws of N.Y., ch. 219, at §§ 1–2 (codified at N.Y. CRIM. PROC. LAW §§ 570.17, 140.10 (McKinney 2022); N.Y. C.P.L.R. 3119, 3102 (McKINNEY 2022)).

63. See Act of Nov. 16, 2021, 2021 McKinney's Sess. Laws of N.Y., ch. 629, at §§ 1–2 (codified at N.Y. CRIM. PROC. LAW § 440.10 (McKinney 2022)).

64. See Act of Oct. 25, 2021, 2021 McKinney's Sess. Laws of N.Y., ch. 501, at §§ 1–2 (codified at N.Y. CRIM. PROC. LAW § 440.10 (McKinney 2022)).

65. See Act of Oct. 7, 2021, 2021 McKinney's Sess. Laws of N.Y., ch. 435, at §§ 1–4 (codified at N.Y. CRIM. PROC. LAW §§ 216.00, 216.05 (McKinney 2022)).

66. See Act of Oct. 7, 2021, 2021 McKinney's Sess. Laws of N.Y., ch. 431, at §§ 1–5 (codified at N.Y. CRIM. PROC. LAW § 60.49 (McKinney 2022); N.Y. C.P.L.R. 4519-a (McKINNEY 2022); N.Y. EXEC. LAW §§ 214-g, 841 (McKinney 2022)).

67. See Act of July 1, 2021, 2021 McKinney's Sess. Laws of N.Y., ch. 210, at §§ 1–2 (codified at N.Y. CRIM. PROC. LAW § 380.50 (McKinney 2022)).

68. See Act of Mar. 18, 2022, 2022 McKinney's Sess. Laws of N.Y., ch. 159, at §§ 1–2 (codified at N.Y. CRIM. PROC. LAW § 725.05 (McKinney 2022)).

69. See Act of Nov. 2, 2021, 2021 McKinney's Sess. Laws of N.Y., ch. 552, at §§ 1–2 (codified at N.Y. CRIM. PROC. LAW § 720.20 (McKinney 2022)).

CPL Section 380.55, et. seq., was amended in relation to streamlining the assignment of appellate counsel for indigent criminal defendants.⁷⁰

CPL Section 340.40, et. seq., was amended in relation to the right of a defendant who has entered a plea of not guilty to an information which charges a misdemeanor to a jury trial.⁷¹

CPL Section 410.10, et. seq., was amended in relation to bona fide work not being considered a parole violation.⁷²

CPL Section 510.15, et. seq., was amended in relation to juvenile delinquency charges of violations in the family court.⁷³

B. Penal Law

PL Section 170.00, et seq., was added in relation to making the falsification of COVID–19 vaccination records a crime.⁷⁴

PL Section 265, et. seq., was added/amended in relation to as follows: the Jose Webster untraceable firearms act;⁷⁵ the “Scott J. Beigel unfinished receiver act” in relation to unfinished frames or receivers;⁷⁶ the definition of large capacity ammunition feeding device for purposes of the offense of criminal possession of a weapon in the third degree and Section 265.36 of the PL relating to unlawful possession of a large capacity ammunition feeding device;⁷⁷ the purchase or

70. See Act of Nov. 15, 2021, 2021 McKinney’s Sess. Laws of N.Y., ch. 616, at §§ 1–2 (codified at N.Y. CRIM. PROC. LAW § 380.55 (McKinney 2022)).

71. See Act of Dec. 29, 2021, 2021 McKinney’s Sess. Laws of N.Y., ch. 806, at §§ 1–2 (codified at N.Y. CRIM. PROC. LAW § 340.40 (McKinney 2022)).

72. See Act of Oct. 22, 2021, 2021 McKinney’s Sess. Laws of N.Y., ch. 487, at §§1–5 (codified at N.Y. CRIM. PROC. LAW § 410.10 (McKinney 2022); N.Y. CORRECT. LAW §§ 209, 274 (McKinney 2022); N.Y. EXEC. § 259-1 (McKinney 2022)).

73. See Act of Dec. 29, 2021, 2021 McKinney’s Sess. Laws of N.Y., ch. 813, at §§ 1–13 (codified at N.Y. FAM. CT. ACT §§ 301.2, 302.1, 304.1, 308.1, 315.3, 320.6, 345.1, 350.1, 352.2, 360.3, 375.2 (McKinney 2022); N.Y. CRIM. PROC. LAW § 510.15 (McKinney 2022)).

74. See Act of Dec. 22, 2021, 2021 McKinney’s Sess. Laws of N.Y., ch. 784, at §§1–3 (codified at N.Y. PENAL LAW §§ 170.00, 156.25 (McKinney 2022)); see also See Act of Feb. 24, 2022, 2022 McKinney’s Sess. Laws of N.Y., ch. 24, at A. 8700 (codified at N.Y. PENAL LAW § 156.25 (McKinney 2022)).

75. See Act of Oct. 28, 2021, 2021 McKinney’s Sess. Laws of N.Y., ch. 520, at §§ 1–6 (codified at N.Y. PENAL LAW §§ 265.00–.01, .07, .60, .61 (McKinney 2022)).

76. See Act of Oct. 28, 2021, 2021 McKinney’s Sess. Laws of N.Y., ch. 519, at §§ 1–4 (codified at N.Y. PENAL LAW §§ 265.00, .01, .63, .64 (McKinney 2022)).

77. See Act of June 6, 2022, 2022 McKinney’s Sess. Laws of N.Y., ch. 209, at §§ 1–4 (codified at N.Y. PENAL LAW §§ 265.00, .02, .36 (McKinney 2022)).

taking possession of a semiautomatic rifle;⁷⁸ requiring semiautomatic pistols sold in this state be verified as a microstamping-enabled pistol and amending the executive law in relation to requiring the division of criminal justice services to certify the viability of microstamping-enabled pistols;⁷⁹ redefining the term, disguised gun, to include any rifle, pistol, shotgun or machine-gun resembling a toy gun and prohibiting the possession, manufacture or design thereof;⁸⁰ redefining the term firearm;⁸¹ redefining the term disguised gun to include any firearm resembling a toy gun and prohibiting the possession, manufacture or design thereof;⁸² the purchase and disposal of firearms, rifles and shotguns;⁸³ and preventing the unlawful sale of firearms, rifles, and shotguns to individuals with a criminal record.⁸⁴

PL Section 135.60, et. seq., was added to address extortion or coercion related to immigration status.⁸⁵

PL Section 240.78, et. seq., was added to establishing the crimes of making a threat of mass harm and aggravated threat of mass harm.⁸⁶

PL Section 190.25, et. seq., was added in relation to impersonating another by using another's electronic signature.⁸⁷

78. See Act of June 6, 2022, 2022 McKinney's Sess. Laws of N.Y., ch. 212, at §§ 1–8 (codified at N.Y. PENAL LAW §§ 400.00–.01, 265.00, 265.10, 265.65–.66 (McKinney 2022)).

79. See Act of June 6, 2022, 2022 McKinney's Sess. Laws of N.Y., ch. 205, at §§ 1–5 (codified at N.Y. PENAL LAW § 265.00, .10, .38 (McKinney 2022); N.Y. EXEC. LAW § 837-w (N.Y. 2022)).

80. See Act of Oct. 28, 2021, 2021 McKinney's Sess. Laws of N.Y., ch. 518, at §§ 1–3 (codified at N.Y. PENAL LAW §§ 265.00, .10 (McKinney 2022)).

81. See Act of June 6, 2022, 2022 McKinney's Sess. Laws of N.Y., ch. 211, at §§ 1–2 (codified at N.Y. PENAL LAW § 265.00 (McKinney 2022)).

82. See Act of Feb. 24, 2022, 2022 McKinney's Sess. Laws of N.Y., ch. 112, at §§ 1–3 (codified at N.Y. PENAL LAW §§ 265.00, .10 (McKinney 2022)).

83. See Act of July 6, 2021, 2021 McKinney's Sess. Laws of N.Y., ch. 236, at §§ 1–2 (codified at N.Y. PENAL LAW § 265.17 (McKinney 2022)).

84. See Act of June 6, 2022, 2022 McKinney's Sess. Laws of N.Y., ch. 207, at §§ 1–5 (codified at N.Y. EXEC. LAW § 230 (McKinney 2022); N.Y. GEN. BUS. LAW §§ 875-a–i (McKinney 2022); N.Y. PENAL LAW § 400.00 (McKinney 2022)).

85. See Act of Oct. 8, 2021, 2021 McKinney's Sess. Laws of N.Y., ch. 447, at §§ 1–3 (codified at N.Y. PENAL LAW §§ 135.60, 155.05 (McKinney 2022)).

86. See Act of June 6, 2022, 2022 McKinney's Sess. Laws of N.Y., ch. 206, at §§ 1–2 (codified at N.Y. PENAL LAW §§ 240.78–.79 (McKinney 2022)).

87. See Act of Dec. 22, 2021, 2021 McKinney's Sess. Laws of N.Y., ch. 739, at §§ 1–2 (codified at N.Y. PENAL LAW § 190.25 (McKinney 2022)).

PL Section 265.01, et. seq., was amended in relation to criminalizing the sale of ghost guns.⁸⁸

PL Section 270.21, et. seq., was amended in relation to the unlawful purchase and unlawful sale or delivery of a body vest.⁸⁹

PL Section 135.60, et. seq., was amended in relation to coercion in the third degree.⁹⁰

PL Section 270.40, et. seq., was amended in relation to unlawfully installing a gas meter.⁹¹

PL Section 220.03, et. seq., was amended in relation to criminal possession of a controlled substance in the seventh degree and PL Section 220.45 relating to criminally possessing a hypodermic instrument was repealed.⁹²

PL Section 70.40, et. seq., was amended in relation to revocation of community supervision.⁹³

PL Section 30.00, et. seq., was amended in relation to pleas of guilty and removal of adolescent offender proceedings to the family court.⁹⁴

PL Section 120.05, et. seq., was amended in relation to assaults upon certain employees of a transit agency or authority.⁹⁵

PL Section 400.00, et. seq., was amended in relation to authorizing certain health care providers to file an application for an extreme

88. See Act of Mar. 18, 2022, 2022 McKinney's Sess. Laws of N.Y., ch. 149, at §§ 1–3 (codified at N.Y. PENAL LAW §§ 265.01, .07 (McKinney 2022)).

89. See Act of June 6, 2022, 2022 McKinney's Sess. Laws of N.Y., ch. 210, at §§ 1–4 (codified at N.Y. PENAL LAW §§ 270.21–.22 (McKinney 2022); N.Y. GEN. BUS. LAW § 396-eee (McKinney 2022); N.Y. EXEC. LAW 144-a (McKinney 2022)).

90. See Act of Oct. 20, 2021, 2021 McKinney's Sess. Laws of N.Y., ch. 484, at §§ 1–2 (codified at N.Y. PENAL LAW § 135.60 (McKinney 2022)).

91. See Act of July 16, 2021, 2021 McKinney's Sess. Laws of N.Y., ch. 274, at §§ 1–2 (codified at N.Y. PENAL LAW § 270.40 (McKinney 2022)).

92. See Act of Oct. 7, 2021, 2021 McKinney's Sess. Laws of N.Y., ch. 433, at §§ 1–5 (codified at N.Y. PENAL LAW § 220.03 (McKinney 2022); N.Y. GEN. BUS. LAW § 850 (McKinney 2022); N.Y. PUB. HEALTH LAW § 3381 (McKinney 2022)).

93. See Act of Sept. 17, 2021, 2021 McKinney's Sess. Laws of N.Y., ch. 427, at §§ 1–10 (codified at N.Y. EXEC. LAW §§ 259, 259-i (McKinney 2022); N.Y. PENAL LAW §§ 70.40, .45 (McKinney 2022)).

94. See Act of Dec. 29, 2021, 2021 McKinney's Sess. Laws of N.Y., ch. 809, at §§ 1–5 (codified at N.Y. PENAL LAW § 30.00 (McKinney 2022); N.Y. CRIM. PRO. LAW §§ 220.10, 725.05, 725.10 (McKinney 2022)).

95. See Act of June 27, 2022, 2022 McKinney's Sess. Laws of N.Y., ch. 233, at §§ 1–2 (codified at N.Y. PENAL LAW § 120.05 (McKinney 2022)).

risk protection order against a person who was examined by such health care provider in certain circumstances.⁹⁶

C. Vehicle & Traffic Law

VTL Section 226, et, seq., was amended in relation to the suspension of a license to drive a motor vehicle or motorcycle.⁹⁷

VTL Section 492, et, seq., was amended in relation to eliminating noting an address change on driver licenses and nondriver identification cards.⁹⁸

VTL Section 101, et, seq., was amended in relation to designating human organ delivery vehicles as authorized emergency vehicles.⁹⁹

VTL Section 223-a, et, seq., was amended in relation to the illegal passing of school buses.¹⁰⁰

VTL Section 402, et, seq., was amended in relation to penalties for purposefully obstructed license plates.¹⁰¹

VTL Section 251, et, seq., was amended in relation to exempting certain members of the armed forces and dependents to operate a motor vehicle or motorcycle on the public highways of this state without being licensed in New York.¹⁰²

VTL Section 503, et, seq., was amended in relation to the period for which commercial learner's permits are valid.¹⁰³

96. See Act of June 6, 2022, 2022 McKinney's Sess. Laws of N.Y., ch. 208, at §§ 1–8 (codified at N.Y. C.P.L.R. 6340–41, 6348 (McKinney 2022); N.Y. EXEC. LAW § 214-h, 840 (McKinney 2022); N.Y. PENAL LAW § 400.00 (McKinney 2022); N.Y. MENTAL HYG. § 9.46 (McKinney 2022)).

97. See Act of Dec. 21, 2021, 2021 McKinney's Sess. Laws of N.Y., ch. 713, at §§ 1–5 (codified at N.Y. VEH. & TRAF. LAW §§ 226, 510, 514, 1802 (McKinney 2022)).

98. See Act of June 30, 2022, 2022 McKinney's Sess. Laws of N.Y., ch. 317, at §§ 1–3 (codified at N.Y. VEH. & TRAF. LAW §§ 492, 505 (McKinney 2022)).

99. See Act of Oct. 25, 2021, 2021 McKinney's Sess. Laws of N.Y., ch. 496, at §§ 1–4 (codified at N.Y. VEH. & TRAF. LAW §§ 101, 114-b, 117-e (McKinney 2022)).

100. See Act of Oct. 29, 2021, 2021 McKinney's Sess. Laws of N.Y., ch. 536, at § 1–5 (codified at N.Y. VEH. & TRAF. LAW §§ 223-a, 1809 (McKinney 2022); N.Y. EDUC. LAW § 3650 (McKinney 2022); N.Y. STATE FIN. § 89-j (McKinney 2022)).

101. See Act of Nov. 8, 2021, 2021 McKinney's Sess. Laws of N.Y., ch. 451, at §§ 1–2 (codified at N.Y. VEH. & TRAF. LAW § 402 (McKinney 2022)).

102. See Act of Oct. 8, 2021, 2021 McKinney's Sess. Laws of N.Y., ch. 454, at §§ 1–2 (codified at N.Y. VEH. & TRAF. LAW § 251 (McKinney 2022)).

103. See Act of June 30, 2022, 2022 McKinney's Sess. Laws of N.Y., ch. 309, at §§ 1–2 (codified at N.Y. VEH. & TRAF. LAW § 503 (McKinney 2022)).

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VTL Section 508, et, seq., was amended in relation to enabling veterans and reservists to receive benefit information upon applying for or renewing a driver's license.¹⁰⁴

104. See Act of Nov. 11, 2021, 2021 McKinney's Sess. Laws of N.Y., ch. 602, at §§ 1–3 (codified at N.Y. VEH. & TRAF. LAW § 508 (McKinney 2022); N.Y. EXEC. LAW § 354-a (McKinney 2022)).