# CRIMINAL LAW

**David E. Zukher**[†]



## INTRODUCTION

This *Survey* covers case law decisions in the field of New York criminal law and procedure during the period of June 30, 2023 to July 1, 2024. 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

[†] David E. Zukher, Esq. is admitted to practice law in New York and North Carolina. Mr. Zukher is the Managing Partner of Weisberg & Zukher, PLLC, a private practice firm focusing on criminal law and general civil litigation. He received his J.D. from Syracuse University College of Law graduating, *magna cum laude*, in May 1999. Mr. Zukher served as a member of the *Syracuse Law Review* in 1998 and as an Executive Editor in 1999. He is a member of the Justinian Honorary Law Society and the Order of the Coif, as well as the recipient of the Robert M. Anderson Publication Award and the Law Review Distinguished Service Award. Mr. Zukher was selected for membership into The National Trial Lawyers: Top 100 Criminal Defense Trial Lawyers for the year 2016. Mr. Zukher gratefully recognizes and acknowledges the contributions of his law clerk, Ms. Karla R. Pavese, Esq.; his summer associate, Mrs. Iman Smail, and Yana Zukher, Esq., whose tireless efforts, assistance, and perseverance made this work possible.

criminal procedure law (hereinafter "CPL"), and the vehicle and traffic law (hereinafter "VTL").

## I. ASSISTANCE OF COUNSEL

In *People v. Lucas*, the defendant argued that his attorney's failure to impeach a detective with his suppression hearing testimony, wherein the detective testified that he was unsure if the defendant was the perpetrator, amounted to ineffective assistance of counsel.[1] The Court rejected a review of the defendant's appeal, as the same required consideration of matters outside the record, specifically, whether the choice made by counsel to not cross-examine was, in fact, trial strategy.[2] Accordingly, the Court held that "[t]he lack of an adequate record bars review on direct appeal wherever the record falls short of establishing conclusively the merit of the defendant's claim."[3]

In *People v. Debellis*, the defendant argued ineffective assistance of counsel on the grounds that defense counsel failed to request a jury instruction on the defense of voluntary surrender.[4] The Court concluded that defense counsel failed to request a jury charge "on the only defense supported by the trial testimony, instead seeking (and failing to obtain) a charge foreclosed by the trial testimony."[5] As such, the Court ordered a remand and a new trial.[6]

In *People v. Watkins*, the defendant argued that his counsel's failure to request a cross-racial identification charge amounted to ineffective assistance of counsel.[7] The Court concluded that, at the time of

1. *See* People v. Lucas, 250 N.E.3d 1169, 1169 (N.Y. 2024).

2. *See id.* at 1171.

3. *Id.* (quoting People v. Lopez-Mendoza, 130 N.E.3d 862, 867 (N.Y. 2019)).

4. *See* People v. Debellis, 225 N.E.3d 859, 860 (N.Y. 2023). "In New York, the standard for effective assistance is 'meaningful representation' by counsel. Our standard is more protective than the Federal standard because 'even in the absence of a reasonable probability of a different outcome, the inadequacy of counsel will still warrant reversal whenever a defendant is deprived of a fair trial.' To establish ineffective assistance, a defendant must 'demonstrate the absence of strategic or other legitimate explanations' for counsel's allegedly deficient conduct." *Id.* at 862 (first quoting People v. Benevento, 697 N.E.2d 584, 585 (N.Y. 1998); then quoting People v. Caban, 833 N.E.2d 213, 222 (N.Y. 2005); then quoting People v. Rivera, 525 N.E.2d 698, 700 (N.Y. 1988)).

5. *Id.* at 860.

6. *See id.*

7. *See* People v. Watkins, 42 N.Y.3d 635, 637 (N.Y. 2024). "[The cross-racial identification instruction] is now mandatory upon request 'when identification is an issue in a criminal case and the identifying witness and defendant appear to be of different races,' in light of the higher 'likelihood of misidentification' and the 'significant disparity between what the psychological research shows and what

the defendant's trial, defendant was not entitled to said charge upon request; rather, said jury charge (now mandatory) was discretionary.[8] As such, the Court reasoned that defense counsel's single failure to request the same charge did not rise to ineffective assistance of counsel.[9]

## II. DISCOVERY

In *People v. Bay*, the defendant argued that the People filed a certificate of compliance (COC) without disclosing key evidentiary items, including a police report and a 911 call recording, and, as such, that the People's declaration of trial readiness was illusory.[10] Because the belated disclosure by the People consisted of "routinely produced disclosure materials" that were repeatedly asked for by the defense, the Court reasoned that the People failed to exercise due diligence prior to the filing of the COC and that the COC should have been held improper and stricken as illusory by the trial court.[11]

## III. EVIDENCE

In *People v. Ortega*, the defendant argued that admission into evidence of two autopsy reports through expert witnesses who did not perform the actual autopsies violated his Sixth Amendment right to confrontation, where the defendant was not given the opportunity to cross-examine the medical examiners who actually performed the autopsies.[12] The Court agreed that admission of the autopsy reports into evidence violated the defendant's Sixth Amendment rights, on the grounds that "it is the People's obligation to establish that their testifying experts, who did not perform or observe the relevant autopsy, reached their conclusions themselves based upon a review of the

uninstructed jurors believe' regarding the impact of this cross-race effect." *Id.* (quoting People v. Boone, 91 N.E.3d 1194, 1196, 1198–99 (N.Y. 2017)).

8. *See id*.

9. *See id.*

10. *See* People v. Bay, 232 N.E.3d 168, 170 (N.Y. 2023). Automatic discovery requires disclosure to a defendant of all items and information that relate to the subject matter of the case and are in the possession, custody, or control of the prosecution or persons under the prosecution's direction or control and enumerates multiple categories of material subject to disclosure. *See* N.Y. CRIM. PROC. LAW § 245.20 (McKinney 2003).

11. *See Bay*, 232 N.E.3d at 178–79. "Under the terms of the statute, the key question in determining if a proper COC has been filed is whether the prosecution has 'exercised due diligence and made reasonable inquiries to ascertain the existence of material and information subject to discovery.'" *Id.* at 175 (citing N.Y. CRIM. PROC. LAW § 245.20(2) (McKinney 2003)).

12. *See* People v. Ortega, 227 N.E.3d 302, 304 (N.Y. 2023).

proper materials rather than the conclusions of the performing examiner."[13] However, the Court upheld the defendant's conviction under the harmless error standard, as the defendant argued insanity and did not dispute causing the death of the victim; therefore, the Court concluded that despite the error, evidence of the defendant's guilt was overwhelming.[14]

In *People v. Williams*, the Court considered whether the trial court erred by denying the defendant's motion for an independent source hearing, following a grant of the defendant's motion to suppress an officer's confirmatory identification of the defendant as the person who sold heroin to a third party.[15] Rather than conducting an independent source hearing, the People used the police officer's prior probable cause hearing testimony towards the determination that the police officer had an independent source for his in-court identification of the defendant.[16] The Court reasoned that the trial court lacked a hearing record sufficient for an independent source determination for the identification, reversed the defendant's conviction, and ordered that a new trial be had after an independent source hearing.[17]

In *People v. Sidbury*, the defendant argued that the sanction of preclusion of his psychiatric expert at trial was improperly imposed by the trial court for the defendant's untimely notice of his intent to proffer such psychiatric evidence as mandated by CPL Section 250.10.[18]

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13. *Id.* at 311.

14. *See id.* at 311–12 (citing People v. Crimmins, 326 N.E.2d 787, 790–91 (N.Y. 1975)); People v. Mairena, 144 N.E.3d 340, 347–48 (N.Y. 2019) (explaining that where proof of guilt is overwhelming, the Court will evaluate whether there was a reasonable possibility that the error might have contributed to the defendant's conviction); *see also* People v. Vargas, 245 N.E.3d 1128, 1130 (N.Y. 2024) (holding that erroneous admission of police testimony regarding out-of-court statements by the victim's daughter did not violate the defendant's Sixth Amendment right to confrontation on the grounds that the error was harmless in light of overwhelming evidence of guilt).

15. *See* People v. Williams, 237 N.E.3d 1229, 1232 (N.Y. 2024).

16. *See id.* An impermissible and/or improper pretrial identification may not be received into evidence "without first determining that they were not tainted by the illegal identification but were of independent origin," which is accomplished by holding "a formal pretrial hearing as to independent source." *Id.* at 1233 (first quoting People v. Ballott, 233 N.E.2d 103, 106 (N.Y. 1967); then quoting People v. Burts, 574 N.E.2d 1024, 1024 (N.Y. 1991)).

17. *See id.* at 1231. For the in-court identification to be admissible, the People must have "'an opportunity to prove by clear and convincing evidence' that the in-court identification was based upon observations of the suspect other than the illegal identification." *Id.* at 1233 (quoting *Ballot*, 233 N.E.2d at 107).

18. *See* People v. Sidbury, 248 N.E.3d 735, 737–38 (N.Y. 2024). CPL Section 250.10 provides that notice of intent to use a psychiatric defense should be served

The Court agreed with the defendant and reversed the conviction.[19] The Court reasoned that if the defendant's notice lacked detail, the proper remedy was an adjournment to amend.[20] Also key to the Court's reasoning was the fact that the trial court failed to "balance prejudice to the People resulting from the delayed notice against [the defendant's] constitutional right to present a defense," consider alternatives to cure any prejudice, and consider whether the delay was in good faith.[21]

In *People v. Jordan*, the Court considered whether the admission of DNA evidence by and through a criminalist violated defendant's Sixth Amendment right of confrontation and whether said error was harmless.[22] The Court held that a Sixth Amendment violation took place because the People could not establish that:

> [T]he testifying analyst must have either participated in or directly supervised this 'final' step that generates the DNA profile or conducted an 'independent analysis' of the data used to do so in a manner that enables replication of the determinations made at that stage in order to verify the profile.[23]

Key to the Court's determination that the error was not harmless was the fact that the witness who identified the defendant as the perpetrator initially gave a physical description that did not match the defendant and the defendant presented medical evidence that he was physically incapable of committing the crime.[24]

In *People v. Weinstein*, the Court held that erroneous *Sandoval* and *Molineux* rulings required a new trial.[25] The Court reasoned that impermissible propensity evidence presented during People's case-in-chief included: (1) assaults the defendant allegedly committed before and after the alleged offense; and (2) testimony that if the defendant attempted to coerce other women into nonconsensual sex, then he did

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by the defense within thirty days of arraignment. *See* N.Y. CRIM. PROC. LAW § 250.10 (McKinney 2025).

19. *See Sidbury*, 248 N.E.3d at 747.

20. *See id.* at 744.

21. *Id.*

22. *See* People v. Jordan, 223 N.E.3d 773, 775–76 (N.Y. 2023) (citing People v. Jordan, 160 N.Y.S.3d 117, 119 (App. Div. 2d Dep't 2022)).

23. *Id.* at 777 (citing People v. Tsintzelis, 146 N.E.3d 1160, 1161 (N.Y. 2020)).

24. *See id.* at 778. "The constitutional harmless error standard applies here, requiring a showing that the evidence was overwhelming and that there is no reasonable possibility that the error might have contributed to defendant's conviction." *Id.* (citing People v. Clyde, 961 N.E.2d 634, 639 (N.Y. 2011)).

25. *See* People v. Weinstein, 248 N.E.3d 691, 716 (N.Y. 2024).

same to victims as charged.[26] The Court also held that the trial court abused its discretion when it ruled that the defendant could be cross-examined about prior uncharged alleged bad acts that were immaterial to his in-court credibility.[27]

In *People v. Bohn*, the Court held that sufficient evidence was present for a jury to conclude that the defendant took pleasure in inflicting extreme pain upon the victim, as to support the defendant's first-degree murder based on torture charge.[28] Key factual determinations for the Court's ruling included: the defendant's prior statements of intent to harm the victim; an audio recording of the defendant's statements and conduct wherein the defendant taunted and strangled the victim; and the numerous painful and ultimately fatal injuries sustained by the victim.[29]

In *People v. Mosley*, the defendant argued that the trial court committed error by allowing testimony from a police officer identifying the defendant as the perpetrator based on police camera footage.[30] The Court concluded that an individual who is not an eye witness to a crime can testify that the defendant is the person depicted in the photo or video, only when it can be shown that the witness "was sufficiently familiar with the defendant to render his testimony helpful, or that the jury faced an obstacle to making the identification that the witness's testimony would have overcome."[31] Based on the scant prior

26. *See id.* at 710–11.

27. *See id.* at 713; People v. Telfair, 231 N.E.3d 385, 389–90 (N.Y. 2023) (ordering a new trial based on erroneous *Molineux* ruling where evidence of prior weapon possession incidents at trial was not relevant to any issue other than criminal propensity and error was not harmless). In reviewing a *Molineux* ruling, the Court will first assess whether the People have "identified some issue, other than mere criminal propensity, to which the evidence is relevant," which is a question of law, not discretion. *Weinstein*, 248 N.E.3d at 716 (quoting People v. Hudy, 535 N.E.2d 250, 258 (N.Y. 1988)). If the evidence at issue is relevant to some issue other than propensity, the Court will consider whether the probative value of the evidence outweighs its potential for prejudice and the decision to admit the evidence will not be disturbed based on a potential reasonable contrary determination; this is a question of law. *See Telfair*, 231 N.E.3d at 389–90 (citing People v. Ely, 503 N.E.2d 88, 94 (N.Y. 1986)). If *Molineux* evidence was erroneously admitted, the Court will undertake a harmless error analysis to determine whether a new trial is necessary. *See id.*

28. *See* People v. Bohn, 235 N.E.3d 356, 357 (N.Y. 2024); *see also* N.Y. PENAL LAW § 125.27(a)(1) (McKinney 2024) (delineating thirteen aggravating factors for the charge of first-degree murder).

29. *See Bohn*, 235 N.E.3d at 359.

30. *See* People v. Mosley, 239 N.E.3d 928, 930 (N.Y. 2024).

31. *Id.* at 929.

interactions between the defendant and the testifying police officer witness, the Court held error and ordered a new trial.[32]

In *People v. Baez*, the defendant argued that the People failed to lay a legally sufficient foundation for the admission of contraband evidence.[33] The Court disagreed with the defendant and upheld the conviction on the grounds "that the People's showing established a legally adequate chain of custody and provided reasonable assurances of the identity and unchanged condition of the evidence."[34]

In *People v. Perdue*, the defendant argued that the trial court abused its discretion by allowing a first-time in-court identification of the defendant absent formal notice from the People.[35] The rule fashioned by the Court was as follows:

> [W]hen the People call a witness who may make a first-time, in-court identification, they must ensure that the defendant is aware of that possibility as early as practicable so that the defendant has a meaningful opportunity to request alternative identification procedures. If the defendant explicitly requests such procedures, a trial court may exercise its discretion to fashion any measures necessary to reduce the risk of misidentification. The ultimate determination of whether to admit a first-time, in-court identification, like any evidence, rests within the evidentiary gatekeeping discretion of the trial court. The court must balance the probative value of the identification against the dangers of misidentification and other prejudice to the defendant.[36]

Because the witness at issue was disclosed to the defendant in pretrial discovery and gave reliable in-court testimony, the Court concluded that the lack of notice did not prejudice the defense and rejected defendant's appeal.[37]

In *People v. Cerda*, the defendant argued that the findings in a forensic report constituted a valid offer of proof to satisfy several

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32. *See id.* at 936–37. "In making this assessment, courts may consider the witness's general level of familiarity with the defendant's appearance . . . and whether the witness's familiarity spanned an extended period of time and variety of circumstances." *Id.* at 933 (citing People v. Russell, 567 N.Y.S.2d 548, 549 (App. Div. 2d Dep't 1991)).

33. *See* People v. Baez, 241 N.E.3d 1257, 1259 (N.Y. 2024).

34. *Id.*

35. *See* People v. Perdue, 232 N.E.3d 738, 740 (N.Y. 2023).

36. *Id.*

37. *See id.*

exceptions to the bar of admissibility under the rape shield law.[38] The Court agreed, concluding that the forensic report at issue contained findings that were relevant to the defense since it offered plausible alternative explanations for the complainant's injury and, thus, should have been admitted pursuant to the interest of justice exception to the rape shield law.[39] The Court further concluded that the exclusion of the report prejudiced the defendant because it barred him from presenting a meaningful defense.[40]

In *People v. Franklin*, the defendant argued that the introduction of a report prepared by a non-profit organization that interviews arrestees for suitability for pretrial release violated his Sixth Amendment right to confrontation.[41] The Court reasoned that the primary purpose for the introduction of the administrative report was not to create a substitute for out-of-court trial testimony and was, therefore, not testimonial and did not trigger the requirements of the Sixth Amendment Confrontation Clause.[42]

## IV. JURY TRIAL AND INSTRUCTION

In *People v. Ramirez*, the defendant argued that safety precautions such as masks and distancing, implemented as the result of the COVID-19 pandemic, impermissibly interfered with the defendant's ability to be present and observe the jury selection process.[43] The Court rejected the defendant's arguments on the grounds that the defendant was personally present for all phases of the jury selection process and was able to hear the questions posed to the prospective jurors

38. *See* People v. Cerda, 223 N.E.3d 308, 311 (N.Y. 2023); *see also* N.Y. CRIM. PROC. LAW § 60.42 (McKinney 2024) (providing that evidence of a victim's sexual conduct is inadmissible in a prosecution for a sex offense defined in PL article 130 unless one of five enumerated exceptions applies). See also *id.* § 60.42(5) for the interest of justice exception.

39. *See Cerda*, 223 N.E.3d at 315.

40. *See id.* at 316.

41. *See* People v. Franklin, 242 N.E.3d 652, 653–54 (N.Y. 2024).

42. *See id.* at 658.

43. *See* People v. Ramirez, 234 N.E.3d 1043, 1045–46 (N.Y. 2024). "New York guarantees the right of defendants to be present at all material stages of their criminal trial and to meaningfully contribute to their defense, including the opportunity to be present at jury selection and to observe the body language, facial expressions and demeanor of prospective jurors." *Id.* at 1045 (first citing N.Y. CONST. art. I, § 6; then citing N.Y. PENAL LAW § 250.20 (McKinney 2025); then citing People v. Rodriguez, 790 N.E.2d 247, 250 (2003)); *see also* People v. Wilkins, 179 N.E.3d 646, 650 (N.Y. 2021); People v. Maffei, 150 N.E.3d 1169, 1175 (N.Y. 2020).

and observe their responses.[44] As such, the Court concluded that the defendant's right to observe the jury was not absolute and that the defendant was not impeded in his ability to meaningfully participate in the jury selection process.[45]

In *People v. Estwick*, the defendant argued that the prosecution failed to establish a non-discriminatory reason for why the People used a preemptory challenge to exclude an African American female juror.[46] The Court agreed that the prosecution failed to provide a race-neutral basis for striking the juror.[47] The Court further reasoned that the trial court improperly provided an explanation that was wholly speculative as to the reason the People moved to strike and that the same grievous error necessitated a remand for a new trial.[48]

In *People v. Aguilar*, the defendant argued that the trial court erred by not including a re-instruction on the justification defense in response to a jury note.[49] The Court rejected the defendant's argument on the grounds that the trial court interpreted the jury note correctly and responded to the note in a meaningful fashion, providing the jury with all information sought.[50]

In *People v. Seignious*, defendant argued that the trial court committed error by submitting a lesser included offense of second-degree burglary as a sexually motivated felony to the jury in his second-degree burglary trial.[51] The Court concluded that the conditions required to obtain a jury charge on a lesser included offense under CPL Section 300.50(1) and (2) were both satisfied, as the jury could have concluded

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44. *See Ramirez*, 234 N.E.3d at 1048–49.

45. *See id.* at 1049.

46. *See* People v. Estwick, 241 N.E.3d 796, 798 (N.Y. 2024).

47. *See id.*

48. *See id.* "Under the well-established *Batson* framework, 'once a prima facie showing of discrimination is made, the nonmovant must come forward with a race-neutral explanation,' and if the nonmovant fails to 'meet this burden, an equal protection violation is established.'" *Id.* at 797 (quoting People v. Smocum, 786 N.E.2d 1275, 1278 (N.Y. 2003)); *see also* People v. Wright, No. 55, 2024 N.Y. LEXIS 829 (N.Y. 2024) (holding that the record supported the trial court's determination that the People proffered an acceptable race-neutral reason for using peremptory strike that was not a pretext for discrimination).

49. *See* People v. Aguilar, 234 N.E.3d 344, 344 (N.Y. 2024).

50. *See id.* at 345 (citing People v. Almodovar, 464 N.E.2d 463, 466 (N.Y. 1984)); *see also* N.Y. CRIM. PROC. LAW § 310.30 (McKinney 2025) (providing that if the jury request further instructions at any time during its deliberations, the court must "give such requested information or instruction as [it] deems proper").

51. *See* People v. Seignious, 237 N.E.3d 778, 780 (N.Y. 2024); *see* N.Y. CRIM. PROC. LAW § 300.50 (McKinney 2024).

based on the evidence that the defendant committed second-degree burglary, but that the same was not sexually motivated.[52]

In *People v. Dunton*, the defendant argued that the Court abused its discretion under CPL Section 260.20, when the defendant was removed from the courtroom during the reading of the verdict absent a warning that his continued disruptive behavior would precipitate said removal.[53] The Court rejected the defendant's argument on the grounds that the totality of defendant's conduct showed that he was an immediate safety risk to the jurors and the court, making any warning prior to his removal impractical.[54]

In *People v. Fisher*, the defendant argued that the trial court's failure to dismiss a juror who was grossly unqualified required a new trial pursuant to CPL Section 270.35.[55] The juror at issue claimed that defendant followed her home but expressed the same concern three days later to the other jurors while they deliberated.[56] The Court concluded that the juror at issue was unqualified because her state of mind prevented her from rendering an impartial verdict and, as such, remanded the case for a new trial.[57]

## V. PLEA AND SENTENCE

In *People v. Rivera*, the defendant argued that the trial court abused its discretion in evaluating mitigating circumstances and, as such, erred in denying defendant a youthful offender adjudication under CPL Section 720.10.[58] The Court concluded that, given the absence of any mitigating factors and the fact that defendant displayed a weapon and threatened use of the same, the trial court properly

52. *See Seignious*, 237 N.E.3d at 782.

53. *See* People v. Dunton, 241 N.E.3d 1239, 1240 (N.Y. 2024). Under CPL Section 260.20, a defendant must be present during the trial but may be removed if they are "disorderly and disruptive" such that the "trial cannot be carried on with [the defendant] in the courtroom [ ] if, after [they] have been warned by the court that [they] will be removed if [they] continue such conduct, [they] continue to engage in such conduct." N.Y. CRIM. PROC. LAW § 260.20 (McKinney 2025).

54. *See Dunton*, 241 N.E.3d at 1245.

55. *See* People v. Fisher, 236 N.E.3d 1232, 1233 (N.Y. 2024). CPL Section 270.35 provides that if after a jury is sworn, "the court finds, from facts unknown at the time of the selection of the jury, that a juror is grossly unqualified to serve in the case . . . the court must discharge such juror." N.Y. CRIM. PROC. LAW § 270.35(1) (McKinney 1999).

56. *See Fisher*, 236 N.E.3d at 1233.

57. *See id.* at 1238.

58. *See People v. Rivera*, 230 N.E.3d 443, 443 (N.Y. 2023); N.Y. CRIM. PROC. LAW § 720.10 (McKinney 2024) (governing the adjudication of youthful offender status).

exercised its discretion in refusing to grant defendant a youthful offender adjudication.[59]

## VI. SEARCH AND SEIZURE

In *People v. Medina*, the defendant argued that the police lacked facts to support a founded suspicion of illegal activity and, as such, were not justified to request consent to search his vehicle under the standard of *People v. De Bour*.[60] The Court rejected defendant's argument on the grounds that the defendant was sitting in a contorted position, tried to shield himself from the officer's view, and provided an inconsistent story as to his travels.[61]

In *People v. Cabrera*, the defendant argued that the failure of the police to give *Miranda* warnings should result in the suppression of his incriminating statements.[62] The Court reasoned that even though the defendant was in custody when he was handcuffed and questioned by the police in his mother's driveway, a reasonable person in the defendant's position would not have felt free to leave.[63] Accordingly, the Court granted suppression of defendant's statements and ordered a new trial.[64]

In *People v. David*, the defendant argued that contraband found in his car should be suppressed based on an improper inventory search conducted by the police, specifically that prior to towing, the police had an affirmative duty to inquire whether any alternatives to towing existed.[65] The Court rejected defendant's arguments on the grounds

59. *See id.* at 444.

60. *See* People v. Medina, 222 N.E.3d 1115, 1115 (N.Y. 2023); People v. De Bour, 352 N.E.2d 562, 568 (N.Y. 1976); *see also* People v. McIntosh, 755 N.E.2d 329, 331 (N.Y. 2001) (the scope of appellate review for consent to search is limited to "whether there is evidence in the record supporting the lower courts' determinations.").

61. *See Medina*, 222 N.E.3d at 1115–16.

62. *See* People v. Cabrera, 230 N.E.3d 1082, 1086 (N.Y. 2023).

63. *See id.* at 1094.

64. *See id.* (stating that to ascertain custodial status, the Court must consider "whether a reasonable person innocent of any wrongdoing would have believed that he or she was not free to leave" and "whether there has been a 'forcible seizure which curtails a person's freedom of action to the degree associated with a formal arrest.'") (first quoting People v. Paulman, 833 N.E.2d 239, 243 (N.Y. 2005); then quoting People v. Morales, 484 N.E.2d 124, 124 (N.Y. 1985)).

65. *See* People v. David, 231 N.E.3d 402, 408 (N.Y. 2023) (stating that the police "may conduct an inventory search of an impounded vehicle without a warrant, so long as the search is conducted according to 'reasonable police regulations relating to inventory procedures administered in good faith.'") (quoting Colorado v. Bertine, 379 U.S. 367 374 (1987)).

that the police have no affirmative duty to inquire about any alternatives to towing "beyond those that are raised for their consideration or are otherwise apparent."[66]

In *People v. Spirito*, the defendant argued that the search of his home by his parole officer, after receiving a tip that defendant was recently depicted in a photograph holding a gun, was unlawful.[67] The Court concluded that "the search of defendant's residence by defendant's parole officer was 'rationally and reasonably related to the performance of the parole officer's duty,'" and, accordingly, the decision of the lower court to deny suppression was affirmed.[68]

In *People v. Nektalov*, the defendant argued that the police lacked probable cause for a stop of his vehicle based on the police officer's observation of defendant's car having excessively tinted windows.[69] The Court agreed with defendant and granted suppression on the grounds that the prosecution failed to elicit any factual basis for the police to conclude that the windows of the defendant's car were tinted excessively.[70]

In *People v. Thomas*, the defendant contested the search of his vehicle had on the grounds that the traffic stop was unreasonably prolonged.[71] The Court held that the trial court applied an improper standard for the determination of the same issue.[72] As such, the case was remanded for the application of the correct standard, that being, reasonable suspicion, rather than the founded suspicion standard applied by the trial court, which is the applicable standard in cases involving the common law right to inquire.[73]

In *People v. Douglas*, the defendant argued that the police department's written inventory search protocol for motor vehicles was unconstitutional.[74] The Court rejected the defendant's argument and held that the People met their burden to show that the inventory search

66. *Id.*

67. *See* People v. Spirito, 242 N.E.3d 667, 668 (N.Y. 2024).

68. *Id.* (citing People v. Huntley, 371 N.E.2d 794, 797 (N.Y. 1977)).

69. *See* People v. Nektalov, 246 N.E.3d 390, 391 (N.Y. 2024).

70. *See id.* at 391–92 ("Vehicle and Traffic Law § 375 (12-a) (b) generally provides that 'no person shall operate any motor vehicle upon any public highway, road, or street' with windows which have a light transmittance of less than 70%. An automobile stop may be lawfully effectuated where law enforcement has 'probable cause that a driver has committed' a traffic violation.") (citing People v. Hinshaw, 156 N.E.3d 812, 814 (N.Y. 2020)).

71. *See* People v. Thomas, 242 N.E.3d 1188, 1190 (N.Y. 2024).

72. *See id.* at 1192.

73. *See id.* (citing People v. De Bour, 352 N.E.2d 562, 568 (N.Y. 1976)).

74. *See* People v. Douglas, 223 N.E.3d 757, 758 (N.Y. 2023).

procedure was designed to protect the property of the defendant; to protect the police against any claim of lost property; and to protect the police from any dangerous instruments.[75] The People were also able to show that the officers at issue conducted the search properly and in accordance with established police procedures.[76]

In *People v. Lively*, the defendant argued that his parole officer's search of his pocket was illegal.[77] The Court held that the search of the defendant's pocket was not substantially related to the performance of the parole officer's duties, on the grounds that the parole officer was at the defendant's residence to look for a parole absconder other than the defendant.[78] Therefore, the Court reasoned that a search of the defendant's pocket and investigating the contents of the earbud case found there were not substantially related to the performance of the parole officer's duties.[79]

In *People v. Cuencas*, the defendant argued that the warrantless entry of the police into his apartment based on the consent of another individual constituted an illegal search.[80] The Court agreed with the defendant, granting suppression on the grounds that the individual who consented to the search came from a first-floor apartment of a multifamily dwelling and simply opened the door for the police, without any affirmative statement claiming or demonstrating authority to consent to the search had been given.[81] Accordingly, the Court concluded that police reliance on the same consent was not reasonable and could not establish proper apparent authority to give consent for a lawful search.[82]

In *People v. Pastrana*, the defendant argued that the roadblock set up by the police did not comply with the Fourth Amendment and that provisions of the Marijuana Regulation and Taxation Act ("MRTA") providing that an odor of marijuana is no longer a valid basis for a police search applied retroactively, mandating suppression.[83] The Court reasoned that the roadblock complied with the

75. *See id.* at 759–60 (citing People v. Johnson, 803 N.E.2d 385, 387 (N.Y. 2003)).

76. *See id.* at 760 (citing *Johnson*, 803 N.E.2d at 388).

77. *See* People v. Lively, 242 N.E.3d 668, 669 (N.Y. 2024). Parolees do not surrender all constitutional rights against unreasonable searches and seizures. *See id.* at 670 (citing People v. Huntley, 371 N.E.2d 794, 796 (N.Y. 1977)).

78. *See id.* at 670–71.

79. *See id.* at 671.

80. *See* People v. Cuencas, 227 N.E.3d 312, 314 (N.Y. 2023).

81. *See id.* at 319–20.

82. *See id.* at 320.

83. *See* People v. Pastrana, 230 N.E.3d 447, 448, 449 (N.Y. 2023).

requirements of the Fourth Amendment on the grounds that it was conducted in accordance with uniform procedure; afforded little discretion to the operating police personnel; gave fair warnings to motorists; and had precautions for motorist safety.[84] Following a statutory analysis, the Court also dismissed defendant's claim that the MRTA statute applied retroactively.[85]

In *People v. Brown*, defendant argued that the police illegally stopped his vehicle pursuant to the community caretaking doctrine.[86] The Court promulgated a new two-part test for the same analysis, to wit:

> We conclude that the police may stop an automobile in an exercise of their community caretaking function if two criteria exist. First, the officers must point to specific, objective, and articulable facts that would lead a reasonable officer to conclude that an occupant of the vehicle is in need of assistance. Second, the police intrusion must be narrowly tailored to address the perceived need for assistance. Once assistance has been provided and the peril mitigated, or the perceived need for assistance has been dispelled, any further police action must be justified under the Fourth Amendment and article I, § 12 of the State Constitution.[87]

Applying the same test in this case, the Court concluded that the People failed to establish that the stop of defendant's vehicle was justified under the first prong of the community caretaking doctrine because the sole basis for the belief that defendant might need aid was the police observation of the front passenger door opening and closing while the vehicle was in motion.[88]

In *People v. Messano*, defendant argued that the police lacked probable cause for the plain view search of his vehicle after an investigatory stop for illegal drug activity.[89] The Court suppressed the contraband at issue as the product of an illegal search on the grounds that the police, who suspected a drug deal, saw nothing exchanged between

84. *See id.* at 449 (citing People v. Scott, 473 N.E.2d 1, 4 (N.Y. 1984)).

85. *See id.* at 450–51.

86. *See* People v. Brown, 244 N.E.3d 520, 522 (N.Y. 2024). The community caretaking doctrine permits the stop of a vehicle under the principle that the police have a varied function in assisting others, including the obligation to help those in need of assistance. *Id.* at 524 (citing People v. De Bour, 352 N.E.2d 562, 568 (N.Y. 1976)).

87. *Id.* at 526.

88. *See id*. at 529.

89. *See* People v. Messano, 232 N.E.3d 186, 190 (N.Y. 2024).

the defendant and the other driver.[90] Therefore, the Court ruled that, when viewed in the totality, defendant conduct was equivocal and susceptible of an interpretation consistent with innocence.[91]

In *People v. Butler*, defendant challenged a canine search as illegal.[92] As a matter of first impression, the Court held that the use of a canine to sniff the body of defendant for the presence of drugs was, in fact, a search under the Fourth Amendment and that the use of a canine exceeds the scope of any invitation implicitly or otherwise granted by defendant for the same search by virtue of the defendant simply being in public.[93] As the appellate division upheld the search under a reasonable suspicion standard, the case was remitted for reconsideration.[94]

## VII. SPEEDY TRIAL

In *People v. Justice*, the defendant argued that he was not without counsel, within the meaning of exclusion of time for speedy trial purposes, when he appeared in court with substitute counsel and that no time was excludable from the speedy trial calculation based on a warrant issued and lifted on the same day due to defendant's tardiness to court.[95] The Court agreed that a defendant with substitute counsel was not "without counsel" and for purposes of speedy trial time calculation and that no time should be excluded from a warrant lifted the same day it was issued based on defendant's late appearance for trial.[96]

In *People v. Labate*, defendant argued that the People's speedy trial time expired due to multiple adjournments requested by the People after announcing being ready for trial.[97] The Court held that a delay of forty-three days was attributable to the People based on the People's failure to be ready on three successive trial dates, without explanation, resulting in a dismissal of the indictment.[98]

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90. *See id.* at 192.

91. *See id.* at 194.

92. *See* People v. Butler, 231 N.E.3d 1021, 1023 (N.Y. 2023).

93. *See id.* at 1028–29.

94. *See id.* at 1029.

95. *See* People v. Justice, 221 N.E.3d 782, 783 (N.Y. 2023).

96. *Id.* CPL Section 30.30(4)(f) provides that a "period during which the defendant is without counsel through no fault of the court' must be excluded when calculating the time within which the People must be ready for trial." N.Y. CRIM. PROC. LAW § 30.30(4)(f) (McKinney 2020). *See also* People v. Rouse, 904 N.E.2d 495, 495 (N.Y. 2009) (finding that a defendant is not without counsel within the meaning of CPL Section 30.30(4)(f) when appearing with substitute counsel).

97. *See* People v. Labate, 242 N.E.3d 1152, 1156 (N.Y. 2024).

98. *See id.* at 1163.

In *People v. King*, the People argued that the amendments to discovery and statutory speedy trial rules did not apply prospectively in a case where the People were in trial ready posture and had already declared ready for trial when the amendments went into effect.[99] The Court held that the amendments to the CPL imposing additional requirements to be fulfilled by the People before announcing their readiness for trial do not apply in a case where the People declared ready for trial before the effective date of the amendments.[100]

In *People v. Lovett*, the People appealed the dismissal of defendant's simplified traffic information on speedy trial grounds under CPL Section 30.30.[101] The Court rejected the People's argument on the grounds that the People stipulated at the trial court level that CPL Section 30.30 applied to defendant's simplified traffic information and, further, declined review of the issue on the same grounds pursuant to CPL Section 470.05(2).[102]

## VIII. 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 Section 160.57 was amended in relation to automatic sealing of certain convictions.[103]

CPL Section 420.45 was amended in relation to the theft of real property and protections for victims of real property theft.[104]

### *B. Penal Law*

PL Section 155.00 was amended in relation to wage theft.[105]

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99. *See* People v. King, 247 N.E.3d 86, 87 (N.Y. 2024).

100. *See id.* at 88.

101. *See* People v. Lovett, 222 N.E.3d 1108, 1108 (N.Y. 2023). "[A]ctions involving only traffic infractions [are not] covered by the speedy trial statute [under CPL Section 30.30.]" *Id.* (quoting People v. Galindo, 191 N.E.3d 1136, 1137 (N.Y. 2022)).

102. *See id.*

103. Act of Nov. 16, 2023, 2023 McKinney's Sess. Laws of N.Y., ch. 631, § 2 (codified at N.Y. CRIM. PROC. LAW § 160.57 (McKinney 2025)).

104. Act of Dec. 14, 2023, 2023 McKinney's Sess. Laws of N.Y., ch. 630, § 6 (codified at N.Y. CRIM. PROC. LAW § 420.45 (McKinney 2025)).

105. Act of Sept. 6, 2023, 2023 McKinney's Sess. Laws of N.Y., ch. 353, §§ 1–2 (codified at N.Y PENAL LAW § 155.00 (McKinney 2025)).

PL Sections 120.19, assault on a retail worker and PL Section 165.66, fostering the sale of stolen goods, were added as new provisions to the PL.[106]

PL Section 245.15 was amended in relation to unlawful dissemination or publication of intimate images created by digitization and of sexually explicit depictions of an individual.[107]

### *C. Vehicle & Traffic Law*

VTL Sections 510 and 511 were amended in relation to first degree aggravated unlicensed operation (AUO) of a motor vehicle, "Angelica's law."[108]

VTL Section 2409 was amended in relation to the operation of all-terrain vehicles by minors changing the age from ten to fourteen.[109]

106. Act of Apr. 20, 2024, 2024 McKinney's Sess. Laws of N.Y., ch. 55, § 1 (codified at N.Y PENAL LAW § 120.19 (McKinney 2025)).

107. Act of Sept. 29, 2023, 2023 McKinney's Sess. Laws of N.Y., ch. 513, § 1 (codified at N.Y PENAL LAW 245.15 (McKinney 2025)).

108. Act of Dec. 12, 2023, 2023 McKinney's Sess. Laws of N.Y., ch. 722, § 3 (codified at N.Y VEH & TRAF LAW § 511 (McKinney 2025).

109. Act of Oct. 25, 2023, 2023 McKinney's Sess. Laws of N.Y., ch. 539, § 2 (codified at N.Y VEH & TRAF LAW § 2409 (McKinney 2025).