

APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, FIRST DEPARTMENT

People v. Gonzalez

2026 NY Slip Op 02047 (Appellate Division of the Supreme Court of the State of New York First Department 2026) · No. Ind No. 00002/21; Appeal No. 6016; Case No. 2022-03361 · Decided April 2, 2026

SUMMARY

The New York Appellate Division, First Department unanimously affirmed Wilfredo Gonzalez's conviction for persistent sexual abuse and his four-year sentence. The court held that the verdict was not against the weight of the evidence, that evidence of prior sexual misconduct was properly admitted to establish intent, and that the defendant's jury-selection claim was unpreserved and otherwise did not warrant reversal.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, First Department
WRITING FOR THE COURT	Moulton, J.P.; Pitt-Burke, J.; O'Neill Levy, J.; Michael, J.; Chan, J.
JURISDICTION	New York Appellate Division, First Department
DECIDED	April 2, 2026
DOCKET	Ind No. 00002/21; Appeal No. 6016; Case No. 2022-03361
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed from a judgment of Supreme Court, New York County, entered after a jury trial, convicting him of persistent sexual abuse and sentencing him as a predicate sex offender with a prior violent felony offense.
STANDARD OF REVIEW	The court reviewed the verdict under the weight-of-the-evidence standard, reviewed admission of prior-misconduct evidence for abuse of discretion, and applied preservation requirements to unpreserved prosecutorial-summation and jury-selection claims.
PRECEDENTIAL VALUE	Published
PARTIES	Wilfredo Gonzalez, Defendant-Appellant v. The People of the State of New York, Respondent

TOPICS

evidence

character evidence

jury selection

preservation of error

appellate procedure

PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the jury's verdict convicting defendant of persistent sexual abuse was against the weight of the evidence.
2. Whether the trial court properly admitted evidence of two prior incidents of sexual misconduct to prove intent under the Molineux doctrine.
3. Whether defendant preserved a claim that the prosecutor mischaracterized the evidence during summation.
4. Whether defendant preserved a claim concerning the court's excusal and handling of prospective jurors during preliminary jury screening, and whether the court officer's instructions were improper.

HOLDINGS

1. The verdict was not against the weight of the evidence and the jury's credibility determinations provided no basis for reversal.
2. The trial court properly admitted evidence of two prior incidents of sexual misconduct because the evidence was relevant to establish defendant's intent and was not offered for an impermissible propensity purpose.
3. Defendant failed to preserve the claim, and the court declined to review it in the interest of justice.
4. Defendant was required to preserve the claim concerning the preliminary screening and excusal of jurors. To the extent the record permitted review, the court's own determinations regarding juror fitness and the proper procedure made any instructions given by the court officer fundamentally ministerial.

KEY QUOTATIONS

“The totality of the evidence, including testimony from the victim and an eyewitness, established that defendant deliberately subjected the victim to sexual contact, and that he acted with the requisite intent to obtain sexual gratification” ([*1])

“Here, by contrast, the alleged act itself was “equivocal and, unless accompanied by some guilty knowledge, the transaction would not be criminal”” ([*2])

“Thus, the trial court properly concluded that Molineux evidence directed to the issue of defendant's intent was admissible” ([*2])

FACTUAL BACKGROUND

The conviction arose from evidence that defendant rubbed his unexposed groin against a woman's buttocks in a crowded public area. The People presented testimony from the victim and an eyewitness, and the court found

that the evidence established deliberate sexual contact and intent to obtain sexual gratification. The trial court also admitted evidence of two prior incidents of sexual misconduct on the subway for the nonpropensity purpose of proving intent.

PROCEDURAL HISTORY

Supreme Court, New York County, rendered judgment on July 20, 2022, amended July 28, 2022, after a jury convicted defendant of persistent sexual abuse and imposed a four-year sentence. The Appellate Division, First Department, unanimously affirmed.

DISPOSITION

affirmed

CASES CITED

- People v. Danielson, 9 NY3d 342, 348-349 (2007)
- People v. Baque, 43 NY3d 26, 29-30 (2024)
- People v. Romero, 7 NY3d 633, 645-646 (2006)
- People v. Hatton, 26 NY3d 364, 369 (2015)
- People v. Carlucci, 196 AD3d 418, 420 (1st Dept 2021), lv denied, 37 NY3d 1026 (2021)
- People v. Morris, 21 NY3d 588, 597-598 (2013)
- People v. Ingram, 71 NY2d 474, 479 (1988)
- People v. McKenzie, 169 AD3d 557, 558 (1st Dept 2019), lv denied, 33 NY3d 1033 (2019)
- People v. Alvino, 71 NY2d 233, 242-245 (1987)
- People v. Goode, 176 AD3d 629, 630 (1st Dept 2019), lv denied, 34 NY3d 1159 (2020)
- People v. Weinstein, 42 NY3d 439, 458-460 (2024)
- People v. King, 27 NY3d 147, 153 (2016)
- People v. Casanova, 62 AD3d 88, 90 (1st Dept 2009), lv denied, 12 NY3d 852 (2009)
- People v. Bosa, 60 AD3d 571, 573 (1st Dept 2009), lv denied, 12 NY3d 923 (2009)
- People v. Branford, 220 AD2d 203, 203 (1st Dept 1995), lv denied, 87 NY2d 1017 (1996)
- People v. Manley, 241 AD3d 1175, 1176 (1st Dept 2025), lv denied, 44 NY3d 1053 (2025)
- People v. Ocampo, 206 AD3d 454, 455-456 (1st Dept 2022), lv denied, 38 NY3d 1152 (2022)

OPINION

PER CURIAM.

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2026 NY Slip Op 02047
April 2, 2026
Appellate Division,
First Department
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Judiciary Law § 431.
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publication in the Official Reports.
The People of the State of New York,
Respondent,
v
Wilfredo Gonzalez, Defendant-Appellant.
Decided and Entered: April 02, 2026
Ind No. 00002/21|Appeal No. 6016|Case No.
2022-03361|
Before: Moulton, J.P., Pitt-Burke, O'Neill Levy, Michael, Chan, JJ.
Jenay Nurse Guilford, Center for Appellate Litigation, New York (Alexandra L. Mitter
of counsel) and Cornell Law School, Appellate Criminal Defense Clinic, New York (Rachel
Goldberg of counsel), for appellant.
Alvin L. Bragg, Jr., District Attorney, New York
(Franklin R. Guenther of counsel), for respondent.
[*1]
Judgment,
Supreme Court, New York County (Steven M. Statsinger, J.), rendered July 20, 2022, as amended
July 28, 2022, convicting defendant, after a jury trial, of persistent sexual abuse, and sentencing
him, as a predicate sex offender with a prior violent felony offense, to a term of four years,
unanimously affirmed.
The verdict was not against the weight of the evidence (*see* *People v Danielson*, 9 NY3d 342, 348-349 [2007]; *see also* *People v Baque*, 43
NY3d 26, 29-30 [2024]).

There is no basis for disturbing the jury's credibility determinations (*see* *People v Romero*, 7 NY3d 633, 645-646 [2006]). The totality of the evidence, including testimony from
the victim and an eyewitness, established that defendant deliberately subjected the victim to sexual
contact, and that he acted with the requisite intent to obtain sexual gratification (*see* Penal
Law §§ 130.00[3], 130.53; *People v Hatton*, 26 NY3d 364, 369 [2015]).

Defendant did not preserve any argument that the prosecutor mischaracterized the evidence during
summation, and we decline to consider it in the interest of justice (*see* *People v Carlucci*, 196 AD3d 418, 420 [1st Dept 2021], *lv denied* 37 NY3d 1026 [2021]).
The trial court providently exercised its discretion by admitting evidence of two of defendant's
prior incidents of sexual misconduct on the subway (*see* *People v Morris*, 21 NY3d
588, 597 [2013]).

This evidence was relevant to establish defendant's intent, where the charged sexual conduct
involved the act of rubbing his unexposed groin against a woman's buttocks in a crowded public
area (*see* *People v Ingram*, 71 NY2d 474, 479 [1988]). "Even if defendant's intent

could be inferred from his behavior, the People, who had the burden of proving that element, 'were not bound to stop after presenting minimum evidence'" (*People v McKenzie*, 169 AD3d 557, 558 [1st Dept 2019], *lv denied* 33 NY3d 1033 [2019], quoting *People v Alvino*, 71 NY2d 233, 245 [1987]).

"Furthermore, even if defendant's principal defense was that he did not touch the victim at all,... portions of the defense cross-examination and summation could be viewed as challenging the proof of the element of intent" (*People v Goode*, 176 AD3d 629, 630 [1st Dept 2019], *lv denied* 34 NY3d 1159 [2020]).

Contrary to defendant's assertion, this case is distinguishable from *People v Weinstein* (42 NY3d 439 [2024]). There, the Court of Appeals held that *Molineux* evidence was improperly admitted "to show defendant's forcible intent, rebut his claim of consent, and explain why complainants were 'hesitant' to report these assaults" (*id.* at 458).

The Court instead concluded that, "as a matter of law," the People failed to show how the proffered witness testimonies "were necessary for a non-propensity purpose" (*id.* at 458-459). In so holding, the Court first observed that nothing about the complainants' respective testimonies against defendant were "equivocal" on the issue of their consent to defendant's conduct so as to warrant *Molineux* evidence (*see id.* at 459). It then explained that there was a "candid acknowledgment that the true purpose of this evidence was to bolster complainants' credibilities," which, the Court noted, constituted an "impermissible propensity purpose" (*id.* at 460).

Here, by contrast, the alleged act itself was "equivocal and, unless accompanied by some guilty knowledge, the transaction would not be criminal" (*Alvino*, 71 NY2d at 242-243).

Nor was there any explicit or tacit acknowledgment that the People intended to use evidence of defendant's prior incidents of sexual assault to bolster the complainants' credibility (cf. *Weinstein*, 42 NY3d at 460). Thus, the trial court properly concluded that *Molineux* evidence directed to the issue of defendant's intent was admissible (*see McKenzie*, 169 AD3d at 558).

The court addressed the potential for prejudice and took steps to minimize any undue prejudicial effect by precluding evidence about an additional incident and providing repeated limiting instructions (*see Morris*, 21 NY3d at 598; *McKenzie*, 169 AD3d at 558).

Defendant was required to preserve his claim that, during a preliminary screening stage of jury selection, the court improperly excused jurors and directed them to exit the courtroom and await further instructions from a court officer (*see People v King*, 27 NY3d 147, 153 [2016]; *People v Casanova*, 62 AD3d 88, 90 [1st Dept 2009], *lv denied* 12 NY3d 852 [2009]).

To the extent the record permits review (*see* *People v Bosa*, 60 AD3d 571, 573 [1st Dept 2009], *lv denied* 12 NY3d 923 [2009]; *People v Branford*, 220 AD2d 203, 203 [1st Dept 1995], *lv denied* 87 NY2d 1017 [1996]), the court appears to have made its own determinations regarding the jurors' fitness and the proper course of action, so any instructions provided by the court officer were fundamentally ministerial (*see* *People v Manley*, 241 AD3d 1175, 1176 [1st Dept 2025], *lv denied* 44 NY3d 1053 [2025]; *People v Ocampo*, 206 AD3d 454, 455-456 [1st Dept 2022], *lv denied* 38 NY3d 1152 [2022]).

THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: April 2, 2026

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