

SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
SECOND JUDICIAL DEPARTMENT

People v. Espinosa

2026 NY Slip Op 02283 · No. 2019-10860 · Decided April 15, 2026

SUMMARY

The Appellate Division, Second Department, affirmed the defendant's judgment of conviction for attempted burglary in the third degree. The court vacated, in the interest of justice, the portion of the order of protection issued in favor of Angel Rivera because Rivera was neither a victim nor a witness to the crime to which the defendant pleaded guilty.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Judicial Department
WRITING FOR THE COURT	Francesca E. Connolly, J.P.; Valerie Brathwaite Nelson, J.; Barry E. Warhit, J.; James P. McCormack, J.
JURISDICTION	New York Supreme Court, Appellate Division, Second Department
DECIDED	April 15, 2026
DOCKET	2019-10860
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed from a judgment convicting him, upon his guilty plea, of attempted burglary in the third degree and imposing sentence. The appeal also brought up for review an order of protection issued at sentencing.
STANDARD OF REVIEW	An issue not preserved by objection at sentencing ordinarily is unreviewable under CPL 470.05(2), but the Appellate Division may reach it in the exercise of its interest-of-justice jurisdiction under CPL 470.15(6).
PRECEDENTIAL VALUE	Published Appellate Division decision
PARTIES	Manuel Espinosa v. The People of the State of New York

TOPICS

- criminal procedure
- appellate procedure
- preservation of error
- remedies

PRACTICE AREAS

criminal procedure

appellate procedure

criminal sentencing

QUESTIONS PRESENTED

1. Whether the defendant's unpreserved challenge to the order of protection could be reviewed in the interest of justice.
2. Whether the sentencing court had authority to issue an order of protection in favor of a person who was neither a victim nor a witness to the particular crime to which the defendant pleaded guilty.

HOLDINGS

1. A challenge to an order-of-protection provision that was not raised by objection at sentencing or otherwise presented to the lower court is unpreserved for ordinary appellate review, but the Appellate Division may reach the issue in the exercise of its interest-of-justice jurisdiction.
2. A sentencing court lacks authority under CPL 530.13(4) to issue an order of protection in favor of a person who was neither a victim nor a witness to the particular crime to which the defendant pleaded guilty.

KEY QUOTATIONS

*“As the defendant correctly contends, the court had no authority to issue an order of protection in favor of that individual, as he was neither a victim nor a witness to the particular crime to which the defendant entered a plea of guilty” ([*1])*

FACTUAL BACKGROUND

Manuel Espinosa pleaded guilty to attempted burglary in the third degree. At sentencing, the Supreme Court issued an order of protection in favor of Angel Rivera. Rivera was neither a victim nor a witness to the particular crime to which Espinosa pleaded guilty, and Espinosa did not object to that portion of the order at sentencing.

PROCEDURAL HISTORY

The Supreme Court, Kings County, entered judgment on August 20, 2019, after defendant pleaded guilty to attempted burglary in the third degree and was sentenced. At sentencing, the court issued an order of protection in favor of Angel Rivera. The Appellate Division reached defendant's unpreserved challenge to that portion of the order in the interest of justice, vacated it, and affirmed the judgment.

DISPOSITION

affirmed

CASES CITED

- People v. Nieves, 2 N.Y.3d 310, 316-317
- People v. Gilyard, 237 A.D.3d 1223

- People v. Fletcher, 220 A.D.3d 805
- People v. Gaffar, 243 A.D.3d 586, 587

OPINION

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PER CURIAM.

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April 15, 2026

Appellate Division, Second Department

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The People of the State of New York, respondent,

v.

Manuel Espinosa, appellant. (S.C.I. No. 4538/19)

Supreme Court of the State of New York, Appellate Division, Second Judicial Department

Decided on April 15, 2026

2019-10860

Francesca E. Connolly, J.P.

Valerie Brathwaite Nelson

Barry E. Warhit

James P. McCormack, JJ.

Twyla Carter, New York, NY (Robin Richardson of counsel), for appellant.

Eric Gonzalez, District Attorney, Brooklyn, NY (Leonard Joblove, Morgan J. Dennehy, and Evan A. Esswein of counsel), for respondent.

DECISION & ORDER

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Raymond Rodriguez, J., at plea; Quynnda L. Santacroce, J., at sentence), rendered August 20, 2019, convicting him of attempted burglary in the third degree, upon his plea of guilty, and imposing sentence. The appeal brings up for review an order of protection issued at the time of sentencing.

ORDERED that upon the appeal from the judgment, so much of the order of protection issued at the time of sentencing as was in favor of Angel Rivera is vacated, as a matter of discretion in the interest of justice; and it is further,

ORDERED that the judgment is affirmed.

The defendant's contention that the Supreme Court improperly issued an order of protection in favor of Angel Rivera is unpreserved for appellate review, since the defendant failed to object to that portion of the order of protection at sentencing or otherwise raise the issue before the court (*see* CPL 470.05[2]; *People v Nieves*, 2 NY3d 310, 316-317). Nevertheless, we reach this issue in the exercise of our interest of justice jurisdiction (*see* CPL 470.15[6]; *People v Gilyard*, 237 AD3d 1223; *People v Fletcher*, 220 AD3d 805). As the defendant correctly contends, the court

had no authority to issue an order of protection in favor of that individual, as he was neither a victim nor a witness to the particular crime to which the defendant entered a plea of guilty (*see* CPL 530.13[4]; *People v Gaffar*, 243 AD3d 586, 587; *People v Gilyard*, 237 AD3d at 1223).

Accordingly, we vacate so much of the order of protection as was issued in favor of Angel Rivera at the time of sentencing.

CONNOLLY, J.P., BRATHWAITE NELSON, WARHIT and MCCORMACK, JJ., concur.

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