

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

People v. Cuevas

2026 NY Slip Op 02940 (N.Y. Ct. App. 2026) · No. Ind. No. 1163/10; Appeal Nos. 6600-6600A; Case Nos. 2019-4501, 2024-05535 · Decided May 12, 2026

SUMMARY

The Appellate Division, First Department unanimously affirmed the defendant's judgment of conviction and the denial of his CPL 440.10 motion to vacate the judgment. The court held that counsel provided effective assistance, the lineup identification was properly admitted, and the prosecution's suppression of substantiated CCRB complaints did not establish material prejudice under Brady. The court also found most prosecutorial-summation claims unpreserved and declined to reduce the sentence.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Angela M. Scarpulla, J.P.; Mendez, J.; Shulman, J.; Rodriguez, J.; Hagler, J.
JURISDICTION	New York Supreme Court, Appellate Division, First Department
DECIDED	May 12, 2026
DOCKET	Ind. No. 1163/10; Appeal Nos. 6600-6600A; Case Nos. 2019-4501, 2024-05535
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed from a judgment of conviction after a jury retrial and from an order denying his CPL 440.10 motion to vacate the judgment. The Appellate Division unanimously affirmed both the judgment and order.
STANDARD OF REVIEW	The court reviewed the denial of the CPL 440.10 motion and suppression ruling for whether the lower court acted providently, reviewed ineffective-assistance claims under the state and federal standards, and considered preservation of prosecutorial-summation claims. The opinion does not state a separate formal standard of review for each issue.

PRECEDENTIAL VALUE	published
PARTIES	Yonander Cuevas v. The People of the State of New York

TOPICS

ineffective assistance suppression of evidence post-conviction relief criminal procedure
appellate procedure

PRACTICE AREAS

criminal law criminal procedure post-conviction relief appellate practice

QUESTIONS PRESENTED

1. Whether trial counsel provided ineffective assistance by declining to introduce DNA evidence excluding defendant and his codefendant as contributors to DNA on duct tape.
2. Whether the lineup identification procedure was unduly suggestive and whether an in-court identification had an independent source.
3. Whether the prosecution's suppression of substantiated CCRB complaints constituted a material Brady violation warranting vacatur of the judgment and a new trial.
4. Whether the defendant preserved his challenges to prosecutorial summation remarks and, alternatively, whether those remarks denied him a fair trial.
5. Whether defendant's sentence should be reduced.

HOLDINGS

1. Defendant received effective assistance under both state and federal standards because counsel's decision to focus on a misidentification defense and not introduce the duct-tape DNA evidence was a reasonable strategic choice.
2. The motion to suppress the lineup identification was properly denied because the detective's remarks did not automatically render the identification procedure impermissibly suggestive, and the detective's certainty and nonidentification instructions ameliorated any suggestiveness.
3. Even if the lineup procedure had been suggestive, an in-court identification could still be admitted because the victim had an independent recollection of defendant based on ample opportunity to observe him during the robbery.
4. The denial of defendant's CPL 440.10 motion based on alleged Brady violations was proper because, although the substantiated CCRB complaints were favorable and suppressed, defendant failed to establish material prejudice.
5. Most of defendant's challenges to the prosecutor's summation remarks were unpreserved because defendant failed to make timely or appropriate objections or seek further relief. His cumulative

constitutional claim was also unpreserved because he did not object or move for a mistrial on that ground.

6. Alternatively, the challenged summation remarks did not warrant reversal because they were permissible comments based on the evidence and responsive to defendant's summation arguments.

KEY QUOTATIONS

*"To establish a Brady violation warranting a new trial, "a defendant must show that (1) the evidence is favorable to the defendant because it is either exculpatory or impeaching in nature; (2) the evidence was suppressed by the prosecution; and (3) prejudice arose because the suppressed evidence was material" (["*2])*

FACTUAL BACKGROUND

Defendant was convicted after a jury retrial of multiple kidnapping, robbery, burglary, larceny, and criminal-possession offenses arising from a robbery in which victims were tied with duct tape and a van was stolen. Before a lineup, a detective told a victim that the police had the robbers and asked the victim to identify them, but also emphasized that the victim should be completely certain and need not identify anyone. The victim had an opportunity to observe defendant for five to ten minutes from approximately twelve to fourteen feet away. Defendant later sought post-conviction relief based on counsel's handling of exculpatory DNA evidence, allegedly suppressed CCRB complaints, and prosecutorial summation remarks.

PROCEDURAL HISTORY

The Supreme Court, Bronx County, conducted pretrial hearings and the first trial before Justice Colleen D. Duffy, and the retrial and sentencing before Justice John W. Carter. Judgment was rendered October 13, 2016, convicting defendant of multiple kidnapping, robbery, burglary, larceny, and criminal-possession offenses and imposing an aggregate 20-year sentence. Justice Judith Lieb later denied defendant's CPL 440.10 motion to vacate the judgment in an order entered on or about August 8, 2024; the Appellate Division affirmed.

DISPOSITION

affirmed

CASES CITED

- People v. Benevento, 91 N.Y.2d 708, 713-714 (1998)
- Strickland v. Washington, 466 U.S. 668 (1984)
- People v. Rodriguez, 64 N.Y.2d 738, 740 (1984)
- People v. Logan, 25 N.Y.2d 184, 192 (1969), cert. denied, 396 U.S. 1020 (1970)
- People v. Adams, 53 N.Y.2d 241, 251 (1981)
- People v. Williams, 222 A.D.2d 149, 152 (1st Dep't 1996), lv. denied, 88 N.Y.2d 1072 (1996)
- Brady v. Maryland, 373 U.S. 83, 87 (1963)
- People v. Garrett, 23 N.Y.3d 878, 885 (2014)

- People v. Smith, 27 N.Y.3d 652, 661 (2016)
- People v. Guica, 33 N.Y.3d 462, 473-474 (2019)
- Ulett, 33 N.Y.3d 512, 520 (2019)
- People v. Romero, 7 N.Y.3d 911, 912 (2006)
- People v. Iannelli, 69 N.Y.2d 684 (1986), cert. denied, 482 U.S. 914 (1987)
- People v. Overlee, 236 A.D.2d 133, 144 (1st Dep't 1997), lv. denied, 91 N.Y.2d 976 (1998)
- People v. D'Alessandro, 184 A.D.2d 114, 118-119 (1st Dep't 1992), lv. denied, 81 N.Y.2d 884 (1993)

OPINION

People v. Cuevas 2026 NY Slip Op 02940

PER CURIAM.

People v Cuevas - 2026 NY Slip Op 02940 skip to main content

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2026 NY Slip Op 02940

May 12, 2026

Appellate Division, First Department

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This decision is uncorrected and subject to revision before publication in the Official Reports.

The People of the State of New York, Respondent,

v

Yonander Cuevas, Appellant.

Decided and Entered: May 12, 2026

Ind. No. 1163/10|Appeal No. 6600-6600A|Case No. 2019-4501, 2024-05535|

Before: Scarpulla, J.P., Mendez, Shulman, Rodriguez, Hagler, JJ.

Caprice R. Jenerson, Office of the Appellate Defender, New York (C. Taylor Poor of counsel), for appellant.

Darcel D. Clark, District Attorney, Bronx (Katherine A. Triffon of counsel), for respondent.

*1 Judgment, Supreme Court, Bronx County (Colleen D. Duffy, J. at pretrial hearings and first trial; John W. Carter, J. at retrial and sentencing), rendered October 13, 2016, convicting defendant, after a jury trial, of kidnapping in the second degree (three counts), robbery in the first degree (three counts), robbery in the second degree (three counts), burglary in the second degree, grand larceny in the fourth degree, and criminal possession of stolen property in the fourth degree (one count), and sentencing him to an aggregate term of 20 years; and order, same court (Judith Lieb, J.), entered on or about August 8, 2024, which denied defendant's CPL 440.10 motion to vacate the judgment, unanimously affirmed.

Defendant received effective assistance of counsel under the state and federal standards (*see* People v Benevento, 91 NY2d 708, 713-714 [1998]; *Strickland v Washington*, 466 US 668 [1984]). At the hearing on his CPL 440.10 motion,

his trial counsel explained his strategic decision to focus on a misidentification defense, and not to admit DNA evidence at the retrial that could divert or confuse the jury. As the motion court found, the evidence at the first trial established that defendant had not handled the duct tape used to tie up the victims, and thus, it was a reasonable strategy for counsel not to introduce evidence that DNA testing of the duct tape excluded defendant and his codefendant as contributors.

The court providently denied defendant's motion to suppress the lineup identification. Based on the victim's testimony, the court found that before the lineup, the detective had told the victim, "We have the guys who robbed you, and we want you to come identify them," and that they had recovered the stolen van. However, an identification is not automatically contaminated by an officer's remark that a suspect is in custody (*People v Rodriguez*, 64 NY2d 738, 740 [1984]; *People v Logan*, 25 NY2d 184, 192 [1969], *cert denied* 396 US 1020 [1970]). Here, before the victim viewed the lineup, the detective stressed that the victim had to be "a hundred percent" [certain of his identification] and that it was "okay" if he did not recognize anyone. These instructions ameliorated any suggestiveness. In any event, even where a suggestive identification procedure has been suppressed, an in-court identification may be permitted where it can be shown that the proposed identification is based on the witness's independent recollection of the incident itself and not on the suggestive procedure (*see People v Adams*, 53 NY2d 241, 251 [1981]; *People v Williams*, 222 AD2d 149, 152 [1st Dept 1996], *lv denied* 88 NY2d 1072 [1996]). The victim's testimony at the independent source portion of the hearing established that the victim had ample opportunity to observe defendant for 5 to 10 minutes from 12 to 14 feet away during the robbery.

*[*2]*

The court providently denied defendant's motion to vacate judgment on the ground that the People violated their *Brady* obligations (*see Brady v Maryland*, 373 US 83, 87 [1963]). To establish a *Brady* violation warranting a new trial, "a defendant must show that (1) the evidence is favorable to the defendant because it is either exculpatory or impeaching in nature; (2) the evidence was suppressed by the prosecution; and (3) prejudice arose because the suppressed evidence was material" (*People v Garrett*, 23 NY3d 878, 885 [2014]). Defendant satisfied the first two prongs by showing that the substantiated CCRB complaints were favorable to defendant and were suppressed by the prosecution (*see People v Smith*, 27 NY3d 652, 661 [2016]). However, upon examining the trial record, we find that there is no reasonable probability that the People's failure to disclose the CCRB complaints, which arose from one incident that occurred 16 years earlier, undermined the fairness of defendant's trial or impacted the verdict (*see People v Guica*, 33 NY3d 462, 473-474 [2019]; *Ulett*, 33 NY3d 512, 520 [2019]).

Defendant has not preserved his claim as to most of the remarks made by the prosecutor during summation that he challenges on appeal because at trial, he either made no objection, objected on different grounds than raised on appeal, or failed to seek a further remedy after the court sustained the objection, addressed the issue, or gave a curative instruction (*see People v Romero*, 7 NY3d 911, 912 [2006]). Further, defendant did not object or move for a mistrial on the ground that the remarks

cumulatively denied him a fair trial; thus, his constitutional claim is unpreserved (*see People v Iannelli*, 69 NY2d 684 [1986], *cert denied* 482 US 914 [1987]). As an alternative holding, we find no basis for reversal (*see People v Overlee*, 236 AD2d 133, 144 [1st Dept 1997], *lv denied* 91 NY2d 976 [1998]; *People v D'Alessandro*, 184 AD2d 114, 118-119 [1st Dept 1992], *lv denied* 81 NY2d 884 [1993]). The remarks at issue constituted permissible comment based on the evidence and were responsive to defendant's summation arguments.

We perceive no basis for reducing the sentence.

THIS CONSTITUTES THE DECISION AND ORDER

OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: May 12, 2026

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PER CURIAM.

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[1984]). At the hearing on his CPL 440.10 motion, his trial counsel explained his strategic decision to focus on a misidentification defense, and not to admit DNA evidence at the retrial that could divert or confuse the jury. As the motion court found, the evidence at the first trial established that defendant had not handled the duct tape used to tie up the victims, and thus, it was a reasonable strategy for counsel not to introduce evidence that DNA testing of the duct tape excluded defendant and his codefendant as contributors. The court providently denied defendant's motion to suppress the lineup identification. Based on the victim's testimony, the court found that before the lineup, the detective had told the victim, "We have the guys who robbed you, and we want you to come identify them," and that they had recovered the stolen van. However, an identification is not automatically contaminated by an officer's remark that a suspect is in custody (*People v Rodriguez* , 64 NY2d 738, 740 [1984]; *People v Logan* , 25 NY2d 184, 192 [1969], cert denied 396 US 1020 [1970]). Here, before the victim viewed the lineup, the detective stressed that the victim had to be "a hundred percent" [certain of his identification] and that it was "okay" if he did not recognize anyone. These instructions ameliorated any suggestiveness. In any event, even where a suggestive identification procedure has been suppressed, an in-court identification may be permitted where it can be shown that the proposed identification is based on the witness's independent recollection of the incident itself and not on the suggestive procedure (see *People v Adams* , 53 NY2d 241, 251 [1981]; *People v Williams* , 222 AD2d 149, 152 [1st Dept 1996], lv denied 88 NY2d 1072 [1996]). The victim's testimony at the independent source portion of the hearing established that the victim had ample opportunity to observe defendant for 5 to 10 minutes from 12 to 14 feet away during the robbery. [*2] The court providently denied defendant's motion to vacate judgment on the ground that the People violated their Brady obligations (see *Brady v Maryland* , 373 US 83, 87 [1963]). To establish a Brady violation warranting a new trial, "a defendant must show that (1) the evidence is favorable to the defendant because it is either exculpatory or impeaching in nature; (2) the evidence was suppressed by the prosecution; and (3) prejudice arose because the suppressed evidence was material" (*People v Garrett* , 23 NY3d 878, 885 [2014]). Defendant satisfied the first two prongs by showing that the substantiated CCRB complaints were favorable to defendant and were suppressed by the prosecution (see *People v Smith* , 27 NY3d 652, 661 [2016]). However, upon examining the trial record, we find that there is no reasonable probability that the People's failure to disclose the CCRB complaints, which arose from one incident that occurred 16 years earlier, undermined the fairness of defendant's trial or impacted the verdict (see *People v Guica* , 33 NY3d 462 , 473-474 [2019]; *Ulett* , 33 NY3d 512 , 520 [2019]). Defendant has not preserved his claim as to most of the remarks made by the prosecutor during summation that he challenges on appeal because at trial, he either made no objection, objected on different grounds than raised on appeal, or failed to seek a further remedy after the court sustained the objection, addressed the issue, or gave a curative instruction (see *People v Romero* , 7 NY3d 911, 912 [2006]). Further, defendant did not object or move for a mistrial on the ground that the remarks cumulatively denied him a fair trial; thus, his constitutional

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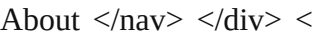
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PER CURIAM.

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