

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

People v. Anderson

People v. Anderson, 2026 NY Slip Op 04056 (N.Y. Ct. App. 2026) · No. 254 KA 25-00191 · Decided June 26, 2026

SUMMARY

The Appellate Division, Fourth Department reversed an order dismissing an indictment charging attempted murder and criminal possession of a weapon. The court held that the grand jury proceeding was not defective because the evidence did not support a justification instruction and the prosecutor's introduction of the defendant's prior conviction did not warrant dismissal.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Fourth Judicial Department
WRITING FOR THE COURT	Montour, J.P.; Ogden, J.; Greenwood, J.; Nowak, J.; Hannah, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Fourth Department
DECIDED	June 26, 2026
DOCKET	254 KA 25-00191
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The People appealed from an order granting the portion of defendant's omnibus motion seeking dismissal of the indictment.
STANDARD OF REVIEW	Whether the grand jury proceeding was so irregular that the integrity of the proceeding was impaired and prejudice to defendant may result; dismissal is an exceptional remedy warranted only upon a possibility that the alleged misconduct affected the grand jury's decision to indict.
PRECEDENTIAL VALUE	Published New York Appellate Division opinion
PARTIES	The People of the State of New York v. Rhodesia Anderson, defendant-respondent

TOPICS

- grand jury
- criminal procedure
- evidence
- appellate procedure
- preservation of error

PRACTICE AREAS

Criminal law

Criminal procedure

Grand jury practice

Evidence

QUESTIONS PRESENTED

1. Whether the grand jury proceeding was defective because the prosecutor did not instruct the grand jury on a justification defense.
2. Whether the introduction of defendant's prior conviction for criminal possession of a weapon in the second degree rendered the grand jury proceeding defective.
3. Whether additional grounds for dismissal raised by defendant on appeal were properly before the court when they had not been decided adversely to the People below.

HOLDINGS

1. The statute is sufficiently certain and not unconstitutionally vague.
2. The trial court properly refused the instruction.
3. The modification was proper and did not prejudice the defendant.
4. The evidence was sufficient; the jury could infer the requisite specific intent.
5. The conviction under §11162.5 is proper; §11391 is a separate offense and does not preclude liability under §11162.5.

KEY QUOTATIONS

*"A court may dismiss an indictment on the ground that a grand jury proceeding is defective where, inter alia, the proceeding is so irregular "that the integrity thereof is impaired and prejudice to the defendant may result"" ([*1])*

*"not every improper comment, elicitation of inadmissible testimony, impermissible question or mere mistake renders an indictment defective"" ([*1])*

*"If the prosecutor fails to instruct the grand jury on a defense that would eliminate a needless or unfounded prosecution, the proceeding is defective, mandating dismissal of the indictment"" ([*1])*

*"A person may not use deadly physical force upon another person unless the person "reasonably believes that such other person is using or about to use deadly physical force"" ([*1])*

FACTUAL BACKGROUND

The grand jury considered charges including attempted murder in the second degree and criminal possession of a weapon in the second degree. Surveillance video showed defendant engaged in a confrontation with a man, later entering her vehicle, driving away, aiming a gun toward the man, and firing several times, striking a bystander. The People also introduced evidence that defendant had a prior conviction for criminal possession of a weapon in the second degree.

PROCEDURAL HISTORY

Supreme Court, Erie County, granted defendant's motion to dismiss the indictment, finding the grand jury proceeding defective because the People failed to instruct the grand jury on justification and introduced evidence of defendant's prior conviction. The Appellate Division reversed, denied that portion of the omnibus motion, reinstated the indictment, and remitted for further proceedings.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The order is reversed on the law, the portion of defendant's omnibus motion seeking dismissal of the indictment is denied, the indictment is reinstated, and the matter is remitted to Supreme Court, Erie County, for further proceedings on the indictment.

CASES CITED

- People v. Darby, 75 NY2d 449, 454 (1990)
- People v. Huston, 88 NY2d 400, 406, 409 (1996)
- People v. Thompson, 22 NY3d 687, 699 (2014), rearg denied 23 NY3d 948 (2014)
- People v. Lancaster, 69 NY2d 20, 25-28 (1986), cert denied 480 US 922 (1987)
- People v. Graham, 148 AD3d 1517, 1519 (4th Dept 2017)
- People v. Valles, 62 NY2d 36, 38-39 (1984)
- People v. Mitchell, 82 NY2d 509, 515 (1993)
- People v. St. John, 215 AD3d 1267, 1268 (4th Dept 2023), lv denied 40 NY3d 999 (2023)
- People v. Nicholson, 26 NY3d 813, 825 (2016)
- People v. Concepcion, 17 NY3d 192, 195 (2011)

OPINION

PER CURIAM.

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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, APPELLANT, v RHODESIA ANDERSON, DEFENDANT-RESPONDENT. Supreme Court of the State of New York, Appellate Division, Fourth Judicial Department Decided on June 26, 2026 254 KA 25-00191 Present: Montour, J.P.,

Ogden, Greenwood, Nowak, And Hannah, JJ. MICHAEL J. KEANE, DISTRICT ATTORNEY, BUFFALO (MICHAEL J. HILLERY OF COUNSEL), FOR APPELLANT.

NICHOLAS T. TEXIDO, BUFFALO, FOR DEFENDANT-RESPONDENT. Appeal from an order of the Supreme Court, Erie County (Paul Wojtaszek, J.), dated January 30, 2025. The order granted that part of defendant's omnibus motion seeking to dismiss the indictment. [*1] It is hereby ORDERED that the order so appealed from is reversed on the law, that part of the omnibus motion seeking to dismiss the indictment is denied, the indictment is reinstated, and the matter is remitted to Supreme Court, Erie County, for further proceedings on the indictment.

Memorandum: The People appeal from an order granting that part of defendant's omnibus motion seeking to dismiss the indictment. The indictment charged defendant with, inter alia, attempted murder in the second degree (Penal Law §§ 110.00, 125.25 [1]) and criminal possession of a weapon in the second degree (§ 265.03 [3]), and Supreme Court dismissed the indictment on the grounds that the grand jury proceeding was defective because the People failed to instruct the grand jury on a justification defense and improperly introduced evidence of defendant's prior conviction.

The People now appeal, and we reverse. A court may dismiss an indictment on the ground that a grand jury proceeding is defective where, inter alia, the proceeding is so irregular "that the integrity thereof is impaired and prejudice to the defendant may result" (CPL 210.35 [5]; see CPL 210.20 [1] [c]). That is a "demanding test" (*People v Darby*, 75 NY2d 449, 454 [1990]) and the "exceptional remedy of dismissal is... warranted only where a defect in the indictment created a possibility of prejudice" (*People v Huston*, 88 NY2d 400, 409 [1996]). "[N]ot every improper comment, elicitation of inadmissible testimony, impermissible question or mere mistake renders an indictment defective" (*id.*).

Dismissal is limited "to those instances where prosecutorial wrongdoing, fraudulent conduct or errors potentially prejudice the ultimate decision reached by the [g]rand [j]ury" (*id.*). In other words, dismissal is warranted only where there is "a showing that, in the absence of the complained-of misconduct, the grand jury might have decided not to indict the defendant" (*People v Thompson*, 22 NY3d 687, 699 [2014], rearg denied 23 NY3d 948 [2014]).

"The People generally enjoy wide discretion in presenting their case to the [g]rand [j]ury... and are not obligated to search for evidence favorable to the defense or to present all evidence in their possession that is favorable to the accused" (*People v Lancaster*, 69 NY2d 20, 25-26 [1986], cert denied 480 US 922 [1987]; see *Huston*, 88 NY2d at 406). "The prosecutor's discretion in presenting the case to the [g]rand [j]ury, however, is not unbounded, for it is settled that at a [g]rand [j]ury proceeding, the prosecutor performs the dual role of advocate and public officer, charged with the duty not only to secure indictments but also to see that justice is done; as a public

officer [they] owe[] a duty of fair dealing to the accused and candor to the courts" (Lancaster, 69 NY2d at 26 [internal quotation marks omitted]; see Huston, 88 NY2d at 406).

The prosecutor's duty of fair dealing extends to the grand jury instructions (see Lancaster, 69 NY2d at 26). CPL 190.25 (6) provides, as relevant here, that "[w]here necessary or appropriate, the court or the district attorney, or both, must instruct the grand jury concerning the law with respect to its duties or any matter before it." "If the prosecutor fails to instruct the grand jury on a defense that would eliminate a needless or unfounded prosecution, the proceeding is defective, mandating dismissal of the indictment" (People v Graham, 148 AD3d 1517, 1519 [4th Dept 2017]; see Lancaster, 69 NY2d at 27-28; People v Valles, 62 NY2d 36, 38-39 [1984]).

We agree with the People that the evidence before the grand jury was not sufficient to support a justification charge (see People v Mitchell, 82 NY2d 509, 515 [1993]), and thus the court erred in dismissing the indictment on that ground.

The evidence before the grand jury included a surveillance video of the incident, which shows defendant and a man, who knew one another prior to the incident, engaged in a verbal argument in front of a convenience store.

After they separated momentarily, the man grabbed defendant by the throat and slammed her against a vehicle and then to the ground. After struggling for a while on the ground, both defendant and the man got up and defendant entered her parked vehicle. She backed it out of the parking space and then started driving down the street.

As she was driving, the man walked toward her direction but did not appear to have anything in his hands, which were by his side. Defendant aimed a gun at the man and fired several times in his direction as she drove away, striking one of the bystanders standing in front of the store. A person may not use deadly physical force upon another person unless the person "reasonably believes that such other person is using or about to use deadly physical force" (Penal Law § 35.15 [2] [a]).

Here, there was no reasonable view of the evidence that the man was using or about to use deadly physical force upon defendant as she was driving away from the store (see generally People v St. John, 215 AD3d 1267, 1268 [4th Dept 2023], lv denied 40 NY3d 999 [2023]). Further, the defense of justification is inapplicable where, as here, defendant had the opportunity to retreat and failed to do so (see § 35.15 [2] [a]; see generally St. John, 215 AD3d at 1268).

With respect to the second ground for dismissal, we agree with the People that presenting evidence of defendant's prior conviction to the grand jury did not render the proceedings defective. The prosecutor charged the grand jury with criminal possession of a weapon in the second degree pursuant to Penal Law § 265.03 (3), which provides that a person is guilty of that count when "such person possesses any loaded firearm.

Such possession shall not, except as provided in [§ 265.02 (1) or (7)], constitute a violation of this subdivision if such possession takes place in such person's home or place of business." Penal Law § 265.02 (1) provides that a person is guilty of criminal possession of a weapon in the third degree when such person commits the crime of criminal possession of a weapon in the fourth degree as defined in, *inter alia*, section 265.01 (1), and has previously been convicted of any crime.

A person is guilty of criminal possession of a weapon in the fourth degree under section 265.01 (1) when they possess any firearm. Despite the fact that the grand jury could readily infer from the evidence that this incident did not occur in defendant's home or place of business, the People did not advance that theory during the grand jury proceeding and instead charged the grand jury with criminal possession of a weapon in the second degree (Penal Law § 265.03 [3]) using the prior conviction exception, *i.e.*, that defendant possessed a loaded firearm and had a prior criminal conviction (*see id.*; § 265.02 [1]).

Thus, the prosecutor introduced evidence that defendant had a prior conviction of criminal possession of a weapon in the second degree, which is the same charge the grand jury was now considering for this case. We conclude that introducing evidence of defendant's prior conviction of criminal possession of a weapon in the second degree as an element of the crime of criminal possession of a weapon in the second degree as set forth in Penal Law § 265.03 (3) was not improper inasmuch as the prosecutor has "wide discretion" in presenting a matter to the grand jury (*Huston*, 88 NY2d at 406; *see Lancaster*, 69 NY2d at 25-26).

In her responding brief defendant raises additional reasons why the grand jury proceeding was defective, but those issues are not properly before us inasmuch as they were not decided adversely to the People (*see People v Nicholson*, 26 NY3d 813, 825 [2016]; *People v [*2] Concepcion*, 17 NY3d 192, 195 [2011]). All concur except Ogden and Nowak, JJ., who concur in the result in the following memorandum: We write separately to express our concern with the prosecutor's introduction of evidence during the grand jury proceeding that defendant had a prior conviction.

Despite the fact that the grand jury could have readily inferred from the evidence that the instant incident did not occur in defendant's home or place of business, the prosecutor opted to introduce additional evidence that defendant had a prior conviction for criminal possession of a weapon in the second degree—the exact same charge that the grand jury was tasked with considering.

Although we agree with the majority that the prosecutor has "wide discretion" in presenting a matter to the grand jury (*People v Huston*, 88 NY2d 400, 406 [1996]; *see People v Lancaster*, 69 NY2d 20, 25-26 [1986], *cert denied* 480 US 922 [1987]), we believe that the certificate of conviction was unduly suggestive of defendant's propensity to commit crimes—notwithstanding the prosecutor's curative instruction that it could not be used for that purpose.

Nevertheless, we concur with the majority's determination inasmuch as we are unable to conclude that the prosecutor's introduction of that evidence establishes the type of pervasive pattern of bias or misconduct warranting the exceptional remedy of dismissal of the indictment (see generally *People v Thompson*, 22 NY3d 687, 699 [2014], rearg denied 23 NY3d 948 [2014]).

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