

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

People v. Fletcher

2026 NY Slip Op 02417 (Supreme Court of the State of New York Appellate Division Second Department 2026)
· No. 2023-03867 · Decided April 22, 2026

SUMMARY

The Appellate Division, Second Department affirmed Shawn Fletcher's judgment of conviction for criminal possession of a weapon in the second and third degrees. The court upheld the denial of suppression, concluding that police had reasonable suspicion and probable cause after observing Fletcher with a gun and that Fletcher abandoned the weapon. The court also rejected claims concerning credibility of police testimony, ineffective assistance of counsel, prosecutorial summation remarks, and excessive sentencing.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Second Department
WRITING FOR THE COURT	Angela G. Iannacci, J.P.; Deborah A. Dowling, J.; Lourdes M. Ventura, J.; Donna-Marie E. Golia, J.
JURISDICTION	New York Appellate Division, Second Department
DECIDED	April 22, 2026
DOCKET	2023-03867
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed from a judgment of the Supreme Court, Kings County, entered after a jury verdict convicting him of criminal possession of a weapon in the second degree and criminal possession of a weapon in the third degree and imposing sentence. The appeal also reviewed the denial, after a suppression hearing, of the branch of defendant's omnibus motion seeking suppression of physical evidence.
STANDARD OF REVIEW	The People initially bear the burden of going forward to establish the legality of police conduct on a motion to suppress physical evidence, while the defendant bears the ultimate burden of proving that the evidence should not be used. The appellate court defers to the hearing court's credibility determinations, exercises factual review power under CPL 470.15(5), and reviews preservation under CPL 470.05(2).

	Claims of ineffective assistance under the New York Constitution are evaluated under the meaningful-representation standard, while federal claims are evaluated under <i>Strickland v. Washington</i> .
PRECEDENTIAL VALUE	published
PARTIES	Shawn Fletcher v. The People of the State of New York

TOPICS

suppression of evidence

search and seizure

probable cause

ineffective assistance

prosecutorial misconduct

PRACTICE AREAS

criminal law

criminal procedure

appellate practice

QUESTIONS PRESENTED

1. Whether the police had reasonable suspicion to pursue Fletcher and probable cause to arrest him after seeing him with a gun.
2. Whether Fletcher abandoned the gun and therefore lacked standing to challenge its seizure and admission into evidence.
3. Whether the challenge to the credibility and alleged tailoring of a police officer's suppression-hearing testimony was preserved for appellate review and, if considered, had merit.
4. Whether defense counsel's failure to specifically argue that the officer's testimony was incredible as a matter of law constituted ineffective assistance under the New York or United States Constitution.
5. Whether prosecutorial remarks during summation deprived Fletcher of a fair trial and whether counsel's failure to object constituted ineffective assistance.
6. Whether the sentence imposed was excessive.

HOLDINGS

1. The suppression court properly determined that the police had reasonable suspicion to pursue Fletcher and probable cause to arrest him because the officers did not pursue or seize him until after seeing him with a gun.
2. Fletcher abandoned the gun when he threw it beneath a tree and therefore lacked standing to contest its subsequent seizure and admission into evidence because he did not show that the abandonment was caused by unlawful police conduct.
3. Fletcher's contention that the officer's testimony was incredible as a matter of law and patently tailored to overcome constitutional objections was unpreserved because it was not raised in the manner required for appellate review; in any event, the contention lacked merit.

4. Defense counsel's failure to specifically argue that the officer's testimony was incredible as a matter of law and patently tailored did not deprive Fletcher of effective assistance under the New York Constitution because counsel provided meaningful representation; the federal ineffective-assistance claim also failed.
5. Most challenged prosecutorial remarks were proper, and any improper remarks were not so flagrant or pervasive as to deprive Fletcher of a fair trial. The partially unpreserved claim did not warrant reversal, and counsel's failure to object did not constitute ineffective assistance.
6. The sentence imposed was not excessive.

KEY QUOTATIONS

“On a motion by a defendant to suppress physical evidence, the People have the burden of going forward to show the legality of the police conduct in the first instance” (at *1)

“The defendant bears the ultimate burden of proving that the evidence should not be used against him or her” (at *1)

“The hearing court's credibility determinations are entitled to deference on appeal” (at *1)

“within the broad bounds of rhetorical comment permissible in closing arguments, constituted a fair response to arguments made by defense counsel in summation, or constituted fair comment on the evidence” (at *2)

FACTUAL BACKGROUND

Police officers did not pursue or seize Fletcher until after they saw him with a gun. Fletcher then threw the gun beneath a tree, and the police subsequently seized it. At the suppression hearing, the court credited an officer's testimony regarding the circumstances of the pursuit, arrest, and seizure; the Appellate Division found no basis to disturb that credibility determination.

PROCEDURAL HISTORY

The Supreme Court, Kings County, denied defendant's motion to suppress physical evidence after a hearing. Following a jury trial, the court convicted defendant of second- and third-degree criminal possession of a weapon and imposed sentence. The Appellate Division affirmed the judgment.

DISPOSITION

affirmed

CASES CITED

- People v. Greenland, 243 AD3d 587, 588
- People v. Johnson, 243 AD3d 679, 680
- People v. Fasoli, 242 AD3d 900, 901
- People v. Gaddy, 241 AD3d 578, 579

- People v. Avant, 216 AD3d 662, 664
- People v. Sumpter, 286 AD2d 450, 451
- People v. White, 153 AD3d 1369, 1370
- People v. Amuso, 44 AD3d 781, 783
- People v. Delgado, 221 AD3d 909, 910
- People v. Taylor, 120 AD3d 519, 520
- People v. Turner, 203 AD3d 758, 760
- People v. Martinez, 180 AD3d 809, 810
- People v. Debillis, 40 NY3d 431, 436
- People v. Benevento, 91 NY2d 708, 712
- Strickland v. Washington, 466 US 668
- People v. Hankerson, 149 AD3d 778, 779
- People v. Manigat, 136 AD3d 614, 616
- People v. Morales, 201 AD3d 819, 819-820
- People v. Anderson, 213 AD3d 687, 688
- People v. Ingrassia, 207 AD3d 751, 752
- People v. Suitte, 90 AD2d 80

OPINION

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PER CURIAM.

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2026 NY Slip Op 02417

April 22, 2026

Appellate Division, Second 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.

Shawn Fletcher, appellant.

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

Decided on April 22, 2026

2023-03867, (Ind. No. 71980/21)

Angela G. Iannacci, J.P.

Deborah A. Dowling

Lourdes M. Ventura

Donna-Marie E. Golia, JJ.

Patricia Pazner, New York, NY (Sankeerth Saradhi of counsel), for appellant.

Eric Gonzalez, District Attorney, Brooklyn, NY (Leonard Joblove and Jordan

Cerruti of counsel), for respondent.

[*1]

DECISION & ORDER

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Eugene M. Guarino, J.), rendered February 7, 2023, convicting him of criminal possession of a weapon in the second degree and criminal possession of a weapon in the third degree, upon a jury verdict, and imposing sentence. The appeal brings up for review the denial, after a hearing, of that branch of the defendant's omnibus motion which was to suppress physical evidence.

ORDERED that the judgment is affirmed.

"On a motion by a defendant to suppress physical evidence, the People have the burden of going forward to show the legality of the police conduct in the first instance" (*People v Greenland*, 243 AD3d 587, 588 [internal quotation marks omitted]; *see* *People v Johnson*, 243 AD3d 679, 680). "The defendant bears the ultimate burden of proving that the evidence should not be used against him or her" (*People v Fasoli*, 242 AD3d 900, 901; *see* *People v Gaddy*, 241 AD3d 578, 579). "The hearing court's credibility determinations are entitled to deference on appeal" (*People v Greenland*, 243 AD3d at 588; *see* *People v Fasoli*, 242 AD3d at 901).

Here, the challenged suppression determinations were proper. The People established that the police officers who arrested the defendant did not pursue or seize him until after they saw him with a gun, at which point they had reasonable suspicion to pursue him and probable cause to arrest him (*see* *People v Avant*, 216 AD3d 662, 664; *People v Sumpter*, 286 AD2d 450, 451). Further, the Supreme Court properly determined that the defendant abandoned the gun when he threw it beneath a tree and, thus, that he had no standing to contest its subsequent seizure and admission into evidence since he failed to demonstrate that he threw the gun away in response to any unlawful police conduct (*see* *People v White*, 153 AD3d 1369, 1370; *People v Amuso*, 44 AD3d 781, 783).

The defendant's contention that a particular police officer's testimony at the suppression hearing was incredible as a matter of law and patently tailored to overcome constitutional objections is unpreserved for appellate review (*see* CPL 470.05[2]; *People v Delgado*, 221 AD3d 909, 910; *People v Taylor*, 120 AD3d 519, 520). In any event, this contention is without merit. Moreover, upon the exercise of our factual review power (*see* CPL 470.15[5]), we discern no basis for disturbing the Supreme Court's decision to credit such testimony (*see* *People v Turner*, 203 AD3d 758, 760; *People v Martinez*, 180 AD3d 809, 810).

Contrary to the defendant's contention, he was not deprived of the effective assistance of counsel under the New York Constitution based on defense counsel's failure to specifically argue that the police officer's testimony at the suppression hearing was incredible as a matter of law and patently tailored to overcome constitutional objections, since, viewing defense counsel's performance in its totality, counsel provided meaningful representation (*see* *People v Debillis*, 40 NY3d 431, 436; *People v Benevento*, 91 NY2d 708, 712). Further, the defendant was not deprived of the effective assistance of counsel under the United States Constitution (*see* *Strickland v Washington*, 466 US 668).

The

defendant's contention that he was deprived of a fair trial by improper remarks made by the prosecutor during summation is partially unpreserved for appellate review, since the defendant did not object to the majority of the remarks he now challenges (*see* CPL 470.05[2]; *People v Hankerson*, 149 AD3d 778, 779; *People v Manigat*, 136 AD3d 614, 616). In any event, most of the challenged remarks were proper because they were "within the broad bounds of rhetorical comment permissible in closing arguments, constituted a fair response to arguments made by defense counsel in summation, or constituted fair comment on the evidence" (*People v Morales*, 201 AD3d 819, 819-820; *see* *People v Manigat*, 136 AD3d at 616). To the extent that certain remarks were improper, they were not so flagrant or pervasive as to have deprived the defendant of a fair trial (*see* *People v Anderson*, 213 AD3d 687, 688; *People v Ingrassia*, 207 AD3d 751, 752). Further, defense counsel's failure to object to those remarks did not constitute ineffective assistance of counsel (*see* *People v Hankerson*, 149 AD3d at 779).

The sentence imposed was not excessive (*see* *People v Suitte*, 90 AD2d 80).

IANNACCI, J.P., DOWLING, VENTURA and GOLIA, JJ., concur.

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