

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

People v. Gerhard

2025 NY Slip Op 06761 · No. CR-23-1050; CR-23-1051 · Decided December 4, 2025

SUMMARY

The Appellate Division, Third Department, affirmed judgments convicting Jason E. Gerhard of criminal possession of a weapon in the third degree and revoking his probation with resentencing. The court held that the evidence was legally sufficient and supported the verdict, and that the People's discovery disclosures and speedy-trial compliance were adequate. Although the trial court improperly limited part of defense counsel's closing argument, the error was deemed harmless, and the court rejected the remaining sentencing challenges.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
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| COURT                 | Appellate Division of the Supreme Court of the State of New York, Third Department                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| WRITING FOR THE COURT | McShan, J.; Clark, J.P.; Aarons, J.; Pritzker, J.; Reynolds Fitzgerald, J.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| JURISDICTION          | New York Appellate Division, Third Department                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| DECIDED               | December 4, 2025                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| DOCKET                | CR-23-1050; CR-23-1051                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| PROCEDURAL POSTURE    | Defendant appealed from a judgment convicting him after a jury trial of criminal possession of a weapon in the third degree and from a judgment revoking his probation and imposing a consecutive prison sentence after he pleaded guilty to the probation violation.                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| STANDARD OF REVIEW    | Legal sufficiency is reviewed by viewing the facts in the light most favorable to the People and determining whether a valid line of reasoning and permissible inferences could permit a rational jury to find every element proved beyond a reasonable doubt. Weight of the evidence is reviewed in a neutral light, considering whether a different verdict would have been unreasonable and, if not, weighing the relative probative force of conflicting evidence while deferring to the jury's credibility determinations. Alleged summation error is reviewed for harmlessness by determining whether there was a significant probability or reasonable possibility that the error affected the |

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|                           | outcome. Sentencing claims involving impermissible factors or punishment for exercising the right to trial were deemed unpreserved. |
| <b>PRECEDENTIAL VALUE</b> | Published New York Appellate Division opinion                                                                                       |
| <b>PARTIES</b>            | Jason E. Gerhard v. The People of the State of New York                                                                             |

## TOPICS

criminal procedure

speedy trial

evidence

harmless error

appellate procedure

## PRACTICE AREAS

Criminal law

Criminal procedure

Appellate practice

## QUESTIONS PRESENTED

1. Whether the evidence was legally sufficient to establish that defendant knowingly constructively possessed the revolver.
2. Whether the jury's conviction for criminal possession of a weapon in the third degree was against the weight of the evidence.
3. Whether the People's certificates of compliance were invalid because discovery materials, including 911 recordings, were not timely disclosed.
4. Whether the People violated New York's statutory speedy-trial requirement by failing to file a supplemental certificate of compliance after disclosing the 911 recordings.
5. Whether County Court improperly restricted defense counsel's summation regarding defendant's knowledge of the revolver and, if so, whether the error required reversal.
6. Whether defendant's sentencing challenges warranted appellate relief, including his claim that the sentences were harsh and excessive.

## HOLDINGS

1. The evidence was legally sufficient to establish that defendant knowingly possessed the revolver under a theory of constructive possession.
2. The conviction was not against the weight of the evidence.
3. County Court properly denied defendant's motion to strike the People's initial and supplemental certificates of compliance because the record showed diligent efforts to provide discovery materials as they became available or discrepancies were identified.
4. Defendant's statutory speedy-trial rights were not violated because the total chargeable delay was less than six months.
5. County Court erred by preventing defense counsel from arguing that defendant did not know a weapon was present based on the substance of his jail calls, but the error was harmless and did not warrant reversal.

6. Defendant's claims that County Court relied on impermissible sentencing factors and penalized him for exercising his right to trial were unpreserved, and his harsh-and-excessive claim did not warrant modification.

#### KEY QUOTATIONS

*"We affirm."* (\*1)

*"When assessing the legal sufficiency of a jury verdict, [this Court] view[s] the facts in the light most favorable to the People and examine[s] whether there is a valid line of reasoning and permissible inferences from which a rational jury could have found the elements of the crime proved beyond a reasonable doubt"* (\*1)

*"Constructive possession may be established through circumstantial evidence, and does not require proof that a defendant has exclusive access to the area where a weapon is found"* (\*3)

*"Indeed, the discovery obligations under CPL article 245 do not create a rule of strict liability or require a perfect prosecutor"* (\*4)

#### FACTUAL BACKGROUND

In February 2022, police responded to a reported burglary at the residence of defendant's ex-girlfriend and found defendant inside after he had entered to collect his belongings. Defendant still possessed keys to the home, and several witnesses established that he was one of three people with access to it. Police later found a loaded and operable revolver on the kitchen table; the ex-girlfriend did not own firearms, and another person with access denied owning the revolver. Defendant's statements and conduct prompted police to detain him under Mental Hygiene Law § 9.41.

#### PROCEDURAL HISTORY

Defendant was indicted for criminal possession of a weapon in the second and third degrees after police found a loaded, operable revolver on a kitchen table in his ex-girlfriend's home. A jury acquitted him of second-degree possession but convicted him of third-degree possession. At sentencing, defendant pleaded guilty to violating probation arising from a prior attempted weapon-possession conviction. County Court sentenced him to three to six years for the new conviction and revoked probation, imposing a consecutive four-year prison term followed by three years of postrelease supervision. The Appellate Division affirmed both judgments.

#### DISPOSITION

affirmed

#### CASES CITED

- People v. Dillon, 231 AD3d 1352, 1353 [3d Dept 2024]
- People v. White, 231 AD3d 1429, 1429 [3d Dept 2024], lv denied 42 NY3d 1082 [2025]
- People v. Baez, 232 AD3d 1044, 1045 [3d Dept 2024]

- People v. Ruffin, 191 AD3d 1174, 1176 [3d Dept 2021], lv denied 37 NY3d 960 [2021]
- People v. McCoy, 169 AD3d 1260, 1262, 1264 [3d Dept 2019], lv denied 33 NY3d 1033 [2019]
- People v. Durfey, 170 AD3d 1331, 1332 [3d Dept 2019], lv denied 34 NY3d 980 [2019]
- People v. Kendricks, 226 AD3d 1150, 1151 [3d Dept 2024], lv denied 41 NY3d 1003 [2024]
- People v. Watts, 215 AD3d 1170, 1171-1173 [3d Dept 2023]
- People v. Perry, 116 AD3d 1253, 1254 [3d Dept 2014]
- People v. Pinkney, 90 AD3d 1313, 1314-1315 [3d Dept 2011]
- People v. Everett, 231 AD3d 1296, 1297 [3d Dept 2024], lv denied 42 NY3d 1052 [2024]
- People v. Malloy, 228 AD3d 1068, 1069 [3d Dept 2024], lv denied 42 NY3d 971 [2024]
- People v. Contompasis, 236 AD3d 138, 145-146 [3d Dept 2025], lv denied 43 NY3d 1007 [2025]
- People v. Bay, 41 NY3d 200, 211-212 [2023]
- People v. Grandoit, 2025 NY Slip Op 05720, \*1-\*3 [3d Dept 2025]
- People v. Reynolds, 239 AD3d 1098, 1099 [3d Dept 2025]
- People v. McMahon, 237 AD3d 746, 751 [2d Dept 2025], lv denied 43 NY3d 1057 [2025]
- People v. Williams, 224 AD3d 998, 1006 [3d Dept 2024], lv denied 41 NY3d 1021 [2024]
- People v. Graham, 233 AD3d 1361, 1366 [3d Dept 2024], lv denied 43 NY3d 944 [2025]
- People v. Branton, 238 AD3d 1429, 1431-1432 [3d Dept 2025]
- People v. Abdullah, 133 AD3d 925, 926 [3d Dept 2015], lv denied 27 NY3d 990 [2016]
- People v. Scaringe, 137 AD3d 1409, 1411 [3d Dept 2016], lv denied 28 NY3d 936 [2016]
- People v. Jordan, 220 AD3d 1187, 1188 [4th Dept 2023]
- People v. Abergut, 202 AD3d 1497, 1498 [4th Dept 2022], lv denied 38 NY3d 1068 [2022]
- People v. Brown, 149 AD3d 584, 585 [1st Dept 2017], lv denied 29 NY3d 1124 [2017]
- People v. Sydlar, 117 AD3d 1314, 1315 [3d Dept 2014], lv denied 23 NY3d 1068 [2014]
- People v. Coley, 240 AD3d 122, 128 [2d Dept 2025]
- People v. Conry, 230 AD3d 596, 597 [2d Dept 2024], lv denied 42 NY3d 1035 [2024]
- People v. Mairena, 34 NY3d 473, 482, 486 [2019]
- People v. Ashwal, 39 NY2d 105, 109-110 [1976]
- People v. Jones, 147 AD3d 1551, 1551-1552 [4th Dept 2017], lv denied 29 NY3d 1082 [2017]
- People v. Cole, 177 AD3d 1096, 1102 [3d Dept 2019], lv denied 34 NY3d 1015 [2019]
- People v. Ortiz, 189 AD3d 891, 892-893 [2d Dept 2020], lv denied 36 NY3d 1058 [2021]
- People v. Gibian, 76 AD3d 583, 588-589 [2d Dept 2010], lv denied 15 NY3d 920 [2010]
- People v. Jenne, 224 AD3d 953, 958 [3d Dept 2024], lv denied 42 NY3d 927 [2024]
- People v. Brisman, 236 AD3d 1092, 1093 [3d Dept 2025]
- People v. Riddick, 2025 NY Slip Op 05992, \*6 [3d Dept 2025]
- People v. Crawford, 235 AD3d 1174, 1179 [3d Dept 2025], lv denied 43 NY3d 1007 [2025]

**INSTRUCTIONS FOR AN AI ASSISTANT**

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