

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

People v. Lerario

2026 NY Slip Op 01092 · No. 111789 CR-23-1737 · Decided February 26, 2026

SUMMARY

The New York Appellate Division, Third Department, affirmed Stephen Lerario’s convictions for attempted murder in the second degree, assault in the first degree, and weapons offenses arising from a domestic shooting. The court held that the weight-of-the-evidence challenge lacked merit, although it found that statements made at the hospital should have been suppressed because Lerario was in custody without Miranda warnings; the error was harmless beyond a reasonable doubt. The court also affirmed denial, without a hearing, of Lerario’s CPL 440.10 motion alleging ineffective assistance of counsel.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Third Department
WRITING FOR THE COURT	Pritzker, J.; Clark, J.P.; Aarons, J.; Reynolds Fitzgerald, J.; Fisher, J.
JURISDICTION	New York Appellate Division, Third Department
DECIDED	February 26, 2026
DOCKET	111789 CR-23-1737
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed from a judgment of conviction entered after a jury trial and, by permission, from County Court’s denial without a hearing of his CPL 440.10 motion to vacate the conviction based on ineffective assistance of counsel.
STANDARD OF REVIEW	Legal-sufficiency claims are reviewed only if preserved; weight-of-the-evidence claims require a neutral review of the credible evidence, with deference to the jury’s credibility determinations. The denial of a CPL 440.10 motion without a hearing is reviewed for abuse of discretion. Constitutional Miranda error is subject to harmless-error review beyond a reasonable doubt.
PRECEDENTIAL VALUE	Published New York Appellate Division opinion

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QUESTIONS PRESENTED

1. Whether defendant's legal-sufficiency challenge was preserved for appellate review.
2. Whether the convictions were against the weight of the evidence, particularly with respect to intent.
3. Whether statements defendant made to police at the hospital before Miranda warnings were administered should have been suppressed.
4. Whether the Miranda violation was harmless beyond a reasonable doubt.
5. Whether defendant was denied effective assistance of trial and CPL 440.10 counsel because counsel did not present or obtain expert testimony concerning intoxication and ballistics.
6. Whether County Court abused its discretion by denying defendant's CPL 440.10 motion without a hearing.
7. Whether defendant's unpreserved jury-selection claims required reversal.

HOLDINGS

1. Defendant's legal-sufficiency claims were unpreserved because his general trial motion to dismiss was not specifically directed at the errors asserted on appeal.
2. The convictions were supported by the weight of the evidence, including evidence from which the jury could find the requisite intent for attempted murder and first-degree assault beyond a reasonable doubt.
3. Defendant was in custody when police questioned him at the hospital, and his unwarned statements should have been suppressed.
4. The Miranda error was harmless beyond a reasonable doubt and did not require reversal.
5. Defendant's jury-selection claims were unpreserved because he failed to object to the asserted errors.
6. Defendant received meaningful representation; counsel's failure to present experts on intoxication and ballistics did not establish ineffective assistance.
7. County Court properly denied defendant's CPL 440.10 motion without a hearing because defendant failed to provide nonrecord support establishing material facts that would entitle him to relief.

KEY QUOTATIONS

*“With the benefit of viewing the interaction between the police and defendant, and considering all the circumstances involved, we cannot say that a reasonable person would have felt free to leave” (*3)*

*“there is no reasonable possibility that the error might have contributed to defendant's conviction,” (*4)*

*“A careful review of the record establishes that defendant received meaningful representation.” (*5)*

FACTUAL BACKGROUND

During an April 2018 domestic incident, defendant and the victim were alone at the victim's residence. After an argument, defendant retrieved the victim's 12-gauge shotgun, pointed it toward her, and later shot her in the face; she lost her right eye after surgery. Police recovered the shotgun and casings, and testing found defendant's fingerprints on both. Defendant made statements to police at the hospital before Miranda warnings were administered, and the prosecution presented evidence concerning intoxication, intent, and the shooting.

PROCEDURAL HISTORY

Supreme Court, Saratoga County, entered judgment on May 3, 2019 after a jury convicted defendant of attempted murder in the second degree, assault in the first degree, and two weapon-possession offenses, and sentenced him as a second felony offender. County Court denied defendant's CPL 440.10 motion without a hearing on August 28, 2023. The Appellate Division affirmed both the judgment and the order.

DISPOSITION

affirmed

CASES CITED

- People v Baber, 182 AD3d 794, 795 [3d Dept 2020], lv denied 35 NY3d 1064 [2020]
- People v Ashe, 208 AD3d 1500, 1501 [3d Dept 2022], lv denied 39 NY3d 961 [2022]
- People v Alger, 206 AD3d 1049, 1050-1051 [3d Dept 2022], lv denied 38 NY3d 1148 [2022]
- People v Pica-Torres, 230 AD3d 855, 856 [3d Dept 2024], lv denied 42 NY3d 1054 [2024]
- People v Hall, 243 AD3d 1070, 1072 [3d Dept 2025]
- People v Scott, 47 AD3d 1016, 1018-1019 [3d Dept 2008], lv denied 10 NY3d 870 [2008]
- People v Abdullah, 206 AD3d 1340, 1346 [3d Dept 2022], lv denied 39 NY3d 939 [2022]
- People v Burry, 52 AD3d 856, 859 [3d Dept 2008], lv dismissed 10 NY3d 956 [2008]
- People v Slivienski, 204 AD3d 1228, 1236 [3d Dept 2022], lv denied 38 NY3d 1136 [2022]
- People v Robinson, 2025 NY Slip Op 05871, *4 [2025]
- People v Dorvil, 234 AD3d 1106, 1113-1114 [3d Dept 2025], lv denied 44 NY3d 982 [2025]
- People v Lancaster, 143 AD3d 1046, 1054 [3d Dept 2016], lv denied 28 NY3d 1147 [2017]
- People v Mosher, 94 AD3d 1231, 1233 [3d Dept 2012], lv denied 19 NY3d 999 [2012]
- People v James, 215 AD3d 1176, 1178 [3d Dept 2023], lv denied 40 NY3d 935 [2023]
- People v Wright, 27 NY3d 516, 520 [2016]
- People v Bellamy, 187 AD3d 1421, 1422 [3d Dept 2020], lv denied 36 NY3d 1049 [2021]
- People v Ramey, 123 AD3d 1290, 1290 [3d Dept 2014], lv denied 25 NY3d 953 [2015]

- People v Baldi, 54 NY2d 137, 147 [1981]
- People v Starnes, 206 AD3d 1133, 1142-1143 [3d Dept 2022], lv denied 38 NY3d 1153 [2022]
- People v Muller, 57 AD3d 1113, 1114-1115 [3d Dept 2008], lv denied 12 NY3d 761 [2009]
- People v King, 124 AD3d 1064, 1067 [3d Dept 2015], lv denied 25 NY3d 1073 [2015]
- People v Cassala, 130 AD3d 1252, 1255 [3d Dept 2015], lv denied 27 NY3d 994 [2016]
- People v Martin, 207 AD3d 403, 403 [1st Dept 2022], lv denied 38 NY3d 1189 [2022]
- People v Njoku, 218 AD3d 1047, 1052-1053 [3d Dept 2023], lv denied 40 NY3d 1093 [2024]
- People v Cole, 217 AD3d 1185, 1186-1187 [3d Dept 2023]
- People v Nelson, 243 AD3d 958, 962 [3d Dept 2025]
- People v White-Span, 182 AD3d 909, 916 [3d Dept 2020], lv denied 35 NY3d 1071 [2020]

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