

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

People v. Brown

2026 NY Slip Op 01628 · No. 4 KA 22-01574 · Decided March 20, 2026

SUMMARY

The Appellate Division, Fourth Department unanimously affirmed Andreello Brown’s convictions for second-degree murder and second-degree criminal possession of a weapon. The court held that Brown’s Batson challenge was moot, found his legal sufficiency claim unpreserved, and concluded that the verdict was not against the weight of the evidence. The court also rejected claims concerning lesser-included-offense instructions, prosecutorial misconduct, ineffective assistance, suppression of statements, and sentence severity.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Fourth Judicial Department
WRITING FOR THE COURT	Whalen, P.J.; Curran, J.; Montour, J.; Smith, J.; Greenwood, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Fourth Judicial Department
DECIDED	March 20, 2026
DOCKET	4 KA 22-01574
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed from an Erie County Court judgment entered after a jury convicted him of murder in the second degree and criminal possession of a weapon in the second degree.
STANDARD OF REVIEW	The court reviewed the weight of the evidence in light of the elements of the charged offenses, reviewed preservation of legal-sufficiency claims de novo only as permitted by New York preservation rules, reviewed the lesser-included-offense charge under the reasonable-view-of-the-evidence standard, and assessed suppression and ineffective-assistance claims under applicable constitutional and New York standards.
PRECEDENTIAL VALUE	published

PARTIES

Andrello Brown v. The People of the State of New York

TOPICS

criminal procedure

appellate procedure

mootness

preservation of error

suppression of evidence

PRACTICE AREAS

criminal law

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QUESTIONS PRESENTED

1. Whether defendant's Batson challenge was moot because the challenged prospective juror was being considered only as an alternate and no alternate participated in deliberations.
2. Whether defendant preserved his challenge to the legal sufficiency of the evidence.
3. Whether the verdict was against the weight of the evidence, including the evidence of intent to kill.
4. Whether the trial court should have charged lesser included offenses based on the possibility that defendant acted without intent to kill.
5. Whether the prosecutor committed misconduct by impeaching the prosecution's own witness or eliciting testimony regarding a precluded exhibit.
6. Whether the court improperly admitted testimony concerning an allegedly unduly prejudicial statement by defendant.
7. Whether trial counsel was ineffective for failing to seek preclusion of allegedly delayed DNA disclosure and for failing to investigate or call a potentially exculpatory witness.
8. Whether defendant's post-Miranda statements should have been suppressed.
9. Whether the sentence was unduly harsh or severe.

HOLDINGS

1. A Batson challenge to the prosecutor's peremptory strike of a prospective alternate juror was moot where no alternate juror participated in deliberations.
2. Defendant's legal-sufficiency challenge was unpreserved because his generic trial-order-of-dismissal motion was not specifically directed at the errors alleged on appeal.
3. The verdict was not against the weight of the evidence, including on the issue of defendant's intent to kill.
4. The trial court properly refused to charge lesser included offenses of second-degree murder because no reasonable view of the evidence supported a finding that defendant committed a lesser offense but not the greater offense.
5. Defendant's claims that the prosecutor improperly impeached the prosecution's own witness, elicited testimony regarding a precluded exhibit, and introduced an unduly prejudicial statement were unpreserved because defendant failed to object at the relevant times.

6. Counsel was not ineffective for failing to move to preclude DNA evidence based on allegedly delayed disclosure because such a motion would have had little or no chance of success.
7. Counsel was not ineffective in investigating a potentially exculpatory witness or deciding not to call that witness because the investigation was reasonable and the decision was a strategic choice based on risks the testimony posed to the defense.
8. The trial court properly refused to suppress defendant's statements because the record showed that he understood and acknowledged the Miranda warnings and willingly answered questions shortly afterward.
9. The sentence was not unduly harsh or severe.

KEY QUOTATIONS

“To establish a charge on a lesser included offense, a defendant must show both that the greater crime cannot be committed without having concomitantly committed the lesser by the same conduct, and that a reasonable view of the evidence supports a finding that [they] committed the lesser, but not the greater, offense” (at 1)

“we necessarily review the evidence adduced as to each of the elements of [the] crime[s] in the context of our review of defendant's challenge regarding the weight of the evidence” (at 1)

“defendant . . . within [seconds] thereafter willingly answer[ed] questions during interrogation” (at 2)

FACTUAL BACKGROUND

A jury convicted Andreello Brown of murder in the second degree and criminal possession of a weapon in the second degree. The prosecution's case included evidence concerning defendant's intent to kill, DNA evidence, statements made to law enforcement after Miranda warnings, and testimony from a potentially exculpatory witness whom defense counsel investigated but did not call. The prospective juror challenged under Batson was being considered as an alternate, and no alternate juror participated in deliberations.

PROCEDURAL HISTORY

Erie County Court denied defendant's Batson and suppression-related claims, declined to charge lesser included offenses, and entered judgment on the jury verdict. The Appellate Division unanimously affirmed.

DISPOSITION

affirmed

CASES CITED

- People v. Pinero, 143 AD3d 428, 429 (1st Dept 2016), lv denied 29 NY3d 1000 (2017)
- People v. Stephens, 255 AD2d 532, 533 (2d Dept 1998), lv denied 92 NY2d 1039 (1998)
- People v. Everson, 240 AD3d 1343, 1344-1345 (4th Dept 2025)
- People v. Haardt, 129 AD3d 1322, 1322 (3d Dept 2015)
- People v. Derby, 242 AD3d 1627, 1629 (4th Dept 2025)

- People v. Boyd, 234 AD3d 1331, 1332 (4th Dept 2025), lv denied 43 NY3d 1044 (2025)
- People v. Danielson, 9 NY3d 342, 349 (2007)
- People v. Bleakley, 69 NY2d 490, 495 (1987)
- People v. Renaldo, 239 AD3d 1470, 1471 (4th Dept 2025), lv denied 44 NY3d 1013 (2025)
- People v. Broadnax, 52 AD3d 1306, 1307 (4th Dept 2008), lv denied 11 NY3d 830 (2008)
- People v. James, 11 NY3d 886, 888 (2008)
- People v. Seeler, 63 AD3d 1595, 1596 (4th Dept 2009), lv denied 13 NY3d 838 (2009)
- People v. Cruz, 221 AD3d 1423, 1428 (4th Dept 2023), lv denied 41 NY3d 1001 (2024)
- People v. Settles, 192 AD3d 1510, 1511 (4th Dept 2021), lv denied 37 NY3d 960 (2021)
- People v. Lewis, 140 AD3d 1593, 1595 (4th Dept 2016), lv denied 28 NY3d 1029 (2016)
- People v. Jones, 224 AD3d 1348, 1350 (4th Dept 2024), lv denied 41 NY3d 1019 (2024)
- People v. Turner, 197 AD3d 997, 998-999 (4th Dept 2021), lv denied 37 NY3d 1061 (2021)
- People v. Raszl, 108 AD3d 1049, 1050 (4th Dept 2013)
- People v. Wills, 224 AD3d 1329, 1330 (4th Dept 2024), lv denied 41 NY3d 1005 (2024)
- People v. Young, 167 AD3d 1448, 1449-1450 (4th Dept 2018), lv denied 33 NY3d 1036 (2019)
- People v. Morgan, 77 AD3d 1419, 1420 (4th Dept 2010), lv denied 15 NY3d 922 (2010)
- People v. Rodriguez-Rivera, 203 AD3d 1624, 1626 (4th Dept 2022), lv denied 39 NY3d 942 (2022)