

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

People v. Ascencio

2026 NY Slip Op 01739 · No. Ind. No. 2537/17; Appeal No. 6176-6176A; Case Nos. 2019-1981, 2024-07432 ·
Decided March 24, 2026

SUMMARY

The New York Supreme Court, Appellate Division, First Department unanimously affirmed a judgment convicting Bridgitte Ascencio of burglary, attempted burglary, and third-degree stalking, as well as an order denying her CPL 440.10 motion to vacate the judgment. The court rejected her claims under McCoy v. Louisiana and for ineffective assistance of counsel, concluding that counsel maintained a consistent defense, did not concede guilt, and was not ineffective in addressing the supplemental jury charge.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Manzanet-Daniels, J.P.; Shulman, J.; Rodriguez, J.; Higgitt, J.; Rosado, J.
JURISDICTION	New York Supreme Court, Appellate Division, First Department
DECIDED	March 24, 2026
DOCKET	Ind. No. 2537/17; Appeal No. 6176-6176A; Case Nos. 2019-1981, 2024-07432
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed from a judgment convicting her after a jury trial and from an order denying her motion under New York Criminal Procedure Law § 440.10 to vacate the judgment.
STANDARD OF REVIEW	The court reviewed the denial of the CPL 440.10 motion for error and considered whether the motion court properly determined the motion without a hearing. The ineffective-assistance claim was evaluated under New York's meaningful-representation standard and Strickland v. Washington.
PRECEDENTIAL VALUE	published

PARTIES

Bridgitte Ascencio v. The People of the State of New York

TOPICS

post-conviction relief

ineffective assistance

sixth amendment

criminal procedure

appellate procedure

PRACTICE AREAS

criminal procedure

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ineffective assistance of counsel

QUESTIONS PRESENTED

1. Whether the Supreme Court properly denied defendant's CPL 440.10 motion without conducting an evidentiary hearing.
2. Whether trial counsel violated defendant's Sixth Amendment autonomy rights under *McCoy v. Louisiana* by conceding guilt during summation.
3. Whether trial counsel rendered ineffective assistance by allegedly conceding guilt, failing to object to the supplemental jury charge, or failing to request an additional definition of second-degree harassment.
4. Whether the supplemental jury instruction concerning first-degree harassment was legally correct.

HOLDINGS

1. The motion court properly denied defendant's CPL 440.10 motion without a hearing because the motion could be determined from the trial record and defendant's submissions.
2. There was no *McCoy* violation because counsel did not concede defendant's guilt and maintained defendant's innocence while presenting defenses to the stalking and burglary charges.
3. Defendant received effective assistance of counsel; counsel was not ineffective for the challenged summation, for failing to object to the supplemental jury charge, or for failing to request an additional instruction on second-degree harassment.
4. The trial court correctly instructed the jury that first-degree harassment was a crime, provided its statutory definition, and twice emphasized that defendant was not charged with that offense.

KEY QUOTATIONS

*"The court properly denied defendant's CPL 440.10 motion without conducting a hearing, as "the motion could be determined on the trial record and defendant's submissions on the motion"" ([*1])*

*"Accordingly, "because counsel maintained defendant's innocence, there was no McCoy violation"" ([*1])*

*"At the end of his summation, counsel expressly asked the jury to acquit defendant of the burglary and stalking charges." ([*1])*

FACTUAL BACKGROUND

Defendant was convicted of burglary in the second degree, attempted burglary in the second degree, and stalking in the third degree after evidence showed that she sent the victim numerous strange and sexualized voicemails, emails, and text messages and appeared uninvited at the victim's apartment door. In post-conviction proceedings, defendant argued that trial counsel conceded her guilt, violated her autonomy under *McCoy v. Louisiana*, rendered ineffective assistance, and failed to object to or request additional language concerning a supplemental jury charge. The appellate court found that counsel maintained a consistent defense disputing the statutory elements of stalking and burglary and expressly sought acquittal.

PROCEDURAL HISTORY

The Supreme Court, New York County, entered judgment on December 14, 2018, as amended March 19, 2019, convicting defendant of burglary in the second degree, attempted burglary in the second degree, and stalking in the third degree, and sentencing her to an aggregate four-year term. The same court denied defendant's CPL 440.10 motion on or about October 24, 2024. The Appellate Division unanimously affirmed both the judgment and the order.

DISPOSITION

affirmed

CASES CITED

- *People v. Satterfield*, 66 NY2d 796, 799 (1985)
- *McCoy v. Louisiana*, 584 U.S. 414 (2018)
- *People v. Benevento*, 91 NY2d 708, 713-714 (1998)
- *Strickland v. Washington*, 466 U.S. 668 (1984)
- *People v. Quiles*, 217 AD3d 635, 635 (1st Dept 2023), lv denied 40 NY3d 1094 (2024)
- *People v. Green*, 187 AD2d 259, 259 (1st Dept 1992), lv denied 81 NY2d 762 (1992)
- *People v. Boyton*, 189 AD2d 721, 722 (1st Dept 1993)
- *People v. Stultz*, 2 NY3d 277, 287 (2004)
- *People v. Smith-Merced*, 50 AD3d 259, 259 (1st Dept 2008), lv denied 10 NY3d 939 (2008)
- *People v. Fermin*, 231 AD2d 436, 436-437 (1st Dept 1996)

OPINION

PER CURIAM.

People v. Ascencio (2026 NY Slip Op 01739) *People v. Ascencio* 2026 NY Slip Op 01739 Decided on March 24, 2026 Appellate Division, First Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports. Decided and Entered: March 24, 2026 Before: Manzanet-Daniels, J.P., Shulman, Rodriguez, Higgitt, Rosado, JJ. Ind. No. 2537/17|Appeal No.

6176-6176A|Case No. 2019-1981, 2024-07432| [*1]The People of the State of New York, Respondent, v Bridgitte Ascencio, Appellant.

Jenay Nurse Guilford, Center for Appellate Litigation, New York (Bryan S. Furst of counsel), for appellant. Alvin L. Bragg, Jr., District Attorney, New York (Steven A. Levy of counsel), for respondent. Judgment, Supreme Court, New York County (Michele S. Rodney, J.), rendered December 14, 2018, as amended March 19, 2019, convicting defendant, after a jury trial, of burglary in the second degree, attempted burglary in the second degree, and stalking in the third degree, and sentencing her to an aggregate term of four years; and order, same court and Justice, entered on or about October 24, 2024, which denied her CPL 440.10 motion to vacate the judgment, unanimously affirmed.

The court properly denied defendant's CPL 440.10 motion without conducting a hearing, as "the motion could be determined on the trial record and defendant's submissions on the motion" (*People v Satterfield*, 66 NY2d 796, 799 [1985]; see also CPL 440.30[4][a]). Upon the combined record, the motion court correctly rejected defendant's Sixth Amendment claim under *McCoy v Louisiana* (584 US 414 [2018]) and her claim of ineffective assistance of counsel (see *People v Benevento*, 91 NY2d 708, 713-714 [1998]; *Strickland v Washington*, 466 US 668 [1984]).

Contrary to defendant's contentions, her trial lawyer did not concede her guilt of harassment in the first degree and burglary in the second degree (see *People v Quiles*, 217 AD3d 635, 635 [1st Dept 2023], lv denied 40 NY3d 1094 [2024]).

In the face of overwhelming evidence that defendant committed the acts at issue, including sending numerous strange and sexualized voicemails, emails, and text messages to the victim and showing up uninvited at her apartment door, defense counsel presented a consistent, reasonable defense to the third-degree stalking charges by arguing that defendant's conduct was not "likely to cause [the victim] to reasonably fear physical injury" (Penal Law § 120.50[3]); and to the second-degree burglary charges by challenging the element of "intent to commit a crime" inside the building (Penal Law § 140.25; see *People v Green*, 187 AD2d 259, 259 [1st Dept 1992], lv denied 81 NY2d 762 [1992]).

Throughout the trial, counsel vigorously challenged the evidence that the victim had an objectively reasonable fear of physical injury and thus did not concede defendant's guilt of first-degree harassment (see Penal Law § 240.25).

In context, counsel's use of the terms "harassing" and "harassment" during his summation amounted to colloquial speech, as he urged the jury to conclude that defendant's acts were non-criminal, annoying, and bothersome conduct that distressed but did not physically threaten the victim (see *People v Boyton*, 189 AD2d 721, 722 [1st Dept 1993]). At the end of his summation, counsel expressly asked the jury to acquit defendant of the burglary and stalking charges.

Accordingly, "because counsel maintained defendant's innocence, there was no McCoy violation" (Quiles, 217 AD3d at 635). Counsel was also not ineffective for failing to object to the supplemental jury charge (see People v Stultz, 2 NY3d 277, 287 [2004]).

The jury asked whether "harassment alone is a crime." In response, the court correctly informed the jury that harassment in the first degree was a crime and provided the jury with the statutory definition, while twice emphasizing that "defendant is not charged with that crime" (see Penal Law §§ 10.00[6], 240.25).

To the extent the record permits review of defendant's claim that counsel was required to ask the court to also provide the jury with the definition of harassment in the second degree, counsel may have reasonably determined that this ran the risk of confusing the jury and diverting their attention from relevant issues (see People v Smith-Merced, 50 AD3d 259, 259 [1st Dept 2008], lv denied 10 NY3d 939 [2008]), as the intent to commit a violation is not an "intent to commit a crime" sufficient to support a burglary charge (Penal Law § 140.25; see Penal Law § 10.00[6]; see also People v Fermin, 231 AD2d 436, 436-437 [1st Dept 1996]).

THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT,
APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: March 24, 2026