

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

post-conviction relief

constitutional law

appellate procedure

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)