

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

People v. Irving

2026 NY Slip Op 01321 · No. Ind. No. 2811/17; Appeal No. 6050; Case No. 2018-03730 · Decided March 10, 2026

SUMMARY

The New York Appellate Division, First Department, held that the lineup identification was unduly suggestive because the defendant was the only participant visibly wearing a red shirt matching the victims’ description. The court nevertheless affirmed the judgment of conviction, finding the suppression error harmless because other admissible evidence established the defendant’s connection to the burglaries.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Webber, J.P.; Scarpulla, J.; González, J.; Rodriguez, J.; Higgitt, J.
JURISDICTION	New York Supreme Court, Appellate Division, First Department
DECIDED	March 10, 2026
DOCKET	Ind. No. 2811/17; Appeal No. 6050; Case No. 2018-03730
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed from a judgment of Supreme Court, New York County, convicting him after a plea of burglary in the second degree and criminal impersonation in the first degree and sentencing him as a second felony offender to an aggregate term of six years. Defendant challenged the denial of his motion to suppress a lineup identification.
STANDARD OF REVIEW	The court assessed the lineup's suggestiveness under the totality of the circumstances and reviewed the suppression error for harmlessness in relation to defendant's plea.
PRECEDENTIAL VALUE	Published
PARTIES	Marc Irving, Defendant-Appellant v. The People of the State of New York, Respondent

TOPICS

suppression of evidence

criminal procedure

harmless error

appellate procedure

evidence

PRACTICE AREAS

criminal procedure

evidence

appellate procedure

QUESTIONS PRESENTED

1. Whether the lineup identification was unduly suggestive because defendant was the only participant visibly wearing clothing matching the victims' description of the perpetrator.
2. Whether the denial of suppression required reversal when the lineup was unduly suggestive but other admissible evidence unquestionably connected defendant to the burglaries.

HOLDINGS

1. The lineup was unduly suggestive because defendant was the sole participant visibly wearing a red shirt matching a prominent detail in the victims' description, creating a substantial likelihood that he would be singled out for identification.
2. The error in failing to suppress the unduly suggestive lineup identification was harmless and did not require reversal because other admissible evidence unquestionably connected defendant to the burglaries and there was no reasonable possibility that the error contributed to the plea.

KEY QUOTATIONS

“Considering the totality of circumstances, the fact that one of the victims did not make a positive identification does not alter defendant's showing that the lineup was unduly suggestive” ([*1])

“With this evidence establishing defendant as the perpetrator, there is no “reasonable possibility that the [court's] error contributed to the plea”” ([*1])

FACTUAL BACKGROUND

The lineup occurred within hours of the incidents and included five men. Defendant was the only participant visibly wearing a red shirt, matching a prominent detail in the victims' description of the perpetrator, despite police efforts to obscure the fillers' clothing with garbage bags. Other evidence connected defendant to the burglaries, including victims' credit cards recovered from him, transaction information linking another stolen credit card to the store where he was found, and an incriminating statement to police.

PROCEDURAL HISTORY

Supreme Court held a suppression hearing before Justice Roger Hayes and accepted defendant's plea and imposed sentence before Justice Curtis Farber. The Appellate Division held that the lineup was unduly suggestive and that the lower court erred in denying suppression, but concluded the error was harmless because other admissible evidence unquestionably connected defendant to the burglaries and affirmed the judgment.

DISPOSITION

affirmed

CASES CITED

- People v Chipp, 75 NY2d 327, 336 [1990], cert denied 498 US 833 [1990]
- People v Owens, 74 NY2d 677, 678 [1989]
- People v Pena, 131 AD3d 708, 709 [2d Dept 2015], lv denied 26 NY3d 1148 [2016]
- People v Jabbar, 155 AD3d 586, 587 [1st Dept 2017], lv denied 30 NY3d 1116 [2018]
- People v Cruz, 55 AD3d 365, 365-366 [1st Dept 2008], lv denied 11 NY3d 924 [2009]
- People v Campbell, 155 AD3d 412, 413 [1st Dept 2017], lv denied 30 NY3d 1114 [2018]
- People v Robles, 42 NY3d 694, 696-697 [2024]

OPINION

PER CURIAM.

People v Irving (2026 NY Slip Op 01321) People v Irving 2026 NY Slip Op 01321 Decided on March 10, 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 10, 2026 Before: Webber, J.P., Scarpulla, González, Rodriguez, Higgitt, JJ. Ind. No. 2811/17|Appeal No. 6050|Case No. 2018-03730| [*1]The People of the State of New York, Respondent, v Marc Irving, Defendant-Appellant.

Caprice R. Jenerson, Office of the Appellate Defender, New York (Stephen R. Strother of counsel), and Alston & Bird LLP, New York (Theodore Altman of counsel), for appellant. Alvin L. Bragg, Jr., District Attorney, New York (Matthew Colangelo of counsel), for respondent. Judgment, Supreme Court, New York County (Roger Hayes, J., at suppression hearing; Curtis Farber, J., at plea and sentencing), rendered May 11, 2018, convicting defendant of burglary in the second degree and criminal impersonation in the first degree, and sentencing him, as a second felony offender, to an aggregate term of six years, unanimously affirmed.

The court erred in denying defendant's motion to suppress the lineup identification. The lineup was unduly suggestive because defendant was the sole participant wearing clothing matching the victims' prior description, thereby creating a substantial likelihood that defendant would be singled out for identification (see People v Chipp, 75 NY2d 327, 336 [1990], cert denied 498 US 833 [1990]; People v Owens, 74 NY2d 677, 678 [1989]).

Of the five men in the lineup, which took place within hours of the incidents, defendant was the only one visibly wearing a red shirt, a detail prominently featured in the victims' description of the perpetrator (see People v Pena, 131 AD3d 708, 709 [2d Dept 2015], lv denied 26 NY3d 1148

[2016]; cf. *People v Jabbar*, 155 AD3d 586, 587 [1st Dept 2017], lv denied 30 NY3d 1116 [2018]; *People v Cruz*, 55 AD3d 365, 365-366 [1st Dept 2008], lv denied 11 NY3d 924 [2009]).

While the police selected four fillers to match the description of the perpetrator provided by the two victims and attempted to obscure their clothing during the lineup by covering them with garbage bags, the red shirt worn by defendant was still clearly visible. Considering the totality of circumstances, the fact that one of the victims did not make a positive identification does not alter defendant's showing that the lineup was unduly suggestive (cf. *People v Campbell*, 155 AD3d 412, 413 [1st Dept 2017], lv denied 30 NY3d 1114 [2018]).

Notwithstanding the court's error in failing to suppress the lineup identification, that error was harmless as there was other admissible evidence unquestionably connecting defendant to the burglaries, which defendant does not challenge. Notably, credit cards bearing the name of one of the victims were recovered from defendant during his arrest; transaction information connected the other victim's stolen credit card to the store where defendant was ultimately located; and defendant made an incriminating statement to the police.

With this evidence establishing defendant as the perpetrator, there is no "reasonable possibility that the [court's] error contributed to the plea" (see *People v Robles*, 42 NY3d 694, 696-697 [2024]).

THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: March 10, 2026