

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

People v. Silva

2026 NY Slip Op 01141 · No. Ind. No. 1609/20; Appeal No. 5940; Case No. 2022-04434 · Decided February 26, 2026

SUMMARY

The Appellate Division, First Department unanimously affirmed Rafael Silva's convictions for two counts of second-degree criminal possession of a weapon and second-degree assault, as well as his aggregate 7½-year sentence. The court held that the evidence was legally sufficient and not against the weight of the evidence, rejected or declined to reach challenges to the prosecutor's summation, and found no basis to reduce the sentence.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Kennedy, J.P.; Scarpulla, J.; Kapnick, J.; González, J.; Rodriguez, J.
JURISDICTION	New York Supreme Court, Appellate Division, First Department
DECIDED	February 26, 2026
DOCKET	Ind. No. 1609/20; Appeal No. 5940; Case No. 2022-04434
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed from a judgment of the Supreme Court, New York County, entered after a jury trial, convicting him of two counts of criminal possession of a weapon in the second degree and assault in the second degree and sentencing him as a second violent felony offender to an aggregate term of 7½ years.
STANDARD OF REVIEW	The court reviewed the verdict for legal sufficiency and weight of the evidence, declined to review unpreserved summation challenges in the interest of justice, alternatively assessed whether the summation deprived defendant of a fair trial, and found no basis to reduce the sentence.
PRECEDENTIAL VALUE	published

PARTIES

Rafael Silva, Defendant-Appellant v. The People of the State of New York, Respondent

TOPICS

criminal procedure

evidence

appellate procedure

standard of review

prosecutorial misconduct

PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether the trial evidence was legally sufficient to support the convictions.
2. Whether the verdict was against the weight of the evidence.
3. Whether the prosecutor's summation deprived defendant of a fair trial.
4. Whether the sentence should be reduced.

HOLDINGS

1. The verdict was supported by legally sufficient evidence and was not against the weight of the evidence.
2. The challenged portions of the prosecutor's summation did not deprive defendant of a fair trial; unpreserved challenges were not considered in the interest of justice.
3. There was no basis to reduce the sentence.

KEY QUOTATIONS

"constituted fair comment on the evidence and reasonable inferences to be drawn therefrom" (*1)

FACTUAL BACKGROUND

During an argument, Silva commanded a shooter to "pop" the victim. The evidence, including witness testimony and surveillance video, supported the jury's conclusion that Silva knew the shooter possessed a loaded firearm and intended that the shooter fire at the victim and cause physical injury. The jury convicted Silva of two counts of second-degree criminal possession of a weapon and second-degree assault.

PROCEDURAL HISTORY

The Supreme Court, New York County, rendered judgment on August 30, 2022, following a jury trial. The Appellate Division unanimously affirmed the judgment, rejecting challenges to the sufficiency and weight of the evidence, prosecutorial summation, and sentence.

DISPOSITION

affirmed

CASES CITED

- People v. Lamont, 25 N.Y.3d 315, 318-319 (2015)
- People v. Danielson, 9 N.Y.3d 342, 348-349 (2007)
- People v. Baque, 43 N.Y.3d 26 (2024)
- Matter of Tatiana N., 73 A.D.3d 186, 190-191 (1st Dep't 2010)
- People v. Grasso, 189 A.D.3d 486, 487 (1st Dep't 2020), lv. denied, 36 N.Y.3d 1097 (2021)
- People v. Torres, 108 A.D.3d 474, 475 (1st Dep't 2013), lv. denied, 22 N.Y.3d 998 (2013)
- People v. Christie, 55 A.D.3d 341, 342 (1st Dep't 2008), lv. denied, 12 N.Y.3d 757 (2009)
- People v. Romero, 7 N.Y.3d 911, 912 (2006), lv. denied, 91 N.Y.2d 976 (1998)
- People v. Overlee, 236 A.D.2d 133, 136 (1st Dep't 1997)
- People v. Gonzalez, 298 A.D.2d 133, 133-134 (1st Dep't 2002), lv. denied, 99 N.Y.2d 614 (2003)
- People v. Bryant, 294 A.D.2d 221 (1st Dep't 2002), lv. denied, 99 N.Y.2d 534 (2002)
- People v. Harkless, 238 A.D.3d 646, 647 (1st Dep't 2025), lv. denied, 44 N.Y.3d 1028 (2025)

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