

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

People v. Post

Post, 2026 NY Slip Op 03580 (Supreme Court of the State of New York Appellate Division Fourth Judicial Department 2026) · No. 387 KA 23-00848 · Decided June 5, 2026

SUMMARY

The New York Appellate Division, Fourth Department, affirmed Dustin Post's convictions for six counts of predatory sexual assault against a child. The court upheld the denial of suppression motions concerning warrantless device searches and pre-Miranda and post-Miranda statements, finding that Post voluntarily consented to the searches and was not in custody during the initial interview. The court also upheld the admission of references to child pornography and a recording of a subsequent interview involving a polygraph examination, concluding that any errors were harmless.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, Fourth Judicial Department
WRITING FOR THE COURT	Whalen, P.J.; Bannister, J.; Montour, J.; Nowak, J.; Hannah, J.
JURISDICTION	Supreme Court of the State of New York, Appellate Division, Fourth Judicial Department
DECIDED	June 5, 2026
DOCKET	387 KA 23-00848
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendant appealed from a judgment of the Chautauqua County Court convicting him, after a jury trial, of six counts of predatory sexual assault against a child.
STANDARD OF REVIEW	The court reviewed the suppression and evidentiary rulings for legal error and concluded that any evidentiary error was harmless because the evidence of guilt was overwhelming and there was no significant probability of acquittal.
PRECEDENTIAL VALUE	published
PARTIES	Dustin Post v. The People of the State of New York

TOPICS

suppression of evidence

fourth amendment

miranda rights

evidence

harmless error

PRACTICE AREAS

New York criminal procedure

criminal evidence

appellate review

QUESTIONS PRESENTED

1. Whether evidence obtained from warrantless searches of defendant's electronic and digital devices should have been suppressed because defendant's consent was not voluntary.
2. Whether defendant's pre-Miranda statements, subsequent post-Miranda statements, and derivative evidence should have been suppressed because he was subjected to custodial interrogation before receiving Miranda warnings.
3. Whether references to defendant's making, possessing, and exchanging child pornography were inadmissible Molineux evidence.
4. Whether admission of the recording of defendant's second interview was reversible error because it disclosed that defendant underwent a polygraph examination.

HOLDINGS

1. Suppression was properly denied because defendant voluntarily provided investigators with written consent to search the devices.
2. Defendant was not in custody during the initial interview, so suppression of his pre-Miranda statements, subsequent post-Miranda statements, and derivative evidence was not required.
3. The trial court properly admitted the references because they were inextricably interwoven with the charged crimes, supplied necessary background, and completed the narrative; their probative value also outweighed their prejudicial effect.
4. Any error was harmless because the evidence of guilt was overwhelming and there was no significant probability that the jury would have acquitted defendant absent the challenged evidence.
5. Admission of the recording was not reversible error because the trial court excluded evidence of the polygraph results, instructed the jury not to consider or speculate about defendant's performance, and any remaining error was harmless.

KEY QUOTATIONS

“a reasonable person, innocent of any crime, would not have believed that [they were] in custody during that time, given the circumstances of the initial [interview]” ([*1])

“inextricably interwoven with the charged crimes, provide[d] necessary background [and] complete[d] [the] narrative” ([*1])

“The evidence of defendant's guilt is overwhelming . . . and there is no significant probability that the jury would have acquitted defendant if the allegedly improper Molineux evidence had been excluded” ([*2])

FACTUAL BACKGROUND

Investigators obtained written consent from defendant to search his electronic and digital devices. Defendant met investigators outside his residence and made statements before receiving Miranda warnings, followed by post-Miranda statements during a second interview that included a voluntarily submitted-to polygraph examination. Recordings of the interviews included references to child pornography and inculpatory statements, and the trial court admitted the challenged portions while excluding evidence of the polygraph results.

PROCEDURAL HISTORY

The Chautauqua County Court rendered judgment on April 10, 2023, after a jury found defendant guilty of six counts of predatory sexual assault against a child. The trial court denied defendant's motions to suppress evidence and statements and permitted admission of challenged Molineux evidence and a recording of a police interview. The Appellate Division unanimously affirmed.

DISPOSITION

affirmed

CASES CITED

- People v. Martin, 197 A.D.3d 955, 955 (4th Dep't 2021), leave denied, 37 N.Y.3d 1162 (2022)
- People v. Fioretti, 155 A.D.3d 1662, 1662-1664 (4th Dep't 2017), leave denied, 30 N.Y.3d 1104 (2018)
- People v. Gonzalez, 39 N.Y.2d 122, 127-130 (1976)
- People v. Walker, 87 A.D.3d 1352, 1352 (4th Dep't 2011), leave denied, 18 N.Y.3d 862 (2011)
- People v. Yukl, 25 N.Y.2d 585, 589 (1969), cert. denied, 400 U.S. 851 (1970)
- People v. Sorrell, 108 A.D.3d 787, 792 (3d Dep't 2013), leave denied, 23 N.Y.3d 1025 (2014)
- People v. Watkins, 224 A.D.3d 1342, 1344-1345 (4th Dep't 2024), leave denied, 41 N.Y.3d 986 (2024)
- People v. Casado, 99 A.D.3d 1208, 1211-1212 (4th Dep't 2012), leave denied, 20 N.Y.3d 985 (2012)
- People v. Frankline, 27 N.Y.3d 1113, 1115 (2016)
- People v. Crimmins, 36 N.Y.2d 230, 241-242 (1975)
- People v. Leone, 25 N.Y.2d 511, 517 (1969)
- People v. Meyers, 182 A.D.3d 1037, 1039 (4th Dep't 2020), leave denied, 35 N.Y.3d 1028 (2020)
- People v. Deskovic, 201 A.D.2d 579, 580 (2d Dep't 1994), leave denied, 83 N.Y.2d 1003 (1994)
- People v. Strzelecki, 108 A.D.3d 644, 645 (2d Dep't 2013), leave denied, 22 N.Y.3d 959 (2013)

OPINION

PER CURIAM.

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Post 2026 NY Slip Op 03580 June 5, 2026 Appellate Division, Fourth Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431.

This decision is uncorrected and subject to revision before publication in the Official Reports. THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT, v DUSTIN POST, DEFENDANT-APPELLANT. Supreme Court of the State of New York, Appellate Division, Fourth Judicial Department Decided on June 5, 2026 387 KA 23-00848 Present: Whalen, P.J., Bannister, Montour, Nowak, And Hannah, JJ. NATHANIEL L. BARONE, II, PUBLIC DEFENDER, MAYVILLE (MATTHEW B. SCHUTTE OF COUNSEL), FOR DEFENDANT-APPELLANT.

JASON L. SCHMIDT, DISTRICT ATTORNEY, MAYVILLE (DANIEL C. GARD OF COUNSEL), FOR RESPONDENT. Appeal from a judgment of the Chautauqua County Court (David W. Foley, J.), rendered April 10, 2023. The judgment convicted defendant, upon a jury verdict, of predatory sexual assault against a child (six counts). [*1] It is hereby ORDERED that the judgment so appealed from is unanimously affirmed.

Memorandum: Defendant appeals from a judgment convicting him, upon a jury verdict, of six counts of predatory sexual assault against a child (Penal Law former § 130.96). We affirm. We reject defendant's contention that County Court erred in refusing to suppress evidence seized pursuant to warrantless searches of his electronic and digital devices. Contrary to defendant's contention, the record establishes that he voluntarily provided investigators with written consent to search those devices (see *People v Martin*, 197 AD3d 955, 955 [4th Dept 2021], lv denied 37 NY3d 1162 [2022]; *People v Fioretti*, 155 AD3d 1662, 1662-1664 [4th Dept 2017], lv denied 30 NY3d 1104 [2018]; see generally *People v Gonzalez*, 39 NY2d 122, 127-130 [1976]).

Defendant further contends that the court erred in refusing to suppress the statements that he made to investigators when he first met with them outside of his residence before he received Miranda warnings and that the court also should have suppressed his subsequent post- Miranda statements and other evidence as the fruit of an unlawful custodial interrogation.

We reject that contention. The court properly concluded that defendant was not in custody inasmuch as the record of the suppression hearing established that "a reasonable person, innocent of any crime, would not have believed that [they were] in custody during that time, given the circumstances of the initial [interview]" (*People v Walker*, 87 AD3d 1352, 1352 [4th Dept 2011], lv denied 18 NY3d 862 [2011]; see generally *People v Yukl*, 25 NY2d 585, 589 [1969], cert denied 400 US 851 [1970]).

Defendant next contends that the court, in its *Molineux* ruling, erred in refusing to require redaction from recordings of defendant's second interview with law enforcement of his references to having made, possessed, and exchanged child pornography.

We conclude that the court properly permitted the admission in evidence of those references. The references were " 'inextricably interwoven with the charged crimes, provide[d] necessary background [and] complete[d] [the] narrative' " of the events charged in the indictment, particularly considering the evidence that defendant recorded his sexual activity with certain victims and showed child pornography to at least one victim in an effort to coax that victim into performing the same sexual act depicted therein (*People v Sorrell*, 108 AD3d 787, 792 [3d Dept 2013], lv denied 23 NY3d 1025 [2014]; see *People v Watkins*, 224 AD3d 1342, 1344-1345 [4th Dept 2024], lv denied 41 NY3d 986 [2024]).

Moreover, " 'the probative value of the Molineux evidence outweighed the prejudicial effect, which was minimized by the court's repeated limiting [*2] instructions to the jury' " (*Watkins*, 224 AD3d at 1345; see *Sorrell*, 108 AD3d at 792).

We further conclude that any error with respect to the admission of Molineux evidence is harmless inasmuch as "[t]he evidence of defendant's guilt is overwhelming... and there is no significant probability that the jury would have acquitted defendant if the allegedly improper Molineux evidence had been excluded" (*People v Casado*, 99 AD3d 1208, 1211-1212 [4th Dept 2012], lv denied 20 NY3d 985 [2012]; see generally *People v Frankline*, 27 NY3d 1113, 1115 [2016]; *People v Crimmins*, 36 NY2d 230, 241-242 [1975]).

Finally, defendant contends that the court committed reversible error by admitting in evidence at trial a recording of the second interview. The second interview included a lengthy polygraph examination to which defendant voluntarily submitted and during which he made inculpatory statements, and defendant contends that the mere disclosure that he underwent a polygraph examination was unduly prejudicial.

We reject that contention. The court properly precluded the People from introducing evidence concerning the results of the polygraph examination (see generally *People v Leone*, 25 NY2d 511, 517 [1969]), and the court further provided a limiting instruction to the jury that evidence regarding defendant's performance on the polygraph examination was inadmissible and that the jury was prohibited from speculating about any such evidence (see *People v Meyers*, 182 AD3d 1037, 1039 [4th Dept 2020], lv denied 35 NY3d 1028 [2020]; see generally *People v Deskovic*, 201 AD2d 579, 580 [2d Dept 1994], lv denied 83 NY2d 1003 [1994]).

Further, we conclude that any error in the admission of the recording of the second interview was harmless under the circumstances of this case (see *People v Strzelecki*, 108 AD3d 644, 645 [2d Dept 2013], lv denied 22 NY3d 959 [2013]; see generally *Crimmins*, 36 NY2d at 241-242).

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