

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

Weinhardt v. New York City Tr. Auth.

2026 NY Slip Op 03653 (Supreme Court of the State of New York Appellate Division First Department 2026) ·
No. 2025-00516 · Decided June 9, 2026

SUMMARY

The Appellate Division, First Department, unanimously affirmed an order denying Nancy Weinhardt's motion to set aside a jury verdict concerning a collision between a vehicle and a New York City Transit Authority bus. The court held that the verdict was not against the weight of the evidence, rejected claims of prejudicial trial misconduct, found any evidentiary error harmless, and upheld the submission of the emergency doctrine to the jury.

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 Appellate Division, First Department
DECIDED	June 9, 2026
DOCKET	2025-00516
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from an order denying plaintiff's CPLR 4404(a) motion to set aside a jury verdict as against the weight of the evidence and in the interests of justice.
STANDARD OF REVIEW	A jury verdict should not be set aside as against the weight of the evidence unless the evidence so preponderates in favor of the moving party that the verdict could not have been reached on any fair interpretation of the evidence. Evidentiary error is subject to harmless-error review, and claims of prejudicial trial misconduct may be unpreserved absent a timely objection or motion for mistrial.
PRECEDENTIAL VALUE	Published New York Appellate Division decision; uncorrected and subject to revision before publication in the Official Reports.

PARTIES

Nancy Weinhardt v. New York City Transit Authority, Michael Herron, et al.

TOPICS

appellate procedure

standard of review

negligence

evidence

harmless error

PRACTICE AREAS

personal injury

motor vehicle negligence

public transportation liability

evidence

appellate procedure

QUESTIONS PRESENTED

1. Whether the jury verdict was against the weight of the evidence or contrary to the interests of justice under CPLR 4404(a).
2. Whether defense counsel's allegedly inflammatory rhetoric and insinuations of a conspiracy deprived plaintiff of a fair trial.
3. Whether admission of portions of a redacted police report constituted reversible error.
4. Whether the emergency doctrine issue was properly submitted to the jury.

HOLDINGS

1. The verdict was not against the weight of the evidence or contrary to the interests of justice because the evidence did not so preponderate in plaintiff's favor that the verdict should be set aside.
2. The alleged inflammatory rhetoric, character attacks, and insinuations of conspiracy did not render the trial fundamentally unfair, and plaintiff failed to preserve the issue by moving for a mistrial when the challenged comments occurred.
3. Any error in admitting portions of the redacted police report was harmless and did not warrant reversal.
4. The trial court properly charged the jury on the emergency doctrine and properly submitted to the jury whether the bus operator was confronted with an emergency.

KEY QUOTATIONS

"The court properly concluded that the verdict was not against the weight of the evidence or contrary to the interests of justice as the evidence did not so preponderate in favor of plaintiff that the verdict should be set aside" ([*1])

"Even assuming the court erred in allowing certain portions of the redacted police report into evidence, any error was harmless." ([*1])

"Finally, the court properly charged the jury concerning the emergency doctrine." ([*1])

FACTUAL BACKGROUND

Plaintiff was a passenger in a motor vehicle driven by Michael Herron that collided with a bus operated by the New York City Transit Authority. Evidence supported the finding that Herron made a sudden right turn in front of the bus, while Herron and his expert testified that the vehicle had been traveling straight when the bus moved into it. The bus operator and a bus passenger gave testimony that the jury was entitled to credit, and a police officer testified from an independent recollection that Herron reported making a right turn in front of the bus.

PROCEDURAL HISTORY

Following a jury verdict arising from a collision between a vehicle carrying plaintiff and a bus operated by the New York City Transit Authority, plaintiff moved under CPLR 4404(a) to set aside the verdict. Supreme Court, New York County, denied the motion in an order entered on or about January 2, 2025. The Appellate Division, First Department, unanimously affirmed without costs.

DISPOSITION

affirmed

CASES CITED

- Muroff v. Heerdt, 242 AD3d 666, 667 (1st Dept 2025)
- Sicignano v. New York City Tr. Auth., 126 AD3d 595, 596 (1st Dept 2015)
- Virgo v. Bonavilla, 49 NY2d 982, 984 (1980)
- Rosario v. Morias, 8 AD3d 108, 108 (1st Dept 2004)

OPINION

PER CURIAM.

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This decision is uncorrected and subject to revision before publication in the Official Reports. Nancy Weinhardt, Plaintiff-Appellant, v New York City Transit Authority, et al., Defendants-Respondents. Decided and Entered: June 09, 2026 Index No. 452432/16|Appeal No. 6054|Case No. 2025-00516| Before: Webber, J.P., Scarpulla, GonzáLez, Rodriguez, Higgitt, JJ. Powers & Santola, LLP, New York (Michael J. Hutter, Jr. of counsel), for appellant.

Anna J. Ervolina, MTA Law Department, Brooklyn (Theresa Frame of counsel), for respondents. [*1] Order, Supreme Court, New York County (Suzanne J. Adams, J.), entered on or about January 2, 2025, which denied plaintiff's motion pursuant to CPLR 4404 (a) to set aside the jury verdict as

against the weight of the evidence and in the interests of justice, unanimously affirmed, without costs.

The court properly concluded that the verdict was not against the weight of the evidence or contrary to the interests of justice as the evidence did not so preponderate in favor of plaintiff that the verdict should be set aside (see *Muroff v Heerdt*, 242 AD3d 666, 667 [1st Dept 2025]). There was proof that defendant Michael Herron, the driver of the motor vehicle in which plaintiff, his mother, was a passenger, which collided with the bus operated by defendant NYCTA, made a sudden right turn in front of the bus, causing the accident.

The court correctly found that although Herron and his expert collectively testified that Herron's car was driving straight when the bus moved into it, the jury was entitled to reject that testimony and credit the testimony of the bus operator and a bus passenger (see *Sicignano v New York City Tr. Auth.*, 126 AD3d 595, 596 [1st Dept 2015]). Plaintiff contends that NYCTA's counsel "corrupted" the fairness of the trial through inflammatory rhetoric, character assassination, and unfounded insinuations of a criminal conspiracy by plaintiff and Herron.

The record does not reflect conduct by NYCTA's counsel that called into question the basic fairness of the trial. Moreover, the court sustained plaintiff's objections to certain comments and plaintiff did not move for a mistrial based on them at the time (see *Virgo v Bonavilla*, 49 NY2d 982, 984 [1980]). Even assuming the court erred in allowing certain portions of the redacted police report into evidence, any error was harmless.

The police officer who prepared the report testified that she had a specific, independent recollection of Herron providing the details of the accident, including telling her that he made a right turn in front of the bus, which was a party admission.

Finally, the court properly charged the jury concerning the emergency doctrine. The issue of whether the bus operator was confronted with an emergency was properly presented to the jury for resolution, as the bus operator also testified that he saw the car as it was coming toward the bus (see *Rosario v Morias*, 8 AD3d 108, 108 [1st Dept 2004]).

We have considered plaintiff's remaining arguments and find them unavailing. THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT. ENTERED: June 9, 2026 Court Decisions All Court Decisions Official Reports Service Bound Volumes Decision Search Resources RSS Feeds Style Manual Citation Tools Opinion Formatting & Privacy Guidelines Opinion Selection Criteria Legal Research Portal Site Index About About the Law Reporting Bureau About our Operations Contact Us Twitter Quick Contact Info 17 Lodge Street Albany, NY 12207 Phone: (518) 453-6900 Links to or from other sites do not signify endorsement or relationship with them.

PER CURIAM.

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