

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

People v. Dennis

2026 N.Y. Slip Op. 01876 · No. 49 KA 25-00147 · Decided March 27, 2026

OPINION

People v. Dennis 2026 NY Slip Op 01876

PER CURIAM.

People v Dennis (2026 NY Slip Op 01876) People v Dennis 2026 NY Slip Op 01876 Decided on March 27, 2026 Appellate Division, Fourth 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 on March 27, 2026

SUPREME COURT OF THE STATE OF NEW YORK

Appellate Division, Fourth Judicial Department

PRESENT: MONTOUR, J.P., SMITH, GREENWOOD, NOWAK, AND

HANNAH, JJ. 49 KA 25-00147

[*1]THE PEOPLE OF THE STATE OF NEW YORK,

RESPONDENT,

v BRANDON DENNIS, DEFENDANT-APPELLANT.

EASTON THOMPSON KASPEREK SHIFFRIN LLP, ROCHESTER (BRIAN

SHIFFRIN OF COUNSEL), FOR DEFENDANT-APPELLANT. BRIAN D. SEAMAN,

DISTRICT ATTORNEY, LOCKPORT (LAURA T. JORDAN OF COUNSEL), FOR

RESPONDENT. Appeal, by permission of a Justice of the Appellate Division of the Supreme

Court in the Fourth Judicial Department, from an order of the Niagara County Court (John James

Ottaviano, J.), entered January 3, 2025. The order denied the motion of defendant to vacate a

judgment of conviction pursuant to CPL 440.10. It is hereby ORDERED that the order so

appealed from is unanimously affirmed. Memorandum: Defendant appeals, by permission of this

Court, from an order that denied without a hearing his motion pursuant to CPL 440.10 to vacate

the judgment convicting him upon a jury verdict of, inter alia, three counts each of murder in the

second degree (Penal Law § 125.25 [1], [3]) and robbery in the first degree (§ 160.15 [2] - [4]).

We previously modified the judgment of conviction (People v Dennis , 91 AD3d 1277 [4th Dept

2012], lv denied 19 NY3d 995 [2012]), and we now conclude that County Court did not err in

denying defendant's motion without conducting a hearing. Defendant failed to establish

entitlement to a hearing on his CPL 440.10 motion inasmuch as he failed to demonstrate that "the

nonrecord facts sought to be established are material and would entitle him . . . to relief" (People

v Streeter , 194 AD3d 1407 , 1408 [4th Dept 2021], lv denied 37 NY3d 974

[2021], reconsideration denied 37 NY3d 1029 [2021] [internal quotation marks omitted]; see *People v Kellum* , 233 AD3d 1374 , 1379 [3d Dept 2024], lv denied 44 NY3d 983 [2025]). Defendant moved to vacate the judgment on the ground that the People violated their Brady obligation by failing to disclose that a prosecution witness had two arrests pending at the time of his trial testimony and that the witness had a personal relationship with an officer involved in the case. "To establish a Brady violation, a defendant must show that (1) the evidence is favorable to the defendant because it is either exculpatory or impeaching in nature; (2) the evidence was suppressed by the prosecution; and (3) prejudice arose because the suppressed evidence was material" (*People v Fuentes* , 12 NY3d 259, 263 [2009], rearg denied 13 NY3d 766 [2009]; see *People v Garrett* , 23 NY3d 878, 885 [2014], rearg denied 25 NY3d 1215 [2015]). "[W]here a defendant makes a specific request for a document, the materiality element is established provided there exists a 'reasonable possibility' that it would have changed the result of the proceeding. Absent a specific request by defendant for the document, materiality can only be demonstrated by a showing that there is a 'reasonable probability' that it would have changed the outcome of the proceedings" (*Fuentes* , 12 NY3d at 263 ; see *People v Lorenzo* , 230 AD3d 1564 , 1566 [4th Dept 2024], lv denied 42 NY3d 1053 [2024]; *People v Hanes* , 218 AD3d 1175, 1177 [4th Dept 2023], lv denied 40 NY3d 1092 [2024]). We agree with defendant that the information regarding the witness's arrests and his relationship with the officer constituted Brady material (see *People v Valentin* , 1 AD3d 982, 982-983 [4th Dept 2003], lv denied 1 NY3d 602 [2004]). However, even assuming, arguendo, that [*2]the information was available to the People (see id . at 983), we conclude, under the circumstances of this case, that defendant failed to establish materiality under Brady inasmuch as there is neither a reasonable probability nor a reasonable possibility that, had the information been disclosed to the defense, it would have changed the result of the trial (see *Hanes* , 218 AD3d at 1177 ; *People v Reed* , 115 AD3d 1334, 1335 [4th Dept 2014], lv denied 23 NY3d 1024 [2014]). Here, the verdict did not turn solely on the witness's testimony. Other evidence, including other eyewitness testimony, DNA evidence from the codefendant, and cell phone data, "established defendant's responsibility for the shooting" (*People v Smith* , 138 AD3d 1418 , 1420 [4th Dept 2016], lv denied 28 NY3d 937 [2016]; see *People v Boykins* , 160 AD3d 1348 , 1350 [4th Dept 2018], lv denied 31 NY3d 1145 [2018]). Entered: March 27, 2026 Ann Dillon Flynn Clerk of the Court