

State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: July 16, 2026

113480

THE PEOPLE OF THE STATE OF
NEW YORK,

Respondent,

v

MEMORANDUM AND ORDER

DOMINIC J. RAINEY,

Appellant.

Calendar Date: April 29, 2026

Before: Aarons, J.P., Pritzker, Ceresia, McShan and Corcoran, JJ.

Sandra M. Colatosti, Albany, for appellant.

Andrew J. Wylie, District Attorney, Plattsburgh (*Jaime A. Douthat* of counsel), for respondent.

Aarons, J.P.

Appeals (1) from a judgment of the County Court of Clinton County (Keith Bruno, J.), rendered April 12, 2021, upon a verdict convicting defendant of the crimes of falsely reporting an incident in the first degree and making a terroristic threat (two counts), and (2) from a judgment of said court, rendered September 15, 2021, which resentenced defendant.

On June 20, 2019, the following four statements appeared on the anonymous social media platform Whisper to users around the City of Plattsburgh, Clinton County: "You think that car in that parking spot is a customer? Nope I planted that yesterday. That's my bomb"; "I'll put my bombs on speed dial. 2-5 takes out downtown and 6-8

ta[k]es out [W]almart and Chik Fil A[,] 9 takes out the interstate"; "I'm all alone really, even he will leave too. But rest assured, if I wanted to I[']d kill every last one of you. How? Bombs every 1000m meter circles made out of cars"; "When I[']m finished here I want the survivors to tell the News my name is simple. 'Abaddon.' " Whisper users who saw the posts contacted law enforcement and, after an investigation, defendant was arrested in connection with the posts and subsequently released. As a result of these June 2019 Whisper posts, defendant was charged by superior court information with falsely reporting an incident in the first degree.

In September 2019, defendant became aware of a public post circulating on the social media platform Snapchat that contained his photograph and a warning to not approach him because he was "making physical threats and stalking girls as they walk home." On September 14, 2019, defendant then engaged in a private Snapchat conversation with the acquaintance who sent him the warning post. In that private conversation, defendant stated, "S**t like this will make me into the greatest mass murder (sic) the world has ever seen[.] I don't have a chance in hell of finding a wife[.] I don't even try anymore. I went to the gym, went home, went to yoga and stopped by the library. Did (sic) talk to anyone[,] haven't seen anyone. The more they lie the more I want ever (sic) male dead[.] Saranac is on my list now." Under police questioning, defendant admitted that "Saranac" referred to Saranac High School. Based upon the September 14, 2019 Snapchat statements, defendant was charged by superior court information with making a terroristic threat.

On February 8, 2020, over the course of about an hour, defendant sent 11 emails to the newsroom of WPTZ, a Plattsburgh television station that had covered one of defendant's arrests. As relevant here, the emails began with defendant complaining about WPTZ's "bias[ed] coverage," asserting that he was the "victim of cyber bullies" and had spent every day of the months he "was locked up . . . planning my revenge. Of the 19 fool proof plans your news station gets blown up in 7 of them via [various items] and a [M]otorola [R]azr. Congrats. You're top of my list. F**k u." By separate email, defendant explained how he would rewire a "simple flip phone" so that "every time you call that number you'll jump a spark...kaboom." Another email stated that it did not matter if it took 10 or 25 years, if he was not married by the age of 40, "I'll kill ever[y] last one of you on Thanksgiving as you sit at your table with your families – kids included. Promise." Based upon these emails, defendant was charged by indictment with a second count of making a terroristic threat.

Defendant consented to being prosecuted by superior court information in connection with the relevant counts, and the charging instruments were consolidated for trial at the People's request. Following pretrial proceedings and a multiday trial, defendant was found guilty as charged and thereafter sentenced to an aggregate prison term of 12 years, to be followed by five years of postrelease supervision. In September 2021, defendant was resentenced on the terms of postrelease supervision to reflect a period of five years of postrelease supervision for each conviction. Defendant appeals.

Turning first to defendant's two convictions of making a terroristic threat, "[a] person is guilty of [that crime] when with intent to intimidate or coerce a civilian population, influence the policy of a unit of government by intimidation or coercion, or affect the conduct of a unit of government by murder, assassination or kidnapping, he or she threatens to commit or cause to be committed a specified offense and thereby causes a reasonable expectation or fear of the imminent commission of such offense" (Penal Law § 490.20 [1]). The specified offense for both convictions was murder in the second degree.

Defendant contends that neither of his convictions of making a terroristic threat is supported by legally sufficient evidence that he intended to intimidate or coerce a civilian population, and, in the alternative, both of those convictions are against the weight of the evidence. "When assessing the legal sufficiency of a jury verdict, we view the facts in the light most favorable to the People and examine whether there is a valid line of reasoning and permissible inferences from which a rational jury could have found the elements of the crime proved beyond a reasonable doubt" (*People v Santiago*, 206 AD3d 1466, 1467 [3d Dept 2022] [internal quotation marks and citations omitted]; see *People v Warner*, 194 AD3d 1098, 1099 [3d Dept 2021], *lv denied* 37 NY3d 1030 [2021]). "In contrast, when undertaking a weight of the evidence review, this Court must first determine whether, based on all the credible evidence, a different finding would not have been unreasonable and then weigh the relative probative force of conflicting testimony and the relative strength of conflicting inferences that may be drawn from the testimony to determine if the verdict is supported by the weight of the evidence" (*People v Santiago*, 206 AD3d at 1467 [internal quotation marks and citations omitted]; see *People v Paige*, 211 AD3d 1333, 1334 [3d Dept 2022], *lv denied* 39 NY3d 1143 [2023]). In conducting that review, we consider the evidence in a neutral light and defer to the jury's assessment of the witnesses' credibility (see *People v Tenace*, 229 AD3d 908, 909 [3d Dept 2024]; *People v Jones*, 202 AD3d 1285, 1286 [3d Dept 2022]).

With respect to the September 2019 Snapchat statement, we agree that defendant's conviction of making a terroristic threat is not supported by legally sufficient evidence. Even viewed in the light most favorable to the People, the record makes clear that defendant made his statement referencing (but not explicitly threatening) "mass murder" and placing "Saranac" on his "list" in a direct exchange initiated by the above-mentioned acquaintance; a screenshot of the statement was then circulated by third parties with captions warning other Snapchat users to "be careful" of defendant. There is no proof that defendant requested or encouraged that acquaintance or any other person to circulate it. As such, the evidence does not support finding that defendant made the statement with the specific intent to intimidate Saranac High School students or some other civilian population (*see Matter of Jose M.F.*, 236 AD3d 1465, 1465 [4th Dept 2025]). Accordingly, defendant's conviction must be reversed, and the relevant superior court information dismissed.

We reach a different conclusion with respect to defendant's conviction of making a terroristic threat in connection with the February 8, 2020 WPTZ emails. Bombing a television station and attacking its employees in retaliation for its news coverage fits the common understanding of terrorism (*see* Penal Law § 490.00; *cf.* Dan Bilefsky et al., *Terrorists Strike Charlie Hebdo Newspaper in Paris, Leaving 12 Dead*, NY Times, Jan. 7, 2015, available at <https://www.nytimes.com/2015/01/08/world/europe/charlie-hebdo-paris-shooting.html> [last accessed June 4, 2026]). Viewed in the light most favorable to the People, defendant's unsolicited statement that he had devised seven ways to blow up WPTZ was meant to scare WPTZ employees to influence their reporting (*see People v Morales*, 20 NY3d 240, 248 [2012]; *People v Jenner*, 39 AD3d 1083, 1086 [3d Dept 2007], *lv denied* 9 NY3d 845 [2007]; *see generally* Penal Law § 490.00). Unlike the September 14, 2019 Snapchat statements, defendant initiated communication with WPTZ and sent the February 8, 2020 emails to the station's general email address for news tips. Though another email stated, "I[']m not going to hurt anyone," and another stated, "Telling you how I could blow your building sky high prevents me from doing it," the absence of an intent to carry out a terroristic threat is not a defense to the crime of making the threat in the first place (*see* Penal Law § 490.20 [2]). As such, defendant's conviction is supported by legally sufficient evidence.

That being said, a different verdict would not have been unreasonable, as the jury could have found that those other emails rendered any "expectation or fear of the imminent commission of" terroristic murder unreasonable, particularly given that WPTZ did not evacuate the building or interrupt programming in response to defendant's emails (Penal Law § 490.20 [1]; *see People v Santiago*, 206 AD3d at 1469). In this respect,

however, the jury could credit the testimony of a WPTZ anchor reporter that he immediately forwarded defendant's emails to police, along with the testimony of WPTZ's news director that, as a result of the emails, he issued safety guidance "making sure [WPTZ employees] were walking out together in pairs and they weren't leaving the building alone." That defendant detailed the contents of a homemade bomb to blow up WPTZ, along with an apparent plan to remotely detonate it with a modified "flip phone," would permit a jury to find that WPTZ employees reasonably feared that defendant would imminently do so (*see* Penal Law § 490.20 [1]; *People v Van Patten*, 48 AD3d 30, 33 [3d Dept 2007], *lv denied* 10 NY3d 845 [2008]). As such, defendant's conviction for making a terroristic threat based upon the February 2020 emails is not against the weight of the evidence.

Next, defendant contends that his conviction of falsely reporting an incident in the first degree in connection with the June 2019 Whisper posts is against the weight of the evidence. A person is guilty of falsely reporting an incident in the first degree when, "[k]nowing the information reported, conveyed or circulated to be false or baseless and under circumstances in which it is likely public alarm or inconvenience will result, he or she initiates or circulates a report or warning of an alleged occurrence or impending occurrence of a fire, explosion or the release of a hazardous substance in or upon a sports stadium or arena, mass transportation facility, enclosed shopping mall, any public building or any public place, and it is likely that persons are present" (Penal Law § 240.60 [6]).

Testimony established that the Whisper application permits a user to publicly post photographs and statements anonymously; that such posts indicate the user's geographic area; and that the user's posts will be visible to other Whisper users in the same geographic area – in this case, Plattsburgh. Accordingly, the Walmart, Chick-fil-A and interstate identified in the Whisper posts were reasonably understood as places located within Plattsburgh. Contrary to defendant's view, each of those locations is a "[p]ublic place" under the statute (Penal Law § 240.00 [1]; *see People v Surdis*, 275 AD2d 553, 553-554 [3d Dept 2000], *lv denied* 95 NY2d 908 [2000]; *see generally People v Jackson*, 18 NY3d 738, 745-746 [2012]). Furthermore, "a warning of the existence of a bomb carries with it the implication of an impending explosion" (*People v Surdis*, 275 AD2d at 554). Users who saw the Whisper posts filed a police report and, as a result, a state trooper and a K-9 unit conducted vehicle sweeps in the parking lot of the Walmart and Chick-fil-A to check for bombs (*compare People v Burwell*, 183 AD3d 173, 181-182 [3d Dept 2020], *lv denied* 35 NY3d 1043 [2020]). Finally, a State Police investigator testified that he traced the posts back to defendant and interviewed him, during which defendant

admitted that he made them to "blow off some steam." Yet, defendant also stated that he directed his threats at Walmart, Chick-fil-A and the interstate because those places "would have the largest amount of people." Thus, although an acquittal would not have been unreasonable if the jury had credited defendant's innocent intent in making the statements comprising the June 2019 Whisper posts, we are satisfied that defendant's conviction of falsely reporting an incident in the first degree is not against the weight of the evidence.

Next, defendant contends that County Court erred in denying his motion to suppress pre- and post-*Miranda* statements he made to police on August 2, 2019 and February 9, 2020.¹ "On a motion to suppress, the People bear the burden of proving beyond a reasonable doubt that the defendant's statements to police were voluntarily given, including that any custodial interrogation was preceded by the administration and the defendant's knowing waiver of his or her *Miranda* rights" (*People v Saunders*, 232 AD3d 1039, 1042 [3d Dept 2024] [internal quotations, brackets and citations omitted], *lv denied* 43 NY3d 1058 [2025]). "The standard for assessing a suspect's custodial status is whether a reasonable person innocent of any wrongdoing would have believed that he or she was not free to leave" (*People v Gentry*, 218 AD3d 919, 923 [3d Dept 2023] [internal quotations marks and citations omitted], *lv denied* 40 NY3d 1012 [2023]). "Various factors to be considered are the location, length and atmosphere of the questioning, whether police significantly restricted the defendant's freedom of action, the degree of the defendant's cooperation, and whether the questioning was accusatory or investigatory"

¹ Defendant further contends that (1) his statements to law enforcement before and after his arrest in connection with the September 14, 2019 Snapchat statements should have been suppressed and (2) that County Court erred in receiving into evidence other videos defendant posted to his social media accounts on or around September 11, 2019 in which he threatens violence against his "enemies" and those of his "country." The first contention is academic in light of our reversal of the relevant conviction. As to the second contention, the videos were received into evidence for the limited purpose of demonstrating that people took action after viewing them at the same time as the September 14, 2019 Snapchat statement, and the court's instruction to the jury in that regard minimized any undue prejudice (*see People v Guevara*, 240 AD3d 1083, 1087 [3d Dept 2025], *lv denied* 44 NY3d 1028 [2025]). In any event, even assuming the videos were erroneously received into evidence, there is no reasonable probability that the videos tainted the remaining two convictions in light of the otherwise overwhelming proof of defendant's guilt (*see People v Morales*, 20 NY3d at 250; *People v Baghai-Kermani*, 84 NY2d 525, 532 [1994]; *People v Crimmins*, 36 NY2d 230, 241-242 [1975]).

(*People v Abdullah*, 206 AD3d 1340, 1345-1346 [3d Dept 2022] [internal quotations marks, brackets and citations omitted], *lv denied* 39 NY3d 939 [2022]; *see People v Green*, 208 AD3d 1539, 1543 [3d Dept 2022]).

At the *Huntley* hearing, testimony established that defendant voluntarily permitted police officers into his apartment on August 2, 2019, and into his motel room on February 9, 2020, whereupon the officers inquired about the June 2019 Whisper posts and February 8, 2020 WPTZ emails, respectively. On both occasions, defendant was cooperative and admitted to authoring the relevant statements prior to the administration of *Miranda* warnings, and on neither occasion was defendant physically restrained nor was his freedom of movement restricted until he was placed in handcuffs following his admissions (*see People v Gentry*, 218 AD3d at 924). Further, on both occasions, defendant remained silent while he was transported to the police station where he was Mirandized, and the arresting officers asked defendant if he would be willing to answer questions. As to the August 2, 2019 interview, defendant responded that he would answer the investigator's questions "depending on what the question is" and engaged in a conversation about his selection of the locations identified in the Whisper posts, after which defendant invoked his right to remain silent. As to the February 9, 2020 interview, defendant answered the officer's questions and consented to a search of his cell phone. Deferring to County Court's credibility determinations (*see People v Saunders*, 232 AD3d at 1042; *People v Moore*, 162 AD3d 1123, 1126 [3d Dept 2018]), the court appropriately determined that, on both August 2, 2019 and February 9, 2020, defendant's pre-*Miranda* statements to police in his apartment and motel room, respectively, were not elicited while defendant was in custody, and that, once in custody and issued *Miranda* warnings, defendant validly waived his rights to remain silent and to an attorney prior to making his statements to police (*compare People v Van Patten*, 48 AD3d at 34-35).

Defendant next contends that County Court erred in granting the People's reverse *Batson* challenge based upon defense counsel's alleged discriminatory pattern of excluding women from the jury. "A *Batson* challenge contemplates a three-step process. At step one, the movant must make a prima facie showing that the peremptory strike was used to discriminate; at step two, if that showing is made, the burden shifts to the opposing party to articulate a non-discriminatory reason for striking the juror; and finally, at step three, the trial court must determine, based on the arguments presented by the parties, whether the proffered reason for the peremptory strike was pretextual and whether the movant has shown purposeful discrimination" (*People v Morgan*, 230 AD3d 864, 870 [3d Dept 2024] [internal quotation marks and citations omitted], *affd* 45 NY3d 940 [2025]; *see People v Payne*, 88 NY2d 172, 181 [1996]).

Defendant used four out of six peremptory challenges to exclude women from the first panel of prospective jurors, and then used seven peremptory challenges to exclude women from the second panel of prospective jurors. Inasmuch as defense counsel provided gender-neutral reasons for excluding each juror and County Court ruled on the ultimate issue of purposeful discrimination, defendant's challenge to the People's step-one showing is moot (*see People v May*, 173 AD3d 1435, 1436 [3d Dept 2019]; *People v Ardrey*, 92 AD3d 967, 969 n 3 [3d Dept 2012], *lv denied* 19 NY3d 861 [2012]). Further, the court's finding that defense counsel's gender-neutral reasons were pretextual is supported by the record (*see People v Leach*, 125 AD3d 568, 569 [1st Dept 2015], *lv denied* 25 NY3d 1074 [2015], *cert denied* 577 US 1033 [2015]; *People v Murphy*, 79 AD3d 1451, 1452 [3d Dept 2010], *lv denied* 16 NY3d 862 [2011]). Although defense counsel claimed that his use of challenges were based upon prospective jurors' backgrounds and failures to provide information in voir dire, defendant excluded only women for those reasons while men who shared similar characteristics went unchallenged (*see People v Wright*, 42 NY3d 708, 715 [2024]; *People v Payne*, 88 NY2d at 185; *People v Allen*, 86 NY2d 101, 110 [1995]). Further, the prosecutor represented that she overheard defense counsel remarking that he intended to exclude women from the jury; defense counsel did not deny that he made the remark. Deferring to the court's factual findings and assessment of defense counsel's credibility, its resolution of the People's reverse *Batson* challenge will not be disturbed (*see People v Hecker*, 15 NY3d 625, 657 [2010]; *People v Cruz*, 238 AD3d 1327, 1328-1329 [3d Dept 2025], *lv denied* 43 NY3d 1054 [2025]; *People v Murphy*, 79 AD3d at 1452).

Defendant next seeks a reduction in his sentence by directing that his sentences for his crimes run concurrently rather than consecutively. Having committed the violent felony of making a terroristic threat in February 2020 while released on his own recognizance in connection with his June 2019 crime of falsely reporting an incident in the first degree, consecutive terms of incarceration are mandatory unless mitigating circumstances affecting the manner in which defendant committed his crime justify the imposition of concurrent terms of incarceration in the interest of justice (*see Penal Law* § 70.25 [2-b]). Under the circumstances, we cannot say that County Court abused its discretion in declining to impose concurrent sentences based upon defendant's untreated mental health issues.

Finally, having reversed one of defendant's convictions for making a terroristic threat, we do not find the remaining aggregate sentence of 7½ years in prison and 5 years of postrelease supervision to be unduly harsh or severe. We therefore decline to reduce

his sentence as a matter of discretion in the interest of justice (*see* CPL 470.15 [6] [b]; *People v Brisman*, 43 NY3d 322, 331 [2025]).

Pritzker, Ceresia, McShan and Corcoran, JJ., concur.

ORDERED that the judgments are modified, on the law, by reversing so much thereof as convicted defendant of making a terroristic threat in connection with the September 14, 2019 Snapchat statements and vacating the sentence imposed thereon; superior court information 123-S-192503 dismissed; and, as so modified, affirmed.

ENTER:

A handwritten signature in black ink, reading "Robert D. Mayberger". The signature is written in a cursive, flowing style with a large initial "R" and a stylized "M".

Robert D. Mayberger
Clerk of the Court