

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

Decided and Entered: July 2, 2026

113681

THE PEOPLE OF THE STATE OF
NEW YORK,

Respondent,

v

MEMORANDUM AND ORDER

JOSEPH COOPER,

Appellant.

Calendar Date: May 28, 2026

Before: Garry, P.J., Fisher, Mackey, Corcoran and Ryba, JJ.

Yorden C. Huban, Public Defender, Albany (James A. Bartosik Jr. of counsel), for appellant.

Lee C. Kindlon, District Attorney, Albany (Daniel J. Young of counsel), for respondent.

Ryba, J.

Appeal from a judgment of the County Court of Albany County (William Little, J.), rendered April 14, 2022, convicting defendant upon his plea of guilty of the crime of criminal possession of a weapon in the second degree.

Defendant was charged by indictment with criminal possession of a weapon in the second degree based upon his possession of a loaded firearm in violation of Penal Law § 265.03. Thereafter, defendant pleaded guilty to the charged offense in exchange for a promised sentence of between 3½ and 5 years in prison, to be followed by a period of postrelease supervision. As part of the plea agreement, defendant waived his right to

appeal. County Court subsequently imposed a determinate prison term of four years, to be followed by five years of postrelease supervision. Defendant appeals.

Defendant argues that, in light of the holding in *New York State Rifle & Pistol Assn., Inc. v Bruen* (597 US 1 [2022]), the absence of a firearm license now constitutes an essential element of the crime of criminal possession of a weapon in the second degree. On that basis, defendant contends that the indictment is jurisdictionally defective for failing to allege the absence of a firearm license and that Penal Law § 265.03 (3) is unconstitutional because it does not require proof of that element. These claims survive defendant's guilty plea and appeal waiver insofar as they challenge the facial validity of the statute and the jurisdictional sufficiency of the indictment (*see People v Johnson*, ___ NY3d ___, ___, 2025 NY Slip Op 06528, *2 [2025], *cert denied* ___ US ___ [2026]). However, it is well settled that a challenge to the constitutionality of a statute is not preserved for appellate review unless raised before the trial court (*see People v Cabrera*, 41 NY3d 35, 42 [2023]; *People v David*, 41 NY3d 90, 95-96 [2023]). Moreover, while a jurisdictional challenge to the sufficiency of an indictment is generally not subject to the preservation requirement, preservation is required where the challenge is founded upon an alleged constitutional infirmity (*see People v Cabrera*, 41 NY3d at 42; *People v David*, 41 NY3d at 99; *People v Clayton*, 247 AD3d 1355, 1356 [3d Dept 2026]).

Here, defendant's challenges to both the indictment and Penal Law § 265.03 rest upon the same constitutional premise that the People were required to plead and prove the absence of a firearm license as an essential element of the offense for which he was convicted. Accordingly, preservation was required notwithstanding defendant's attempt to characterize his claim as a jurisdictional challenge to the facial sufficiency of the indictment. "For this Court to consider a constitutional claim in the guise of an argument that the accusatory instrument is facially insufficient would permit an end run around the parties' obligation to preserve constitutional claims before the trial court" (*People v Baumann & Sons Buses, Inc.*, 6 NY3d 404, 408 [2006]). Although defendant moved to dismiss the indictment on various grounds, he failed to specifically raise the constitutional arguments he now advances and the motion was therefore insufficient to preserve his arguments for our review (*see People v Clayton*, 247 AD3d at 1356; *People v White-Span*, 182 AD3d 909, 909 [3d Dept 2020], *lv denied* 35 NY3d 1071 [2020]).

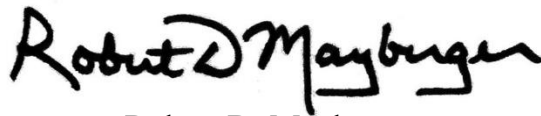
Finally, defendant's constitutional challenge to the sentencing scheme applicable to criminal possession of a weapon in the second degree is likewise unpreserved due to defendant's failure to raise the issue before County Court (*see People v Cabrera*, 41

NY3d at 42). As none of defendant's arguments are properly before us, we decline to address their merits.

Garry, P.J., Fisher, Mackey and Corcoran, JJ., concur.

ORDERED that the judgment is affirmed.

ENTER:

A handwritten signature in black ink that reads "Robert D. Mayberger". The signature is written in a cursive, slightly slanted style.

Robert D. Mayberger
Clerk of the Court