

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

Decided and Entered: March 19, 2026

CR-23-1525

THE PEOPLE OF THE STATE OF
NEW YORK,

Respondent,

v

MEMORANDUM AND ORDER

SHIRON CLAYTON,

Appellant.

Calendar Date: February 17, 2026

Before: Aarons, J.P., Pritzker, Reynolds Fitzgerald, Fisher and Mackey, JJ.

Justin C. Brusgul, Altamont, for appellant.

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

Fisher, J.

Appeal from a judgment of the County Court of Albany County (Andra Ackerman, J.), rendered March 2, 2023, convicting defendant upon his plea of guilty of the crime of attempted criminal possession of a weapon in the second degree.

In satisfaction of a single-count indictment, defendant pleaded guilty to the reduced charge of attempted criminal possession of a weapon in the second degree and agreed to waive his right to appeal. County Court sentenced defendant pursuant to the

terms of the plea agreement to a prison term of 2½ years, to be followed by three years of postrelease supervision. Defendant appeals.¹

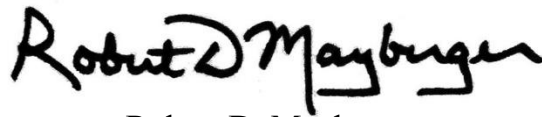
Defendant contends that the indictment is jurisdictionally defective because it fails to allege that defendant lacked a license to possess a weapon, which defendant asserts is now an essential element of the offense in light of the holding in *New York State Rifle & Pistol Assn, Inc. v Bruen* (597 US 1 [2022]). A jurisdictional defect in an indictment survives a guilty plea and an appeal waiver and can be raised for the first time on appeal (see *People v Iannone*, 45 NY2d 589, 600 [1978]; *People v Taylor*, 243 AD3d 1064, 1064-1065 [3d Dept 2025]); however, where, as here, a defendant argues "that the accusatory instrument was facially defective in failing to plead all constitutionally required elements, thereby depriving [County] Court of jurisdiction[,] . . . preservation is required" (*People v David*, 41 NY3d 90, 99 [2023]). Since defendant's general omnibus motion to dismiss the indictment on the basis that the evidence before the grand jury was legally insufficient was not sufficiently specific as to the alleged error to preserve the challenge he now raises (see *People v White-Span*, 182 AD3d 909, 909 [3d Dept 2020], *lv denied* 35 NY3d 1071 [2020]; see also *People v Finger*, 95 NY2d 894, 895 [2000]; *People v Gray*, 86 NY2d 10, 19 [1995]), his contentions are not properly before us. Defendant's remaining contentions have been found academic or without merit (see generally *People v Johnson*, ___ NY3d ___, ___, 2025 NY Slip Op 06528, *5 [2025]).

Aarons, J.P., Pritzker, Reynolds Fitzgerald and Mackey, JJ., concur.

¹ To the extent that defendant's cursory assertion that the indictment violated his due process rights can be deemed a constitutional challenge to the state's firearms licensing scheme and his conviction under Penal Law § 265.03 (3) in light of *Bruen*, such contention is not preserved as defendant failed to raise such issue before County Court (see *People v Johnson*, ___ NY3d ___, ___, 2025 NY Slip Op 06528, *3 [2025]; *People v McLean*, 244 AD3d 1248, 1248-1249 [2d Dept 2025]; *People v Morris-Caldwell*, 221 AD3d 1137, 1137-1138 [3d Dept 2023], *lv denied* 40 NY3d 1093 [2024]).

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 style with a large, stylized 'R' and 'M'.

Robert D. Mayberger
Clerk of the Court