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

Decided and Entered: July 2, 2026 CR-24-0827

THE PEOPLE OF THE STATE OF NEW YORK,
Respondent,
v MEMORANDUM AND ORDER

DIEAGO HARRELL,
Appellant.

Calendar Date: May 29, 2026

Before: Clark, J.P., Aarons, Ceresia, McShan and Powers, JJ.

Paul J. Connolly, Delmar, for appellant.

Robert M. Carney, District Attorney, Schenectady (*Peter H. Willis* of counsel), for respondent.

Clark, J.P.

Appeal from a judgment of the County Court of Schenectady County (Matthew Sypniewski, J.), rendered August 11, 2023, convicting defendant following a nonjury trial of the crimes of kidnapping in the second degree (two counts), criminal possession of a weapon in the second degree and criminal possession of a firearm.

Defendant was charged in an 11-count indictment with various felonies in connection with allegations that he and two codefendants – Danny Harrell (hereinafter codefendant 1) and Dwayne Henderson (hereinafter codefendant 2) – abducted, restrained and tortured an individual (hereinafter the victim) for approximately 20 hours at an apartment in the City of Schenectady. Following a bench trial, at which defendant

and the codefendants were tried jointly, County Court found defendant not guilty of attempted murder and kidnapping in the first degree, but guilty of two counts of kidnapping in the second degree as lesser included offenses, as well as one count each of criminal possession of a weapon in the second degree and criminal possession of a firearm. County Court denied defendant's request to be adjudicated a youthful offender and sentenced him to concurrent 10-year prison terms on the kidnapping convictions, to be followed by five years of postrelease supervision. Lesser concurrent prison sentences were imposed on the remaining convictions. Defendant appeals.

Initially, the People concede that one of the kidnapping convictions against defendant is multiplicitous and must be vacated (*see People v Greene*, 41 NY3d 950, 951 [2024]). We agree and will modify the judgment accordingly. Defendant challenges the remaining charges on legal sufficiency and weight of the evidence grounds, arguing, as it pertains to the remaining kidnapping conviction, that the trial evidence did not establish the abduction element of the crime or that he participated in any such abduction, either directly or as an accomplice. As for the convictions of criminal possession of a weapon in the second degree and criminal possession of a firearm, defendant contends that there was insufficient evidence to establish his constructive possession of the handgun forming the basis of such charges or that he intended to use the handgun unlawfully against another. Although defendant's legal sufficiency arguments are adequately preserved, he waived his right to challenge the legal sufficiency of the evidence on the remaining kidnapping conviction "by consenting to the submission of [kidnapping in the second degree] as a lesser included offense" of the kidnapping in the first degree charges brought against him (*People v O'Neill*, 169 AD3d 1515, 1515 [4th Dept 2019]; *see generally People v Strange*, 247 AD3d 1358, 1359 [3d Dept 2026]). Nonetheless, we necessarily consider whether the People proved the abduction element of kidnapping in the second degree beyond a reasonable doubt in the context of defendant's weight of the evidence challenge, which bears no preservation requirement (*see People v Strange*, 247 AD3d at 1359; *People v Mazzeo*, 202 AD3d 1279, 1280-1281 [3d Dept 2022], *lv denied* 38 NY3d 1072 [2022]).

As relevant here, "[a] person is guilty of kidnapping in the second degree when he [or she] abducts another person" (Penal Law § 135.20; *accord People v White*, 231 AD3d 1429, 1430 [3d Dept 2024], *lv denied* 42 NY3d 1082 [2025]). " 'Abduct' means to restrain a person with intent to prevent his [or her] liberation by either (a) secreting or holding him [or her] in a place where he [or she] is not likely to be found, or (b) using or threatening to use deadly physical force" (Penal Law § 135.00 [2]). Restrain, in turn, "means to restrict a person's movements intentionally and unlawfully in such manner as

to interfere substantially with his [or her] liberty by moving him [or her] from one place to another, or by confining him [or her] either in the place where the restriction commences or in a place to which he [or she] has been moved, without consent and with knowledge that the restriction is unlawful" (Penal Law § 135.00 [1]). Pertinent here, "[a] person is so moved or confined 'without consent' when such is accomplished by . . . physical force, intimidation or deception" (Penal Law § 135.00 [1]).

As for the weapon possession charges, a person is guilty of criminal possession of a weapon in the second degree when, as relevant here, he or she knowingly possesses a loaded and operable firearm "with intent to use the same unlawfully against another" (Penal Law § 265.03 [1] [b]; *see People v Noble*, 244 AD3d 1499, 1500 [3d Dept 2025]). Relatedly, as charged here, "[a] person is guilty of criminal possession of a firearm when he or she . . . possesses any firearm" without authorization (Penal Law § 265.01-b [1]; *see People v Cherry*, 248 AD3d 452, 452 [1st Dept 2026]). "A defendant may be found to possess a firearm through actual, physical possession or through constructive possession – the latter of which requires proof that the defendant exercised dominion or control over the property by a sufficient level of control over the area in which the weapon is found" (*People v Malloy*, 228 AD3d 1068, 1068 [3d Dept 2024] [internal quotation marks and citations omitted], *lv denied* 42 NY3d 971 [2024]; *accord People v Everett*, 231 AD3d 1296, 1297 [3d Dept 2024], *lv denied* 42 NY3d 1052 [2024]). "Constructive possession may be established through circumstantial evidence, and does not require proof that a defendant has exclusive access to the area where a weapon is found" (*People v Watts*, 215 AD3d 1170, 1172 [3d Dept 2023] [internal quotation marks, brackets and citations omitted]; *accord People v Gerhard*, 244 AD3d 1313, 1315 [3d Dept 2025], *lv denied* 45 NY3d 936 [2026]). Moreover, to hold a person responsible for the criminal conduct of another under a theory of accomplice liability, the People must prove that " 'when, acting with the mental culpability required for the commission thereof, he [or she] solicit[ed], request[ed], command[ed], importune[d], or intentionally aid[ed] [the principal] to engage in such conduct' " (*People v Jenkins*, 210 AD3d 1293, 1294 [3d Dept 2022], *lv denied* 39 NY3d 1155 [2023], quoting Penal Law § 20.00).

At trial, the People presented evidence that a person contacted police on October 25, 2021 after seeing a video posted to Snapchat depicting the victim being tortured. Police obtained the user information for the associated Snapchat account, learning that it belonged to codefendant 1 and that the video had been filmed in Schenectady County. After detectives obtained information about an address codefendant 1 was associated with in the City of Schenectady, a SWAT Team was assembled to go to the residence. When the SWAT Team made entry into the building on October 26, 2021 and

approached the second-floor apartment, where they believed the victim was being held, they encountered a dog that "didn't seem very friendly." The SWAT Team entered through the front door of the apartment, announced their presence, and found the victim. When the victim was found, both of his eyes were swollen shut, he had significant swelling to his head and there was dried blood covering his face and body. Defendant emerged from a bedroom in the back of the apartment and both codefendants were located in different rooms.[1] Upon conducting a search of the residence, police found, among other things, drug paraphernalia, a rope, a car jack and a semiautomatic handgun. The handgun was located under a mattress in the bedroom from which defendant emerged and had a cartridge[2] in its chamber. Police also found gun cartridges in the bathroom toilet bowl that matched the caliber of the handgun found in the bedroom. A cellphone was also located on the floor under the bed where the handgun was found. None of defendant's personal belongings were located in the bedroom in which the handgun was found, but the codefendants' belongings were found in different bedrooms within the residence. The People presented evidence that the handgun retrieved from the apartment was operable.

The victim was transported to the hospital to treat his injuries, which included several facial bone fractures, a fractured sternum, several puncture wounds to his left arm consistent with animal bites, a head injury, and "innumerable abrasions and bruises throughout the rest of his body." To establish how the victim sustained his injuries, the People entered into evidence the relevant Snapchat videos posted to codefendant 1's account. The videos depicted the victim being attacked by a dog while lying on the ground, being beaten with a pole, having a pillow thrown over his face, and having his head stomped on by a foot. The victim was later shown lying on the floor with a rope wrapped around his legs. In a different video, he was shown lying naked on the floor in a fetal position with blood all over his body. Several of the videos were accompanied by written captions bearing statements such as, "Bro stomping him to sleep" and "We kidnap MFs when they do wrong." In one of the videos, a person wearing a balaclava was shown

[1] Two women were also in the apartment.

[2] The detective who provided such testimony explained that a gun cartridge is a "[a] full bullet . . . with primer in the casing."

on the screen and a caption was posted at the bottom that stated: "And if you feel a way I'll shoot you and ya mother."[3]

The victim took the stand at trial and revealed the circumstances leading up to the underlying incident. He explained that he was previously familiar with codefendant 2 from performing a variety of jobs for him in the months preceding October 2021 – including at the residence from which he was ultimately rescued – and that he was sometimes compensated for his work in drugs. The victim testified that codefendant 2 was living with defendant and codefendant 1 at such residence in October 2021, and that defendant occupied the back room of the residence, from which the loaded handgun was ultimately retrieved. On the morning of October 24, 2021, the victim dropped codefendant 2 off at a hospital to be treated for appendicitis and left briefly to go to a food pantry. When the victim subsequently returned to the hospital, codefendant 2 gave him "a red bag" to give to codefendant 1. The victim testified that he gave the bag to codefendant 1, who gave him three bags of heroin in exchange. The victim then subsequently returned to the hospital to park codefendant 2's van and went home.[4]

The victim testified that he received a call from codefendant 2 the next morning asking him to pick him up from the hospital because the hospital would not release him to defendant or codefendant 1. Shortly thereafter, defendant and codefendant 1 picked the victim up in codefendant 2's van and proceeded to drive in the direction of the hospital. The victim testified that codefendant 1 was driving the van, defendant was seated in the third row, and that there was a "young pitbull" in one of the first-row seats, which the victim sat next to. According to the victim, when they were approximately two-thirds of the way to the hospital, codefendant 1 turned the vehicle around and proceeded to an apartment, from which codefendant 2 exited. Codefendant 2 then got into a different vehicle, which proceeded to follow the van back to the victim's house. The victim testified that, once they got back to his house, codefendant 2 walked over to the window where he was sitting and accused the victim of stealing from him. The victim remembered trying to open the van doors, but they were locked, and then feeling pain on the back left-hand side of his head before losing consciousness. The victim affirmed that

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[3] Police located a balaclava in a bedroom where they also found clothing associated with codefendant 1. The bedroom in which the balaclava was found was not the bedroom where the handgun was located.

[4] Consistent with such testimony, the People admitted video evidence of codefendant 2 being dropped off at the hospital.

the blow to his head came from behind him and that defendant was the only person seated behind him at the time.

Although the victim could not recall the details of his assault while he was testifying at trial, when reviewing the Snapchat videos, he identified his car jack handle in one of the videos and revealed that he had done work on codefendant 2's van at the residence on the evening of October 23, 2021. The victim also identified both codefendants as the individuals who put a pillow over his head and stomped on his head during the ordeal. He also recalled seeing the owner of the residence at the apartment at one point while he was being held there. In addition to the foregoing evidence, the People produced evidence that the victim's abduction and restraint began around 11:30 a.m. on October 25, 2021. Later that day, at 5:21 p.m., a vehicle that codefendant 1 was driving was the subject of a traffic stop. Defendant was also in the vehicle at the time and he was detained for approximately 45 minutes to an hour, yet he did not inform police of the situation and subsequently returned to the residence where the victim was being held. The People also entered into evidence several messages from codefendant 1's Snapchat account that referenced shooting the victim.

Turning to the legal sufficiency of the evidence pertaining to the conviction for criminal possession of a firearm relative to the handgun located in the apartment, the People proffered evidence that defendant assisted both codefendants in transporting the victim, against his will, to an apartment where he was held captive for approximately 22 hours and tortured, and that defendant emerged from the bedroom in which the loaded semiautomatic handgun was ultimately found by the SWAT Team. Correspondingly, the victim, who was familiar with the subject apartment, identified the bedroom from which defendant emerged as defendant's room. Police retrieved cartridges matching the caliber of the handgun found in the bedroom from a toilet bowl within the residence. The People also presented evidence that the handgun was operable. When viewing such evidence in the light most favorable to the People, there is a valid line of reasoning and permissible inferences from which the factfinder could conclude beyond a reasonable doubt that defendant "exercised dominion or control over the [handgun] by a sufficient level of control over the area" in which it was found to support a determination of constructive possession (*People v Johnson*, 225 AD3d 1115, 1116 [4th Dept 2024] [internal quotation marks and citation omitted]). Accordingly, the conviction of criminal possession of a firearm under Penal Law § 265.01-b (1) is supported by legally sufficient evidence (*see People v Bundy*, 90 NY2d 918, 920 [1997]; *People v Johnson*, 225 AD3d at 1116; *People v Grasso*, 163 AD3d 991, 992 [2d Dept 2018], *lv denied* 32 NY3d 1111 [2018]).

Moreover, although a different verdict would not have been unreasonable, when viewing the aforementioned evidence in a neutral light, deferring to the factfinder's credibility assessments, and "weigh[ing] the relative probative force of conflicting testimony and the relative strength of conflicting inferences that may be drawn [therefrom]," we conclude that the verdict on such count is supported by the weight of the evidence (*People v Cokely*, ___ AD3d ___, ___, 2026 NY Slip Op 03030, *1 [3d Dept 2026] [internal quotation marks and citations omitted]). As to where the handgun was found, we are mindful that the mattress did not have sheets on it, none of defendant's personal belongings were located in the subject bedroom, and there was no evidence tying defendant to the cellphone found under the bed. However, this is not a situation where defendant's "mere presence in the [apartment]" formed the basis of the firearm possession charge, which would be insufficient to establish constructive possession (*compare People v King*, 206 AD3d 1593, 1594 [4th Dept 2022]; *People v Rolldan*, 175 AD3d 1811, 1813 [4th Dept 2019], *lv denied* 34 NY3d 1081 [2019]). Rather, the victim, who was familiar with the subject apartment, testified that the room where the handgun was located was defendant's bedroom, defendant was the only person to emerge from such bedroom when the SWAT Team entered the residence, and the codefendants' personal belongings were located in different bedrooms. We emphasize that "[i]t was not necessary for the People to establish that defendant had exclusive access to the area in question" (*People v Crowley*, 188 AD3d 1665, 1666 [4th Dept 2020] [internal quotation marks and citation omitted], *lv denied* 36 NY3d 1056 [2020]) and "possession [of a weapon] may be joint" (*People v McGough*, 122 AD3d 1164, 1167 [3d Dept 2014], *lv denied* 24 NY3d 1220 [2015]). In this case, we are satisfied that the People proved defendant's knowing constructive possession of the firearm beyond a reasonable doubt and, accordingly, the verdict on such count is supported by the weight of the evidence (*see People v McCoy*, 169 AD3d 1260, 1263 [3d Dept 2019], *lv denied* 33 NY3d 1033 [2019]; *People v McGough*, 122 AD3d at 1167).

Regarding the conviction of criminal possession of a weapon in the second degree under Penal Law § 265.03 (1) (b), as previously noted, the People were required to prove, in addition to defendant's possession of the handgun, that it was loaded and operable and that defendant had the intent for it to be used unlawfully against another. Under Penal Law § 265.15 (4), there is a presumption that a person who possesses a weapon intends to use it unlawfully against another (*see People v Galindo*, 23 NY3d 719, 722 [2014]). Such presumption applies even in a case premised upon constructive possession (*see People v Edwards*, 39 AD3d 1078, 1080 [3d Dept 2007]; *People v Duran*, 6 AD3d 809, 811 [3d Dept 2004], *lv denied* 41 NY3d 1003 [2004]). "Before the presumption may apply, the People must establish beyond a reasonable doubt the predicate fact or facts the statute

requires be proved" and "[i]f the People succeed in this endeavor, they are entitled to rely on the presumption . . . [as] part of the support for their prima facie case" (*People v Galindo*, 23 NY3d at 723 [internal quotation marks, brackets and citations omitted]). The defendant may "rebut [such presumption] with contrary proof or . . . may rely on the People's evidence to rebut the presumption. It is then for the [finder of fact] . . . to weigh the competing inferences and determine whether to accept or reject the presumption" (*id.* at 724). Given the proof that defendant constructively possessed the handgun, that it was loaded at the time it was found, that defendant assisted in rendering the victim unconscious with a blow to the head, and that he failed to inform police that the victim was being tortured despite having an opportunity to do so, while relying on the presumption set forth in Penal Law § 265.15 (4), we conclude that the evidence was legally sufficient to establish defendant's intent to use the handgun unlawfully against the victim (*see People v Grasso*, 163 AD3d at 992; *People v Vargas*, 60 AD3d 1236, 1238 [3d Dept 2009], *lv denied* 13 NY3d 750 [2009]). As for the weight of the evidence, although a different verdict would not have been unreasonable, when viewing the aforementioned evidence in a neutral light and weighing the relative force of conflicting inferences that may be drawn therefrom, we conclude that the People satisfied their burden of proof as to all of the elements necessary to obtain a conviction against defendant under Penal Law § 265.03 (1) (b) and, thus, the verdict is not against the weight of the evidence (*see People v James*, 176 AD3d 1492, 1494-1495 [3d Dept 2019], *lv denied* 34 NY3d 1078 [2019]). That said, while the People satisfied their burden of proof on both charges predicated upon defendant's possession of the handgun, we agree with defendant that the criminal possession of a firearm conviction under Penal Law § 265.01-b (1) is an inclusory concurrent count of the criminal possession of a weapon in the second degree conviction under Penal Law § 265.03 (1) (b). Therefore, the criminal possession of a firearm conviction, and the corresponding sentence imposed thereon, must be vacated (*see People v Walker*, 237 AD3d 978, 979-980 [2d Dept 2025]; *People v Harvey*, 214 AD3d 672, 673 [2d Dept 2023], *lv denied* 40 NY3d 929 [2023]).

Turning to defendant's weight of the evidence argument relative to the remaining kidnapping in the second degree conviction, although a different verdict also would not have been unreasonable, we have no trouble concluding that the People proved their case against defendant beyond a reasonable doubt. The People presented evidence that defendant directly aided in abducting the victim by rendering him unconscious through a blow to the head while the victim was seated in a locked van, after which he was secreted to an apartment where he was not likely to be found, bound with a rope and tortured. Although there was no evidence that defendant participated in assaulting the victim at the apartment, such proof was not a prerequisite to obtain a conviction on the kidnapping

charge against defendant. In addition to the evidence that defendant directly aided in the victim's abduction, the proof also established that defendant was in the apartment when the SWAT Team arrived almost 24 hours after he assisted in rendering the victim unconscious, he was with codefendant 1 during a traffic stop that occurred while the victim was being held against his will, and he returned to the apartment without informing police of the situation, signifying his shared intent to restrain the victim. In these circumstances, County Court's finding that the victim was abducted and that defendant aided in such abduction with the requisite intent is supported by the weight of the evidence (*see People v Alcaraz-Ubiles*, 215 AD3d 1264, 1265 [4th Dept 2023], *lv denied* 40 NY3d 927 [2023]; *People v Lora*, 192 AD3d 1488, 1489 [4th Dept 2021], *lv denied* 37 NY3d 973 [2021]; *People v Rolldan*, 175 AD3d at 1813).

Next, defendant argues that County Court erred in denying his motion to invalidate the People's initial certificate of compliance (hereinafter COC) based upon the belated disclosure of defendant's full recorded police interview. Pursuant to CPL 245.50 (1), after the People comply with their pretrial discovery obligations under CPL 245.20, they are required to file a COC affirming that " 'after exercising due diligence and making reasonable inquiries to ascertain the existence of material and information subject to discovery, the prosecutor has disclosed and made available all known material and information subject to discovery' " (*People v Reynolds*, 239 AD3d 1098, 1099 [3d Dept 2025], quoting CPL 245.50 [1]). Due diligence "is a familiar and flexible standard that requires the People to make reasonable efforts to comply with statutory directives" (*People v Bay*, 41 NY3d 200, 211 [2023] [internal quotation marks and citation omitted]). The standard does not require a "perfect prosecutor" and the "analysis of whether the People made reasonable efforts sufficient to satisfy CPL article 245 is fundamentally case-specific," taking into account, among other things, "the efforts made by the prosecution and the prosecutor's office to comply with the statutory requirements, the volume of discovery provided and outstanding, the complexity of the case, how obvious any missing material would likely have been to a prosecutor exercising due diligence, the explanation for any discovery lapse, and the People's response when apprised of any missing discovery" (*id.* at 212 [internal quotation marks omitted]). Belated disclosure of discoverable material "will not necessarily establish a lack of due diligence or render an initial COC improper," so long as the People establish that they exercised due diligence before filing the initial COC (*id.*; *see* CPL 245.50 [1-a]; *People v Williams*, 224 AD3d 998, 1006 [3d Dept 2024], *lv denied* 41 NY3d 1021 [2024]). The court may, however, issue an appropriate sanction for the belated disclosure that is "appropriate and proportionate to the prejudice suffered by the party entitled to disclosure" (CPL 245.80 [1]; *see People v Coffey*, 244 AD3d 1609, 1612 [3d Dept 2025]).

Here, the indictment against defendant was handed up on January 11, 2022 and the People filed their initial COC on January 24, 2022, after having turned over a plethora of discovery. The People then filed a supplemental COC on February 23, 2022 certifying that they had turned over copies of the grand jury minutes that had not previously been available at the time of the filing of the initial COC. Thereafter, on July 15, 2022, the People filed a second supplemental COC stating that the "[s]econd portion of the recorded interview [defendant] gave to [police] at the Schenectady Police Department" on October 26, 2021 had not been turned over and was now being provided. Based upon this belated disclosure, defendant filed a motion to invalidate the initial COC and to dismiss the indictment for expiration of the CPL 30.30 speedy trial clock.

The People opposed the motion, submitting an affirmation from the prosecutor assigned to the case who explained that there were two recordings from defendant's interview at the police station, which were filmed when he was sitting in different interview rooms. The prosecutor further explained that only one of the recordings had been turned over in the initial batch of discovery and that such video "only showed . . . defendant sitting in an interview room . . . and not the interview itself." The prosecutor maintained that the failure to turn over the entire recording was an inadvertent mistake, revealing that he had observed defendant's interview in person, did not realize that there were two recordings, had only watched a portion of the video that was initially turned over to ensure that it was working properly and learned when preparing for the *Huntley* hearing that the recording he had turned over did not depict the full interview. The prosecutor further revealed that, upon realizing the issue, he promptly turned over the full recording to defense counsel "within hours" of locating it. County Court denied defendant's motion to invalidate the initial COC, finding that the People had "substantially complied with their discovery obligations and made good faith efforts in obtaining and providing the materials required," and that the belated disclosure of the full police interview did not "justify the severe sanction" defendant was requesting (*see* CPL 245.80 [1]). The court also noted that "defense counsel was sufficiently alerted to the fact that there was an interview of defendant with law enforcement" by virtue of having been served with a CPL 710.30 notice during defendant's arraignment, "but did not notify the prosecution of the fact that such interview was missing from the discovery materials" (*see* CPL 245.50 [4] [b]).[5]

[5] The People ultimately did not introduce defendant's statements from his police interview at trial.

Considering the due diligence factors specified in *Bay*, we conclude that County Court properly declined to invalidate the initial COC. Although the full recording of defendant's police interview should have been turned over with the initial batch of discovery (*see* CPL 245.20 [1] [a]) and the prosecutor should have more expeditiously realized the oversight, the record demonstrates that the People provided extensive discovery to defendant and made good faith and diligent efforts to comply with their disclosure obligations prior to filing the initial COC. The People also satisfied their continuing obligation to promptly turn over additional material as it became available and they quickly turned over the full recording of defendant's police interview upon realizing the oversight. In these circumstances, the single belated disclosure did not warrant invalidating the initial COC (*see People v Contompasis*, 236 AD3d 138, 150-151 [3d Dept 2025], *lv denied* 43 NY3d 1007 [2025]; *People v Williams*, 224 AD3d at 1007; *compare People v Mazelie*, 248 AD3d 45, 51 [3d Dept 2025]).

Defendant also contends that he was deprived of the effective assistance of counsel due to his trial attorney's failure to introduce evidence of a forensic report setting forth findings from swabs of the handgun and its magazine, which he contends would have shown that he was not the donor of two identifiable DNA samples found on the gun. We disagree. "To establish a claim of ineffective assistance of counsel, a defendant is required to demonstrate that he or she was not provided meaningful representation and that there is an absence of strategic or other legitimate explanations for counsel's allegedly deficient conduct" (*People v Reichel*, 211 AD3d 1090, 1091 [3d Dept 2022] [internal quotation marks and citations omitted], *lv denied* 39 NY3d 1113 [2023]; *see People v Gaffney*, ___ NY3d ___, 2026 NY Slip Op 01445, *1 [2026]). As relevant to defendant's argument, prior to trial, the People provided defense counsel with a copy of a forensic report establishing that DNA from the handgun's magazine was "consistent with at least two donors, with the major contributor being an unknown male donor." The report further stated that defendant could "be excluded as being the major contributor" from the mixed DNA profile found on the swab from the magazine. As for the DNA found on the handgun's slide, the forensic results were "consistent with at least three donors, with the major contributor being an unknown male donor." Defendant was also "excluded as being the major contributor" to the mixed DNA profile found on the slide, but the results were otherwise "not suitable for further comparison due to insufficient genetic information."

At trial, defense counsel conducted cross-examination highlighting the lack of evidence tying defendant to the bedroom where the handgun was discovered and emphasized during summation that the People did not present any evidence that

defendant's DNA was on the handgun. While defendant faults counsel for failing to introduce the DNA report into evidence or to have its author testify, the failure to do so may have been a deliberate trial strategy insofar as the findings in the report did not exonerate defendant (*see People v Reinfurt*, 241 AD3d 1015, 1025 [3d Dept 2025], *lv denied* 44 NY3d 1067 [2026]; *People v Jones*, 217 AD3d 1406, 1407 [4th Dept 2023], *lv denied* 40 NY3d 951 [2023]). Rather, the report merely excluded defendant as the *major contributor* to the mixed DNA profiles found on the handgun's magazine and slide; it did not exclude him as a donor altogether. Given that it was the People's burden to prove defendant's guilt beyond a reasonable doubt, defense counsel may have reasonably concluded that emphasizing their failure to present any evidence that defendant's DNA was on the handgun, rather than introducing a report that did not definitively establish such fact, was a better strategic choice. More fundamentally, as the People proceeded upon a theory of constructive possession relative to the handgun, whether defendant's DNA was on the handgun was of limited probative value. Considering counsel's representation in totality, we conclude that defendant was provided with meaningful representation (*see People v Mowry*, 246 AD3d 1288, 1292 [3d Dept 2026], *lv denied* 45 NY3d 973 [2026]; *People v Reinfurt*, 241 AD3d at 1025; *People v Calafell*, 211 AD3d 1114, 1120 [3d Dept 2022], *lv denied* 39 NY3d 1077 [2023]).

We turn next to defendant's argument that County Court abused its discretion in declining to adjudicate him a youthful offender. Pursuant to CPL 720.10 (2), "[e]very youth" is eligible for youthful offender status subject to three enumerated exceptions. One such exception is when the youth is convicted of an armed felony offense (*see* CPL 720.10 [2] [a]-[c]), such as criminal possession of a weapon in the second degree (*see* CPL 1.20 [41] [a]; 720.10 [2] [a] [ii]; Penal Law § 70.02 [1] [b]). If a youth has been convicted of an armed felony offense, he or she "is eligible to be granted youthful offender status [only] if the court determines that there are mitigating circumstances bearing directly upon the manner in which the crime was committed, or, if the defendant was not the sole participant in the crime, that the defendant's participation was relatively minor" (*People v Middlebrooks*, 25 NY3d 516, 519 [2015]; *see* CPL 720.10 [3]). "If the court determines, in its discretion, that neither of the CPL 720.10 (3) factors exists and states the reasons for that determination on the record, no further determination by the court is required" (*People v Williams*, 202 AD3d 1162, 1163 [3d Dept 2022] [internal quotation marks, brackets and citations omitted], *lv denied* 38 NY3d 954 [2022]).

Here, in opposing defendant's request to be adjudicated a youthful offender, the People did not dispute that he was of eligible age since he had turned 18 three days prior to the commission of the underlying offenses (*see* CPL 720.10 [1]). They argued,

however, that he was ineligible for such status insofar as he had been convicted of an armed felony offense (criminal possession of a weapon in the second degree), that his role in the underlying kidnapping was substantial, and there were no mitigating circumstances bearing directly on the manner in which the crimes were committed. After hearing defendant's argument in response, County Court declined to grant defendant youthful offender status, noting that the conviction of criminal possession of a weapon in the second degree was an armed felony offense and finding that neither of the CPL 720.10 (3) factors existed so as to render him eligible. The court also considered the recommendation in the presentence report, defendant's level of involvement in the underlying crimes, and the interests of society in relieving defendant from a criminal record.

County Court properly concluded that neither of the CPL 720.10 (3) factors existed to render defendant eligible for youthful offender status upon his conviction of an armed felony offense. Although there was no evidence that defendant participated in the victim's torture at the apartment, he played a major role in helping to facilitate such torture and his participation in the underlying crimes cannot be characterized as "relatively minor" (CPL 720.10 [3]). Defendant also did not establish the existence of mitigating circumstances bearing directly on the manner in which the underlying crimes were committed. To the contrary, the credited trial testimony established that defendant used violence to help render the victim incapacitated and had the opportunity to inform authorities that the victim was being held against his will during the traffic stop on October 25, 2021, yet he chose to stay silent, evincing a striking lack of concern for the victim's suffering. In these circumstances, County Court did not abuse its discretion in declining to adjudicate defendant a youthful offender (*see People v Williams*, 202 AD3d at 1164; *People v Williams*, 155 AD3d 1260, 1260 [3d Dept 2017], *lv denied* 30 NY3d 1121 [2018]).

We also decline defendant's request to reduce the sentence in the interest of justice. Although we recognize that defendant had a difficult upbringing, no prior criminal history, was not the main participant of the events at the apartment and has the support of his family, these mitigating circumstances were appropriately accounted for in the prison sentence imposed by County Court, which was far below the 25-year statutory maximum that defendant faced on the class B felony kidnapping conviction (*see* Penal Law §§ 70.02 [3] [a]; 135.20). When considering the seriousness of defendant's conduct and the violence used to help facilitate the victim's kidnapping, we do not view the 10-year prison sentence imposed to be unduly harsh or severe (*see* CPL 470.15 [6] [b]).

Defendant's remaining contentions, to the extent not expressly addressed, have been considered and found unavailing.

Aarons, Ceresia, McShan and Powers, JJ., concur.

ORDERED that the judgment is modified, on the law, by reversing defendant's conviction of kidnapping in the second degree under count 3-A of the verdict sheet and defendant's conviction of criminal possession of a firearm under count 5 of the verdict sheet; those counts are dismissed, the sentences imposed thereon are vacated and matter remitted to the County Court of Schenectady County for entry of an amended uniform sentence and commitment form; and, as so modified, affirmed.

ENTER:

Robert D. Mayberger
Clerk of the Court