

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

Decided and Entered: July 16, 2026

CR-25-0470

THE PEOPLE OF THE STATE OF
NEW YORK,

Respondent,

v

MEMORANDUM AND ORDER

MARKEITH BUCHANAN,
Appellant.

Calendar Date: May 29, 2026

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

Hug Law PLLC, Albany (*Matthew C. Hug* of counsel), for appellant.

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

Powers, J.

Appeal from a judgment of the County Court of Schenectady County (Matthew Sypniewski, J.), rendered April 30, 2024, upon a verdict convicting defendant of the crimes of manslaughter in the first degree and criminal possession of a weapon in the second degree (two counts).

In July 2022, defendant was involved in an altercation outside of a bar in the City of Schenectady. This altercation culminated in defendant discharging a single shot from a firearm which fatally wounded the other individual involved in that altercation (hereinafter the victim). Defendant was thereafter charged by indictment with the crimes of murder in the second degree and two counts of criminal possession of a weapon in the

second degree.¹ Following a *Sandoval* hearing, County Court precluded the People from introducing two of defendant's prior convictions but permitted inquiry into defendant's 2019 conviction of robbery in the third degree, with the limitation that no mention be made of any shooting during the incident underlying that conviction. Defendant proceeded to trial, during which he pursued a justification defense, and was ultimately convicted of the lesser included offense of manslaughter in the first degree (*see* Penal Law § 125.20 [1] [hereinafter count 1]), as well as both counts of criminal possession of a weapon in the second degree (*see* Penal Law § 265.03 [3] [hereinafter count 2]; Penal Law § 265.03 [1] [b] [hereinafter count 3]). The court sentenced defendant, as a second felony offender, to a prison term of 25 years, to be followed by five years of postrelease supervision, for his conviction under count 1 and prison terms of 15 years, to be followed by five years of postrelease supervision, for his convictions of counts 2 and 3. The court directed that the sentences under counts 1 and 3 run concurrently to one another and the sentence under count 2 run consecutive thereto, amounting to an aggregate 40-year prison term. Defendant appeals.

Defendant initially asserts that his convictions are not supported by legally sufficient evidence. First, he has forfeited this challenge as to his conviction of manslaughter in the first degree as he affirmatively requested that this be charged as a lesser included offense of murder in the second degree (*see People v Kearney*, 25 AD3d 622, 623 [2d Dept 2006], *lv denied* 6 NY3d 849 [2006]; *see also People v Strange*, 247 AD3d 1358, 1359 [3d Dept 2026]; *People v Branton*, 238 AD3d 1429, 1430 [3d Dept 2025]; *People v Colbert*, 60 AD3d 1209, 1210 [3d Dept 2009]). In any event, the argument is also unpreserved. Defendant claims on appeal that the evidence established justification (*see generally* Penal Law § 35.15) and, therefore, his convictions under counts 1 and 3 are not supported by legally sufficient evidence. However, defendant not only failed to advance this argument as a basis in his motion for a trial order of dismissal at the close of the People's proof (*see People v Baber*, 182 AD3d 794, 795 [3d Dept 2020], *lv denied* 35 NY3d 1064 [2020]; *People v Harris*, 177 AD3d 1199, 1200 [3d Dept 2019], *lv denied* 35 NY3d 970 [2020]), but he also then failed to renew that motion after presenting proof on his own behalf (*see People v Cipriani*, 244 AD3d 1304, 1305 [3d Dept 2025], *lv denied* 44 NY3d 1065 [2026]; *People v Benton*, 243 AD3d 1118, 1119 n 1 [3d Dept 2025]). Similarly, defendant's generalized motion for a trial order of dismissal with respect to his conviction of criminal possession of a weapon under count 2 was not

¹ Although defendant was subsequently charged with another count in a superseding indictment, that count was dismissed by County Court as unsupported by legally sufficient evidence.

sufficient to preserve his argument with respect to that count, and, as stated above, he nevertheless failed to renew that motion.² All told, defendant's legal sufficiency arguments are entirely unpreserved.

Still, in reviewing defendant's weight of the evidence challenge, we must "necessarily evaluate[] whether all elements of the charged crimes were proven beyond a reasonable doubt" and whether the defense of justification was disproven (*People v Ashe*, 208 AD3d 1500, 1501 [3d Dept 2022], *lv denied* 39 NY3d 961 [2022]; *accord People v Prusinski*, 242 AD3d 1427, 1428 [3d Dept 2025], *lv denied* 45 NY3d 938 [2026]). "When undertaking a weight of the evidence review, we must first determine whether, based on all the credible evidence, a different finding would not have been unreasonable and then, if not, 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 Davis*, 200 AD3d 1200, 1201 [3d Dept 2021] [internal quotation marks, brackets and citations omitted]; *see People v Abreu*, 195 AD3d 1152, 1153 [3d Dept 2021], *lv denied* 37 NY3d 1144 [2021]).

As to defendant's conviction under count 1, "[a] person is guilty of manslaughter in the first degree when . . . [w]ith intent to cause serious physical injury to another person, he [or she] causes the death of such person" (Penal Law § 125.20 [1]). Relevant to count 2, "[a] person is guilty of criminal possession of a weapon in the second degree when . . . such person possesses any loaded firearm" (Penal Law § 265.03 [3]). Finally, relevant to count 3, "[a] person is guilty of criminal possession of a weapon in the second degree when . . . with intent to use the same unlawfully against another, such person . . . possesses a loaded firearm" (Penal Law § 265.03 [1] [b]). "Given defendant's invocation of the justification defense, the People bore the burden of proving beyond a reasonable doubt that defendant was not justified in using deadly physical force against the victim" (*People v Harris*, 186 AD3d 907, 909 [3d Dept 2020] [citations omitted], *lv denied* 36 NY3d 1120 [2021]; *see* Penal Law § 35.15 [1], [2]). "[A] person who reasonably believes that another is about to use deadly physical force is not free to reciprocate with deadly physical force if such person knows that he or she can with complete safety as to himself, herself and others avoid the necessity of so doing by retreating" (*People v DeCamp*, 211 AD3d 1121, 1122 [3d Dept 2022] [internal quotation marks and citations omitted], *lv denied* 39 NY3d 1077 [2023]).

² Notably, not only is this claim unpreserved, but defendant's counsel also stated in closing that defendant "is absolutely guilty of that charge."

The evidence adduced at trial included, among other things, numerous video exhibits which depict the underlying events. Namely, the footage depicts defendant's arrival at the bar with a group of individuals. The victim, who was already inside the bar and came outside at defendant's arrival, can then be seen speaking animatedly to defendant and then proceed to punch and kick defendant, quickly knocking him to the ground. After approximately 30 seconds of this, the victim steps away from defendant and begins to speak with a member of defendant's group. Defendant is then able to stand and walks unsteadily to his vehicle. As defendant then returns toward the bar from his vehicle, the victim begins to approach defendant but abruptly turns his body as a muzzle flash can be seen. The victim is then seen entering the bar as blood drips from his person and, when inside, he collapses to the floor unconscious. The footage indicates that it was less than five minutes from defendant's arrival to the discharge of the firearm. Multiple individuals testified to observing these events and a medical expert testified to the victim's injuries, specifically that the bullet entered into the victim's right bicep before moving through his chest cavity and ending in his left bicep.

For his part, defendant testified and, with little variation, acknowledged the foregoing facts. He admitted that he had purchased a firearm for his own protection approximately two years prior to the events in question and believed it to be loaded and operational. After defendant was denied entry to the bar, the victim referred to him as a snitch multiple times, which resulted in the physical altercation between defendant and the victim. During that altercation, defendant was struck multiple times and had been, in essence, knocked out. When able to stand, defendant walked to his vehicle and retrieved the firearm that he kept therein because, according to defendant, he wanted it for protection from the victim. Defendant then attempted to locate those he had come with and, while he did so, the victim walked toward him and said something to the effect of "Why are you coming back? Are you going to make me kill you?" Defendant testified that he took two or three steps away from the victim as the victim again made mention of killing him, and defendant discharged the firearm in the direction of the victim. Defendant maintained that he did so to scare the victim away because he believed that the victim was attempting to kill him based upon these contemporaneous statements.

Viewing the evidence in a neutral light and deferring to the jury's credibility determinations, each of defendant's convictions are supported by the weight of the evidence (*see generally People v DeCamp*, 211 AD3d at 1123-1124). When considering the totality of the record, the evidence, including defendant's own testimony, established that he possessed a firearm and discharged it while knowingly pointing the firearm at the victim, fatally shooting him. These circumstances support that defendant possessed the

requisite criminal intent under counts 1 and 3 (*see People v Zeoli*, 248 AD3d 1422, 1425 [3d Dept 2026]; *see generally* Penal Law §§ 125.20 [1]; 265.03 [1] [b]). The evidence here also confirms that defendant had ample time to retreat after the victim stepped away and defendant returned to his vehicle. Yet, instead of electing to get into his vehicle and depart, he chose to retrieve his firearm – which he knew to be loaded and believed to be operational – and walked back toward the bar. Thus, while a different verdict would not have been unreasonable as to counts 1 and 3 had the jury credited defendant's explanation of events, viewing the evidence in a neutral light and deferring to the jury's credibility assessments, the jury's rejection of defendant's justification defense is supported by the weight of the evidence (*see People v Cutting*, 206 AD3d 1281, 1282 [3d Dept 2022]; *People v Harris*, 186 AD3d at 910; *People v Gibson*, 141 AD3d 1009, 1012 [3d Dept 2016]). Finally, considering defendant's admitted possession of the loaded firearm, a different verdict as to count 2 would have been unreasonable (*see People v Agan*, 207 AD3d 861, 868 [3d Dept 2022], *lv denied* 38 NY3d 1186 [2022], 39 NY3d 939 [2022]; *see generally* Penal Law § 265.03 [3]). Nevertheless, contrary to defendant's assertion, that count is not supported solely by his admissions on the stand but also the logical deductions that may be made from the video evidence introduced by the People, which was then only reinforced by those admissions. Consequently, the verdict as to each count is supported by the weight of the evidence.

Defendant failed to preserve his contention that counts 2 and 3 – the two counts of criminal possession of a weapon – were duplicitous (*see People v Allen*, 24 NY3d 441, 449-450 [2014]; *compare People v Wells*, 141 AD3d 1013, 1014 n 1 [3d Dept 2016], *lv denied* 28 NY3d 1189 [2017]). " 'To allow an unpreserved claim of duplicitousness to be raised on appeal would open the door to abuse,' since a defendant could choose to let a duplicitous indictment stand at trial and then, on appeal, 'obtain a new trial on the basis of an error they consciously decided not to challenge' " (*People v Macias*, ___ AD3d ___, ___, 256 NYS3d 181, ___, 2026 NY Slip Op 03396, *2 [1st Dept 2026], quoting *People v Becoats*, 17 NY3d 643, 651 [2011], *cert denied* 566 US 964 [2012]). This is exactly the situation we are presented with here. Defendant seeks to "obtain a new trial on the basis of an error [which he] consciously decided not to challenge because [he] . . . welcomed it" to gain credibility before the jury (*People v Becoats*, 17 NY3d at 651). Specifically, by admitting his guilt to count 2, defendant was attempting to encourage the jury's belief in his justification defense relevant as to counts 1 and 3. Based upon the circumstances of this case, defendant should not now be permitted to be heard with respect to his challenge that these counts are duplicitous and, therefore, we decline to exercise our interest of justice jurisdiction to reverse on this basis (*see CPL 470.15* [6] [a]; *People v Bonilla*, 231 AD3d 1168, 1168 [2d Dept 2024], *lv denied* 43 NY3d 943 [2025]; *People v Woods*, 221

AD3d 1415, 1416 [4th Dept 2023], *lv denied* 40 NY3d 1095 [2024]; *see also People v Agan*, 207 AD3d at 862; *cf. People v Benn*, 210 AD3d 690, 692 [2d Dept 2022], *lv denied* 39 NY3d 1109 [2023]).

Defendant next asserts that County Court abused its discretion in permitting cross-examination, with certain limitations, related to his 2019 robbery conviction. Although this contention is unpreserved as defendant failed to object after the court offered its *Sandoval* compromise (*see People v Erfurt*, 234 AD3d 1120, 1124 [3d Dept 2025], *lv denied* 43 NY3d 1008 [2025]; *People v Cooper*, 199 AD3d 1061, 189 [3d Dept 2021], *lv denied* 38 NY3d 926 [2022]), we, nevertheless, find it to be without merit. "Generally, evidence of prior specific criminal, vicious or immoral conduct should be admitted if the nature of such conduct or the circumstances in which it occurred bear logically and reasonably on the issue of credibility" (*People v Pietoso*, 168 AD3d 1276, 1279 [3d Dept 2019] [internal quotation marks, brackets and citations omitted], *lv denied* 33 NY3d 1034 [2019]). Robbery convictions are highly probative of credibility, veracity and honesty, and the court's compromise ameliorated the prejudice that would have resulted by inquiry into the underlying facts (*see People v Fuller*, 214 AD3d 1337, 1338 [4th Dept 2023], *lv denied* 39 NY3d 1154 [2023]; *People v Bowes*, 206 AD3d 1260, 1267 [3d Dept 2022]; *People v White*, 173 AD3d 781, 781-782 [2d Dept 2019]; *see generally People v Sandoval*, 34 NY2d 371, 376 [1974]). The court's *Sandoval* compromise reflects a proper exercise of discretion.

Finally, County Court lawfully imposed consecutive sentences relative to defendant's two convictions of criminal possession of a weapon in the second degree under counts 2 and 3 (*see Penal Law* 265.03 [1] [b]; [3]). The underlying facts supporting these convictions demonstrate that each is based upon separate and distinct acts and not one act "which was continuous in nature" (*Matter of Johnson v Morgenthau*, 69 NY2d 148, 152 [1987]; *cf People v Smith*, 63 AD3d 1301, 1305 [3d Dept 2009], *lv denied* 13 NY3d 862 [2009]; *compare People v Lewis*, ___ NY3d ___, ___, 2026 NY Slip Op 01588, *9 [2026]; *see generally Penal Law* § 70.25). "This is not a case . . . where someone handed [defendant] a gun just before he shot [the victim] – i.e. where the act of possession was simultaneous with the shooting" (*People v Billups*, ___ NY3d ___, ___, 2026 NY Slip Op 01589, *3 [2026] [internal quotation marks, emphasis and citation omitted]). To the contrary, defendant admitted to purchasing the firearm illegally from a known drug dealer approximately two years prior to this shooting. Even more to the point, defendant testified that he regularly drove with the loaded firearm in the glove compartment of his vehicle, knew it was in the vehicle on the night in question, left it there when he attempted to enter the bar and subsequently retrieved it after getting into a

physical altercation with the victim. These facts demonstrate " 'that defendant possessed the weapon for a sufficient period of time before forming the specific intent to [use it unlawfully]' " (*People v Williams*, 246 AD3d 1419, 1420 [4th Dept 2026], *lv denied* 45 NY3d 975 [2026], quoting *People v Malloy*, 33 NY3d 1078, 1080 [2019]). The ability to impose consecutive sentences "reflects the high priority placed by the Legislature on ridding New York's streets of illegal guns"; yet "even where permissible, the imposition of consecutive sentences is discretionary" (*People v Billups*, ___ NY3d at ___, 2026 NY Slip Op 01589, *3, *4 [internal quotation marks and citations omitted]). Nevertheless, based upon the facts presented, we find that the imposition of concurrent sentences is appropriate and modify the judgment accordingly (*see* CPL 470.15 [3] [c]; *People v Bonville*, 245 AD3d 998, 1000 [3d Dept 2026]; *People v Mayette*, 233 AD3d 1097, 1105 [3d Dept 2024], *lv denied* 43 NY3d 945 [2025]; *People v Anderson*, 149 AD3d 1407, 1416 [3d Dept 2017], *lv denied* 30 NY3d 947 [2017]; *see also* *People v Rahaman*, 189 AD3d 1709, 1714 [3d Dept 2020], *lv denied* 36 NY3d 1059 [2021]). However, to the extent that defendant's brief may be read as asserting that the sentence imposed upon his conviction of manslaughter in the first degree was unduly harsh and severe, we disagree (*see* CPL 470.15 [6] [b]). Thus, running defendant's sentences concurrently results in the imposition of a 25-year aggregate prison term, to be followed by five years of postrelease supervision.

Clark, J.P., Aarons, Ceresia and McShan, JJ., concur.

ORDERED that the judgment is modified, as a matter of discretion in the interest of justice, by directing that the sentences imposed upon defendant run concurrently to one another, and, as so modified, affirmed.

ENTER:

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

Robert D. Mayberger
Clerk of the Court