

**SUPREME COURT OF THE STATE OF NEW YORK**  
***Appellate Division, Fourth Judicial Department***

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**KA 25-00147**

PRESENT: MONTOUR, J.P., SMITH, GREENWOOD, NOWAK, AND HANNAH, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

BRANDON DENNIS, DEFENDANT-APPELLANT.

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EASTON THOMPSON KASPEREK SHIFFRIN LLP, ROCHESTER (BRIAN SHIFFRIN OF COUNSEL), FOR DEFENDANT-APPELLANT.

BRIAN D. SEAMAN, DISTRICT ATTORNEY, LOCKPORT (LAURA T. JORDAN OF COUNSEL), FOR RESPONDENT.

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Appeal, by permission of a Justice of the Appellate Division of the Supreme Court in the Fourth Judicial Department, from an order of the Niagara County Court (John James Ottaviano, J.), entered January 3, 2025. The order denied the motion of defendant to vacate a judgment of conviction pursuant to CPL 440.10.

It is hereby ORDERED that the order so appealed from is unanimously affirmed.

Memorandum: Defendant appeals, by permission of this Court, from an order that denied without a hearing his motion pursuant to CPL 440.10 to vacate the judgment convicting him upon a jury verdict of, inter alia, three counts each of murder in the second degree (Penal Law § 125.25 [1], [3]) and robbery in the first degree (§ 160.15 [2] - [4]). We previously modified the judgment of conviction (*People v Dennis*, 91 AD3d 1277 [4th Dept 2012], *lv denied* 19 NY3d 995 [2012]), and we now conclude that County Court did not err in denying defendant's motion without conducting a hearing.

Defendant failed to establish entitlement to a hearing on his CPL 440.10 motion inasmuch as he failed to demonstrate that "the nonrecord facts sought to be established are material and would entitle him . . . to relief" (*People v Streeter*, 194 AD3d 1407, 1408 [4th Dept 2021], *lv denied* 37 NY3d 974 [2021], *reconsideration denied* 37 NY3d 1029 [2021] [internal quotation marks omitted]; see *People v Kellum*, 233 AD3d 1374, 1379 [3d Dept 2024], *lv denied* 44 NY3d 983 [2025]). Defendant moved to vacate the judgment on the ground that the People violated their *Brady* obligation by failing to disclose that a prosecution witness had two arrests pending at the time of his trial testimony and that the witness had a personal relationship with an officer involved in the case. "To establish a *Brady* violation, a defendant must show that (1) the evidence is favorable to the

defendant because it is either exculpatory or impeaching in nature; (2) the evidence was suppressed by the prosecution; and (3) prejudice arose because the suppressed evidence was material" (*People v Fuentes*, 12 NY3d 259, 263 [2009], *rearg denied* 13 NY3d 766 [2009]; *see People v Garrett*, 23 NY3d 878, 885 [2014], *rearg denied* 25 NY3d 1215 [2015]). "[W]here a defendant makes a specific request for a document, the materiality element is established provided there exists a 'reasonable possibility' that it would have changed the result of the proceeding. Absent a specific request by defendant for the document, materiality can only be demonstrated by a showing that there is a 'reasonable probability' that it would have changed the outcome of the proceedings" (*Fuentes*, 12 NY3d at 263; *see People v Lorenzo*, 230 AD3d 1564, 1566 [4th Dept 2024], *lv denied* 42 NY3d 1053 [2024]; *People v Hanes*, 218 AD3d 1175, 1177 [4th Dept 2023], *lv denied* 40 NY3d 1092 [2024]).

We agree with defendant that the information regarding the witness's arrests and his relationship with the officer constituted *Brady* material (*see People v Valentin*, 1 AD3d 982, 982-983 [4th Dept 2003], *lv denied* 1 NY3d 602 [2004]). However, even assuming, arguendo, that the information was available to the People (*see id.* at 983), we conclude, under the circumstances of this case, that defendant failed to establish materiality under *Brady* inasmuch as there is neither a reasonable probability nor a reasonable possibility that, had the information been disclosed to the defense, it would have changed the result of the trial (*see Hanes*, 218 AD3d at 1177; *People v Reed*, 115 AD3d 1334, 1335 [4th Dept 2014], *lv denied* 23 NY3d 1024 [2014]). Here, the verdict did not turn solely on the witness's testimony. Other evidence, including other eyewitness testimony, DNA evidence from the codefendant, and cell phone data, "established defendant's responsibility for the shooting" (*People v Smith*, 138 AD3d 1418, 1420 [4th Dept 2016], *lv denied* 28 NY3d 937 [2016]; *see People v Boykins*, 160 AD3d 1348, 1350 [4th Dept 2018], *lv denied* 31 NY3d 1145 [2018]).