

# State of New York Court of Appeals

Summaries are prepared based on the parties' briefs and are for background purposes only.

To be argued Thursday, February 12, 2026

**People v Jarvis Lewis** (228 AD3d 1226 [AD4])  
Court PASS Docket No. APL-2025-00026

On the day jury selection was scheduled for Jarvis Lewis's criminal trial, Mr. Lewis asked the court to replace his retained counsel with new assigned counsel. The court denied the substitution request and told Mr. Lewis his retained counsel would continue to represent him. Mr. Lewis refused to proceed, was taken to a holding cell, and refused to return to the courtroom. Counsel conferred with Mr. Lewis and reported to the court that Mr. Lewis did not want counsel to represent him and objected to the trial proceeding. At the court's direction, counsel informed Mr. Lewis that the court anticipated moving forward with the trial, in defendant's absence and with counsel representing him. Mr. Lewis directed defense counsel not to participate in the proceedings and to leave.

Mr. Lewis was brought to the courtroom, where the court advised him that he had a right to be present for trial and to present a defense. Mr. Lewis objected to the entire proceeding, said he had fired counsel, refused to answer the court's questions and again asked for substitute counsel. The court informed Mr. Lewis that he would not be assigned a different attorney but could proceed pro se. Mr. Lewis left the courtroom. The trial was held in Mr. Lewis's absence. Counsel did not participate except to move for dismissal outside of the presence of the jury.

Mr. Lewis was convicted and appealed, arguing he was denied the effective assistance of counsel.

In a 3–2 decision, the Appellate Division, Fourth Department, affirmed. Both the majority and dissent agreed that the trial court properly denied Mr. Lewis's last-minute request for new counsel. The majority, relying on *People v Henriquez* (3 NY3d 210 [2004]), held Mr. Lewis waived his right to the effective assistance of counsel by explicitly instructing his retained attorney not to participate in the trial and refusing to represent himself. The majority noted Mr. Lewis acted knowingly and voluntarily, and that the trial judge repeatedly warned him of his rights and allowed him opportunities to change his mind.

The dissent acknowledged that a defendant's willful absence hampers counsel's ability to provide adequate representation but concluded that, under these circumstances, counsel's nonparticipation amounted to ineffective assistance. The dissent noted that counsel's silence was not a strategic choice but stemmed from a misunderstanding of his ethical obligations after Mr. Lewis attempted to discharge him.

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To be argued Thursday, February 12, 2026

**People v Ricky Billups** (233 AD3d 492 [AD1])  
Court PASS Docket No. APL-2025-00108

On December 11, 2011, Ricky Billups and others planned to rob a marijuana dealer. The next day, Mr. Billups obtained a loaded gun, carried it through public streets for about 15 blocks, and stored it under a bed in an apartment. Later that evening, during the attempted robbery, the dealer's brother intervened and was fatally shot.

Mr. Billups was convicted of felony murder (Penal Law §125.25[3]), first- and second-degree robbery (§§160.15, 160.10), and second-degree criminal possession of a weapon (§265.03[3]). He received an aggregate sentence of 40 years to life, including a 15-year consecutive term for the weapon-possession count.

On appeal, Mr. Billups argued that the 15-year consecutive sentence for “simple” possession of a loaded firearm was unlawful under Penal Law §70.25(2) and *People v Brown* (21 NY3d 739). He contended that consecutive sentences for simple possession are permissible only if the defendant completed the possessory act before forming intent to use the gun in another crime. Because he obtained the gun after planning the robbery, he claimed his sentence violated *Brown's* rule that possession must precede intent to use.

The People countered that consecutive sentences were lawful because Mr. Billups completed the crime of simple possession well before committing robbery and murder. His possession lasted over an hour, across multiple locations, posing distinct public safety risks. They argued that *Brown* does not require possession to precede any generalized intent; it only requires that the crimes be “separate and distinct.” The People further asserted that, even under Mr. Billups's interpretation, his possession preceded the specific intent to kill an unanticipated victim.

The Appellate Division, First Department, affirmed, holding that the trial court lawfully imposed a consecutive sentence for the simple possession conviction.

# State of New York Court of Appeals

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To be argued Thursday, February 12, 2026

**People v Jhajuan Saab** (238 AD3d 1212 [AD3])  
Court PASS Docket No. APL-2025-00125

A drive-by shooting in Albany injured multiple people gathered on a street corner; one victim later died from his injuries. Jhajuan Saab and another individual fired at the group from the backseat of a car. Mr. Saab was charged with two counts of murder in the second degree, four counts of attempted assault in the first degree, and one count of criminal possession of a weapon. In satisfaction of the indictment, Mr. Saab admitted to shooting two victims, including the victim who died, and pleaded guilty to one count of manslaughter in the first degree and one count of attempted assault in the first degree.

Supreme Court sentenced Mr. Saab to 25 years for manslaughter and 10 years for attempted assault, to run consecutively, for an aggregate of 35 years, plus post-release supervision. On appeal, Mr. Saab argued Supreme Court's imposition of consecutive sentences was illegal because there was no record evidence to suggest that the victims were wounded by separate and distinct acts.

In a 3-2 decision, the Appellate Division, Third Department, modified the judgment, ruling the sentences must run concurrently. The majority looked to Penal Law § 70.25(2) and the requirement that concurrent sentences are required when offenses arise from a single act or when one act constitutes a material element of another. Consecutive sentences are permissible only if the People prove the crimes were based on separate and distinct acts. Here, the majority said consecutive sentences were unlawful because the record—limited to the indictment and plea allocation—does not show separate bullets caused the injuries.

The dissent disagreed, saying that the record supported consecutive sentencing because the shooting involved multiple victims, multiple shots, and different calibers of ammunition. The dissent emphasized that the trial court had access to grand jury minutes, video evidence, and the presentence report, which indicated separate acts. Even if consecutive sentences were not authorized, the dissent said the proper remedy was remittal to allow the People to withdraw consent to the plea, not modification on appeal.