

Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: September 24, 2026

CR-25-1162

THE PEOPLE OF THE STATE OF
NEW YORK,

Appellant,

v

MEMORANDUM AND ORDER

GREGORY THAYER,

Respondent.

Calendar Date: August 20, 2026

Before: Clark, J.P., Pritzker, Ceresia, Mackey and Corcoran, JJ.

Emmanuel C. Nneji, District Attorney, Kingston, for appellant.

*Law Office of Joel B. Rudin, P.C., New York City (Joel B. Rudin of counsel) and
Gottlieb Townsend, New York City (Robert C. Gottlieb of counsel), for respondent.*

Ceresia, J.

Appeal from an order of the Supreme Court (Roger McDonough, J.), entered October 9, 2024 in Ulster County, which granted defendant's motion pursuant to CPL 440.10 to vacate the judgment convicting him of the crimes of manslaughter in the first degree and criminal possession of a weapon in the second degree, after a hearing.

Defendant, who shot and killed his childhood friend, was charged by indictment with murder in the second degree and criminal possession of a weapon in the second degree. Defendant retained trial counsel from New York City and local counsel from the Village of New Paltz, Ulster County. Trial counsel advised County Court (Rounds, J.) that defendant intended to waive a jury trial, and also filed a notice of intent to present

evidence of the defenses of lack of criminal responsibility by reason of mental disease or defect (*see* CPL 250.10 [1] [a]) and lack of capacity to form criminal intent (*see* CPL 250.10 [1] [c]), together with a psychiatrist's report in support of these defenses. Subsequently, local counsel learned that the judge's law clerk wished to speak with him, prompting local counsel to meet privately with the law clerk. Although their accounts of this conversation later differed, according to local counsel, the law clerk indicated that he and the judge had reviewed the psychiatrist's report and were concerned that it lacked support for a defense of extreme emotional disturbance (*see* CPL 250.10 [1] [b]) – which was not a defense advanced by defendant in his CPL 250.10 notice. The law clerk also offered his opinion that defendant would be better off with a jury trial as opposed to a bench trial, and further conveyed that the occurrence of the meeting was to remain confidential and was not to be shared with trial counsel. Following this conversation, local counsel debated whether to disclose it to trial counsel, but ultimately decided to raise the law clerk's concerns while framing them as if they were his own. However, as he wished to maintain the confidence requested by the law clerk, local counsel, who eventually withdrew from representing defendant, did not reveal the meeting's occurrence to trial counsel.

At the ensuing bench trial, trial counsel pursued the defenses set forth in defendant's CPL 250.10 notice. During an off-the-record conference following the close of the People's proof, County Court inquired as to whether defendant would be requesting a charge on extreme emotional disturbance, and trial counsel indicated he would not. The court then stated that it believed it was required to consider this defense and asked whether trial counsel wished to amend his CPL 250.10 notice to include it. In response, defendant filed an amended notice.¹ The trial proceeded, at the conclusion of which the court rendered a verdict. Accepting the defense of extreme emotional disturbance, the court acquitted defendant of murder in the second degree but convicted him of the lesser included offense of manslaughter in the first degree² as well as criminal possession of a

¹ While we are mindful that defendant eventually acquiesced in County Court's decision to charge itself with the defense of extreme emotional disturbance, we nevertheless observe that a defendant has the right to chart his or her own course when presenting a defense, and it is improper for a court to undermine the chosen strategy (*see People v Bradley*, 88 NY2d 901, 902-904 [1996]).

² The defenses listed in defendant's CPL 250.10 notice lead to an acquittal if proven (*see* Penal Law § 40.15; *People v Segal*, 54 NY2d 58, 66 [1981]). By contrast, the defense of extreme emotional disturbance does not relieve a defendant of criminal responsibility but instead serves, as relevant here, to reduce a charge of second-degree

weapon in the second degree. Two days after the verdict was announced, local counsel, for the first time, revealed to trial counsel his private conversation with the law clerk.

Notwithstanding the fact that he had not yet been sentenced, defendant then moved, among other things, to vacate the judgment of conviction pursuant to CPL 440.10, contending that he received ineffective assistance of counsel based on local counsel's failure to disclose the ex parte conversation, and that his waiver of his right to a jury trial was not knowing and intelligent. County Court recused and the matter was reassigned to Supreme Court (McDonough, J.). The court held the motion in abeyance and proceeded with sentencing in the interim, imposing a term of 25 years in prison, to be followed by five years of postrelease supervision, on the manslaughter conviction and a lesser concurrent term on the weapon possession conviction. After a hearing on the motion – at which trial counsel, local counsel, defendant and two other attorneys on the defense team testified – Supreme Court granted defendant's motion and ordered a new trial. The People appeal.

We affirm. Turning first to Supreme Court's finding of ineffectiveness, "[u]nder the state and federal constitutions, a criminal defendant is entitled to the effective assistance of counsel, defined as representation that is reasonably competent, conflict-free and singlemindedly devoted to the client's best interests" (*People v Ennis*, 11 NY3d 403, 409-410 [2008] [internal quotation marks and citations omitted], *cert denied* 556 US 1240 [2009]; *see People v Hines*, 228 AD3d 995, 995 [3d Dept 2024], *lv denied* 42 NY3d 938 [2024]). A conflict of interest on the part of defense counsel may be categorized as either actual or potential, and an actual conflict "arises when an attorney has divided and incompatible loyalties within the same matter necessarily preclusive of single-minded advocacy" (*People v Mero*, 43 NY3d 407, 416 [2024] [internal quotation marks and citation omitted]). Absent a knowing waiver by the defendant, reversal is required when there is an actual conflict or even a significant possibility of one (*see People v Wright*, 27 NY3d 516, 520-521 [2016]; *People v Solomon*, 20 NY3d 91, 95-96 [2011]; *People v Marshall*, 173 AD3d 1257, 1259 [3d Dept 2019]). By contrast, a potential conflict of interest will result in reversal only where the defendant demonstrates that it operated on the defense (*see People v Prusinski*, 242 AD3d 1427, 1433 [3d Dept 2025], *lv denied* 45 NY3d 938 [2026]; *People v Hartle*, 192 AD3d 1199, 1201 [3d Dept 2021], *affd* 40 NY3d 39 [2023], *cert denied* ___ US ___, 144 S Ct 383 [2023]).

murder to first-degree manslaughter (*see* Penal Law § 125.20 [2]; *People v Israel*, 26 NY3d 236, 239 n [2015]).

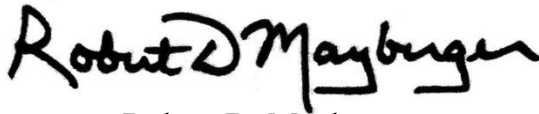
The circumstances presented here reveal the existence of an actual conflict of interest, insofar as local counsel's loyalties within the matter were clearly divided. By his own hearing testimony, local counsel felt "stuck between a rock and a hard place" and in a "very difficult position" given the secrecy imposed upon him by the law clerk and his duty of loyalty to defendant. Although local counsel conveyed the substance of the law clerk's concerns to trial counsel, he did not share his awareness that the judge was inclined to discredit defendant's expert, thereby prejudging the defense theory. The law clerk's suggestion that defendant would be better off with a jury as the factfinder rather than the judge further highlights the disadvantage at which defendant was unwittingly placed. We find unavailing the People's argument that any conflict was obviated by the fact that local counsel did not participate in defendant's waiver of a jury trial and subsequent bench trial, as local counsel was aware of defendant's intention to proceed with a bench trial when he obtained the information from the law clerk but still sat mute, thus failing to provide single-minded advocacy (*see People v Mero*, 43 NY3d at 416). In sum, local counsel's unwaived actual conflict of interest deprived defendant of effective representation, and Supreme Court properly vacated the judgment of conviction (*see People v Prescott*, 21 NY3d 925, 927-928 [2013]; *People v Marshall*, 173 AD3d at 1259).

For the same reasons, we also agree with Supreme Court's finding that defendant's waiver of his right to a jury trial was invalid, as he could not make a knowing, intelligent and voluntary waiver while lacking the information possessed by local counsel (*see People v Black*, 199 AD3d 824, 825 [2d Dept 2021]). Finally, with respect to the parties' competing arguments regarding whether double jeopardy bars retrial of certain charges, this issue was raised below, but Supreme Court reserved decision pending the outcome of the instant appeal. Therefore, the question is not properly before us (*see CPL 470.15* [1]; *People v Morris*, 176 AD3d 1635, 1636 [4th Dept 2019]). The People's remaining contentions, to the extent not explicitly addressed herein, have been considered and rejected.

Clark, J.P., Pritzker, Mackey and Corcoran, JJ., concur.

ORDERED that the order is 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, stylized "R" and "M".

Robert D. Mayberger
Clerk of the Court