

174 A.D.3d 638

Supreme Court, Appellate Division,
Second Department, New York.

The PEOPLE, etc., Respondent,

v.

Raul ALVAREZ, Appellant.

2016-11453

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(Ind. No. 3590/15)

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Argued—April 1, 2019

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July 10, 2019

Attorneys and Law Firms

Paul Skip Laisure, New York, NY, for appellant.

Eric Gonzalez, District Attorney, Brooklyn, N.Y. (Leonard Joblove, Jean M. Joyce, and Julian Joiris of counsel), for respondent.

JOHN M. LEVENTHAL, J.P., SHERI S. ROMAN, HECTOR D. LASALLE, LINDA CHRISTOPHER, JJ.

****871** DECISION & ORDER

***638** Appeal by the defendant from a judgment of the Supreme Court, Kings County (Matthew Sciarrino, Jr., J.), rendered October 5, 2016, convicting him of burglary in the third degree, criminal trespass in the third degree, criminal mischief in the third degree, attempted petit larceny, criminal possession of a controlled substance in the seventh degree, and unlawful possession of marijuana, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is **reversed**, on the law, and a new trial is ordered.

CPL 270.20(1)(b) provides that a prospective juror may be challenged for cause if the juror “has a state of mind that is likely to preclude him [or her] from rendering an impartial verdict based upon the evidence adduced at the trial.” “Where an issue is raised concerning the ability of a prospective

juror to be fair and impartial, the prospective juror must state unequivocally that his or her prior state of mind will not influence his or her verdict, and that he or she will render an impartial verdict based solely on the evidence” (*People v. Valdez*, 138 A.D.3d 1151, 1152, 30 N.Y.S.3d 294; *see People v. Chambers*, 97 N.Y.2d 417, 740 N.Y.S.2d 291, 766 N.E.2d 953; *People v. Bludson*, 97 N.Y.2d 644, 646, 736 N.Y.S.2d 289, 761 N.E.2d 1016; *People v. Johnson*, 94 N.Y.2d 600, 614, 709 N.Y.S.2d 134, 730 N.E.2d 932; *People v. Blyden*, 55 N.Y.2d 73, 77–78, 447 N.Y.S.2d 886, 432 N.E.2d 758; *People v. Alvarez*, 130 A.D.3d 1054, 14 N.Y.S.3d 157; *People v. Garcia*, 125 A.D.3d 882, 5 N.Y.S.3d 121). “A prospective juror’s responses, construed as a whole, must demonstrate an absolute belief that his or her prior opinion will not influence his or her verdict” (*People v. Valdez*, 138 A.D.3d at 1152–1153, 30 N.Y.S.3d 294; *see People v. Culhane*, 33 N.Y.2d 90, 107, 350 N.Y.S.2d 381, 305 N.E.2d 469; *People v. McQuade*, 110 N.Y. 284, 301, 18 N.E. 156; *People v. Alvarez*, 130 A.D.3d at 1054, 14 N.Y.S.3d 157; *People v. Garcia*, 125 A.D.3d at 883, 5 N.Y.S.3d 121; *People v. Goodwin*, 64 A.D.3d 790, 882 N.Y.S.2d 707).

Here, during voir dire, three of the prospective jurors demonstrated a state of mind that was likely to preclude them from ***639** rendering an impartial verdict (*see* CPL 270.20[1][b]), and the Supreme Court failed to obtain an unequivocal assurance that they could set aside any bias and render an impartial verdict based on the evidence (*see People v. Johnson*, 94 N.Y.2d at 614, 709 N.Y.S.2d 134, 730 N.E.2d 932; *People v. Valdez*, 138 A.D.3d at 1153, 30 N.Y.S.3d 294; *People v. Brothers*, 95 A.D.3d 1227, 1228, 944 N.Y.S.2d 645; *People v. Henriques*, 307 A.D.2d 937, 937–938, 762 N.Y.S.2d 887). As a result, the court erred in denying the defendant’s challenges for cause to those three prospective jurors. The failure to grant the defendant’s challenges for cause constituted reversible error because the defendant exhausted all of his peremptory challenges prior to the completion of jury selection (*see* CPL 270.20[2]; *People v. Valdez*, 138 A.D.3d at 1153, 30 N.Y.S.3d 294).

LEVENTHAL, J.P., ROMAN, LASALLE and CHRISTOPHER, JJ., concur.

All Citations

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