

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

Decided and Entered: July 3, 2014

105242

THE PEOPLE OF THE STATE OF
NEW YORK,

Respondent,

v

MEMORANDUM AND ORDER

SHAWN YOUNG,

Appellant.

Calendar Date: May 29, 2014

Before: Peters, P.J., Rose, Egan Jr., Lynch and Devine, JJ.

Cynthia Feathers, Glens Falls, for appellant.

Robert M. Carney, District Attorney, Schenectady (John R. Healy of counsel), for respondent.

Egan Jr., J.

Appeal from a judgment of the County Court of Schenectady County (Hoye, J.), rendered August 19, 2011, upon a verdict convicting defendant of the crimes of burglary in the first degree, robbery in the first degree and grand larceny in the third degree.

In the early morning hours of August 19, 2010, defendant and another assailant forced their way at gun point into the victim's apartment in the City of Schenectady, Schenectady County, ordered Winston Tull and William Davis, who were visiting the victim, to lie on the floor and stole money and drugs from the victim before fleeing the apartment. Following a jury trial, defendant was convicted of burglary in the first degree, robbery in the first degree and grand larceny in the third degree and was

sentenced to an aggregate prison term of 20 years. Defendant now appeals.

We agree with defendant that County Court committed reversible error in denying his challenge for cause to prospective juror No. 153. "Prospective jurors who make statements that cast serious doubt on their ability to render an impartial verdict, and who have given less-than-unequivocal assurances of impartiality, must be excused" (People v Arnold, 96 NY2d 358, 363 [2001] [citations omitted]; see People v Harris, 19 NY3d 679, 685 [2012]; People v McGuire, 101 AD3d 1386, 1388 [2012]). Here, during jury selection, juror No. 153 stated that he was "very uncomfortable" about the alleged use of a firearm during the commission of the charged crimes. When asked by defense counsel if his stated discomfort was something that would affect his ability to keep an open mind, juror No. 153 responded, "It might. I can't say for sure what it is, but it's a concern to me."

After questioning of this panel had concluded, and out of the presence of the prospective jurors, defense counsel challenged juror No. 153 for cause. County Court, stating that defense counsel failed to ask any follow-up questions of juror No. 153 at the time the juror made the subject statements in order to make out an appropriate foundation for cause, denied the challenge. Having heard the statements by juror No. 153, County Court should have either granted the challenge for cause or conducted a further inquiry of that juror and obtained express, unequivocal assurances on the record of his impartiality (see People v Harris, 19 NY3d at 685-686; People v McGuire, 101 AD3d at 1388; People v Thigpen, 277 AD2d 261, 261 [2000]). As the record demonstrates, no such assurances were even sought – much less obtained – from this particular juror. Although the record indeed indicates that the prospective jurors collectively responded in the affirmative when asked – as a group – if they could render a decision based solely upon the evidence presented, County Court did not specifically address the concern expressed by juror No. 153 in any meaningful way or otherwise obtain assurances of his impartiality. Absent such assurances, and given the fact that defendant exhausted his peremptory challenges, the denial of defendant's challenge for cause

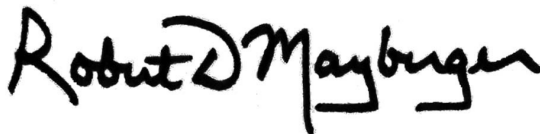
constitutes reversible error (see People v Nicholas, 98 NY2d 749, 752 [2002]; People v Jones, 45 AD3d 1178, 1179 [2007]; see also CPL 270.20 [2]). Accordingly, this matter is remitted for a new trial.

Finally, although we agree that the People improperly used Davis' testimony to bolster the victim's prior identification testimony of defendant as the perpetrator, any error in this regard "was most certainly harmless in light of [the victim's] unequivocal and well-grounded identification testimony and the overwhelming evidence of defendant's guilt" (People v Vargas, 60 AD3d 1236, 1239 [2009], lv denied 13 NY3d 750 [2009]). The balance of defendant's evidentiary objections have been examined and found to be lacking in merit.

Peters, P.J., Rose, Lynch and Devine, JJ., concur.

ORDERED that the judgment is reversed, on the law, and matter remitted to the County Court of Schenectady County for a new trial.

ENTER:

A handwritten signature in black ink that reads "Robert D. Mayberger". The signature is written in a cursive, slightly slanted style.

Robert D. Mayberger
Clerk of the Court