

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D33898
C/prt

_____AD3d_____

Argued - January 23, 2012

PETER B. SKELOS, J.P.
JOHN M. LEVENTHAL
PLUMMER E. LOTT
ROBERT J. MILLER, JJ.

2009-07455

DECISION & ORDER

The People, etc., respondent,
v Keenan Parker, appellant.

(Ind. No. 9940/07)

Lynn W. L. Fahey, New York, N.Y. (David P. Greenberg of counsel), for appellant,
and appellant pro se.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove and Keith
Dolan of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Del
Giudice, J.), rendered July 20, 2009, convicting him of murder in the second degree, upon a jury
verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

Contrary to the defendant's contentions, the Supreme Court providently exercised its
discretion in removing him from the courtroom prior to the prosecutor's summation. "A defendant's
right to be present at a criminal trial is encompassed within the confrontation clauses of the State and
Federal Constitutions" (*People v Parker*, 57 NY2d 136, 139, citing US Const, 6th Amend, NY
Const, art I, § 6; *see Illinois v Allen*, 397 US 337, 338). However, the right to be present "may be
waived, and a defendant may forfeit his right to be present when his conduct 'unambiguously
indicates a defiance of the processes of law and it disrupts the trial after all parties are assembled and
ready to proceed'" (*People v Hendrix*, 63 AD3d 958, 958, quoting *People v Sanchez*, 65 NY2d 436,
444; *see People v Mitchell*, 69 AD3d 761). Here, the removal came after the Supreme Court issued
several admonitions, which were ignored, as the defendant's outbursts continued. Furthermore,

given the defendant's prior behavior, the Supreme Court providently exercised its discretion in denying the defendant's applications to return to the courtroom (*cf. People v Hendrix*, 63 AD3d at 958; *People v Valdes*, 283 AD2d 187).

Likewise, there is no merit to the defendant's claim that the Supreme Court erred in its *Sandoval* ruling (*see People v Sandoval*, 34 NY2d 371) by not setting forth its reasoning and the balancing process in which it engaged in making the *Sandoval* ruling. "Our law does not require the application of any particular balancing process in *Sandoval* determinations . . . Similarly, an exercise of a trial court's *Sandoval* discretion should not be disturbed merely because the court did not provide a detailed recitation of its underlying reasoning" (*People v Walker*, 83 NY2d 455, 459 [internal quotation marks and citations omitted]).

The Supreme Court did not err in discharging a sworn juror over the protest of the defendant (*see People v Buford*, 69 NY2d 290). After a chance encounter with one of the prosecution's witnesses, the juror approached the Supreme Court to express his uneasiness over their brief exchange. When asked if he could remain fair and impartial following the incident, the juror answered "I can't tell you." Based on the juror's response, the Supreme Court was justified in concluding that the juror was "grossly unqualified" to continue serving based on his inability to state that he would not be influenced by his meeting with the witness (*see People v Lennon*, 37 AD3d 853; *see generally People v Rodriguez*, 71 NY2d 214, 219).

The contention raised by the defendant in his pro se supplemental brief is academic. The remaining contention raised by the defendant in his main brief does not require reversal.

SKELOS, J.P., LEVENTHAL, LOTT and MILLER, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court