

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

D56465
O/htr

_____AD3d_____

Argued - April 27, 2018

WILLIAM F. MASTRO, J.P.
MARK C. DILLON
FRANCESCA E. CONNOLLY
ANGELA G. IANNACCI, JJ.

2015-01357

DECISION & ORDER

The People, etc., respondent,
v Rodger Freeman, appellant.

(Ind. No. 2406/11)

Beverly Van Ness, New York, NY, for appellant.

Eric Gonzalez, District Attorney, Brooklyn, NY (Leonard Joblove and Camille O'Hara Gillespie of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Albert Tomei, J.), rendered May 19, 2014, convicting him of attempted murder in the first degree, conspiracy in the second degree, intimidating a victim or a witness in the first degree (two counts), and criminal possession of a weapon in the second degree, upon a jury verdict, and imposing sentence.

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

The defendant was tried jointly with two codefendants (hereinafter collectively the defense). During voir dire, the defense was given 20 peremptory challenges for regular jurors. After questioning of the first group of prospective jurors was completed, the Supreme Court divided that group into two subgroups. Each side had the opportunity to exercise challenges for cause to the first subgroup of prospective jurors. Counsel for codefendant Terell Viera stated that he would exercise the peremptory challenges on behalf of all three defendants. After the People exercised their peremptory challenges to the first subgroup, the court asked the defense if they wished to exercise any peremptory challenges. Counsel for codefendant Terell Viera indicated that the defense had five peremptory challenges. The clerk named the four prospective jurors in the first subgroup to be

assigned seats on the jury, including prospective juror eight. Thereafter, the defendant's attorney stated, "There was one we missed, number eight." The court responded, "We have eight." In response, the defendant's attorney stated, "We don't want eight." The court replied, "You already—you told me what the perempts are and who the selected jurors are," and denied the request to challenge prospective juror eight.

For the reasons set forth in our decision and order on the companion appeal (*see People v Viera*, ___ AD3d ___, decided herewith), the Supreme Court improperly denied the peremptory challenge to prospective juror eight. Since a trial court's improper denial of a peremptory challenge mandates reversal, we reverse the judgment and order a new trial (*see People v Hecker*, 15 NY3d 625, 661; *People v Parrales*, 105 AD3d 871, 872; *People v Jabot*, 93 AD3d 1079, 1082).

In light of our determination, we need not address the defendant's remaining contentions.

MASTRO, J.P., DILLON, CONNOLLY and IANNACCI, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court