



## **DEFENDANT'S ABSENCE FROM SIDEBAR CONFERENCES DURING JURY SELECTION DID NOT REQUIRE REVERSAL (FOURTH DEPT).**

The Fourth Department, over a dissent, determined defendant's absence from sidebar conferences did not require reversal:

Defendant contends that the court violated the rule in *People v Antommarchi* (80 NY2d 247, 250 [1992] ...) when it conducted several sidebar conferences in his absence and that reversal is required with respect to two of those conferences. We disagree with defendant that reversal is required as a result of any violation of defendant's *Antommarchi* rights. It is well settled that a criminal defendant has a statutory right to be present at all material stages of the trial (see CPL 260.20 ...), including the sidebar questioning of a prospective juror when the purpose of the questioning is "intended to search out a prospective juror's bias, hostility or predisposition to believe or discredit the testimony of potential witnesses" ... . Nevertheless, "reversal is not required when, because of the matter then at issue before the court or the practical result of the determination of that matter, the defendant's presence could not have afforded him or her any meaningful opportunity to affect the outcome" ... . In determining whether the defendant's presence could have afforded him or her such an opportunity, the test is whether the record negates the possibility that the defendant "could have provided valuable input on his [or her] counsel's apparently discretionary choice to excuse those venire persons" ... . Thus, reversal is not required where the defendant's attorney does not exercise a choice to exclude a prospective juror, such as where a prospective juror is excused for cause or where the People have exercised a peremptory challenge to the prospective juror ... .

... [W]e conclude that defendant had no opportunity to provide any input that might have affected the outcome regarding the relevant prospective jurors. [People v Wilkins, 2019 NY Slip Op 06238, Fourth Dept 8-22-19](#)