

The Star-Ledger

In ‘historic’ ruling, N.J.’s top court orders new murder trial saying ‘implicit bias’ tainted jury selection

By Blake Nelson

NJ Advance Media for NJ.com and The Star-Ledger

Published July 13, 2021

New Jersey’s Supreme Court unanimously ordered a new trial Tuesday for a man convicted of murder after concluding there was evidence of “implicit bias” during the jury selection process.

In 2017, the Essex County Prosecutor’s Office singled out one prospective juror for a background check after their request to have him removed was denied, according to court records. They found the candidate, a Black man identified only by initials in court papers, had a warrant and arrested him soon after.

“Based on all of the circumstances, we infer that F.G.’s removal from the jury panel may have stemmed from implicit or unconscious bias on the part of the State, which can violate a defendant’s right to a fair trial in the same way that purposeful discrimination can,” Chief Justice Stuart Rabner wrote in the decision.

The ruling, the top court’s first on a whether prosecutors may run background checks on prospective jurors, did not ban the practice entirely. Going forward, the justices said any request for a check must be approved by the judge and the results shared with all sides.

The potential juror should also have a chance to respond, the justices said.

Deputy Public Defender Joseph Russo called the decision “historic.”

“The Court squarely addressed the devastating consequences of unconscious racial bias, which has been a longstanding problem in New Jersey and throughout the country,” Russo said in a statement.

A spokeswoman for the prosecutor’s office said they would follow the new rules in the future.

“We believe the assistant prosecutor who tried the case acted in good faith based on the caselaw at the time; we do not believe that the prosecutor acted with any racial bias,” Katherine Carter wrote in an email.

The agency is “firmly committed to delivering justice fairly and without bias,” she added.

In 2014, Edwin Andujar was accused of stabbing his roommate to death with a kitchen knife.

Andujar is Hispanic, according to online prison records, and lawyers began questioning potential jurors for his trial three years later.

One potential juror from Newark said he was familiar with the criminal justice system because he knew cousins in law enforcement, friends who'd been accused of crimes and others who'd been victims.

That experience meant the potential juror couldn't be fair, prosecutors argued.

It's "very concerning" that "his close friends hustle," one prosecutor said, according to court records. "That draws into question whether he respects the criminal justice system."

Andujar's lawyer disagreed, saying "it is not a hidden fact that living in certain areas you are going to have more people who are accused of crimes, more people who are victims of crime," court records show.

The judge sided with Andujar, concluding that the man "would make a fair and impartial juror."

The prosecutor's office then ran a background check.

They found the man had twice been arrested, although not convicted, and he had a current municipal court warrant for simple assault, according to court records.

None of that disqualified him as a juror, Rabner wrote. Yet prosecutors still moved to put him in handcuffs.

"The record reveals that implicit or unconscious racial bias infected the jury selection process in violation of defendant's fundamental rights," the chief justice wrote.

The new charges were dropped two months later, according to court records.

An appellate court previously ruled that arresting potential jurors was a good way to discourage people from reporting for jury duty.

The month after that decision, Andujar was released from New Jersey State Prison in Trenton, according to prison records. It was not immediately clear when his new trial might begin.

The Supreme Court also promised to dig into the issue further. The chief justice called for a Judicial Conference on Jury Selection to meet in the fall, where experts, lawyers and members of the public can "consider additional steps needed to prevent discrimination in the way we select juries."

NJ Advance Media staff writer Rebecca Everett contributed to this report.