

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

D25128  
H/nl

\_\_\_\_\_AD3d\_\_\_\_\_

Submitted - October 13, 2009

REINALDO E. RIVERA, J.P.  
STEVEN W. FISHER  
ARIEL E. BELEN  
LEONARD B. AUSTIN, JJ.

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2008-07134

DECISION & ORDER

The People, etc., respondent,  
v Justin Munlyn, appellant.

(Ind. No. 2836/07)

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Marianne Karas, Armonk, N.Y., for appellant.

Kathleen M. Rice, District Attorney, Mineola, N.Y. (Robert A. Schwartz and Jason P. Weinstein of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Nassau County (Ayres, J.), rendered July 23, 2008, convicting him of robbery in the second degree, assault in the second degree, and resisting arrest, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

Contrary to the defendant's contention, the Supreme Court properly discharged a sworn juror based upon the juror's expressed inability to be fair and impartial as a result of his acquaintance with a prosecution witness (*see People v Lennon*, 37 AD3d 853; *People v Ford*, 211 AD2d 438, 439).

The defendant's contention that the sentence imposed by the Supreme Court improperly penalized him for exercising his right to trial is unpreserved for appellate review (*see People v Brown*, 38 AD3d 676, 677; *People v Chapero*, 23 AD3d 492, 493). In any event, the record reveals no retaliation or vindictiveness against the defendant on the part of the Supreme Court in arriving at the sentence, "and the fact that the sentence imposed after trial was greater than that

offered during plea negotiations is no indication that the defendant was punished for asserting his right to proceed to trial” (*People v Tannis*, 36 AD3d 635, 635; *see People v Davis*, 27 AD3d 761, 762). Moreover, the sentence imposed was not excessive (*see People v Suite*, 90 AD2d 80).

The defendant’s remaining contentions are unpreserved for appellate review and, in any event, are without merit.

RIVERA, J.P., FISHER, BELEN and AUSTIN, JJ., concur.

ENTER:

  
James Edward Pelzer  
Clerk of the Court