

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

D30960
O/kmb

_____AD3d_____

Argued - April 4, 2011

JOSEPH COVELLO, J.P.
DANIEL D. ANGIOLILLO
THOMAS A. DICKERSON
L. PRISCILLA HALL, JJ.

2009-09242

DECISION & ORDER

The People, etc., respondent,
v Clifford Saunders, appellant.

(Ind. No. 863/08)

Lynn W. L. Fahey, New York, N.Y. (A. Alexander Donn of counsel), for appellant.

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano, Nicoletta J. Caferri, and Ellen C. Abbot of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Cooperman, J.), rendered September 11, 2009, convicting him of criminal possession of a weapon in the third degree (two counts) and operating a motor vehicle without safety belts, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant contends that he was deprived of a fair trial because the Supreme Court failed to conduct an inquiry as to whether certain jurors were grossly unqualified or engaged in substantial misconduct under CPL 270.35(1). The defendant allegedly saw, but did not hear, the jurors in question engaged in an argument or discussion on the street after the jury had been excused for the day, thus suggesting that they might have discussed the case outside the jury room. This contention is unpreserved for appellate review (*see People v Riley*, 79 AD3d 911, 912; *People v Quinones*, 41 AD3d 868). Although the defendant's attorney reported the defendant's observations to the court, the defendant did not request that the Supreme Court make an inquiry of the jurors or move to discharge them. Therefore, he demonstrated a willingness to continue to accept the jurors as triers of fact and, thus, cannot be heard to complain (*see* CPL 470.05[2]; *People v Riley*, 79 AD3d

April 26, 2011

Page 1.

PEOPLE v SAUNDERS, CLIFFORD

at 912; *People v Quinones*, 41 AD3d at 868).

In any event, there was no evidence in the record that the jurors were grossly unqualified to serve, engaged in substantial misconduct, or were otherwise unable to render an impartial verdict (see *People v Argendorf*, 76 AD3d 1100, 1100-1101; *People v Rivera*, 31 AD3d 670, 671).

The defendant's remaining contention is without merit.

COVELLO, J.P., ANGIOLILLO, DICKERSON and HALL, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court