

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

D31295  
W/hu

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

Argued - April 26, 2011

JOSEPH COVELLO, J.P.  
RANDALL T. ENG  
CHERYL E. CHAMBERS  
ROBERT J. MILLER, JJ.

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2010-03565

DECISION & ORDER

The People, etc., respondent,  
v Michael Dell'Aera, appellant.

(Ind. No. 1516/09)

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Paula Schwartz Frome, Garden City, N.Y., for appellant.

Kathleen M. Rice, District Attorney, Mineola, N.Y. (Douglas Noll and Laurie K. Gibbons of counsel), for respondent.

Appeal by the defendant from a judgment of the County Court, Nassau County (Honorof, J.), rendered April 14, 2010, convicting him of robbery in the second degree, robbery in the third degree, and petit larceny, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's challenge to the County Court's jury charge regarding intent is without merit (*see* CJI2d [NY] Culpable Mental States—Intent). The County Court was not required to provide the charge in the precise language requested by the defendant (*see People v Samuels*, 99 NY2d 20, 25-26; *People v Dory*, 59 NY2d 121, 129; *People v Maldonado*, 127 AD2d 855; *People v Compitiello*, 118 AD2d 720). Where, as here, the Trial Judge sufficiently explained all the applicable legal principles to the jury, he was not bound to use the specific language requested (*see People v Maldonado*, 127 AD2d at 855; *People v Dory*, 59 NY2d at 129). Furthermore, the County Court's charge did not alter the People's theory as presented in the indictment or the facts as presented at trial (*see People v Charles*, 61 NY2d 321, 326-330; *People v Kaminski*, 58 NY2d 886, 887; *People v Faber*, 64 AD3d 788; *People v Jean*, 146 AD2d 803, 804, *affd* 75 NY2d 744).

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The defendant's remaining challenge to the adequacy of the County Court's response to a jury note requesting clarification of the concept of reasonable doubt is unpreserved for appellate review (see CPL 470.05[2]; *People v Romero*, 71 AD3d 795, 796), and, in any event, is without merit (see *People v Malloy*, 55 NY2d 296, 303, *cert denied* 459 US 847; *People v Steinberg*, 79 NY2d 673, 684; *People v Chase*, 225 AD2d 789, 790; *People v Walton*, 220 AD2d 548).

COVELLO, J.P., ENG, CHAMBERS and MILLER, JJ., concur.

ENTER:

  
Matthew G. Kiernan  
Clerk of the Court