

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

D33770
O/prt

_____AD3d_____

Argued - January 5, 2012

DANIEL D. ANGIOLILLO, J.P.
ANITA R. FLORIO
CHERYL E. CHAMBERS
L. PRISCILLA HALL, JJ.

2010-01866

DECISION & ORDER

The People, etc., respondent,
v Anthony Waters, appellant.

(Ind. No. 1178/07)

Lynn W. L. Fahey, New York, N.Y. (Jonathan Garvin of counsel), for appellant.

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano,
Johnnette Traill, and Gretchen Robinson of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Holder, J.), rendered January 25, 2010, convicting him of burglary in the second degree, criminal mischief in the fourth degree, and petit larceny, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant's argument that his constitutional right to a jury in whose selection he had a voice was violated when the trial court discharged a juror who had plans to travel in the future but was not immediately unavailable (*see* CPL 270.15[3]) is unpreserved for appellate review because he failed to raise this specific argument at trial (*see People v Wells*, 15 NY3d 927, 928, *cert denied* _____US_____, 132 S Ct 123 [2011]; *People v Person*, 8 NY3d 973, 974; *People v Graves*, 85 NY2d 1024, 1026-1027), and we decline to reach it in the exercise of our interest of justice jurisdiction.

ANGIOLILLO, J.P., FLORIO, CHAMBERS and HALL, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court

January 31, 2012

PEOPLE v WATERS, ANTHONY