

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

D13680
C/hu

_____AD3d_____

Argued - January 4, 2007

STEPHEN G. CRANE, J.P.
REINALDO E. RIVERA
GLORIA GOLDSTEIN
EDWARD D. CARNI, JJ.

2004-02883

DECISION & ORDER

The People, etc., respondent,
v Terrell Lambert, appellant.

(Ind. No. 2319/03)

Lynn W. L. Fahey, New York, N.Y. (Alex V. Chachkes and Annabelle Chan of counsel), for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove and Victor Barall of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Mangano, Jr., J.), rendered March 23, 2004, convicting him of grand larceny in the third degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is reversed, on the law, and a new trial is ordered.

As the People correctly concede, the trial court committed reversible error when, after the defense counsel exercised his peremptory challenges, it permitted the prosecutor to exercise a peremptory challenge to an unsworn prospective juror over the defense counsel's objection (*see* CPL 270.15[2]; *People v Williams*, 26 NY2d 62; *People v Nieves*, 26 AD3d 519, 520). The prosecutor's belated exercise of a peremptory challenge violated "the one persistently protected and enunciated rule of jury selection - that the People make peremptory challenges first, and that they never be permitted to go back and challenge a juror accepted by the defense" (*People v Alston*, 88 NY2d 519, 529).

CRANE, J.P., RIVERA, GOLDSTEIN and CARNI, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court

January 30, 2007

PEOPLE v LAMBERT, TERRELL