

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

D14638
C/cb

_____AD3d_____

Argued - March 5, 2007

ROBERT W. SCHMIDT, J.P.
ROBERT A. SPOLZINO
ANITA R. FLORIO
PETER B. SKELOS, JJ.

2005-02477

DECISION & ORDER

The People, etc., respondent,
v Kenneth Lumpkin, appellant.

(Ind. No. 1799/03)

Lynn W. L. Fahey, New York, N.Y. (Katherine R. Schaefer of counsel), for appellant.

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano, Jeanette Lifschitz, Steven L. Vollins, and Benjamin Mastaitis of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Hollie, J.), rendered March 1, 2005, convicting him of grand larceny in the third degree and grand larceny in the fourth degree (two counts), upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant failed to preserve for appellate review his contention regarding the preliminary instructions given to the jury, and his contention that the trial court failed to admonish the jury not to discuss the case during an overnight recess (*see* CPL 270.40, 310.10; *People v Agramonte*, 87 NY2d 765, 771; *People v Bonaparte*, 78 NY2d 26, 32; *People v Taylor*, 29 AD3d 713, 714; *People v Robinson*, 8 AD3d 502; *People v Morton*, 23 AD3d 411, 412), and we decline to review

these contentions in the exercise of our interest of justice jurisdiction (*see* CPL 470.15[6][a]; *People v Giddens*, 202 AD2d 976; *People v Moore*, 161 AD2d 733, 734; *People v Morton*, 23 AD3d 411, 412).

SCHMIDT, J.P., SPOLZINO, FLORIO and SKELOS, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "James Edward Pelzer". The signature is written in a cursive, flowing style.

James Edward Pelzer
Clerk of the Court