

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

D24598  
W/kmg

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Argued - September 22, 2009

REINALDO E. RIVERA, J.P.  
ANITA R. FLORIO  
RANDALL T. ENG  
JOHN M. LEVENTHAL, JJ.

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2005-06936

DECISION & ORDER

The People, etc., respondent,  
v Larry Smith, appellant.

(Ind. No. 4413/02)

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

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove and Howard B. Goodman of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Hall, J.), rendered July 8, 2005, convicting him of murder in the first degree (two counts), upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant contends that the Supreme Court erred in denying his *Batson* challenge (*see Batson v Kentucky*, 476 US 79) because the prosecutor's explanations for striking a black female prospective juror were pretextual. However, the defendant's challenge was properly denied since he failed to satisfy his burden of demonstrating, under the third prong of the *Batson* analysis, that the facially race-neutral and gender-neutral explanations given by the prosecutor were a pretext for discrimination (*see People v Payne*, 88 NY2d 172, 181).

The defendant's remaining contention is without merit.

RIVERA, J.P., FLORIO, ENG and LEVENTHAL, JJ., concur.

ENTER:

  
James Edward Pelzer

October 13, 2009

PEOPLE v SMITH, LARRY

Clerk of the Court

October 13, 2009

PEOPLE v SMITH, LARRY