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This memorandum is uncorrected and subject to revision before
publication in the New York Reports.

No. 56 SSM 56
The People &c.,
Respondent,
v.
Roland Ramos,
Appellant.

Submitted by Jonathan Garelick, for appellant.
Submitted by Daniel Bresnahan, for respondent.

MEMORANDUM:

The order of the Appellate Division should be reversed and a new trial ordered on the charges of scheme to defraud in the first degree and petit larceny, and the present indictment otherwise dismissed without prejudice to an application by the People, if they be so advised, for leave to resubmit the charge

of grand larceny in the fourth degree to another Grand Jury (see People v Steadman, 82 NY2d 1 [1993]; People v Mayo, 48 NY2d 245, 253 [1979]).

The trial court erred when it admitted hearsay evidence without a proper foundation (CPLR 4518[a]). Even assuming some documents may be admitted as business records without foundation testimony (see People v. Kennedy, 68 NY2d 569, 577 n 4), the record at issue in this case was not such a document. Nothing on its face indicates that it "was made in the regular course of business and that it was the regular course of business to make it" (CPLR 4518[a]). Nor can the error be deemed harmless in the circumstances of this case.

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On review of submissions pursuant to section 500.11 of the Rules, order reversed and a new trial ordered on the charges of scheme to defraud in the first degree and petit larceny, and the indictment otherwise dismissed without prejudice to an application by the People, if they be so advised, for leave to resubmit the charge of grand larceny in the fourth degree to another Grand Jury, in a memorandum. Chief Judge Lippman and Judges Ciparick, Graffeo, Read, Smith, Pigott and Jones concur.

Decided January 12, 2010