

State of New York Court of Appeals

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

No. 61 SSM 9
The People &c.,
Appellant,
v.
Kesean R. McKenzie-Smith,
Respondent.

Submitted by Scott Myles, for appellant.
Submitted by David M. Abbatoy, Jr., for respondent.

On review of submissions pursuant to section 500.11 of the Rules, order reversed and case remitted to the Appellate Division, Fourth Department, for consideration of the facts and issues raised but not determined on appeal to that Court. The Appellate Division erred in holding that defendant's Antommarchi claim (*People v Antommarchi*, 80 NY2d 247 [1992]) entitled him to a new trial (*see People v Wilkins*, 37 NY3d 371, 380 [2021]). Chief Judge DiFiore and Judges Rivera, Garcia, Wilson, Singas and Cannataro concur. Judge Troutman took no part.

Decided May 19, 2022