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This memorandum is uncorrected and subject to revision before  
publication in the New York Reports.  
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No. 173 SSM 8  
The People &c.,  
Respondent,  
v.  
Curtis L. Mason,  
Appellant.

Submitted by Mary J. Fahey, for appellant.  
Submitted by Hon. Barry L. Porsch, Seneca County  
District Attorney, for respondent.

MEMORANDUM:

The order of the Appellate Division should be reversed  
and the case remitted to that court for further proceedings in  
accordance with this memorandum.

On appeal, defendant argued that the jury's verdict was  
against the weight of the evidence. The order of the Appellate

Division, however, "'manifest[s] a lack of application of that review power'" (People v Romero, 7 NY3d 633, 646 [2006], quoting People v Bleakley, 69 NY2d 490, 496 [1987])). Consequently, we must reverse and remit for a proper consideration of the claim. Defendant's remaining contention lacks merit.

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On review of submissions pursuant to section 500.11 of the Rules, order reversed and case remitted to the Appellate Division, Fourth Department, for further proceedings in accordance with the memorandum herein. Chief Judge Lippman and Judges Graffeo, Read, Smith, Pigott, Rivera and Abdus-Salaam concur.

Decided June 11, 2013