

# State of New York Court of Appeals

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

No. 95 SSM 24  
The People &c.,  
Respondent,  
v.  
Russell Smith,  
Appellant.

Submitted by Mark W. Zeno, for appellant.  
Submitted by Kyle R. Silverstein, for respondent.

On review of submissions pursuant to section 500.11 of the Rules, order reversed and case remitted to Supreme Court, Bronx County, for a hearing on defendant's CPL 330.30 motion. The motion court abused its discretion in denying defendant's CPL 330.30 (2) motion without first conducting a hearing (*see* CPL 330.40 [2] [d]-[f]; *People v Maragh*, 94 NY2d 569, 573-575 [2000]). Chief Judge DiFiore and Judges Rivera, Stein, Fahey, Garcia, Wilson and Feinman concur.

Decided November 19, 2020