

# 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. 86 SSM 22  
The People &c.,  
Respondent,  
v.  
Kevin A. Dukes,  
Appellant.

Submitted by Timothy S. Davis, for appellant.  
Submitted by Nancy Gilligan, for respondent.

On review of submissions pursuant to section 500.11 of the Rules, order affirmed, without costs. Defendant's argument that portions of the presentence report were inadmissible and should not have been considered is unpreserved for our review. Chief Judge DiFiore and Judges Fahey, Garcia, Singas and Cannataro concur. Judges Rivera and Wilson dissent for reasons stated in the dissenting memorandum at the Appellate Division (186 AD3d 1073, 1074-1076 [2020] [Peradotto, J.P. and Lindley, J. dissenting]).

Decided November 23, 2021