

# 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. 87 SSM 25  
The People &c.,  
Appellant,  
v.  
Jermaine Jennings,  
Respondent.

Submitted by Kenneth H. Tyler, for appellant.  
Submitted by John R. Lewis, 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 the appeal to that Court. Counsel's failure to challenge the verdict as repugnant did not render the representation ineffective because the issue was not clear-cut and dispositive given the jury charge (*see People v Rodriguez*, 31 NY3d 1067 [2018]). Chief Judge DiFiore and Judges Rivera, Fahey, Garcia, Wilson, Singas and Cannataro concur.

Decided November 18, 2021