

State of New York Court of Appeals

MEMORANDUM

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

No. 68 SSM 14
The People &c.,
Respondent,
v.
Luis Serrano,
Appellant.

Submitted by Steven M. Sharp, for appellant.
Submitted by Peter H. Willis, for respondent.

MEMORANDUM:

The order of the Appellate Division should be affirmed. County Court properly denied defendant's request to charge assault in the third degree (Penal Law § 120.00 [1]) as a lesser included offense of assault in the first degree (*see People v Almonte*, 33 NY3d

1083, 1084 [2019]). Furthermore, defendant received effective assistance of counsel (*see People v Benevento*, 91 NY2d 708, 712-715 [1998]). Defendant's remaining contentions, in particular his challenges to the admission of certain testimony, are unpreserved or waived.

On review of submissions pursuant to section 500.11 of the Rules, order affirmed, in a memorandum. Chief Judge DiFiore and Judges Rivera, Garcia, Wilson, Singas, Cannataro and Troutman concur.

Decided June 16, 2022