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

No. 233 SSM 52
The People &c.,
Respondent,
v.
Bruce Sweeper,
Appellant.

Submitted by Susan H. Salomon, for appellant.
Submitted by Patricia Curran, for respondent.

MEMORANDUM:

The order of the Appellate Division should be affirmed. Supreme Court properly denied defendant's application pursuant to Batson v Kentucky (476 US 79 [1986]). Defendant failed to establish a step one prima facie case of racial discrimination (id. at 94-97; People v Hecker, __ NY3d __ [decided November 30,

2010])). Defendant's challenge to the constitutionality of his adjudication as a persistent violent felony offender is barred by United States v Almendarez-Torres (523 US 224 [1998]; see People v Bell, __ NY3d __ [decided today]). Defendant's remaining contentions are without merit.

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On review of submissions pursuant to section 500.11 of the Rules, order affirmed, in a memorandum. Chief Judge Lippman and Judges Ciparick, Graffeo, Read, Smith, Pigott and Jones concur.

Decided December 14, 2010