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

No. 144 SSM 8
The People &c.,
Respondent,
v.
Rolando Herrera,
Appellant.

Submitted by Matthew Caldwell, for appellant.
Submitted by Stanley Kaplan, for respondent.

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On review of submissions pursuant to section 500.11 of the Rules,
order affirmed (see People v Fernandez, __ NY3d __ [decided
today]). Chief Judge Lippman and Judges Ciparick, Graffeo, Read,
Smith and Pigott concur. Judge Jones dissents for reasons stated
in his dissenting opinion in People v Fernandez (__ NY3d __
[decided today]).

Decided May 5, 2011