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

No. 194
The People &c.,
Respondent,
v.
Derrick Hill,
Appellant.

Jonathan Garelick, for appellant.
Philip Morrow, for respondent.

MEMORANDUM:

The order of the Appellate Division should be reversed
and a new trial ordered.

Absent "unusual circumstances," evidence of a
defendant's silence at the time of arrest is generally

inadmissible under common-law evidentiary principles (People v Conyers, 52 NY2d 454, 459 [1981]). And the use for impeachment purposes of a defendant's silence after receiving Miranda warnings has been deemed impermissible as a matter of due process (see Doyle v Ohio, 426 US 610, 619 [1976]). Under the circumstances presented, we conclude that defendant did not open the door to evidence of his post-Miranda silence and, therefore, Supreme Court erred in permitting its introduction at trial. Nor can the error be viewed as harmless in this case.

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Order reversed and a new trial ordered, in a memorandum. Chief Judge Lippman and Judges Graffeo, Read, Smith, Pigott and Rivera concur. Judge Abdus-Salaam took no part.

Decided November 18, 2014