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This memorandum is uncorrected and subject to revision before  
publication in the New York Reports.  
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No. 168 SSM 23  
The People &c.,  
Respondent,  
v.  
Fatin Johnson,  
Appellant.

Submitted by Abigail Everett, for appellant.  
Submitted by Susan Gliner, for respondent.

MEMORANDUM:

The order of the Appellate Division should be affirmed.

Upon remittal from this Court (10 NY3d 875 [2008]), the Appellate Division employed the proper legal standard when it rejected defendant's argument that the verdict convicting him of

depraved indifference murder was against the weight of the evidence (67 AD3d 448 [1st Dept 2009]). Contrary to defendant's contention, the Appellate Division was not required to evaluate the elements of depraved indifference murder as they were interpreted in certain cases decided prior to his trial. Defendant voiced no objection to the court's charge as given and failed to request that any specific judicial interpretations of the elements be presented to the jury. Thus, the Appellate Division properly refused to consider such information when it "weigh[ed] the evidence in light of the elements of the crime as charged to the [jury]" (People v Danielson, 9 NY3d 342, 349 [2007]).

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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 June 10, 2010