

**SUPREME COURT OF THE STATE OF NEW YORK**  
***Appellate Division, Fourth Judicial Department***

1332

**KA 09-02416**

PRESENT: SMITH, J.P., PERADOTTO, LINDLEY, GREEN, AND MARTOCHE, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

TIMOTHY M. NEUNER, DEFENDANT-APPELLANT.

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LAW OFFICE OF MARK A. YOUNG, ROCHESTER (BRIDGET FIELD OF COUNSEL), FOR DEFENDANT-APPELLANT.

MICHAEL C. GREEN, DISTRICT ATTORNEY, ROCHESTER (GEOFFREY KAEUPER OF COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Monroe County Court (Frank P. Geraci, Jr., J.), rendered October 7, 2009. The judgment convicted defendant, upon his plea of guilty, of driving while intoxicated, a class E felony.

It is hereby ORDERED that the judgment so appealed from is unanimously affirmed.

Memorandum: Defendant appeals from a judgment convicting him upon his plea of guilty of driving while intoxicated as a class E felony (Vehicle and Traffic Law § 1192 [3]; § 1193 [1] [c] [former (i)]). Defendant failed to move to withdraw his plea or to vacate the judgment of conviction, and he therefore failed to preserve for our review his challenge to the factual sufficiency of the plea allocution (see *People v Lopez*, 71 NY2d 662, 665). Contrary to defendant's contention, "[t]he plea allocution does not 'clearly cast[ ] significant doubt upon the defendant's guilt or otherwise call[ ] into question the voluntariness of the plea,' and thus defendant's contention does not fall within the rare case exception to the preservation doctrine" (*People v Loper*, 38 AD3d 1178, 1179, quoting *Lopez*, 71 NY2d at 666; see *People v Farnsworth*, 32 AD3d 1176, lv denied 7 NY3d 867).

Entered: December 23, 2011

Frances E. Cafarell  
Clerk of the Court