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

No. 80
The People &c.,
Respondent,
v.
David Lofton,
Appellant.

Brian Shiffrin, for appellant.
Scott Myles, for respondent.

MEMORANDUM:

The order of the Appellate Division, insofar as
appealed from, should be reversed and the case remitted to
Supreme Court for consideration of defendant's eligibility for a
youthful offender adjudication.

We agree with defendant's contention that the trial

court failed to make an on-the-record determination as to whether defendant was eligible for a youthful offender adjudication by first "considering the presence or absence of the factors set forth in CPL 720.10 (3)" (People v Middlebrooks, 25 NY3d 516, 525 [2015]).

Defendant's remaining contention, that certain remarks made by the prosecutor in summation constituted improper burden-shifting, is without merit. Viewed in conjunction with the entire summation and the trial court's corrective action, the challenged remarks did not deprive defendant of a fair trial (see People v Romero, 7 NY3d 911, 913 [2006]).

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Order, insofar as appealed from, reversed and case remitted to Supreme Court, Monroe County, for further proceedings in accordance with the memorandum herein. Chief Judge DiFiore and Judges Rivera, Stein, Fahey, Garcia and Wilson concur. Judge Feinman took no part.

Decided June 22, 2017