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

No. 242 SSM 21
The People &c.,
Appellant,
v.
Terrence McFarlane,
Respondent.

Submitted by Stanley R. Kaplan, for appellant.
Respondent, precluded.

MEMORANDUM:

The order of the Appellate Division should be affirmed.
The determination as to whether a defendant has consented to a
search involves a mixed question of law and fact (People v
Valerio, 95 NY2d 924, 925 [2000]). Where, as here, there exists

record support for the Appellate Division's resolution of this question, the issue is beyond this Court's further review (id.).

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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 Graffeo, Read, Smith, Pigott, Rivera and Abdus-Salaam concur.

Decided August 29, 2013