

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

No. 232 SSM 22  
The People &c.,  
Respondent,  
v.  
Tyrone Davis,  
Appellant.

Submitted by Steven A. Feldman, for appellant.  
Submitted by Thomas Constant, for respondent.

MEMORANDUM:

The order of the Appellate Division should be affirmed.  
Defendant failed to bring a motion to withdraw his plea  
under CPL 220.60 (3) or a motion to vacate the judgment of  
conviction pursuant to CPL 440.10. Nor did his factual  
recitation negate the intent element of the crime to which he

pleaded guilty. His plea therefore does not qualify for the "rare case" exception to the preservation requirement under People v Lopez (71 NY2d 662, 666 [1988]). Consequently, defendant's challenge to the factual sufficiency of his allocution "was properly rejected by the Appellate Division and its order upholding the plea and conviction should be affirmed" (People v Toxey, 86 NY2d 725, 726 [1995]).

\* \* \* \* \*

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 November 20, 2014