

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

1123

**KA 13-00445**

PRESENT: SMITH, J.P., PERADOTTO, LINDLEY, DEJOSEPH, AND WINSLOW, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

EMMANUEL L. SHEPPARD, DEFENDANT-APPELLANT.

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CHARLES J. GREENBERG, AMHERST, FOR DEFENDANT-APPELLANT.

KRISTYNA S. MILLS, DISTRICT ATTORNEY, WATERTOWN (HARMONY A. HEALY OF COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Jefferson County Court (Kim H. Martusewicz, J.), rendered February 22, 2013. The judgment convicted defendant, upon his plea of guilty, of criminal possession of a controlled substance in the first degree (two counts), criminal possession of a controlled substance in the third degree, conspiracy in the second degree and criminally using drug paraphernalia in the second degree (five counts).

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, inter alia, two counts of criminal possession of a controlled substance in the first degree (Penal Law § 220.21 [1]). With respect to defendant's challenge to County Court's denial of his motion to suppress evidence, we affirm for the reasons stated in *People v Richardson* (132 AD3d 1313, 1314-1315, lv denied 26 NY3d 1149). By failing to move to withdraw his plea or to vacate the judgment of conviction, defendant failed to preserve for our review his further contentions that the plea allocution was factually insufficient (*see People v Lopez*, 71 NY2d 662, 665-666), and that the plea was not knowingly, voluntarily and intelligently entered (*see People v Boyden*, 112 AD3d 1372, 1372-1373, lv denied 23 NY3d 960). This case does not fall within the narrow exception to the preservation requirement inasmuch as nothing in the plea colloquy "clearly casts significant doubt upon the defendant's guilt or otherwise calls into question the voluntariness of the plea" (*Lopez*, 71 NY2d at 666).

Entered: October 6, 2017

Mark W. Bennett  
Clerk of the Court