

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

607

KA 13-01432

PRESENT: SMITH, J.P., PERADOTTO, LINDLEY, SCONIERS, AND WHALEN, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

KENNETH S. VIRGES, DEFENDANT-APPELLANT.

ANTHONY J. LANA, BUFFALO, FOR DEFENDANT-APPELLANT.

FRANK A. SEDITA, III, DISTRICT ATTORNEY, BUFFALO (NICHOLAS T. TEXIDO OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Erie County Court (Michael L. D'Amico, J.), rendered July 10, 2013. The judgment convicted defendant, upon his plea of guilty, of criminal possession of a weapon in the second degree and criminal possession of marihuana in the fifth degree.

It is hereby ORDERED that the judgment so appealed from is unanimously affirmed and the matter is remitted to Erie County Court for proceedings pursuant to CPL 460.50 (5).

Memorandum: Defendant appeals from a judgment convicting him upon his plea of guilty of criminal possession of a weapon in the second degree (Penal Law § 265.03 [3]) and criminal possession of marihuana in the fifth degree (§ 221.10 [2]). County Court properly denied defendant's motion to suppress the evidence seized from his person and vehicle. The police officer had an "objective, credible reason" for approaching defendant's parked vehicle and requesting information based on a tip provided by an anonymous informant, who reported that a man was sitting in a gray car smoking marihuana at a certain address (*People v Ocasio*, 85 NY2d 982, 985; see *People v Boler*, 106 AD3d 1119, 1121). Defendant's vehicle matched that description and was parked at that address. When the police officer smelled marihuana, he had probable cause to search defendant and the vehicle for contraband (see *People v Robinson*, 103 AD3d 421, 421-422, *lv denied* 20 NY3d 1103; *People v Contant*, 90 AD3d 779, 780, *lv denied* 18 NY3d 956; *People v Black*, 59 AD3d 1050, 1051, *lv denied* 12 NY3d 851; see generally *Arizona v Gant*, 556 US 332, 351; *People v Blasich*, 73 NY2d 673, 678).

Entered: June 20, 2014

Frances E. Cafarell
Clerk of the Court