

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

1286

KA 12-01414

PRESENT: SCUDDER, P.J., CENTRA, CARNI, LINDLEY, AND SCONIERS, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, APPELLANT,

V

MEMORANDUM AND ORDER

JESSE F. JOHNSTON, DEFENDANT-RESPONDENT.

JASON L. COOK, DISTRICT ATTORNEY, PENN YAN, FOR APPELLANT.

MICHAEL A. JONES, JR., VICTOR, FOR DEFENDANT-RESPONDENT.

Appeal from an order of the Yates County Court (W. Patrick Falvey, J.), dated June 4, 2012. The order granted that part of the omnibus motion of defendant seeking to suppress certain evidence.

It is hereby ORDERED that the order so appealed from is unanimously reversed on the law, that part of defendant's omnibus motion seeking to suppress evidence is denied, and the matter is remitted to Yates County Court for further proceedings on the indictment.

Memorandum: The People appeal from an order granting that part of defendant's omnibus motion seeking to suppress evidence, i.e., a weapon and oral statements made by defendant to an investigator employed by the Sheriff's Department. We previously determined that County Court erred in suppressing the weapon and defendant's statements, but we held the case, reserved decision and remitted the matter to County Court to consider other possible grounds for granting that part of defendant's motion seeking to suppress his statements (*People v Johnston*, 103 AD3d 1202, *lv denied* 21 NY3d 912). Upon remittal, the court rejected the other grounds advanced by defendant with respect to suppression of his statements. Inasmuch as defendant has no appeal as of right from an intermediate order denying a suppression motion (*see* CPL 450.10; *see also* *People v Merz*, 20 AD2d 918), we do not address the propriety of the court's determination upon remittal that the other grounds advanced by defendant did not warrant suppression of his statements. Thus, in accordance with our prior decision in which we determined that the court erred in suppressing the weapon and the statements, we deny that part of defendant's omnibus motion seeking to suppress evidence.

Entered: January 3, 2014

Frances E. Cafarell
Clerk of the Court