

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

846

KA 14-01525

PRESENT: WHALEN, P.J., CENTRA, NEMOYER, TROUTMAN, AND SCUDDER, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

ANTONIO PACE, DEFENDANT-APPELLANT.

THE LEGAL AID BUREAU OF BUFFALO, INC., BUFFALO (BENJAMIN L. NELSON OF COUNSEL), FOR DEFENDANT-APPELLANT.

MICHAEL J. FLAHERTY, JR., ACTING DISTRICT ATTORNEY, BUFFALO (TIMOTHY J. GARVIN OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Supreme Court, Erie County (Penny M. Wolfgang, J.), rendered July 16, 2014. The judgment convicted defendant, upon his plea of guilty, of criminal possession of a weapon in the second degree and criminal possession of a weapon in the third degree.

It is hereby ORDERED that the judgment so appealed from is unanimously affirmed.

Memorandum: On appeal 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 a weapon in the third degree (§ 265.02 [3]), defendant contends that Supreme Court erred in refusing to suppress a handgun and his oral statements to the police. We reject that contention. The police were entitled to arrest defendant for a violation of the local open container ordinance committed in their presence (*see People v Taylor*, 294 AD2d 825, 825; *People v Bothwell*, 261 AD2d 232, 234-235, *lv denied* 93 NY2d 1026; *see generally* CPL 140.10 [1] [a]; *People ex rel. Johnson v New York State Div. of Parole*, 299 AD2d 832, 834, *lv denied* 99 NY2d 508), and the police were authorized to search defendant's person incident to his lawful arrest (*see People v Williams*, 39 AD3d 1269, 1270, *lv denied* 9 NY3d 871; *Johnson*, 299 AD2d at 834; *Taylor*, 294 AD2d at 826). The sentence is not unduly harsh or severe.

Entered: October 7, 2016

Frances E. Cafarell
Clerk of the Court