

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

971

**KA 15-00619**

PRESENT: SMITH, J.P., DEJOSEPH, CURRAN, TROUTMAN, AND WINSLOW, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

JOHN H. BUTLER, DEFENDANT-APPELLANT.

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THE LEGAL AID BUREAU OF BUFFALO, INC., BUFFALO (NICHOLAS P. DIFONZO OF COUNSEL), FOR DEFENDANT-APPELLANT.

JOSEPH V. CARDONE, DISTRICT ATTORNEY, ALBION (KATHERINE BOGAN OF COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Orleans County Court (James P. Punch, J.), rendered February 23, 2015. The judgment convicted defendant, upon his plea of guilty, of criminal possession of a controlled substance in the fifth degree.

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 criminal possession of a controlled substance in the fifth degree (Penal Law § 220.06). Defendant contends that County Court erred in determining, following a *Darden* hearing, that there was probable cause supporting a search warrant in the case. By pleading guilty before the court issued a suppression ruling with respect to the evidence seized pursuant to that search warrant, defendant waived his right to raise the issue of probable cause on appeal (*see People v Taylor*, 43 AD3d 1400, 1400-1401, lv denied 9 NY3d 1039; *see generally People v Elmer*, 19 NY3d 501, 509; *People v Fernandez*, 67 NY2d 686, 688).

Entered: September 29, 2017

Mark W. Bennett  
Clerk of the Court