

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

883

KA 14-02280

PRESENT: WHALEN, P.J., PERADOTTO, DEJOSEPH, CURRAN, AND WINSLOW, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

PETROS SOUTEMENIDES, DEFENDANT-APPELLANT.

TIMOTHY P. DONAHER, PUBLIC DEFENDER, ROCHESTER (JAMES A. HOBBS OF COUNSEL), FOR DEFENDANT-APPELLANT.

SANDRA DOORLEY, DISTRICT ATTORNEY, ROCHESTER (SCOTT MYLES OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Monroe County Court (James J. Piampiano, J.), rendered October 23, 2014. The judgment convicted defendant, upon his plea of guilty, of burglary 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 guilty plea of burglary in the third degree (Penal Law § 140.20), defendant contends that County Court erred in refusing to suppress statements he made to the police investigator on the ground that they were involuntary. We reject that contention. The investigator testified at the suppression hearing that defendant did not appear to be intoxicated or high on drugs at the time of the interview, and that defendant was coherent, acknowledged that he understood his rights, and was willing to answer questions. When the investigator asked defendant if he was "high," he responded in the negative. We conclude that there was no evidence at the hearing that defendant was "intoxicated to such a degree that he was incapable of voluntarily, knowingly, and intelligently waiving his *Miranda* rights" (*People v Downey*, 254 AD2d 794, 795, *lv denied* 92 NY2d 1031), or that his statements were not otherwise voluntarily made (*see People v Pruitt*, 6 AD3d 1233, 1233, *lv denied* 3 NY3d 646).

Entered: June 16, 2017

Frances E. Cafarell
Clerk of the Court