

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

881

**KA 14-01878**

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

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

ROBERTO A. GUERRERO, DEFENDANT-APPELLANT.

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

SANDRA DOORLEY, DISTRICT ATTORNEY, ROCHESTER (KELLY CHRISTINE WOLFORD OF COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Supreme Court, Monroe County (Thomas E. Moran, J.), rendered July 21, 2014. The judgment convicted defendant, upon his plea of guilty, of burglary in the second degree (two counts).

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 two counts of burglary in the second degree (Penal Law § 140.25 [2]). Defendant's contention that he was unlawfully arrested in his home without an arrest warrant in violation of *Payton v New York* (445 US 573) is not preserved for our review (see CPL 470.05 [2]), because that contention is based on grounds that were not raised before Supreme Court (see *People v Martin*, 50 NY2d 1029, 1031). We decline to exercise our power to review it as a matter of discretion in the interest of justice (see CPL 470.15 [3] [c]), particularly in view of the fact that the lack of preservation resulted in a hearing record that was not fully developed with respect to that contention (see *People v Flores*, 83 AD3d 1460, 1460, *affd* 19 NY3d 881). We note, however, that our affirmance should not be construed as a ratification of the suppression court's characterization of the police work as it was described at the hearing (see generally *Tydings v Greenfield, Stein & Senior, LLP*, 43 AD3d 680, 684, *affd* 11 NY3d 195).

Entered: June 16, 2017

Frances E. Cafarell  
Clerk of the Court