

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

794

KA 22-00940

PRESENT: WHALEN, P.J., CURRAN, MONTOUR, OGDEN, AND NOWAK, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, APPELLANT,

V

MEMORANDUM AND ORDER

DAVID SANTIAGO, DEFENDANT-RESPONDENT.

JOHN J. FLYNN, DISTRICT ATTORNEY, BUFFALO (DANIEL J. MATTLE OF COUNSEL), FOR APPELLANT.

Appeal from an order of the Supreme Court, Erie County (Debra L. Givens, A.J.), dated May 24, 2022. The order granted that part of the omnibus motion of defendant seeking to suppress physical evidence.

It is hereby ORDERED that the case is held, the decision is reserved and the matter is remitted to Supreme Court, Erie County, for further proceedings in accordance with the following memorandum: The People appeal from an order granting defendant's omnibus motion insofar as it sought to suppress physical evidence recovered from the upper apartment of a duplex; defendant allegedly resided in the lower apartment of the duplex. We agree with the People that Supreme Court erred in suppressing the physical evidence without determining whether defendant had standing to challenge the search of the upper apartment (*see People v Guice*, 181 AD3d 1209, 1210 [4th Dept 2020]; *People v Sweat*, 148 AD3d 1641, 1642 [4th Dept 2017]; *see also* CPL 710.60 [6]). We therefore hold the case, reserve decision, and remit the matter to Supreme Court to rule on that issue (*see Guice*, 181 AD3d at 1210; *Sweat*, 148 AD3d at 1642; *see generally People v Concepcion*, 17 NY3d 192, 194-195 [2011]).

Entered: November 17, 2023

Ann Dillon Flynn
Clerk of the Court