

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

739

**KA 14-01526**

PRESENT: SMITH, J.P., PERADOTTO, DEJOSEPH, TROUTMAN, AND SCUDDER, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

REGINALD O. PIERCE, DEFENDANT-APPELLANT.

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

MICHAEL J. FLAHERTY, JR., ACTING DISTRICT ATTORNEY, BUFFALO (ASHLEY R. LOWRY OF COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Supreme Court, Erie County (Christopher J. Burns, J.), rendered June 19, 2014. The judgment convicted defendant, upon his plea of guilty, of assault 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: Defendant appeals from a judgment convicting him upon his plea of guilty of assault in the second degree (Penal Law § 120.05 [2]) and criminal possession of a weapon in the third degree (§ 265.02 [1]). Initially, we note that, “[b]y pleading guilty, defendant forfeited review of [Supreme] Court’s *Molineux* ruling” (*People v Brown*, 305 AD2d 1068, 1068, *lv denied* 100 NY2d 579). Contrary to defendant’s contention, the court properly refused to suppress his statements to the police inasmuch as the record establishes that defendant spoke “freely and unguardedly” in the presence of two different police officers after voluntarily waiving his *Miranda* rights (*People v Cascio*, 79 AD3d 1809, 1811, *lv denied* 16 NY3d 893; *see People v Carbonaro*, 134 AD3d 1543, 1547-1548, *lv denied* 27 NY3d 994, *reconsideration denied* 27 NY3d 1149; *People v Collins*, 43 AD3d 1338, 1339, *lv denied* 9 NY3d 1005). Finally, the sentence is not unduly harsh or severe.

Entered: September 30, 2016

Frances E. Cafarell  
Clerk of the Court