

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

1133

**KA 11-01321**

PRESENT: CENTRA, J.P., FAHEY, CARNI, SCONIERS, AND VALENTINO, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

WILSON STEWART, DEFENDANT-APPELLANT.

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FRANK H. HISCOCK LEGAL AID SOCIETY, SYRACUSE (PIOTR BANASIAK OF COUNSEL), FOR DEFENDANT-APPELLANT.

WILLIAM J. FITZPATRICK, DISTRICT ATTORNEY, SYRACUSE (MARIA MALDONADO OF COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Onondaga County Court (Joseph E. Fahey, J.), rendered July 9, 2010. The judgment convicted defendant, after a nonjury trial, of assault in the first degree, assault in the second degree and criminal possession of a weapon in the third degree.

It is hereby ORDERED that the case is held, the decision is reserved and the matter is remitted to Onondaga County Court for further proceedings in accordance with the following Memorandum: On appeal from a judgment convicting him upon a nonjury verdict of assault in the first degree (Penal Law § 120.10 [1]), assault in the second degree (§ 120.05 [2]), and criminal possession of a weapon in the third degree (§ 265.02 [1]), defendant contends, inter alia, that County Court erred in failing to rule on that part of his pretrial motion seeking inspection of the grand jury minutes to determine whether the grand jury proceedings were defective. We agree. "The record does not reflect that the court ever ruled on [that part of] defendant's motion, and a failure to rule on a motion cannot be deemed a denial thereof" (*People v Jones*, 103 AD3d 1215, 1217, lv dismissed 21 NY3d 944; see generally *People v Concepcion*, 17 NY3d 192, 197-198). We therefore hold the case, reserve decision and remit the matter to County Court to decide that part of defendant's motion.

Entered: November 15, 2013

Frances E. Cafarell  
Clerk of the Court