

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

980

**KA 17-00612**

PRESENT: WHALEN, P.J., LINDLEY, DEJOSEPH, NEMOYER, AND TROUTMAN, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

MARCUS ST DENIS, DEFENDANT-APPELLANT.

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LEANNE LAPP, PUBLIC DEFENDER, CANANDAIGUA, D.J. & J.A. CIRANDO, PLLC,  
SYRACUSE (REBECCA L. KONST OF COUNSEL), FOR DEFENDANT-APPELLANT.

JAMES B. RITTS, DISTRICT ATTORNEY, CANANDAIGUA (V. CHRISTOPHER  
EAGGLESTON OF COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Supreme Court, Ontario County (Craig J. Doran, J.), rendered December 5, 2016. The judgment convicted defendant upon his plea of guilty of attempted assault in the second degree.

It is hereby ORDERED that the judgment so appealed from is unanimously reversed on the law, the plea and waiver of indictment are vacated, the superior court information is dismissed, and the matter is remitted to Supreme Court, Ontario County, for proceedings pursuant to CPL 470.45.

Memorandum: On appeal from a judgment convicting him upon a plea of guilty of attempted assault in the second degree (Penal Law §§ 110.00, 120.05 [7]), defendant contends that his waiver of indictment is jurisdictionally defective because it does not contain the "approximate time" of the offense (CPL 195.20). We agree. A jurisdictionally valid waiver of indictment must contain, inter alia, the "approximate time" of each offense charged in the superior court information (SCI) (*id.*; see *People v Vaughn*, 173 AD3d 1260, 1261 [3d Dept 2019]; *People v Busch-Scardino*, 166 AD3d 1314, 1315-1316 [3d Dept 2018]; see also *People v Edwards*, 171 AD3d 1402, 1403 [3d Dept 2019]). That requirement is strictly enforced (see *People v Colon-Colon*, 169 AD3d 187, 192 [4th Dept 2019], *lv denied* 33 NY3d 975 [2019]). " '[S]ubstantial compliance will not be tolerated' " (*id.* at 191). Here, the waiver of indictment does not contain the approximate time of the offense (see *Vaughn*, 173 AD3d at 1261). Inasmuch as the SCI also does not contain that information, we need not consider whether to adopt the so-called "single document" rule (*Busch-Scardino*, 166 AD3d at 1315; see generally *People v Lamoni*, 230 AD2d 628, 629 [1st Dept 1996], *lv denied* 89 NY2d 925 [1996]). We therefore reverse the judgment, vacate the plea and waiver of indictment, and dismiss the

SCI (*see Colon-Colon*, 169 AD3d at 193-194).

Entered: November 8, 2019

Mark W. Bennett  
Clerk of the Court