

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

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KA 19-01119

PRESENT: CARNI, J.P., LINDLEY, NEMOYER, CURRAN, AND BANNISTER, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

FAHRUDIN OMEROVIC, DEFENDANT-APPELLANT.

J. SCOTT PORTER, SENECA FALLS, FOR DEFENDANT-APPELLANT.

SCOTT D. MCNAMARA, DISTRICT ATTORNEY, UTICA (STEVEN G. COX OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Oneida County Court (Michael L. Dwyer, J.), rendered February 28, 2019. The judgment convicted defendant upon a jury verdict of making a terroristic threat (two counts).

It is hereby ORDERED that the judgment so appealed from is unanimously affirmed.

Memorandum: Defendant appeals from a judgment convicting him upon a jury verdict of two counts of making a terroristic threat (Penal Law § 490.20 [1]). Although defendant was not required to preserve his contention that County Court imposed illegal consecutive sentences (*see People v Houston*, 142 AD3d 1397, 1399 [4th Dept 2016], *lv denied* 28 NY3d 1146 [2017]), he was required, and failed, to preserve his related contention that the indictment is multiplicitous (*see People v Kobza*, 66 AD3d 1387, 1388 [4th Dept 2009], *lv denied* 13 NY3d 939 [2010]). In any event, both contentions lack merit. An indictment is considered multiplicitous when a single offense is charged in more than one count (*see People v Alonzo*, 16 NY3d 267, 269 [2011]; *People v Sprague*, 151 AD3d 1921, 1922-1923 [4th Dept 2017], *lv denied* 30 NY3d 1023 [2017]). Here, inasmuch as the events underlying the two counts occurred at distinct times on different days and as separate transactions, they did not constitute a " 'single, uninterrupted occurrence' " (*Alonzo*, 16 NY3d at 270; *see generally People v Moffitt*, 20 AD3d 687, 690-691 [3d Dept 2005], *lv denied* 5 NY3d 854 [2005]), and thus the indictment was not multiplicitous. Further, because the acts underlying the crimes were separate and distinct, the imposition of consecutive sentences was permissible (*see People v Fuentes*, 52 AD3d 1297, 1301 [4th Dept 2008], *lv denied* 11 NY3d 736 [2008]).

Finally, the sentence is not unduly harsh or severe.

Entered: October 2, 2020

Mark W. Bennett
Clerk of the Court