

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

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**KA 10-01816**

PRESENT: SMITH, J.P., FAHEY, LINDLEY, AND MARTOCHE, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

ORDER

EMERSON C. VERNON, DEFENDANT-APPELLANT.

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MATTHEW D. NAFUS, SCOTTSVILLE, FOR DEFENDANT-APPELLANT.

MICHAEL C. GREEN, DISTRICT ATTORNEY, ROCHESTER (LESLIE E. SWIFT OF COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Supreme Court, Monroe County (Joseph D. Valentino, J.), rendered August 24, 2010. The judgment convicted defendant, upon a jury verdict, of assault in the second degree.

It is hereby ORDERED that the judgment so appealed from is unanimously modified on the law by reducing the conviction of assault in the second degree (Penal Law § 120.05 [7]) to assault in the third degree (§ 120.00 [1]) and vacating the sentence and as modified the judgment is affirmed, and the matter is remitted to Supreme Court, Monroe County, for sentencing on the conviction of assault in the third degree and for proceedings pursuant to CPL 460.50 (5) (see *People v Skinner*, \_\_\_ AD3d \_\_\_ [Apr. 27, 2012]).

Entered: April 27, 2012

Frances E. Cafarell  
Clerk of the Court