



THE SUPERIOR COURT INFORMATION TO WHICH DEFENDANT PLED GUILTY WAS JURISDICTIONALLY DEFECTIVE BECAUSE IT DID NOT INCLUDE AN OFFENSE CHARGED IN THE FELONY COMPLAINT OR A LESSER INCLUDED OFFENSE (THIRD DEPT).

The Third Department, reversing defendant's conviction, determined the Superior Court Information (SCI) to which defendant pled guilty was jurisdictionally defective because it did not include an offense that was charged in the felony complaint or a lesser included offense:

... [T]he waiver of indictment and SCI are jurisdictionally defective because they did not charge an "offense for which the defendant was held for action of a grand jury" (CPL 195.20 ...). Pursuant to CPL 195.20, a waiver of indictment must contain "each offense to be charged in the [SCI]" which "may include any offense for which the defendant was held for action of a grand jury and any offense or offenses properly joinable." To that end, "a defendant is held for the action of a [g]rand [j]ury on both the offense charged in the felony complaint as well as its lesser included offenses" ... , because, "[f]or purposes of waiver of indictment, a charge that is a lesser included offense of a crime charged in the felony complaint is viewed as the 'same offense' and may be substituted for the original charge in a waiver of indictment and SCI"... . Accordingly, "a defendant may waive indictment and plead guilty to an SCI that names a different offense from that charged in the felony complaint only when the crime named in the SCI is a lesser included offense of the original charge"

Inasmuch as it is possible to commit the crime charged in the felony complaint — possession of a loaded weapon — without committing the crime charged in the SCI — possession with intent to use the weapon unlawfully — the crime charged in the SCI is not a lesser included offense of the former and the SCI could not serve as a proper jurisdictional predicate for defendant's guilty plea [People v Diego, 2019 NY Slip Op 04054, Third Dept 5-22-19](#)