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This memorandum is uncorrected and subject to revision before  
publication in the New York Reports.  
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No. 245 SSM 41  
The People &c.,  
Respondent,  
v.  
Frederick E. Walker,  
Appellant.

Submitted by James S. Hinman, for appellant.  
Submitted by Stephen X. O'Brien, for respondent.

\* \* \* \* \*

On review of submissions pursuant to section 500.11 of the Rules, order modified and case remitted to Supreme Court, Monroe County, for further proceedings, and as so modified, affirmed. We conclude that on this record defendant satisfied his burden of showing that a reconstruction hearing is necessary to determine whether he was present during the Sandoval hearing. Upon remittal, if it is determined that defendant was not present during the Sandoval hearing, a new trial must be ordered; if it is determined that defendant was present, the judgment of conviction should be amended to reflect that result. Chief Judge Lippman and Judges Ciparick, Graffeo, Read, Smith and Jones concur. Judge Pigott took no part.

Decided December 20, 2011