

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

544

KA 18-02252

PRESENT: CENTRA, J.P., PERADOTTO, CURRAN, WINSLOW, AND DEJOSEPH, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

KENNETH W. SCOTT, DEFENDANT-APPELLANT.

BETH A. RATCHFORD, CANANDAIGUA, FOR DEFENDANT-APPELLANT.

SANDRA DOORLEY, DISTRICT ATTORNEY, ROCHESTER (DEREK HARNSBERGER OF COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Supreme Court, Monroe County (Charles A. Schiano, Jr., J.), rendered May 22, 2018. The judgment convicted defendant upon a jury verdict of criminal possession of a weapon in the second degree (two counts).

It is hereby ORDERED that the judgment so appealed from is unanimously reversed on the law, that part of the omnibus motion seeking to suppress physical evidence is granted, the indictment against defendant is dismissed, and the matter is remitted to Supreme Court, Monroe County, for proceedings pursuant to CPL 470.45.

Memorandum: Defendant appeals from a judgment convicting him upon a jury verdict of two counts of criminal possession of a weapon in the second degree (Penal Law § 265.03 [1] [b]; [3]). As we previously determined on the appeal of a codefendant, Supreme Court erred in denying that part of the omnibus motion seeking to suppress physical evidence seized by the police (*see People v Fitts*, 188 AD3d 1676, 1677-1678 [4th Dept 2020]). We therefore reverse the judgment, grant that part of the motion, and dismiss the indictment against defendant.

Entered: June 11, 2021

Mark W. Bennett
Clerk of the Court