

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

405.1

KA 13-00204

PRESENT: SMITH, J.P., CENTRA, NEMOYER, CURRAN, AND TROUTMAN, JJ.

THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

CLARENCE E. COOPER, III, DEFENDANT-APPELLANT.

DAVISON LAW OFFICE, PLLC, CANANDAIGUA (MARK C. DAVISON OF COUNSEL),
FOR DEFENDANT-APPELLANT.

SANDRA DOORLEY, DISTRICT ATTORNEY, ROCHESTER (JOSEPH R. PLUKAS OF
COUNSEL), FOR RESPONDENT.

Appeal from a judgment of the Supreme Court, Monroe County (Robert B. Wiggins, A.J.), rendered March 18, 2009. The judgment convicted defendant, upon a jury verdict, of burglary in the second degree, attempted burglary in the second degree and attempted petit larceny.

It is hereby ORDERED that the judgment so appealed from is unanimously reversed on the law and a new trial is granted.

Memorandum: Defendant appeals from a judgment convicting him after a jury trial of, inter alia, burglary in the second degree (Penal Law § 140.25 [2]). As the People correctly concede, reversal is required. The record establishes that defendant was excluded from Supreme Court's *Sandoval* conference (see generally *People v Dokes*, 79 NY2d 656, 662 [1992]) and, because "[t]he court's *Sandoval* ruling in this case was not wholly favorable to defendant, . . . 'it cannot be said that defendant's presence at the hearing would have been superfluous' " (*People v Gardner*, 144 AD3d 1546, 1547 [4th Dept 2016]; see generally *People v Odiat*, 82 NY2d 872, 874 [1993]).

Entered: March 16, 2018

Mark W. Bennett
Clerk of the Court