

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

**487**

**KA 09-00588**

PRESENT: SCUDDER, P.J., FAHEY, CARNI, SCONIERS, AND MARTOCHE, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

ORLANDO LUGO-ROSADO, DEFENDANT-APPELLANT.

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FRANK H. HISCOCK LEGAL AID SOCIETY, SYRACUSE (PHILIP ROTHSCCHILD OF COUNSEL), FOR DEFENDANT-APPELLANT.

WILLIAM J. FITZPATRICK, DISTRICT ATTORNEY, SYRACUSE (JAMES P. MAXWELL OF COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Onondaga County Court (Patrick J. Cunningham, J.), rendered August 9, 1991. The judgment convicted defendant, upon a jury verdict, of conspiracy in the second degree.

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

Memorandum: Defendant appeals from a judgment convicting him upon a jury verdict of conspiracy in the second degree (Penal Law § 105.15). We agree with defendant that reversal is required. County Court's instructions to the jury on reasonable doubt unconstitutionally diminished the People's burden of proof, and defendant was thereby deprived of a fair trial (*see People v Docen-Perez*, 197 AD2d 865; *People v Towndrow*, 187 AD2d 194, 195-196, lv dismissed 81 NY2d 1021; *People v Geddes*, 186 AD2d 993; *see generally Victor v Nebraska*, 511 US 1, 5, reh denied 511 US 1101; *Sullivan v Louisiana*, 508 US 275, 280-281). In light of our determination, we need not address defendant's remaining contentions.

Entered: April 29, 2011

Patricia L. Morgan  
Clerk of the Court