

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

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**KA 15-01479**

PRESENT: WHALEN, P.J., CARNI, LINDLEY, DEJOSEPH, AND NEMOYER, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

JESSE L. LEUBNER, DEFENDANT-APPELLANT.  
(APPEAL NO. 2.)

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PHIL MODRZYNSKI, BUFFALO, FOR DEFENDANT-APPELLANT.

JON E. BUDELMANN, DISTRICT ATTORNEY, AUBURN (CHRISTOPHER T. VALDINA OF COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Cayuga County Court (Mark H. Fandrich, A.J.), rendered August 25, 2015. The judgment convicted defendant, after a nonjury trial, of criminal possession of marihuana in the second degree and growing of the plant known as Cannabis by unlicensed persons.

It is hereby ORDERED that the judgment so appealed from is unanimously reversed on the law, the motion is granted, the indictment is dismissed, and the matter is remitted to Cayuga County Court for proceedings pursuant to CPL 470.45.

Same memorandum as in *People v Leubner* ([appeal No. 1] \_\_\_ AD3d \_\_\_ [Oct. 7, 2016]).

Entered: October 7, 2016

Frances E. Cafarell  
Clerk of the Court