

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

672

**KA 12-01925**

PRESENT: WHALEN, P.J., CENTRA, PERADOTTO, AND CARNI, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, RESPONDENT,

V

MEMORANDUM AND ORDER

JAMES E. HALL, II, DEFENDANT-APPELLANT.

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TRACY L. SULLIVAN, SYRACUSE, FOR DEFENDANT-APPELLANT.

LEANNE K. MOSER, DISTRICT ATTORNEY, LOWVILLE, D.J. & J.A. CIRANDO, ESQS., SYRACUSE (JOHN A. CIRANDO OF COUNSEL), FOR RESPONDENT.

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Appeal from a judgment of the Lewis County Court (Charles C. Merrell, J.), rendered October 28, 2011. The judgment convicted defendant, upon a jury verdict, of course of sexual conduct against a child in the first degree and endangering the welfare of a child.

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 upon a jury verdict of course of sexual conduct against a child in the first degree (Penal Law § 130.75 [1] [a]) and endangering the welfare of a child (§ 260.10 [1]). We agree with defendant that County Court erred in denying defendant's request to remove his shackles during the trial without making findings on the record concerning the necessity for such restraints (*see People v Clyde*, 18 NY3d 145, 152-153). Contrary to the People's contention, the evidence of guilt is not overwhelming, and thus "they cannot meet their burden of showing that any constitutional error [is] harmless beyond a reasonable doubt" (*People v Cruz*, 17 NY3d 941, 945; *see generally People v Best*, 19 NY3d 739, 744).

Entered: September 30, 2016

Frances E. Cafarell  
Clerk of the Court