

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D80991
C/jr

_____AD3d_____

Argued - May 29, 2026

BETSY BARROS, J.P.
DEBORAH A. DOWLING
LILLIAN WAN
CARL J. LANDICINO, JJ.

2024-05327

DECISION & ORDER

The People, etc., appellant,
v Peter Galantino, respondent.

(Ind. No. 70741/21)

Anne T. Donnelly, District Attorney, Mineola, NY (Daniel Bresnahan and Cristin N. Connell of counsel), for appellant.

John F. Carman (Edelstein & Grossman, New York, NY [Jonathan I. Edelstein], of counsel), for respondent.

Appeal by the People from an order of the Supreme Court, Nassau County (Howard E. Sturim, J.), dated May 28, 2024. The order, insofar as appealed from, granted that branch of the defendant's motion which was pursuant to CPL 330.30(1) to set aside a jury verdict convicting him of aggravated cruelty to animals on legal sufficiency grounds. Justice Wan has been substituted for Justice Wooten (*see* 22 NYCRR 1250.1[b]).

ORDERED that the order is reversed insofar as appealed from, on the law, that branch of the defendant's motion which was pursuant to CPL 330.30(1) to set aside the jury verdict convicting him of aggravated cruelty to animals on legal sufficiency grounds is denied, count one of the indictment and the verdict thereon are reinstated, and the matter is remitted to the Supreme Court, Nassau County, for further proceedings consistent herewith, including sentencing the defendant on that count.

On March 14, 2020, the complainants were walking, among other pets, a four-pound nine-year-old Yorkshire Terrier, named Mocha, near their home in Rockville Centre. The defendant was walking ahead of them, and they watched as the defendant's dog defecated on the nearby grass, and the defendant failed to clean it up. The complainants confronted the defendant which led to an

argument. During that altercation, the defendant kicked Mocha, and euthanasia was thereafter administered to Mocha.

Following a jury trial, the defendant was found guilty of, inter alia, aggravated cruelty to animals. Thereafter, the defendant moved, among other things, pursuant to CPL 330.30(1) to set aside the verdict convicting him of aggravated cruelty to animals on legal sufficiency grounds. The People opposed the motion. In an order dated May 28, 2024, the Supreme Court, inter alia, granted that branch of the defendant's motion. The People appeal.

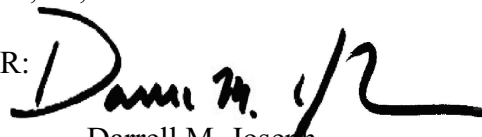
Pursuant to CPL 330.30(1), a trial court may set aside or modify a guilty verdict before sentence on "[a]ny ground appearing in the record which, if raised upon an appeal from a prospective judgment of conviction, would require a reversal or modification of the judgment as a matter of law by an appellate court." In considering a motion pursuant to CPL 330.30(1), a trial court may only consider questions of law, not fact (*see People v Ventura*, 66 NY2d 693, 695; *People v Davidson*, 122 AD3d 937; *People v Sadowski*, 173 AD2d 873, 873-874). "Moreover, a trial court may only consider claims of legal error under CPL 330.30(1) where those claims are properly preserved for appellate review" (*People v Davidson*, 122 AD3d at 938; *see People v Thomas*, 8 AD3d 303, 303). "[A] defendant who presents evidence after a court has declined to grant a trial motion to dismiss made at the close of the People's case waives subsequent review of that determination" (*People v Hines*, 97 NY2d 56, 61; *see People v Kolupa*, 13 NY3d 786, 787; *People v Devitt*, 214 AD3d 825, 826; *People v Faraone*, 186 AD3d 1394, 1394).

Here, although the defendant moved for a trial order of dismissal at the close of the People's case, since the defendant failed to renew his motion for a trial order of dismissal after all of the evidence, he failed to preserve his challenge to the legal sufficiency of the evidence (*see People v Kolupa*, 13 NY3d at 787; *People v Hines*, 97 NY2d 56; *People v Devitt*, 214 AD3d at 825; *People v Faraone*, 186 AD3d at 1394), notwithstanding his subsequent motion, among other things, pursuant to CPL 330.30(1) to set aside the verdict convicting him of aggravated cruelty to animals on legal sufficiency grounds (*see People v Decker*, 218 AD3d 1026, 1029). Accordingly, the Supreme Court was without power to consider it (*see People v Hines*, 97 NY2d at 61; *People v Taylor*, 187 AD3d 58, 61; *People v Sturges*, 164 AD3d 616, 618-619).

Accordingly, we reverse the order insofar as appealed from, deny that branch of the defendant's motion which was pursuant to CPL 330.30(1) to set aside the jury verdict convicting him of aggravated cruelty to animals on legal sufficiency grounds, reinstate count one of the indictment and the verdict thereon, and remit the matter to the Supreme Court, Nassau County, for further proceedings consistent herewith.

BARROS, J.P., DOWLING, WAN and LANDICINO, JJ., concur.

ENTER:


Darrell M. Joseph
Clerk of the Court