STATE OF NEW YORK

7447--A

Cal. No. 552

2017-2018 Regular Sessions

IN ASSEMBLY

April 25, 2017

Introduced by M. of A. JOYNER -- (at request of the Office of Court Administration) -- read once and referred to the Committee on Codes -- reported from committee, advanced to a third reading, amended and ordered reprinted, retaining its place on the order of third reading

AN ACT to amend the criminal procedure law, in relation to erroneously excluded evidence and trial orders of dismissal; and to repeal certain provisions of such law relating thereto

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision 1 of section 290.10 of the criminal procedure law, as amended by chapter 170 of the laws of 1983, is amended to read as follows:

1. At the conclusion of the people's case or at the conclusion of all the evidence, the court may, [~~except as provided in subdivision two,~~] upon motion of the defendant, (a) issue a "trial order of dismissal," dismissing any count of an indictment upon the ground that the trial evidence is not legally sufficient to establish the offense charged therein or any lesser included offense, or (b) reserve decision on the motion until after the verdict has been rendered and accepted by the court. Where the court has reserved decision and the jury thereafter renders a verdict of guilty, the court shall proceed to determine the motion upon such evidence as it would have been authorized to consider upon the motion had the court not reserved decision. If the court determines that such motion should have been granted upon the ground specified in paragraph (a) herein, it shall enter an order both setting aside the verdict and dismissing any count of the indictment upon such ground. If the jury is discharged before rendition of a verdict the court shall proceed to determine the motion as set forth in this paragraph.

§ 2. Subdivisions 2 and 3 of section 290.10 of the criminal procedure law are REPEALED.

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

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§ 3. Subdivision 1 of section 450.40 of the criminal procedure law is amended to read as follows:

[~~1.~~] An appeal by the people from a trial order of dismissal, as authorized by subdivision two of section 450.20, may, as indicated by section 290.10, be based [~~either (a)~~] upon the ground that the evidence adduced at the trial was legally sufficient to support the count or counts of the accusatory instrument dismissed by the order[~~, or (b) upon the ground that, though not legally sufficient, such evidence would have been legally sufficient had the court not erroneously excluded admissible evidence offered by the people~~].

§ 4. Subdivision 2 of section 450.40 of the criminal procedure law is REPEALED.

§ 5. This act shall take effect immediately.