

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

1630

**KA 08-00199**

PRESENT: HURLBUTT, J.P., CENTRA, FAHEY, AND PERADOTTO, JJ.

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THE PEOPLE OF THE STATE OF NEW YORK, APPELLANT,

V

MEMORANDUM AND ORDER

ALBERT SCERBO, DEFENDANT-RESPONDENT.  
(APPEAL NO. 2.)

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

J. SCOTT PORTER, SENECA FALLS, FOR DEFENDANT-RESPONDENT.

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Appeal from an order of the Onondaga County Court (William D. Walsh, J.), entered November 27, 2007. The order, insofar as appealed from, denied the motion of the People to reopen the CPL 330.40 hearing and granted the motion of defendant to set aside the verdict and for a new trial.

It is hereby ORDERED that the order so appealed from is unanimously affirmed.

Same Memorandum as in *People v Scerbo* ([appeal No. 1] \_\_\_ AD3d \_\_\_ [Feb. 6, 2009]).

Entered: February 6, 2009

JoAnn M. Wahl  
Clerk of the Court