

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

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Argued - May 14, 2012

REINALDO E. RIVERA, J.P.  
L. PRISCILLA HALL  
PLUMMER E. LOTT  
JEFFREY A. COHEN, JJ.

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2010-03559

DECISION & ORDER

The People, etc., respondent,  
v Anthony Cruz, appellant.

(Ind. No. 7090/08)

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Steven Banks, New York, N.Y. (Kerry Elgarten and Alan Axelrod of counsel), for appellant.

Charles J. Hynes, District Attorney, Brooklyn, N.Y. (Leonard Joblove and Lori Glachman of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Kings County (Dowling, J.), rendered March 23, 2010, convicting him of robbery in the first degree and criminal possession of a weapon in the second degree, upon a jury verdict, and imposing sentence. The appeal brings up for review the denial, after a hearing, of that branch of the defendant's omnibus motion which was to suppress physical evidence.

ORDERED that the judgment is reversed, on the law, that branch of the defendant's omnibus motion which was to suppress physical evidence is granted, and a new trial is ordered.

For the reasons stated in our decision on the codefendant's appeal (*see People v Vargas*, 89 AD3d 771), that branch of the defendant's omnibus motion which was to suppress physical evidence should have been granted. Contrary to the People's contention, the error in admitting the physical evidence was not harmless beyond a reasonable doubt (*see People v Crimmins*, 36 NY2d 230, 237).

RIVERA, J.P., HALL, LOTT and COHEN, JJ., concur.

ENTER:



Aprilanne Agostino  
Clerk of the Court

June 13, 2012

PEOPLE v CRUZ, ANTHONY