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This memorandum is uncorrected and subject to revision before  
publication in the New York Reports.

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No. 31  
The People &c.,  
Respondent,  
v.  
Rashid Bilal,  
Appellant.

Rachel T. Goldberg, for appellant.  
Philip Morrow, for respondent.

MEMORANDUM:

The order of the Appellate Division should be modified by remitting to Supreme Court for a suppression hearing. In the event that defendant prevails at the suppression hearing, a new trial should be ordered; alternatively, in the event that the People prevail, the judgment should be amended to reflect that

result. As so modified, the order should be affirmed.

On this record and in light of the issues framed by the parties in connection with defendant's CPL 440.10 motion, we conclude that defendant was denied the effective assistance of counsel. In this case, defendant was indicted on a charge of criminal possession of a weapon in the second degree (see Penal Law § 265.03 [3]), and defense counsel failed to move to suppress the gun that was recovered during defendant's encounter with the police. Defendant established, through his counsel's affidavit, that there was no "strategic or other legitimate explanation[ ]" (People v Rivera, 71 NY2d 705, 709 [1988]) for defense counsel's failure to file a motion to suppress. Thus, we conclude that counsel did not provide defendant with meaningful representation under these particular circumstances. Accordingly, defendant is entitled to a suppression hearing and, if he prevails at the hearing, a new trial, but if the People prevail, the judgment should be amended to reflect that result (see People v Clermont, 22 NY3d 931, 934 [2013]; People v Millan, 69 NY2d 514, 521-522 [1987]).

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Order modified by remitting to Supreme Court, New York County, for further proceedings in accordance with the memorandum herein and, as so modified, affirmed. Chief Judge DiFiore and Judges Pigott, Rivera, Abdus-Salaam, Stein, Fahey and Garcia concur.

Decided March 31, 2016