

29 A.D.2d 984, 290 N.Y.S.2d 109
(Cite as: **29 A.D.2d 984, 290 N.Y.S.2d 109**)

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Supreme Court, Appellate Division, Second Department, New York.
The PEOPLE, etc., Appellant,
v.
Nathaniel DUMAS, Respondent.
April 22, 1968.

Proceeding on appeal by People from an order of the Supreme Court, Kings County, granting defendant's motion to suppress evidence. The Supreme Court, Appellate Division, held that where, at hearing on defendant's motion to suppress evidence, only evidence presented was testimony of one of three police officers who witnessed incident leading to arrest of defendant and search and seizure of narcotics, hypodermic needle and syringes, order granting motion to suppress would be reversed for full hearing at which People would be given opportunity to present testimony of all three officers and defendant given opportunity to present his evidence.

Order reversed and new hearing granted.

Christ and Benjamin, JJ., dissented.

West Headnotes

Criminal Law 110 1189

110 Criminal Law

110XXIV Review

110XXIV(U) Determination and Disposition of Cause

110k1185 Reversal

110k1189 k. Ordering New Trial. **Most**

Cited Cases

Where, at hearing on defendant's motion to suppress evidence, only evidence presented was testimony of one of three police officers who witnessed incident leading to arrest of defendant and search and seizure of narcotics, hypodermic needle and syringes, order granting motion to suppress would

be reversed for full hearing at which People would be given opportunity to present testimony of all three officers and defendant given opportunity to present his evidence.

****110** Aaron E. Koota, Dist. Atty., Kings County, for appellant, Martha Prince, Asst. Dist. Atty., of counsel.

Anthony F. Marra, New York City, for defendant-respondent, **Joel A. Brenner**, New York City, of counsel.

Before BELDOCK, P.J., and CHRIST, BRENNAN, BENJAMIN and MUNDER, JJ.

MEMORANDUM BY THE COURT.

***984** Appeal by the People from an order of the Supreme Court, Kings County, dated February 14, 1967, which granted defendant's motion to suppress evidence.

Order reversed, on the law and the facts and in the interests of justice, and new hearing granted.

At the hearing on defendant's motion to suppress, the only evidence presented was the uncontradicted testimony of one of the three police officers who witnessed the incident leading to the arrest of defendant and the search and seizure of the narcotics, hypodermic needles and syringes. The court chose not to believe that testimony. In our opinion, a full hearing should be had at which the People should be given the opportunity to present the testimony of all three officers and the defendant should be given the opportunity to present his evidence.

BELDOCK, P.J., and BRENNAN and MUNDER, JJ., concur.

CHRIST and BENJAMIN, JJ., dissent and vote to affirm the order, with the following memorandum: It was within the proper scope of the Justice trying

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the issues in this case to disbelieve the police officer. He clearly stated this to be the ****111** reason for his determination. The majority slip suggests that the People should be permitted to have a new hearing so as to present witnesses not previously called and for whose absence no excuse was offered. The People had a full opportunity to put in the complete case for the prosecution and it may be presumed that this was done and that witnesses within the People's control who were not called would not have supported its position. The defendant should not be subjected to a succession of hearings upon this issue.

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