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publication in the New York Reports.

No. 70 SSM 1
The People &c.,
Respondent,
v.
Darrion B. Freeman,
Appellant.

Submitted by James A. Hobbs, for appellant.
Submitted by Robert J. Shoemaker, for respondent.

MEMORANDUM:

The order of the Appellate Division should be reversed,
defendant's plea vacated, that portion of his motion which
requested suppression of tangible property and statements
obtained following the entry into defendant's residence granted,

the first and second counts of the indictment dismissed, and the case remitted to County Court for further proceedings on the third count of the indictment. Applying the factors outlined by this Court in People v Gonzalez (39 NY2d 122, 127 [1976]), we hold, consistent with the reasoning of the Appellate Division dissent, that the record lacks support for the conclusion of the courts below that defendant voluntarily consented to the entry and search of his home.

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On review of submissions pursuant to section 500.11 of the Rules, order reversed, defendant's plea vacated, that portion of his motion which requested suppression of tangible property and statements obtained following entry into defendant's residence granted, the first and second counts of the indictment dismissed, and case remitted to County Court, Monroe County, for further proceedings on the third count of the indictment, in a memorandum. Chief Judge DiFiore and Judges Rivera, Abdus-Salaam, Stein, Fahey, Garcia and Wilson concur.

Decided March 23, 2017