

**FILED: August 17, 2011**

IN THE COURT OF APPEALS OF THE STATE OF OREGON

STATE OF OREGON,  
Plaintiff-Appellant  
Cross-Respondent,

v.

YURIY PETROVICH GANNOTSKIY,  
Defendant-Respondent  
Cross-Appellant.

Multnomah County Circuit Court  
071255736

A144840

Angel Lopez, Judge.

Submitted on July 14, 2011.

John R. Kroger, Attorney General, Jerome Lidz, Solicitor General, and Joanna L. Jenkins, Assistant Attorney General, filed the brief for appellant - cross-respondent.

No appearance for respondent - cross-appellant.

Before Ortega, Presiding Judge, and Nakamoto, Judge, and Rosenblum, Senior Judge.

PER CURIAM

Reversed and remanded on appeal; affirmed on cross-appeal.

1 PER CURIAM

2 The state seeks reversal of the trial court's pretrial order granting  
3 defendant's motion to suppress evidence obtained from a blood draw administered after  
4 defendant's arrest.<sup>1</sup> In granting the motion to suppress, the trial court explicitly relied on  
5 this court's opinion in *State v. Machuca*, 231 Or App 232, 218 P3d 145 (2009), *rev'd*, 347  
6 Or 644, 227 P3d 729 (2010) (*Machuca I*). In explaining its conclusion, the trial court  
7 stated that, but for *Machuca I*, its ruling "would have been to the contrary[.]" After the  
8 trial court granted defendant's motion to suppress, the Supreme Court decided *State v.*  
9 *Machuca*, 347 Or 644, 227 P3d 729 (2010) (*Machuca II*), in which it reversed our  
10 decision in *Machuca I*. Based on *Machuca II*, the trial court erred in granting the motion  
11 to suppress.

12 Reversed and remanded on appeal; affirmed on cross-appeal.

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<sup>1</sup> Defendant filed a notice of cross-appeal, but did not otherwise appear.