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This memorandum is uncorrected and subject to revision before  
publication in the New York Reports.  
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No. 77 SSM 54  
The People &c.,  
Respondent,  
v.  
Tyrone Maye,  
Appellant.

Submitted by Matthew C. Hug, for appellant.  
Respondent, precluded.

MEMORANDUM:

The order of the Appellate Division should be modified  
by granting defendant's motion to suppress the cocaine recovered  
and remitting to County Court for further proceedings in  
accordance with this memorandum and, as so modified, affirmed.

Defendant seeks suppression of evidence including

cocaine found in a "baggie" during a manual body cavity search performed at a police station, without a warrant. The officer who carried out the search testified that he saw the "baggie" protruding from defendant's rectum, and removed it. Since no exigent circumstances prevented the police from seeking prior judicial authorization for the search, defendant's motion to suppress should be granted to the extent of suppressing the cocaine recovered (see People v Hall, 10 NY3d 303, 311 [2008]).

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On review of submissions pursuant to section 500.11 of the Rules, order modified by granting defendant's motion to suppress the cocaine recovered and remitting to County Court, Warren County, for further proceedings in accordance with the memorandum herein and, as so modified, affirmed. Judges Ciparick, Graffeo, Read, Smith, Pigott and Jones concur. Chief Judge Lippman took no part.

Decided February 12, 2009