

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

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Submitted - March 8, 2011

JOSEPH COVELLO, J.P.  
L. PRISCILLA HALL  
PLUMMER E. LOTT  
JEFFREY A. COHEN, JJ.

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2009-10848

DECISION & ORDER

The People, etc., respondent,  
v Benjamin A. DeMartino, Sr., appellant.

(Ind. No. 08-01233)

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Diane E. Selker, Peekskill, N.Y., for appellant.

Janet DiFiore, District Attorney, White Plains, N.Y. (Hae Jin Liu, Lois Cullen Valerio, and Richard Longworth Hecht of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Westchester County (Neary, J.), rendered October 7, 2009, convicting him of criminal possession of a controlled substance in the third degree (three counts), criminal possession of a controlled substance in the fourth degree (two counts), criminal possession of marijuana in the second degree, criminal storage of explosives, criminal possession of explosives, criminal possession of a controlled substance in the seventh degree (two counts), and criminal use of drug paraphernalia in the second degree (three counts), upon his plea of guilty, and imposing sentence. The appeal brings up for review the denial, after a hearing, of that branch of the defendant's omnibus motion which was to suppress physical evidence.

ORDERED that the judgment is affirmed.

The Supreme Court properly denied that branch of the defendant's omnibus motion which was to suppress physical evidence seized as a result of a warrantless search of the defendant's home (*see People v Rodriguez*, 77 AD3d 280, 287). The record supports the Supreme Court's determination that the warrantless entry into the home was justified by a reasonable belief by the police that an emergency situation required their immediate assistance (*see People v Molnar*, 98 NY2d 328; *People v Mitchell*, 39 NY2d 173, *cert denied* 426 US 953; *People v Rodriguez*, 77 AD3d

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at 287; *People v Desmarat*, 38 AD3d 913; *People v Manning*, 301 AD2d 661; *People v DePaula*, 179 AD2d 424). Moreover, the Supreme Court properly denied suppression of certain evidence later seized from the defendant's garage pursuant to a search warrant. Although the search warrant failed to list the defendant's garage as a place to be searched, the garage was referenced in the search warrant application and supporting documents (see *People v Carpenter*, 51 AD3d 1149; *People v Davenport*, 231 AD2d 809).

COVELLO, J.P., HALL, LOTT and COHEN, JJ., concur.

ENTER:

A handwritten signature in black ink that reads "Matthew G. Kiernan". The signature is written in a cursive, slightly slanted style.

Matthew G. Kiernan  
Clerk of the Court