

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

D29155
W/kmb

_____AD3d_____

Submitted - October 7, 2010

STEVEN W. FISHER, J.P.
FRED T. SANTUCCI
RANDALL T. ENG
SANDRA L. SGROI, JJ.

2008-06330

DECISION & ORDER

The People, etc., respondent,
v Richard McAllister, appellant.

(Ind. No. 2741/06)

Lynn W. L. Fahey, New York, N.Y. (William Kastin of counsel), for appellant.

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano, Sharon Y. Brodt, and Roni C. Piplani of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Lasak, J.), rendered June 25, 2008, convicting him of manslaughter in the second degree, assault in the second degree, reckless endangerment in the first degree, criminal possession of a weapon in the second degree, and criminal possession of a weapon in the fourth degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is modified, on the law, by vacating the conviction of criminal possession of a weapon in the fourth degree, vacating the sentence imposed thereon, and dismissing that count of the indictment; as so modified, the judgment is affirmed.

As the defendant argues and the People correctly concede, criminal possession of a weapon in the fourth degree is a lesser-included offense of criminal possession of a weapon in the second degree (*see* Penal Law §§ 265.01[1], 265.03[1][b]; *People v Headley-Ombler*, 270 AD2d 358, 359; *People v Gonzalez*, 227 AD2d 641, 642; *People v Chatman*, 122 AD2d 148, 149). Thus, we vacate the conviction and sentence for criminal possession of a weapon in the fourth degree and dismiss that count of the indictment (*see* CPL 300.40[3][b]; *People v Headley-Ombler*, 270 AD2d at 359; *People v Gonzalez*, 227 AD2d at 642).

November 23, 2010

Page 1.

PEOPLE v McALLISTER, RICHARD

The sentences imposed on the remaining counts were not excessive (*see People v Suitte*, 90 AD2d 80).

FISHER, J.P., SANTUCCI, ENG and SGROI, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court