

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

D29892
O/prt

_____AD3d_____

Argued - January 13, 2011

ANITA R. FLORIO, J.P.
THOMAS A. DICKERSON
CHERYL E. CHAMBERS
PLUMMER E. LOTT, JJ.

2009-01615

DECISION & ORDER

The People, etc., respondent,
v Kevin Chestnut, appellant.

(Ind. No. 658/06)

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, Nicoletta J. Caferri, and Jennifer Hagan of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Aloise, J.), rendered February 2, 2009, convicting him of robbery in the first degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

As the People correctly concede, the codefendant should have been tried separately pursuant to CPL 200.40(1) as to the drug counts and resisting arrest count against him, as those counts in no way related to the defendant (*see People v Spencer*, 67 AD2d 867; *People v Banks*, 45 AD2d 1024). Although the Supreme Court erred in denying the defendant's motion to sever the unrelated counts applicable only to the codefendant (*see* CPL 200.40[1]), the error was harmless (*see People v Serrano*, 74 AD3d 1104, 1107; *People v Singson*, 40 AD3d 1015, 1016; *People v Ortiz*, 23 AD3d 499, 1107).

FLORIO, J.P., DICKERSON, CHAMBERS and LOTT, JJ., concur.

ENTER:



Matthew G. Kiernan
Clerk of the Court

February 1, 2011

PEOPLE v CHESTNUT, KEVIN