

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

D31594
O/kmb

_____AD3d_____

Argued - May 16, 2011

MARK C. DILLON, J.P.
ARIEL E. BELEN
SANDRA L. SGROI
ROBERT J. MILLER, JJ.

2009-00014

DECISION & ORDER

The People, etc., respondent,
v Colleen Morgridge, appellant.

(Ind. No. 10300/07)

Steven Banks, New York, N.Y. (Kerry Elgarten of counsel), for appellant.

Richard A. Brown, District Attorney, Kew Gardens, N.Y. (John M. Castellano,
Johnnette Traill, and Gretchen Robinson of counsel), for respondent.

Appeal by the defendant from a judgment of the Supreme Court, Queens County (Kron, J.), rendered December 10, 2008, convicting her of criminal possession of marijuana in the first degree, upon a jury verdict, and imposing sentence.

ORDERED that the judgment is affirmed.

The defendant was tried and convicted of criminal possession of marijuana in the first degree, which required a finding that she knowingly and unlawfully possessed in excess of 10 pounds of marijuana (*see* Penal Law § 221.30). Pursuant to a search warrant, the police recovered over 20 pounds of marijuana from bins located in the kitchen of the defendant's apartment. The police also recovered a bag containing one-eighth of an ounce of marijuana on the defendant's bedroom dresser. At trial, the defendant asked the Supreme Court to submit the crime of unlawful possession of marijuana as a lesser-included offense. The Supreme Court denied the request.

Pursuant to CPL 300.50, a court in its discretion may, in addition to submitting the greatest offense which it is required to submit, submit any lesser-included offenses, as long as there is a reasonable view of the evidence which would support a finding that the defendant committed the

lesser offense but did not commit the greater (*see People v Davis*, 14 NY3d 20, 23). Furthermore, “[i]f the court is authorized . . . to submit a lesser included offense and is requested by either party to do so, it must do so” (CPL 300.50[2]).

Here, although unlawful possession of marijuana is a lesser-included offense of criminal possession of marijuana in the first degree (*see e.g. People v Turdo*, 74 AD2d 614), there was no reasonable view of the evidence that the defendant committed the lesser, but not the greater offense (*see People v Davis*, 14 NY3d at 23).

The defendant’s remaining contention is unpreserved for appellate review and, in any event, without merit.

DILLON, J.P., BELEN, SGROI and MILLER, JJ., concur.

ENTER:


Matthew G. Kiernan
Clerk of the Court