

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

D36769
C/kmb

_____AD3d_____

Argued - November 20, 2012

DANIEL D. ANGIOLILLO, J.P.
THOMAS A. DICKERSON
L. PRISCILLA HALL
LEONARD B. AUSTIN, JJ.

2009-11410

DECISION & ORDER

The People, etc., respondent,
v Brigitte Harris, appellant.

(Ind. No. 2296/07)

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

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

Appeal by the defendant from a judgment of the Supreme Court, Queens County
(Cooperman, J.), rendered November 6, 2009, convicting her of manslaughter 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 affirmed.

The defendant's contention that the Supreme Court should have charged the jury with
criminally negligent homicide as a lesser-included offense of murder in the second degree is
unpreserved for appellate review (*see* CPL 300.50[2]; *People v Diaz*, 71 AD3d 1158, 1158-1159;
People v Osorio, 49 AD3d 562, 563). In any event, the defendant's contention is without merit, as
there is no reasonable view of the evidence that would support the conclusion that the defendant
committed the lesser offense of criminally negligent homicide (*see* CPL 300.50[1]; *People v Glover*,
57 NY2d 61, 63).

Contrary to the defendant's contention on appeal, she received the effective assistance
of counsel (*see People v Baldi*, 54 NY2d 137, 147; *People v Calderon*, 66 AD3d 314, 320-321).

December 12, 2012

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The defendant's contention that the imposed sentence was improperly based on the crimes of which she was acquitted is unpreserved for appellate review (*see* CPL 470.05[2]; *People v Stanley*, 50 AD3d 1066, 1067-1068; *People v Rambali*, 27 AD3d 582, 582) and, in any event, is without merit (*see People v Stanley*, 50 AD3d at 1067-1068; *People v Robinson*, 250 AD2d 629, 629).

The sentence imposed was not excessive (*see People v Suitte*, 90 AD2d 80).

ANGIOLILLO, J.P., DICKERSON, HALL and AUSTIN, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court