

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

SPENCER MARTEL PERKINS,

Appellant,

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

v.

CASE NO. 1D04-0035

STATE OF FLORIDA,

Appellee.

Opinion filed December 3, 2004.

An appeal from the Circuit Court for Baker County.
Joseph M. Williams, Judge.

Patricia A. Worrell, Tallahassee, for Appellant.

Charlie Crist, Attorney General, and Alan R. Dakan, Assistant Attorney General,
Tallahassee, for Appellee.

PER CURIAM.

This is a timely appeal from the appellant's convictions and sentences for possession of cocaine with intent to sell and sale of cocaine. At the charge conference regarding the charge of possession of cocaine with intent to sell, defense counsel requested an instruction on the lesser included offense of simple possession of cocaine. The trial court refused to give the instruction and the issue was preserved for

appeal. The appellant was entitled to the instruction because the information contained the elements of and the evidence adduced at trial could have supported a conviction of the lesser included offense of possession of cocaine. Amada v. State, 585 So. 2d 282 (Fla. 1991); Gainer v. State, 633 So. 2d 480, 481 (Fla. 1st DCA 1994). The trial court's failure to give this instruction is reversible error. We therefore reverse the appellant's conviction and sentence for possession of cocaine with the intent to sell and remand for a new trial. We affirm the appellant's conviction and sentence for sale of cocaine.

AFFIRMED, in part, REVERSED, in part, and REMANDED.

ERVIN, DAVIS and HAWKES, JJ., CONCUR.