

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

ALFRECO LETT ,

Appellant,

v.

CASE NO. 1D08-5324

STATE OF FLORIDA ,

Appellee.

/

Opinion filed March 10, 2010.

An appeal from the Circuit Court for Escambia County.
Jan Shackelford, Judge.

Nancy A. Daniels, Public Defender, and Kathleen Stover, Assistant Public Defender, Tallahassee, for Appellant.

Bill McCollum, Attorney General, and Michael T. Kennett, Assistant Attorney General, Tallahassee, for Appellee.

CLARK, J.

As the state concedes, the trial court committed fundamental error by failing to instruct the jury on the knowledge element for the charge of resisting arrest without violence because that element was disputed at trial. Leonard v. State, 1 So. 3d 1271 (Fla. 1st DCA 2009); Harris v. State, 935 So. 2d 1259 (Fla. 5th DCA 2006). The standard jury instruction for this offense does not contain language

addressing a defendant's knowledge that the person he or she is resisting is an officer, but when such knowledge is in dispute, it is an element of the crime of resisting an officer without violence and requires instruction. Cooper v. State, 742 So. 2d 855 (Fla. 1st DCA 1999).

The state's request to certify the question of whether knowledge is an element of resisting an officer without violence is denied.

The conviction for resisting arrest without violence (Count III) is REVERSED and this case REMANDED.

VAN NORTWICK and MARSTILLER, JJ., CONCUR.