

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FIFTH DISTRICT

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

GARY RIDGE,

Appellant,

v.

Case No. 5D13-3

STATE OF FLORIDA,

Appellee.

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Opinion filed May 16, 2014

Appeal from the Circuit Court  
for Seminole County,  
Debra S. Nelson, Judge.

William R. Ponall and Lisabeth Fryer  
of Snure & Ponall, P.A., Winter Park,  
for Appellant.

Pamela Jo Bondi, Attorney General,  
Tallahassee, and Ann M. Phillips,  
Assistant Attorney General, Daytona  
Beach, for Appellee.

PER CURIAM.

Appellant challenges the judgment and sentence entered after a jury found him guilty of armed trespass, resisting an officer without violence, and loitering or prowling. He contends the lower court erred in refusing to instruct the jury on his defense of involuntary intoxication. The State properly concedes that Appellant was entitled to an instruction on involuntary intoxication, and it does not take issue with Appellant's

assertion that the trial judge's stated reason for denying the instruction was erroneous. The State nevertheless asserts that the trial court should be affirmed because the proffered, special instruction was not a correct statement of the law—an objection not argued below.<sup>1</sup> We do not view this as a case where the trial court may be affirmed for alternative reasons not argued below. Had the State objected to the content of the instruction, Appellant could have easily corrected the error. Accordingly, Appellant is entitled to a new trial with the now-standard instruction.

REVERSED AND REMANDED.

TORPY, C.J., ORFINGER and EVANDER, JJ., concur.

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<sup>1</sup> The case went to trial before the adoption of a standard jury instruction regarding involuntary intoxication. See Fla. Std. Jury Instr. (Crim.) 3.6(e)(2).