

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

ELIZABETH HARRIS
LOWERY,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

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

CASE NO. 1D09-2311

Opinion filed February 7, 2011.

An appeal from the Circuit Court for Escambia County.
Linda L. Nobles, Judge.

Nancy A. Daniels, Public Defender, and Terry Carley, Assistant Public Defender,
Tallahassee, for Appellant.

Pamela Jo Bondi, Attorney General, and Heather Flanagan Ross, Assistant
Attorney General, Tallahassee, for Appellee.

PER CURIAM.

Appellant, Elizabeth Harris Lowery, appeals her judgments and sentences
and raises two issues, only one of which merits discussion. Appellant argues that
the trial court committed fundamental error in failing to instruct the jury on the

knowledge element of the offense of resisting an officer without violence. Although the State concedes error, we conclude that no fundamental error occurred. Appellant's testimony established that at the time any alleged resistance occurred, she was aware that the individuals were officers. As such, the knowledge element was not in dispute at trial. Cf. Lett v. State, 29 So. 3d 455, 456 (Fla. 1st DCA 2010) (holding that the trial court committed fundamental error in not instructing the jury on the knowledge element of the offense of resisting an officer without violence when that element was in dispute at trial); Leonard v. State, 1 So. 3d 1271, 1271 (Fla. 1st DCA 2009) (same).

Accordingly, we AFFIRM.

KAHN, DAVIS, and HAWKES, JJ., CONCUR.