

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FOURTH DISTRICT  
*January Term 2008*

**CHRISTOPHER DUCKETT,**  
Appellant,

v.

**STATE OF FLORIDA,**  
Appellee.

No. 4D07-1121

[July 2, 2008]

WARNER, J.

When charging the jury in appellant's trial for trafficking in LSD, the court omitted the word "knowingly" from the first element in the jury instruction, i.e., that appellant knowingly possessed LSD. At trial the defense submitted a correct trafficking instruction including the word "knowingly." However, the trial court did not read the word to the jury, and counsel did not object. Nevertheless, as we held in *Nash v. State*, 951 So. 2d 1003 (Fla. 4th DCA 2007), the omission of the word "knowingly" in the trafficking instruction constitutes fundamental error where the element is disputed at trial. Here, appellant disputed his knowing possession of the drug. We reverse his conviction for trafficking in LSD and remand for a new trial consistent with this opinion. We affirm as to the remaining issue.

POLEN and TAYLOR, JJ., concur.

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Appeal from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Charles M. Greene, Judge; L.T. Case No. 05-2470 CF10A.

Frank Negron, Davie, for appellant.

Bill McCollum, Attorney General, Tallahassee, and Myra J. Fried, Assistant Attorney General, West Palm Beach, for appellee.

***Not final until disposition of timely filed motion for rehearing.***