

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
January Term 2010

RAUL DELTORO,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D08-4791

[June 2, 2010]

PER CURIAM.

The appellant, Raul Deltoro was charged by information with violating section 316.1935(2), Florida Statutes (2008). The information was erroneously captioned with the non-existent crime of “aggravated fleeing (chase).”

The jury was presented with evidence and testimony as to the crime of non-aggravated fleeing and eluding (pursuant to section 316.1935(2)). The jury was likewise instructed on the crime of non-aggravated fleeing and eluding pursuant to the same section and subsection. After finding the defendant guilty as charged, the trial court entered judgment for the aggravated form of the crime.

Although the improper designation of a crime in the caption of a charging document may be rejected as surplusage, a resultant judgment that is patently erroneous must be corrected. *See Keese v. State*, 204 So. 2d 925, 927 (Fla. 4th DCA 1967).

Accordingly, this matter is remanded to the trial court to enter a corrected judgment, scoresheet and order placing the defendant on probation.

Reversed and remanded with instructions.

CIKLIN, GERBER, JJ., and COX, JACK S., Associate Judge, concur.

* * *

Appeal from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Michael L. Gates, Judge; L.T. Case No. 08-009230 CF10A.

Carey Haughwout, Public Defender, and Timothy D. Kenison, Assistant Public Defender, West Palm Beach, for appellant.

Bill McCollum, Attorney General, Tallahassee, and Sue-Ellen Kenny, Assistant Attorney General, West Palm Beach, for appellee.

Not final until disposition of timely filed motion for rehearing.