

Third District Court of Appeal

State of Florida, January Term, A.D. 2011

Opinion filed June 29, 2011.

No. 3D10-2148
Lower Tribunal No. 09-7015-B

O.Y., a juvenile,
Appellant,

vs.

The State of Florida,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Abby Cynamon, Judge.

Carlos J. Martinez, Public Defender, and Melissa del Valle, Assistant Public Defender, for appellant.

Pamela Jo Bondi, Attorney General, and Nikole Hiciano, Assistant Attorney General, for appellee.

Before RAMIREZ, C.J., and SALTER and EMAS, JJ.

PER CURIAM.

Confession of Error

Based on the state's proper confession of error, we reverse O.Y.'s adjudication of delinquency on count 1 for the lesser included offense of assault on

a law enforcement officer. This adjudication is fundamental error because the charging document did not allege the elements of assault, and assault is not a necessarily lesser included offense to the charge of battery on a law enforcement officer. V.C. v. State, No. 3D10-350 (Fla. 3d DCA May 18, 2011).

The adjudication is affirmed in all other respects.