

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
January Term 2011

JERRY M. SANNER,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D09-2179

[June 29, 2011]

ON MOTION FOR REHEARING

PER CURIAM.

We grant appellant's motion for rehearing, withdraw our previously issued opinion and substitute the following in its place.

Appellant challenges his conviction for fleeing and eluding a law enforcement officer under section 316.1935(3)(a), Florida Statutes (2006), claiming that the state failed to prove an essential element of the crime, namely that a patrol vehicle in the chase had "agency insignia and other jurisdictional markings prominently displayed on the vehicle" We agree that the state failed to put on proof of this statutory element, requiring reversal. *See Erskine v. State*, 23 So. 3d 1207, 1208-09 (Fla. 3d DCA 2009); *Jackson v. State*, 818 So. 2d 539, 542 (Fla. 2d DCA 2002); *Gorsuch v. State*, 797 So. 2d 649, 650-51 (Fla. 3d DCA 2001). We therefore reverse with directions to reduce the conviction to a third degree felony under 316.1935(1).

We affirm as to appellant's challenge to his habitual offender qualification offenses, finding that the state sufficiently proved them and that appellant's attorney conceded that appellant qualified for habitual offender status.

Affirmed in part; reversed in part and remanded for resentencing in accordance with this opinion.

WARNER, LEVINE and CONNER, JJ., concur.

* * *

Appeal from the Circuit Court for the Nineteenth Judicial Circuit, Indian River County; Robert A. Hawley, Judge; L.T. Case No. 312006CF001958A.

Carey Haughwout, Public Defender, and David John McPherrin, Assistant Public Defender, West Palm Beach, for appellant.

Pamela Jo Bondi, Attorney General, Tallahassee, and Katherine Y. McIntire, Assistant Attorney General, West Palm Beach, for appellee.