

Third District Court of Appeal

State of Florida

Opinion filed January 23, 2019.

No. 3D18-0991
Lower Tribunal No. 17-16780

Joseph Smith,
Appellant,

vs.

The State of Florida,
Appellee.

An Appeal from the Circuit Court for Miami-Dade County, Nushin G. Sayfie,
Judge.

Carlos J. Martinez, Public Defender, and Shannon Hemmendinger, Assistant
Public Defender, for appellant.

Ashley Brooke Moody, Attorney General, and Gabrielle Raemy Charest-
Turken, Assistant Attorney General, for appellee.

Before EMAS, C.J., and HENDON, J., and LAGOA, Associate Judge.

ON CONFESSION OF ERROR

LAGOA, Associate Judge.

Joseph Smith (“Smith”) appeals his conviction and sentence for possession of a controlled substance, possession of drug paraphernalia, and resisting an officer without violence, arguing that his trial was fundamentally flawed due to the trial court’s failure to instruct the jury as to reasonable doubt. As the State correctly concedes, the trial court’s failure to instruct the jury as to Florida Standard Jury Instruction (Criminal) 3.7 Plea of Not Guilty; Reasonable Doubt, and Burden of Proof, or any similar instruction, constituted fundamental error. See Cavagnaro v. State, 117 So. 3d 1111, 1112 (Fla. 3d DCA 2012) (finding fundamental error where the jury charge did not include Florida Standard Jury Instruction (Criminal) 3.7 or any similar instruction); see also Curry v. State, 169 So. 3d 1258, 1258 (Fla. 5th DCA 2015); Burnette v. State, 103 So. 3d 1059 (Fla. 1st DCA 2013). Accordingly, we reverse Smith’s conviction and remand for a new trial.

Reversed and remanded.