

FIRST DISTRICT COURT OF APPEAL  
STATE OF FLORIDA

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No. 1D2022-1259

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CHRISTOPHER WAYNE SMITH,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

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On appeal from the Circuit Court for Santa Rosa County.  
Clifton A. Drake, Judge.

July 17, 2024

PER CURIAM.

A jury found Appellant Christopher Wayne Smith guilty of burglary with assault or battery. In a separate count, the jury also found Appellant guilty of simple battery.\* Appellant raises several issues on appeal. His first issue argues that these two convictions violate double jeopardy. We agree and reverse the simple battery conviction. We affirm on all other issues without comment.

Criminal defendants have a constitutional right against double jeopardy. U.S. Const. amend. V; art. I, § 9, Fla. Const. A

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\* The jury additionally found Appellant guilty of four other charges irrelevant to the issue here.

court cannot convict a defendant of two offenses for the same occurrence if one of the offenses does not require an additional proof of fact. *Pizzo v. State*, 945 So. 2d 1203, 1206 (Fla. 2006) (“A defendant is placed in double jeopardy where based upon the same conduct the defendant is convicted of two offenses, each of which does not require proof of a different element.”); *State v. Tuttle*, 177 So. 3d 1246, 1247 (Fla. 2015) (“Double jeopardy prohibits conviction for two crimes where all of the elements of one crime are subsumed within the elements of the second crime.”); § 775.021(4)(b)3., Fla. Stat. (providing that the Legislature’s general intent “is to convict and sentence for each criminal offense committed in the course of one criminal episode” but carving out an exception for “[o]ffenses which are lesser offenses the statutory elements of which are subsumed by the greater offense.”). Double jeopardy thus “bars dual convictions for burglary with assault and/or battery and simple battery when it is unclear whether the jury convicted the defendant of burglary with assault or burglary with battery.” *Barber v. State*, 263 So. 3d 1133, 1135 (Fla. 1st DCA 2019).

The jury’s finding that Appellant committed simple battery did not require the proof of any additional fact from the charge for burglary with assault or battery. Therefore, the dual conviction violates double jeopardy.

AFFIRMED in part; REVERSED in part and REMANDED with instruction that amended judgment be rendered.

BILBREY, NORDBY, and TANENBAUM, JJ., concur.

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***Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.***

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Jessica J. Yeary, Public Defender, and Danielle Jorden, Assistant Public Defender, Tallahassee, for Appellant.

Ashley Moody, Attorney General, and Daren L. Shippy, Assistant Attorney General, Tallahassee, for Appellee.