

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

RODRICK NEWTON ALLEN,

Appellant,

v.

Case No. 5D13-3160

STATE OF FLORIDA,

Appellee.

_____ /

Opinion filed September 12, 2014

Appeal from the Circuit Court
for Lake County,
Mark A. Nacke, Judge.

James S. Purdy, Public Defender, and
Frank W. Scott, Assistant Public Defender,
Daytona Beach, for Appellant.

Pamela Jo Bondi, Attorney General,
Tallahassee, and Carmen F. Corrente,
Assistant Attorney General, Daytona
Beach, for Appellee.

PER CURIAM.

Rodrick Newton Allen was convicted of trespass, battery, and domestic battery by strangulation. The victim was his former girlfriend. Allen contends that his convictions for battery and domestic battery by strangulation violate the prohibition against double jeopardy and that his conviction for battery must be reversed. The State concedes that the two convictions occurred at the same time and location, were committed against the

same victim during the same episode, and no temporal break occurred between the commission of the two offenses. The State properly suggests that if the two convictions violate the proscription against double jeopardy, the less serious offense of battery should be the conviction and sentence that is vacated.

We conclude, based on the facts and circumstances of this case, that a double jeopardy violation has occurred, see Ramirez v. State, 113 So. 3d 105 (Fla. 5th DCA 2013), and that the conviction for battery by strangulation should be affirmed and the lesser offense of battery should be reversed. We, therefore, remand this case to the trial court to vacate the battery conviction and sentence.

AFFIRMED in part; REVERSED in part; REMANDED.

SAWAYA, ORFINGER, and BERGER, JJ., concur.