

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

SAMUEL RALPHEAL BROWN,

Appellant,

v.

Case No. 5D15-3472

STATE OF FLORIDA,

Appellee.

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Opinion filed October 28, 2016

Appeal from the Circuit Court  
for Marion County,  
Hale R. Stancil, Judge.

James S. Purdy, Public Defender, and Noel  
A. Pelella, Assistant Public Defender,  
Daytona Beach, for Appellant.

Pamela Jo Bondi, Attorney General, and  
Rebecca Roark Wall, Assistant Attorney  
General, Daytona Beach, for Appellee.

PER CURIAM.

As the State properly concedes, Appellant's convictions for both attempted second-degree murder and attempted felony murder violated double jeopardy principles. See *Wilkes v. State*, 123 So. 3d 632, 634-35 (Fla. 4th DCA 2013) (holding that convictions of attempted murder and attempted felony murder, arising out of single attempt to cause

death to single victim, violated double jeopardy). On remand, the trial court shall set aside the conviction for the lesser offense.

We further conclude that Appellant failed to preserve the issue of whether the trial court erred in failing to make a separate finding as to whether the State provided genuine race-neutral reasons in support of its exercise of two peremptory challenges. See, e.g., *Spencer v. State*, 196 So. 3d 400, 406 (Fla. 2d DCA 2016) (holding that opponent of peremptory challenge, which was made pursuant to *Melbourne*,<sup>1</sup> must object to any deficiency, including pretext, at time of challenge); *Ivy v. State*, 196 So. 3d 394, 398-99 (Fla. 2d DCA 2016) (holding that defendant failed to preserve issue of whether trial court erred in failing to make separate finding on issue of pretext after finding exercise of peremptory challenge to be race-neutral); *Hanna v. State*, 194 So. 3d 424 (Fla. 3d DCA 2016) (joining the decisions of *Spencer* and *Ivy*).

AFFIRMED, in part; REVERSED, in part; REMANDED.

SAWAYA, EVANDER and WALLIS, JJ., concur.

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<sup>1</sup> *Melbourne v. State*, 679 So. 2d 759 (Fla. 1996).