

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

JANUARY TERM 2003

GEORGE WESLEY SMITH,

Appellant,

v.

CASE NO. 5D02-2068

STATE OF FLORIDA,

Appellee.

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Opinion filed February 28, 2003

**Appeal from the Circuit
Court for Orange County,
Lawrence R. Kirkwood, Judge.**

**James B. Gibson, Public Defender, and
Leonard R. Ross, Assistant Public Defender,
Daytona Beach, for Appellant.**

**Charles J. Crist, Attorney General, Tallahassee, and
Patrick W. Krechowski, Assistant Attorney General,
Daytona Beach, for Appellee.**

TORPY, J.

Appellant was convicted of battery (Count I), two counts of resisting an officer without violence (Counts IV and V), one count of resisting an officer with violence (Count II) and one count of attempting to deprive an officer of his weapon (Count VI).

Appellant's first point on appeal is that the convictions for resisting an officer with

violence and two counts of resisting an officer without violence violate double jeopardy principles because they arose from one continuous event. The State concedes error on this point. *Madison v. State*, 777 So. 2d 1175 (Fla. 5th DCA 2001). Therefore, we vacate the judgments and sentences as to counts IV (resisting an officer without violence) and V (resisting an officer without violence).

Appellant's second point relates to the sufficiency of the evidence to support the conviction for attempting to deprive an officer of his weapon. We decline to review this issue, however, because appellant failed to preserve this issue for appeal. *Stephens v. State*, 787 So. 2d 747 (Fla. 2001).

We affirm the convictions and sentences except for the convictions on Counts IV and V. We remand for recalculation of the scoresheet and resentencing.

AFFIRMED in part; REVERSED in part; and REMANDED.

GRIFFIN and PLEUS, JJ. concur.