

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

JULY TERM 2010

DONALD R. FIRTH,

Appellant,

v.

Case No. 5D09-2114

STATE OF FLORIDA,

Appellee.

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Opinion filed September 10, 2010

Appeal from the Circuit Court
for Orange County,
Jenifer M. Davis, Judge.

James S. Purdy, Public Defender, and
Edward J. Weiss, Assistant Public
Defender, Daytona Beach, for Appellant.

Bill McCollum, Attorney General,
Tallahassee, and Bonnie Jean Parrish,
Assistant Attorney General, Daytona
Beach, for Appellee.

PER CURIAM.

Appellant challenges his convictions for sexual battery with a deadly weapon or physical force, false imprisonment, simple battery and assault. He presents several points on appeal, only one of which warrants discussion – whether his convictions for sexual battery with a deadly weapon and simple battery violate double jeopardy. Concluding that the simple battery, a category one lesser-included offense, arose from

the same criminal episode as the sexual battery, we vacate the conviction on the simple battery count. *Garcia v. State*, 769 So. 2d 449, 449 (Fla. 4th DCA 2000). We affirm in all other respects.

AFFIRMED IN PART; VACATED IN PART.

GRIFFIN, ORFINGER and TORPY, JJ., concur.