

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

JULY TERM 2010

DAVID YOUNG,

Appellant,

v.

Case No. 5D09-631

STATE OF FLORIDA,

Appellee.

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Opinion filed September 3, 2010

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

James S. Purdy, Public Defender, and
Anne Moorman Reeves, Assistant Public
Defender, Daytona Beach, for Appellant.

Bill McCollum, Attorney General,
Tallahassee, and Kellie A. Nielan,
Assistant Attorney General, Daytona
Beach, for Appellee.

EVANDER, J.

We affirm, without discussion, Young's conviction for burglary of a conveyance with an assault or a battery.¹ However, double jeopardy principles preclude Young's conviction for simple battery.

In the instant case, the verdict form gave no indication as to whether the jury found that Young had committed a "burglary with *an assault*," or a "burglary with a

¹ § 810.02(2)(a), Fla. Stat. (2007).

battery." We reverse as we must read the verdict in a manner that would give the benefit of the doubt to Young. *State v. Reardon*, 763 So. 2d 418, 419 n. 3 (Fla. 5th DCA 2000). Convictions for both burglary with a battery and for the lesser included offense of battery violate double jeopardy. See, e.g., *West v. State*, 21 So. 3d 916 (Fla. 5th DCA 2009); *Bracey v. State*, 985 So. 2d 704 (Fla. 5th DCA 2008).

The facts in this case, as acknowledged by the State, are almost indistinguishable from the factual scenario addressed in *Torna v. State*, 742 So. 2d 366 (Fla. 3d DCA 1999). There, the jury similarly found the defendant guilty of burglary with an assault or a battery and of simple battery. The *Torna* court stated:

This verdict form is the crux of the problem here as it contained no indication as to whether the jury had found that Torna had committed a 'burglary with *an assault*,' or a 'burglary with *a battery*.' Given Torna's additional conviction of 'battery,' the determination of 'with an assault' or 'with a battery' was necessary so as to not run afoul of the double jeopardy issue. Since the determination was not made, and we cannot now guess what the jury was thinking, we must conclude that Torna was indeed subjected to double jeopardy by his conviction of both 'burglary with an assault and/or battery' and 'battery.'

Id. at 367.

Young cannot properly be convicted of both offenses. Accordingly, we vacate the conviction of (simple) battery.

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

MONACO, C.J. and COHEN, J., concur.