

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

BRYAN GORDON,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

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

CASE NO. 1D07-4338

Opinion filed August 31, 2009.

An appeal from the Circuit Court for Leon County.
Kathleen F. Dekker, Judge.

Robert Augustus Harper and Robert Augustus Harper, III, Harper & Harper, P.A.,
Tallahassee, for Appellant.

Bill McCollum, Attorney General, Trisha Meggs Pate, Assistant Attorney General,
and Joshua R. Heller, Assistant Attorney General, Tallahassee, for Appellee.

PER CURIAM.

Bryan Gordon was convicted of burglary of a dwelling with an assault or
battery and simple battery and adjudicated guilty of both offenses. Under the facts

of this case, it was error to convict Gordon of both burglary with a battery and simple battery. See Bracey v. State, 985 So.2d 704 (Fla. 5th DCA 2008).

Accordingly, we affirm Gordon's conviction and sentence for burglary with a battery, but reverse the simple battery conviction. On remand, the trial court shall vacate that conviction. In all other respects, the judgment and sentences on appeal are affirmed.

BARFIELD and ALLEN, JJ., CONCUR; THOMAS, J., DISSENTS, without opinion.