

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

VAUGHN NICHOLAS POTTLE,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

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

CASE NO. 1D14-5329

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Opinion filed July 29, 2015.

An appeal from the Circuit Court for Okaloosa County.

Michael A. Flowers, Judge.

Nancy A. Daniels, Public Defender, and A. Victoria Wiggins, Assistant Public  
Defender, Tallahassee, Appellant.

Pamela Jo Bondi, Attorney General, and Samuel B. Steinberg, Assistant Attorney  
General, Tallahassee, for Appellee.

PER CURIAM.

The state concedes that appellant's dual convictions for simple battery and domestic battery by strangulation violate the prohibition against double jeopardy. The elements of domestic battery by strangulation subsume the elements of simple battery, and both convictions stemmed from appellant's single act of choking the

victim. See Allen v. State, 146 So. 3d 1262 (Fla. 5th DCA 2014) (concluding that convictions for battery and domestic battery by strangulation based upon one act violated proscription against double jeopardy); see also Harris v. State, 111 So. 3d 922 (Fla. 1st DCA 2013) (reversing conviction and sentence for misdemeanor battery, because felony battery and simple battery arose from the same act and the elements of the former subsumed those of the latter).

We therefore reverse and remand to the trial court to vacate appellant's conviction and sentence for battery. See Pizzo v. State, 945 So. 2d 1203, 1206 (Fla. 2006); Means v. State, 127 So. 3d 750, 752 (Fla. 1st DCA 2013).

REVERSED and REMANDED.

LEWIS, MAKAR, and KELSEY, JJ., CONCUR.