

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

TIMOTHY DONALD HELTON,

CASE NO. 1D13-2656

Appellant,

v.

STATE OF FLORIDA,

Appellee.

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Opinion filed October 6, 2017.

An appeal from the Circuit Court for Santa Rosa County.  
David Rimmer, Judge.

Andy Thomas, Public Defender, and Barbara J. Busharis, Assistant Public  
Defender, Tallahassee, for Appellant.

Pamela Jo Bondi, Attorney General, and Jennifer J. Moore, Assistant Attorney  
General, Tallahassee, for Appellee.

ON REMAND FROM THE FLORIDA SUPREME COURT

PER CURIAM.

We originally reversed Helton's conviction for aggravated battery and remanded for a new trial based on this court's decision in Floyd v. State, 151 So. 3d 452 (Fla. 1st DCA 2014). However, the Florida Supreme Court quashed our original opinion in this case and remanded for reconsideration upon application of

its decision in State v. Floyd, 186 So. 3d 1013 (Fla. 2016). Based on that decision, we reject Helton’s argument that the jury instructions regarding the duty to retreat were fundamentally erroneous.

However, we agree that Helton’s conviction for aggravated battery was improperly reclassified from a second-degree felony to a first-degree felony under section 775.087(1), Florida Statutes (2010), based on the use of a weapon, which was an essential element of the offense. In finding Helton guilty of aggravated battery, the jury determined that in the course of committing the aggravated battery, Helton both “caused great bodily harm, permanent disability or permanent disfigurement to [the victim]” and “used a deadly weapon.” Helton’s conviction for aggravated battery under both statutory theories cannot be reclassified pursuant to section 775.087(1) because it cannot be determined that the conviction was not based on the use of a deadly weapon. Frasier v. State, 132 So. 3d 365 (Fla. 1st DCA 2014). Accordingly, we reverse and remand for resentencing of the offense as a second-degree felony.

AFFIRMED in part; REVERSED in part; and REMANDED for resentencing.

ROBERTS, JAY, and M.K. THOMAS, JJ., CONCUR.