

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

CLAUDE LEE TAYLOR,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D15-1923

[November 30, 2016]

Appeal from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Geoffrey D. Cohen, Judge; L.T. Case No. 14011770CF10A.

Carey Haughwout, Public Defender, and Mara C. Herbert, Assistant Public Defender, West Palm Beach, for appellant.

Pamela Jo Bondi, Attorney General, Tallahassee, and Luke R. Napodano, Assistant Attorney General, West Palm Beach, for appellee.

DAMOORGIAN, J.

Claude Lee Taylor appeals his conviction and sentence for one count of domestic battery by strangulation and one count of simple battery. On appeal, Appellant takes issue with an evidentiary ruling at trial, asserts that the trial court erred in denying his request for a Presentence Investigation (“PSI”) because it also found that he was a Habitual Felony Offender, and argues that his convictions violate the prohibition against double jeopardy.

We find no merit to Appellant’s evidentiary challenge and affirm without further comment. We also find that although Appellant was entitled to a PSI as a matter of statutory right, he expressly waived his right to a PSI on the record. However, the State properly concedes that Appellant’s dual convictions for simple battery and domestic battery by strangulation violate the prohibition against double jeopardy as “the elements of domestic battery by strangulation subsume the elements of simple battery, and both convictions stemmed from [A]ppellant’s single act of choking the victim.” *Pottle v. State*, 168 So. 3d 1290, 1290 (Fla. 1st DCA 2015). See

also *Thompson v. State*, 123 So. 3d 1188, 1188 (Fla. 4th DCA 2013); *Ramirez v. State*, 113 So. 3d 105, 108 (Fla. 5th DCA 2013). We therefore reverse and remand for the trial court to vacate Appellant's conviction and sentence for simple battery.

Affirmed in part, reversed in part and remanded.

LEVINE and CONNER, JJ., concur.

* * *

Not final until disposition of timely filed motion for rehearing.