

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

JANUARY TERM 2012

JEROME WESLEY,

Appellant,

v.

Case No. 5D11-861

STATE OF FLORIDA,

Appellee.

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Opinion filed January 13, 2012

Appeal from the Circuit Court
for Putnam County,
Terry Larue, Judge.

James S. Purdy, Public Defender, and
Noel A. Pelella, Assistant Public Defender,
Daytona Beach, for Appellant.

Pamela Jo Bondi, Attorney General,
Tallahassee, and Douglas T. Squire,
Assistant Attorney General, Daytona
Beach, for Appellee.

MONACO, J.

The appellant, Jerome Wesley, appeals from his convictions by jury of burglary with an assault or battery, assault, and attempted second degree murder of a law enforcement officer. We affirm in all respects save one. As the State admirably concedes, under the facts of this case because Mr. Wesley was convicted of burglary with an assault or battery, the conviction of simple assault runs afoul of the double

jeopardy provisions of the constitution. See § 775.021(4)(b)3, Fla. Stat. (2011); see also *Reeves v. State*, 57 So. 3d 874 (Fla. 5th DCA), cert. denied, 132 S.Ct. 515 (2011); *Austin v. State*, 699 So. 2d 314 (Fla. 1st DCA 1997).

Accordingly, we vacate the conviction for simple assault, and otherwise affirm the judgment and sentence.

AFFIRMED in part, REVERSED in part.

ORFINGER, C.J. and EVANDER, J., concur.