

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

JULY TERM 2011

TONY LAMONT SANDERS,

Appellant,

v.

Case No. 5D10-4366

STATE OF FLORIDA,

Appellee.

Opinion filed November 10, 2011

Appeal from the Circuit Court
for Hernando County,
Stephen Rushing, Judge.

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

Pamela Jo Bondi, Attorney General,
Tallahassee, and Ann M. Phillips,
Assistant Attorney General, Daytona
Beach, for Appellee.

PER CURIAM.

Tony Sanders was convicted of attempted burglary of a dwelling with a battery, contributing to the delinquency of a minor, and battery. On appeal, he correctly argues that double jeopardy principles preclude his convictions for both attempted burglary with a battery and battery. We reject the State's argument that both convictions should be upheld because the jury could have found that Sanders committed two separate

batteries. Where, as in the instant case, it is impossible to tell from the verdict form if the jury found that the defendant had committed two distinct batteries or only a single battery, the verdict must be read in a manner that would give the benefit of the doubt to the defendant. See *Young v. State*, 43 So. 3d 876 (Fla. 5th DCA 2010); *Partch v. State*, 43 So. 3d 758 (Fla. 1st DCA 2010); *Torna v. State*, 742 So. 2d 366 (Fla. 3d DCA 1999). Accordingly, we vacate the conviction of (simple) battery.

AFFIRMED, in part; REVERSED, in part; REMANDED.

TORPY, LAWSON and EVANDER, JJ., concur.