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IN THE SUPREME COURT OF FLORIDA

JAMES HOUSTON ROUGHTON,

Petitioner,

v. CASE NO. SC12-1719

STATE OF FLORIDA,

Respondent.
_____/

ON DISCRETIONARY REVIEW FROM
THE FIFTH DISTRICT COURT OF APPEAL

MERITS BRIEF OF RESPONDENT

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SUMMARY OF ARGUMENT

The district court correctly determined that convictions for lewd or lascivious molestation and sexual battery, arising from the same act, do not violate the prohibition against double jeopardy. Each offense contains an element that the other does not. Because they are separate statutory offenses not subject to any of the enumerated exceptions in section 775.021, Florida Statutes, Roughton's convictions for lewd or lascivious molestation and sexual battery must be affirmed.

ARGUMENT

THE DISTRICT COURT CORRECTLY DETERMINED THAT CONVICTIONS FOR LEWD AND LASCIVIOUS MOLESTATION AND SEXUAL BATTERY, ARISING FROM THE SAME ACT, DO NOT VIOLATE THE PROHIBITION AGAINST DOUBLE JEOPARDY.

Roughton was charged with and convicted of both capital sexual battery (count one) and lewd or lascivious molestation (count two), based upon his single act of placing his mouth on the penis of the seven year-old victim. The prosecutor acknowledged at sentencing that both charges were based on the same act, and did not request a sentence on count two. The prosecutor did explain, however, that if anything were to happen to count one on appeal, the State was reserving the right to seek a sentence on count two. As a result, the trial court adjudicated Roughton guilty on both counts, but imposed no sentence for count two.

On direct appeal, Roughton claimed that convictions on both counts, which arose from the same criminal act, violated his constitutional protection against double jeopardy. The district court first determined that there was no specific statement of legislative intent to separately punish both offenses when they arise form the same act,[1] so the *Blockburger*,[2] or same elements test

[1] Respondent would note, however, that the legislature has consistently expressed its intent to protect children from sexual offenses. *See* Ch. 84-86, Laws of Fla. ("the intent of the Legislature was and remains to prohibit lewd and lascivious acts upon children, including sexual intercourse and other acts defined as sexual battery, without regard either to the victim's consent or

codified in section 775.021(4)(a), Florida Statutes, was to be utilized to determine legislative intent. *Roughton v. State*, 92 So.3d 284 (Fla. 5th DCA 2012). The district court noted that Florida courts have reached differing conclusions about whether sexual battery and lewd or lascivious molestation have different elements,[3] and determined:

> Comparing the lewd or lascivious and sexual battery statutes demonstrates that their elements are different. Lewd or lascivious molestation requires a specific lewd or lascivious intent, which sexual battery does not. Admittedly, lewd or lascivious intent is often associated with sexual battery, however, it is not an element of that crime, and may be committed without the intent for sexual satisfaction. [footnote omitted] *Surace v. State,* 378 So.2d 895 (Fla. 3d DCA 1980)(holding intent to obtain sexual gratification not essential element of sexual battery); *see State v. Wiley*, 181 Vt. 300, 917 A.2d 501, 505 (2007)(distinguishing sexual assault from lewd or lascivious conduct for double jeopardy purposes based upon intent).
>
> In addition, the anatomy protected by the statute is, or may be, different. For example, touching the buttocks of a child in a lewd manner would constitute a lewd and lascivious molestation, but would not constitute a sexual battery. Instead, sexual battery requires

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the victim's prior chastity..."); and Chapter 99-201, Laws of Florida, which was entitled the "Children's Protection Act of 1999," and "creat[ed] the offenses of 'lewd or lascivious battery'; lewd or lascivious molestation'; 'lewd or lascivious conduct'; and 'lewd or lascivious exhibition',..."

[2] *Blockburger v. United States,* 284 U.S. 299, 52 S.Ct. 180, 76 L.Ed. 306 (1936).

[3] The Fourth District Court holds that the offenses of lewd and lascivious molestation and sexual battery each contain an element the other does not, while the First and Second District Courts both hold that convictions of sexual battery and lewd and lascivious molestation arising from the same criminal conduct are barred by double jeopardy. *Roughton*, 92 So.2d at 286.

> either penetration or oral, anal or vaginal union with the sexual organ of another, neither of which are elements of lewd or lascivious molestation. Further, the two offenses are not subject to any of the three exceptions set out in section 775.021(4)(b) in that they do not require identical elements of proof, are not degrees of the same offense as provided by statute, nor is one subsumed by the other. Hence, because they are separate statutory offenses not subject to any of the enumerated exceptions, convictions of lewd and lascivious molestation and sexual battery arising from the same act do not violate the prohibition against double jeopardy.

Roughton, 92 So.3d at 286-87. The court thus affirmed Roughton's convictions, but certified conflict with *Berlin v. State*, 72 So.3d 284 (Fla. 1st DCA 2011); *Smith v. State*, 41 So.3d 1041 (Fla. 1st DCA 2010); *Robinson v. State*, 919 So.2d 623 (Fla. 2d DCA 2006); and *Johnson v. State,* 913 So.2d 1291 (Fla. 2d DCA 2005).

A double jeopardy claim based on undisputed facts presents a question of law and is reviewed de novo. *Pizzo v. State,* 945 So.2d 1203, 1206 (Fla. 2006). It is well established that double jeopardy has no application where the legislature intends to impose multiple punishments for different offenses that occur during the same criminal episode. *See Valdes v. State*, 3 So.3d 1067, 1069 (Fla. 2009)("[T]here is no constitutional prohibition against multiple punishments for different offenses arising out of the same criminal transaction as long as the Legislature intends to authorize separate punishments."); *Borges v. State*, 415 So.2d 1265, 1267 (Fla. 1982)("The Double Jeopardy Clause 'presents no substantive limitation on the legislatures power to prescribe multiple punishments,' but rather, 'seeks only to prevent courts

either from allowing multiple prosecutions or from imposing multiple punishments for a single, legislatively defined offense.'")(quoting *State v. Hegstrom*, 401 So.2d 1343, 1345 (Fla. 1981)). Legislative intent is the dispositive question in determining whether double jeopardy bars separate convictions and sentences for offenses arising from a single episode. *Boler v. State*, 678 So.2d 319, 321 (Fla. 1996).

Roughton was convicted of capital sexual battery and lewd or lascivious molestation of a victim less than twelve years old. There is no specific statement by the legislature that it intended to punish these offenses separately. In the absence of a specific statement, this Court must employ the "same elements" test set forth in *Blockburger v. United States,* 284 U.S. 299, 52 S.Ct. 180, 76 L.Ed 306 (1932). That test, codified in section 775.021(4)(a), Florida Statutes, mandates that:

> Whoever, in the course of one criminal transaction or episode, commits an act or acts which constitute one or more separate criminal offenses, upon conviction shall be sentenced separately for each criminal offense...For the purposes of this subsection, offenses are separate if each offense requires proof of an element that the other does not, without regard to the accusatory pleading or the proof adduced at trial.

Applying this straightforward test, this Court can easily conclude, as did the Fourth and Fifth District Courts, that sexual battery and lewd or lascivious molestation each contain an element that the other does not. *See Darville v. State*, 995 So.2d 1025, 1027 (Fla. 4th DCA 2008)("We have no difficulty in ascertaining that the lewd

and lascivious molestation offense contains an element not found in the sexual battery conviction, and vice versa."); *Roughton*, 92 So.3d at 286-87 (lewd or lascivious molestation requires a specific lewd or lascivious intent, which sexual battery does not, and sexual battery requires either penetration or oral, anal, vaginal union with the sexual organ of another, neither of which are elements of lewd or lascivious molestation).

Sexual battery is defined as:

> ...oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object; however, sexual battery does not include an act done for a bona fide medical purpose.

§ 794.011(h), Fla. Stat. (2009). In contrast, lewd or lascivious molestation occurs when a person:

> ...intentionally touches in a lewd or lascivious manner the breasts, genitals, genital area, or buttocks, or the clothing covering them, of a person less than 16 years of age, or forces or entices a person under 16 years of age to so touch the perpetrator, commits lewd or lascivious molestation.

§ 800.04(5)(a), Fla. Stat. (2009). As the foregoing illustrates, and the district court below found, sexual battery contains a "penetration or union with" element that lewd or lascivious molestation does not. In turn, lewd or lascivious molestation provides for touching of the breasts and buttocks, which are body parts not implicated in a sexual battery. Moreover, lewd or lascivious molestation - as its title indicates - requires an intentional touching that is either lewd or lascivious. Lewd or

lascivious has been defined by this Court as "wicked, lustful, unchaste, licentious, or sensual intent on the part of the person doing an act." Fla. Std. Jury. Instr. (Crim) 11.10(c). This essential element of the offense is not inconsequential, *see Shaw v. State*, 2013 WL 3927681 (Fla. 3d DCA July 31, 2013)(failure to instruct on essential element, that the defendant acted in a lewd or lascivious manner, required reversal of lewd and lascivious molestation conviction), and is not contained in the crime of sexual battery.

Roughton observes that the crux of the issue is explained in Judge Altenbernd's concurring opinion in *Drawdy*: "As the cases cited by the court's opinion demonstrate, standard *Blockburger* analysis is often an unsatisfactory method to resolve double jeopardy in cases of sexual misconduct because our sense of the separateness of these crimes, or alternatively, our sense that two or more offenses are inextricably intertwined conduct is not adequately explained by a difference in the English language description of the elements of these offenses." *Drawdy v. State*, 98 So.3d 165, 172 (Fla. 2d DCA 2012) (Altenbernd, J., concurring). This does seem to be at the heart of the issue, but whether the standard *Blockburger* analysis is satisfactory or not, it is the mandatory double jeopardy analysis. And it is because neither the First nor Second District Courts have conducted a standard *Blockburger* elements comparison, they were able to conclude that

convictions for sexual battery and lewd or lascivious molestation violate double jeopardy. Rather than comparing elements, those courts have focused on the specific acts committed in the cases before them, with no further analysis.

In *Johnson v. State,* 913 So.2d 1291 (Fla. 2d DCA 2005), the State had declined to address the double jeopardy issue, and instead conceded that the lewd or lascivious conviction should be vacated due to the absence of a factual basis to support it. The court agreed with the State, then went a step further, and concluded, without analysis, that the lewd or lascivious conviction also had to be vacated because it violated double jeopardy. *Id*. at 1292. The court cited to *Tannahill v. State,* 848 So.2d 442, 444 (Fla. 4th DCA 2003); *Rios v. State,* 791 So.2d 1208, 1210 (Fla. 5th DCA 2001); and *Banks v. State,* 728 So.2d 768 (Fla. 1st DCA 1999). Significantly, those three cases all relied upon *State v. Hightower*, 509 So.2d 1078 (Fla. 1987), or cases that cited *Hightower*, which had stated, in *dicta*, that under the post-1983 and pre-1999 statutes, convictions for lewd or lascivious conduct and sexual battery were improper, because the two offense were mutually exclusive. There was no double jeopardy issue in that case.

A year after *Johnson*, the Second District again addressed the issue, and again held that one act could not support convictions for both sexual battery and lewd or lascivious conduct, and cited to *Johnson*, *Hightower*, and *Tannahill*. *Robinson*, 919 So.2d at 624.

The court rejected the State's argument that cases interpreting the earlier statutes were not instructive, and concluded that even under the amended version of section 800.04, the two crimes of lewd or lascivious molestation and sexual battery violated double jeopardy where they were based on the same sexual act. *Id.* In addition to the court's reliance on outdated case law, noticeably absent from its opinion is any comparison of the elements of the two crimes.

As the district court below noted, the lewd or lascivious statute was substantially amended in 1999, so cases decided prior to that amendment were not particularly helpful. *Roughton*, 92 So.3d at 286 n.6. Respondent submits that this is the correct approach, because those cases are not just unhelpful, they are inapplicable. As noted earlier, the enacting language of Chapter 99-201, Laws of Florida, the "Children's Protection Act of 1999," "**created**" the offense of lewd or lascivious molestation. The Senate Staff Analysis and Economic Impact Statement for the Children's Protection Act specifically states that the bill "would break down the current criminal offenses of 'lewd, lascivious, or indecent assault or act in the presence of a child' into separate and more precisely delineated crimes." Thus, since these are new, specific offenses, the cases interpreting the old, general statute are no longer relevant.

In *Smith v. State*, 41 So.3d 1041 (Fla. 1st DCA 2010), the State apparently conceded that convictions for sexual battery and lewd or lascivious molestation violated double jeopardy, and the court agreed. While the court mentioned the *Blockburger* test, it did not strictly apply it. The court determined that lewd or lascivious molestation requires proof of an intentional touching of certain body parts, and that sexual battery requires proof of an intentional touching of those same body parts. The court then determined that since the criminal act under both section 794.011(2)(a) and section 800.04(5) was an intentional touching of the type prohibited by the respective statutes, "[u]nder the *Blockburger* test, the two charged offenses arise from a single criminal act and constitute the same offense. *Id.* at 1043. A year later, based on *Smith*, that court again reversed a lewd or lascivious molestation conviction based on a claim that convictions for that offense and sexual battery, based on the same act, violated double jeopardy. *Berlin v. State*, 72 So.2d 284 (Fla. 1st DCA 2011).

Most recently, in *Drawdy v. State,* 98 So.3d 165 (Fla. 2d DCA 2012), rev. granted 2013 WL 2477186 (Fla. January 28, 2013), the Second District Court agreed with the First District Court's reasoning in *Beahr v. State,* 992 So.2d 844 (Fla. 1st DCA 2008), "that while sexual battery includes an element not included in lewd and lascivious molestation, the converse is not true." *Id.* at 171.

The court found that the *Beahr* Court, in applying the *Blockburger* test, had "determined that sexual battery included an element not included in lewd or lascivious molestation - penetration or union - but the converse was not true; rather, 'the elements of lewd or lascivious molestation [were] subsumed by the elements of the more serious crime of sexual battery.'" *Drawdy*, 98 So.3d at 170, quoting *Beahr*, 992 So.2d at 847. Again, this analysis contains no element comparison, and totally ignores the fact that an essential element of lewd or lascivious molestation is a lewd and lascivious intent. *Shaw, supra*. Respondent thus submits that the district court below, like the Fourth District Court, correctly applied the "standard *Blockburger* analysis," and correctly determined that each offense contains an element the other does not.

Because sexual battery and lewd or lascivious molestation each contain an element the other does not, the next step in the double jeopardy analysis would be to determine whether any of the statutory exceptions apply. The district court found that the two offenses are not subject to any of the three exceptions set out in section 775.021(4)(b) in that they do not requires identical elements of proof, they are not degrees of the same offense as provided by statute, nor is one subsumed by the other. Roughton does not challenge any of these findings. Based on the foregoing, Roughton's convictions for lewd or lascivious molestation and

sexual battery arising from the same act do not violate the prohibition against double jeopardy.

CONCLUSION

Based on the arguments and authorities presented herein, the State requests this Court approve the decision of the Fifth District Court of Appeal.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing Merits Brief of Respondent has been furnished by email to counsel for Petitioner, Edward J. Weiss, weiss.ed@pd7.org, and appellate.efile@pd7.org, this 22nd day of August, 2013.

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the size and style of type used in this brief is 12-point Courier New, in compliance with Fla. R. App. P. 9.210(a)(2).

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JAMES HOUSTON ROUGHTON,

Petitioner,

v. CASE NO. SC12-1719

STATE OF FLORIDA,

Respondent.
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ON DISCRETIONARY REVIEW FROM
THE FIFTH DISTRICT COURT OF APPEAL

APPENDIX

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92 So.3d 284, 37 Fla. L. Weekly D1662

District Court of Appeal of Florida,
Fifth District.

James ROUGHTON, Appellant,
v.
STATE of Florida, Appellee.

No. 5D11–652.

July 13, 2012.

Background: Defendant was convicted in the Circuit Court, Orange County, Bob Leblanc, J., of sexual battery on a person under twelve years of age and lewd or lascivious molestation of a victim less than twelve years of age, and he appealed.

Holding: The District Court of Appeal, Orfinger, C.J., held that defendant's convictions did not violate the prohibition against double jeopardy.

Affirmed; conflict certified.

West Headnotes

[1] KeyCite Citing References for this Headnote

135H Double Jeopardy
135HV Offenses, Elements, and Issues Foreclosed
135HV(A) In General
135Hk132 Identity of Offenses; Same Offense
135Hk134 k. Several offenses in one act; separate statutory offenses and legislative intent. Most Cited Cases

Prevailing standard for determining whether multiple convictions for offenses arising from the same criminal transaction violates double jeopardy is whether the legislature intended to authorize separate punishments for the two crimes. U.S.C.A. Const.Amend. 5.
[2] KeyCite Citing References for this Headnote

37 Assault and Battery
37II Criminal Responsibility
37II(A) Offenses
37k59 k. Indecent assault. Most Cited Cases

Although lewd or lascivious intent is often associated with sexual battery, it is not an element of that crime, and may be committed without the intent for sexual satisfaction.
[3] KeyCite Citing References for this Headnote

135H Double Jeopardy
135HV Offenses, Elements, and Issues Foreclosed
135HV(A) In General
135Hk139 Particular Offenses, Identity of

135Hk148 k. Sex offenses; obscenity. Most Cited Cases

Defendant's convictions for lewd or lascivious molestation and sexual battery, arising from the same act, did not violate the prohibition against double jeopardy; lewd or lascivious molestation required a specific lewd or lascivious intent, which sexual battery did not, and although lewd or lascivious intent was often associated with sexual battery, it was not an element of that crime, and could be committed without the intent for sexual satisfaction. U.S.C.A. Const.Amend. 5.

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ORFINGER, C.J.

James Roughton appeals his convictions for sexual battery on a person under twelve years of age and lewd or lascivious molestation of a victim less than twelve years of age. Mr. Roughton asserts that because his convictions for sexual battery and lewd or lascivious molestation arise from the same criminal act, they violate his constitutional protections against double jeopardy.[FN1] The State concedes that the convictions were based on the same act, but argues that the convictions do not violate double jeopardy. We affirm both convictions.[FN2]

FN1. Both counts of the information allege that Mr. Roughton placed his mouth on the victim's penis.

FN2. Although the trial court adjudicated Mr. Roughton guilty of lewd or lascivious molestation, it failed to impose a sentence. Withholding the sentence on one of the two convictions does not cure a double jeopardy violation. *See Bolding v. State*, 28 So.3d 956 (Fla. 1st DCA 2010).

[1] "Determining whether double jeopardy is violated based on undisputed facts is a purely legal determination, so the standard of review is de novo." *Binns v. State*, 979 So.2d 439, 441 (Fla. 4th DCA 2008). "The prevailing standard for determining the constitutionality of multiple convictions for offenses arising from the same criminal transaction is whether the Legislature 'intended to authorize separate punishments for the two crimes.' " *Valdes v. State*, 3 So.3d 1067, 1070 (Fla.2009) (quoting *M.P. v. State*, 682 So.2d 79, 81 (Fla.1996)). Absent clear legislative intent to authorize separate punishments, courts employ the *Blockburger*[FN3] "same elements" test, *i.e.,* "whether each offense has an element that the other does not," codified at section 775.021(4)(a), Florida Statutes (2008).[FN4] If each of the offenses has an element that the other does not, the court must then determine if one of the exceptions*286 set forth in section 775.021(4)(b) [FN5] applies to preclude separate convictions and sentences. *Valdes*, 3 So.3d at 1070.

FN3. *Blockburger v. United States*, 284 U.S. 299, 52 S.Ct. 180, 76 L.Ed. 306 (1932).

FN4. Section 775.021(4)(a), Florida Statutes (2008), states:

> Whoever, in the course of one criminal transaction or episode, commits an act or acts which constitute one or more separate criminal offenses, upon conviction and adjudication of guilt, shall be sentenced separately for each criminal offense; and the sentencing judge may order the sentences to be served concurrently or consecutively. For the purposes of this subsection, offenses are separate if each offense requires proof of an element that the other does not, without regard to the accusatory pleading or the proof adduced at trial.

FN5. Section 775.021(4)(b), Florida Statutes (2008), states:

> The intent of the Legislature is to convict and sentence for each criminal offense committed in the course of one criminal episode or transaction and not to allow the principle of lenity as set forth in subsection (1) to determine legislative intent. Exceptions to this rule of construction are:

1. Offenses which require identical elements of proof.

2. Offenses which are degrees of the same offense as provided by statute.

3. Offenses which are lesser offenses the statutory elements of which are subsumed by the greater offense.

Florida courts have reached differing conclusions about whether sexual battery and lewd or lascivious molestation have different elements. The Fourth District Court holds that the offenses of lewd or lascivious molestation and sexual battery each contain an element that the other does not. As a result, that court concluded that a conviction of both, arising from the same underlying act, is not a violation of double jeopardy. *See, e.g.,* *Darville v. State*, 995 So.2d 1025, 1027 (Fla. 4th DCA 2008) ("We have no difficulty in ascertaining that the lewd and lascivious molestation offense contains an element not found in the sexual battery conviction, and vice versa."). Conversely, the First and Second District Courts both hold that convictions of sexual battery and lewd or lascivious molestation arising from the same criminal act are barred by double jeopardy. *See, e.g.,* *Berlin v. State*, 72 So.3d 284, 284–85 (Fla. 1st DCA 2011); *Smith v. State*, 41 So.3d 1041, 1043 (Fla. 1st DCA 2010) ("Lewd or lascivious molestation requires proof of an intentional touching of certain body parts, and sexual battery requires proof of penetration or union with those same body parts. The criminal act under both section 794.011(2)(a) and section 800.04(5) is an intentional touching of the type prohibited by the respective statutes. Under the *Blockburger* test, the two charged offenses arise from a single criminal act and constitute the same offense."); *Robinson v. State*, 919 So.2d 623, 623 (Fla. 2d DCA 2006) (holding double jeopardy principles preclude convictions for both sexual battery and lewd or lascivious molestation based on one act); *Johnson v. State*, 913 So.2d 1291, 1291 (Fla. 2d DCA 2005).

[2] [3] Here, there is no specific statement of legislative intent to have sexual battery and lewd or lascivious molestation punished separately when the two crimes arise from a single act. However, section 775.021(4)(a) establishes the general legislative intent to punish separate offenses that arise from the same act. Thus, we must utilize the *Blockburger* "same elements" analysis. *Roberts v. State*, 39 So.3d 372, 373 (Fla. 1st DCA 2010). Comparing the lewd or lascivious and sexual battery statutes demonstrates that their elements are different. Lewd or lascivious molestation requires a specific lewd or lascivious intent, which sexual battery does not. Admittedly, lewd or lascivious intent is often associated with sexual battery, however, it is not an element of that crime, and may be committed without the intent for sexual satisfaction.[FN6] *Surace v. State*, 378 So.2d 895 (Fla. 3d DCA 1980) (holding intent to obtain sexual gratification not essential element of sexual battery); *see *287* *State v. Wiley*, 181 Vt. 300, 917 A.2d 501, 505 (2007) (distinguishing sexual assault from lewd or lascivious conduct for double jeopardy purposes based upon intent).

FN6. The lewd or lascivious statute was substantially amended in 1999. Under the previous language, the proscribed acts expressly excluded "the crime of sexual battery." *Welsh v. State*, 850 So.2d 467, 471 n. 5 (Fla.2003). Hence, cases decided prior to that amendment are not particularly helpful.

In addition, the anatomy protected by the statutes is, or may be, different. For example, touching the buttocks of a child in a lewd manner would constitute a lewd or lascivious molestation, but would not constitute a sexual battery. Instead, sexual battery requires either penetration or oral, anal or vaginal union with the sexual organ of another, neither of which are elements of lewd or lascivious molestation. Further, the two offenses are not subject to any of the three exceptions set out in section 775.021(4)(b) in that they do not require identical elements of proof, are not degrees of the same offense as provided by statute, nor is one subsumed by the other. Hence, because they are separate statutory offenses not subject to any of the enumerated exceptions, convictions of lewd or lascivious molestation and sexual battery arising from the same act do not violate the prohibition against double jeopardy.

For these reasons, we affirm Mr. Roughton's convictions. In doing so, we certify direct and express conflict with *Berlin v. State*, 72 So.3d 284 (Fla. 1st DCA 2011); *Smith v. State*, 41 So.3d 1041 (Fla. 1st DCA 2010); *Robinson v. State*, 919 So.2d 623 (Fla. 2d DCA 2006); and *Johnson v. State*, 913 So.2d 1291 (Fla. 2d DCA 2005).[FN7]

FN7. We find no merit in Mr. Roughton's *Williams* rule argument and decline to address it.

AFFIRMED; CONFLICT CERTIFIED.

PALMER and EVANDER, JJ., concur.

Fla.App. 5 Dist.,2012.
Roughton v. State
92 So.3d 284, 37 Fla. L. Weekly D1662