

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

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

THOMAS STEPHEN CERRATO,

Appellant,

v.

Case No. 5D18-1387

STATE OF FLORIDA,

Appellee.

_____ /

Opinion filed January 3, 2020

Appeal from the Circuit Court
for Osceola County,
Greg A. Tynan, Judge.

Joel Kaplan and Lisa Hanley Colon,
Miami, for Appellant.

Ashley Moody, Attorney General,
Tallahassee, and Kristen L. Davenport,
Assistant Attorney General, Daytona
Beach, for Appellee.

PER CURIAM.

Appellant was convicted, after a jury trial, of thirty-four counts of unlawful possession of materials depicting a sexual performance by a child, one count of use of a child in a sexual performance, one count of promotion of a sexual performance by a child, and two counts of lewd or lascivious molestation of a person twelve (12) years of age or older but less than sixteen (16) years of age. He raises multiple issues on appeal. The

State properly concedes that Appellant's convictions on counts twelve and thirty-eight violate double jeopardy because they concerned the same image and same charge of unlawful possession of materials depicting a sexual performance by a child and, thus, one of these two convictions must be set aside. The State further properly concedes that Appellant's conviction on count fourteen was improperly scored as a level seven (7) offense rather than as a level six (6) offense, resulting in a ten-point scoresheet error. We also agree with Appellant that the State's evidence was insufficient to support his convictions on counts nine, eleven, and twenty-eight. We affirm as to the other issues raised on appeal.

On remand, the trial court shall vacate Appellant's convictions on counts nine, eleven, twenty-eight, and either twelve or thirty-eight, and resentence Appellant pursuant to a corrected scoresheet.

AFFIRMED, in part; REVERSED, in part; and REMANDED with instructions.

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