

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D13-4977

NATHAN DYGART,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

On appeal from the Circuit Court for Leon County.
Jackie L. Fulford.

May 13, 2019

ON REMAND FROM THE FLORIDA SUPREME COURT

PER CURIAM.

This court earlier affirmed Dygart's convictions, concluding that there was no double-jeopardy violation. *See Dygart v. State*, 247 So. 3d 655 (Fla. 1st DCA 2018). The Florida Supreme Court has now quashed that decision, remanding for reconsideration based on the intervening decision in *Lee v. State*, 258 So. 3d 1297 (Fla. 2018). *See Dygart v. State*, SC18-968 (Fla. Apr. 12, 2019).

In *Lee*, the Florida Supreme Court held "that to determine whether multiple convictions of solicitation of a minor, unlawful use of a two-way communications device, and traveling after solicitation of a minor are based upon the same conduct for purposes of double jeopardy, the reviewing court may consider only the charging document." *Lee*, 258 So. 3d at 1304. Looking only at

the information in this case, we cannot conclude one way or the other whether the State based the two charged counts (one for solicitation and one for travel following solicitation) on the same solicitation. In this circumstance, *Lee* requires that we reverse the lesser conviction.

AFFIRMED in part; REVERSED in part.

WINOKUR and WINSOR, JJ., concur; MAKAR, J., concurs in result only.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Andy Thomas, Public Defender, and Kathleen Stover, Assistant Public Defender, Tallahassee, for Appellant.

Ashley Moody, Attorney General, and Giselle D. Lylen, Assistant Attorney General, Tallahassee, for Appellee.