

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D17-1520

ANTWAND HOWARD,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

On appeal from the Circuit Court for Leon County.
Angela C. Dempsey, Judge.

September 9, 2019

PER CURIAM.

Appellant was charged with, and convicted of, solicitation of a minor via computer, traveling to meet a minor, and lewd or lascivious molestation. The evidence adduced at trial established multiple separate acts within each of those three categories, but the charging document alleged only that the acts occurred within a stated time span, leaving open the possibility that they only occurred once. The verdict form did not list separate acts under any of the three counts alleged in the information. The verdict was guilty as charged.

In post-*Anders* briefing, Appellant invokes the Florida Supreme Court's decision in *Lee v. State*, 258 So. 3d 1297 (Fla.

Dec. 13, 2018), as establishing a double-jeopardy violation from his convictions for solicitation of a minor and traveling after solicitation of a minor. The supreme court held in *State v. Shelley*, 176 So. 3d 914 (Fla. 2015), that dual convictions for solicitation of a minor and traveling to meet a minor violate double jeopardy, because the traveling statute includes the language making solicitation a crime; and the court rejected as insufficient the Legislature’s attempts to make it clear that it intends for the two to constitute separate crimes. 176 So. 3d at 919. Building on *Shelley*, *Lee* requires us to “consider only the charging document” “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.” 258 So. 3d at 1299.

We are required to follow *Lee*; and thus we reverse the lesser conviction, which is the solicitation. *Id.* at 1305. On remand, the trial court should resentence for the remaining convictions. We otherwise affirm.

REVERSED and REMANDED.

RAY, C.J., and KELSEY and JAY, JJ., concur.

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

David Joffe of Joffe Law, P.A., Fort Lauderdale, for Appellant.

Ashley Moody, Attorney General; and Heather Flanagan Ross, Assistant Attorney General, Tallahassee, for Appellee.