

IN THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT, IN
AND FOR LEON COUNTY, FLORIDA

Case No. 17-CF00526

STATE OF FLORIDA,

v.

DARREL D. HARVEY,

Defendant.

_____ /

AMENDED SECOND MOTION TO DISMISS

COMES NOW the Defendant DARREL D. HARVEY, by and through his undersigned attorney, pursuant to Rule 3.190(c)(4) of the Florida Rules of Criminal Procedure, and moves this Court to dismiss the information filed against him herein on the following grounds:

1. The Defendant is charged in a three-count information with Count II charging that the Defendant did unlawfully and knowingly use a computer online service, internet service, local bulletin board service, or any other device capable of electronic data storage or transmission to seduce, solicit, lure, or entice, or attempt to do so, a child or another person believed to be a child, to commit or to otherwise engage in other unlawful sexual conduct with a child or another person believed to be a child, contrary to Section 847.0135(3)(a). Florida Statutes, Soliciting of a Minor Via Computer, a third degree felony. This Motion as to Count II. Section 847-0135 (3)(a) charges that it is

illegal for a person to knowingly use a computer online service, Internet service, local bulletin board service, or any other device capable of electronic data storage or transmission, to "seduce, solicit, lure, or entice, a child or another person believed by the person to be a child, to commit any illegal act described in Chapter 794, Chapter 800, or Chapter 827." This language is not included in the charging document. Thus, the Defendant is not being charged under these Chapters, and the charging document simply alleges "to otherwise engage in other unlawful sexual conduct with a child or another person believed to be a child."

2. The removal of reference to Chapters 794, 800 and 827, simply leaves in the charging document "other unlawful conduct." This therefore leaves a charge of some other unlawful conduct not included in the specific statutes contained in Section 847.0135 (3)(a), and does not allege specifically what sexual conduct the Defendant was using an electronic device to seduce, solicit, lure or entice, or attempt to do so, to engage in with a child. This deprives the Defendant of due process, as he does not know what specific act he is charged with trying to commit. In this case, there are insufficient allegations to apprise the Defendant as to what "other unlawful sexual conduct" he was attempting to commit. The conduct alleged does not state a crime or overt acts constituting a crime as required by statute *State v. Duke*, 709 So.2d 580 (Fla. 5th DCA 1998).

3. Count I of the Information charges that the Defendant "did unlawfully and knowingly travel any distance within this State, for the purpose of engaging in an illegal act described in Chapter 794, Chapter 800, or Chapter 827, Florida Statutes, or to otherwise engage in other unlawful sexual conduct with a child or a person believed to be a child, after using a computer online service, internet service, local bulletin board service, or any other device capable of electronic data storage or transmission to:" in the first section of the Information, tracking the language in Florida Statute 847.0135 (4); and then continues with section (a) of the Statute, to say "seduce, solicit, lure, or entice, or attempt to do so, a child or another person believed to be a child, to engage in or otherwise engage in other unlawful sexual conduct with a child or another person believed to be a child, contrary to Section 847.0135 (4)(a)), Florida Statutes".

4. The charging Information is invalid, as the Assistant State Attorney has attempted to charge the Defendant with conduct under the Statute, and in doing so, has added or changed the language of the Statute. He cannot do this as a matter of law. The State has added language to section (a) of the Statute by adding the language "or another person believed to be a child". The Statute in section (a) specifically states "seduce, solicit, lure, or entice or attempt to seduce, solicit, lure, or entice a child or another person believed by the person to be a child, to

engage in any illegal act described in Chapter 794, Chapter 800, or Chapter 827, or to otherwise engage in other unlawful conduct with a child:" The language "or another person believed to be a child" has illegally been added to the charging Information and the State is without authority to change or amend the Statute. Therefore, the Defendant's rights have been violated by being charged with an illegal or modified charge.

Consequently, Counts I and II must be dismissed.

WHEREFORE, Defendant respectfully request the charges in Count II be dismissed.


Respectfully submitted this 10th day of January, 2018.

s/ Frank E. Sheffield
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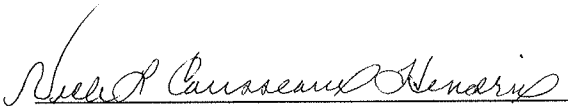
STATE OF FLORIDA
COUNTY OF LEON

BEFORE ME, the undersigned authority, this day personally appeared DARREL D. HARVEY, who is personally known to me, or who presented FDC H610-164-68-227-0 as identification, and after being duly sworn, he deposed and said that the allegations contained in the foregoing Motion to Dismiss are true and correct.

Sworn to and subscribed before me this ____ day of January, 2018.



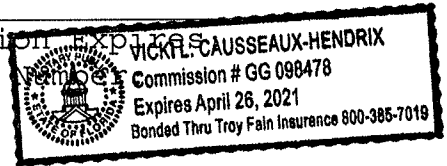
DARREL D. HARVEY



NOTARY PUBLIC

Typed Name _____
My Commission Expires _____

Commission # _____
Commission Expires _____



CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served electronically through the E-filing portal on parties listed below, this 10th day of January, 2018.

John Hutchins
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s/ Frank E. Sheffield
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