

1 you added some things in this amended second motion --

2 MR. SHEFFIELD: I did.

3 THE COURT: -- to dismiss. So we could probably go  
4 right to that.

5 MR. SHEFFIELD: Yes, sir. The, the second motion to  
6 dismiss is wholly encompassed within the amended motion,  
7 and there are additional allegations in the -- in that  
8 amended motion to dismiss. Basically, what we have said  
9 is that he's charged in the three-count information. And  
10 Count II of it charges that he unlawfully and knowingly  
11 used a computer, on-line service, et cetera, et cetera,  
12 in an attempt to seduce, solicit, lure, or entice a child  
13 or another person he believed to be a child. And that  
14 he's -- he tried to get that child to commit some sex  
15 act.

16 And in this particular case, the statute contains  
17 specific provisos where it says, described in Chapter  
18 794, Chapter 800, or Chapter 827. That language is not  
19 included in the information of this case. In fact --

20 THE COURT: In Count II, you're saying specifically,  
21 right? Because it's in Count I.

22 MR. SHEFFIELD: It's in Count I. But in Count II,  
23 it is, it is not -- so I'm making reference to Count II.

24 THE COURT: Right.

25 MR. SHEFFIELD: It is not referenced in Count II.

1 And so Count II, the charging document alleges to  
2 otherwise engage in other unlawful sexual conduct with a  
3 child or another person believed to be a child.

4 THE COURT: So you're saying that that's  
5 insufficient to --

6 MR. SHEFFIELD: I'm saying --

7 THE COURT: -- put the defendant on notice?

8 MR. SHEFFIELD: -- that that is insufficient, that  
9 it deprives the defendant the right to know exactly what  
10 he's being charged with, because what is, in fact, other  
11 sexual conduct? It, it doesn't say that -- they've  
12 eliminated sexual battery under 794. They've eliminated  
13 lewd and lascivious. They -- under 800 -- 827. So he's,  
14 he's traveling under, quote, otherwise engaged in  
15 unlawful sexual conduct, which I think violates  
16 Mr. Harvey's due process rights, because it simply does  
17 not sufficiently inform him of what he's actually having  
18 defend on.

19 And I, I would note that there is no traverse that  
20 the State has filed in this. The State attempted to file  
21 an amended information, again, late yesterday. Our  
22 position is -- and I, I went in the court file and  
23 checked the clerk's notes and everything that we have not  
24 waived speedy trial. We've never waived speedy trial.  
25 It's not in there and it reflects it. So we're past the

1 175-day period of time where the State can legally amend  
2 the information. So our position is that the attempt to  
3 amend the information is a nullity.

4 And, furthermore, it doesn't cure the problem. If  
5 you also look -- the, the language that is in the  
6 information that -- done by Mr. Hutchins adds a section,  
7 because the language of the statute specifically says, an  
8 illegal act described in Chapter 794, 800, or 827 or  
9 otherwise engaged in other unlawful conduct with a child,  
10 period. And Mr. Hutchins has added the to -- the  
11 language, or another person believed to be a child. And  
12 he can't do that. That's not, that's not what the  
13 statute says. The statute is very specific in its  
14 language. And, and we feel like that that is defective.

15 So the basis of my second amended motion is that the  
16 information itself is defected. It deprives Mr. Harvey  
17 of his due process rights. It also attempts to charge  
18 him with some kind of activity that, that we have no  
19 idea. So he doesn't know what he's charged with. He  
20 hasn't been charged with, with a formal crime under the  
21 statute. And Mr. Hutchins has taken a poetic license to  
22 add language to the charges that is not authorized under  
23 law. So we feel like that it's well taken and it hasn't  
24 been traversed.

25 THE COURT: All right. So, Mr. Hutchins, first of  
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1 all, in regards to Count II, there's language that says  
2 other unlawful sexual conduct but it doesn't  
3 specifically --

4 MR. HUTCHINS: We would --

5 THE COURT: -- as in Count I, point to Chapter 794,  
6 Chapter 800, or Chapter 827 to put the defendant on  
7 notice as to what type of conduct.

8 MR. SHEFFIELD: And there, there was an amended  
9 information that includes those, those statutes now.

10 THE COURT: All right. That was filed --

11 MR. HUTCHINS: Yesterday morning.

12 THE COURT: Okay. And so --

13 THE CLERK: I do have it. They just have not made  
14 it to the file yet.

15 THE COURT: All right. Great. All right.

16 MR. HUTCHINS: So it includes that language now.  
17 May I just respond to a couple of Mr. Sheffield's  
18 arguments while the Court is doing a review on that?

19 The defendant in this case was arrested on February  
20 the 12th of 2017. We are clearly outside of the time for  
21 speedy. There was a waiver of speedy in this case,  
22 Judge. That's --

23 THE COURT: Where -- when was it? Do you know?

24 MR. HUTCHINS: Well, the case is set for trial  
25 outside of speedy, Judge. That constitutes a waiver of

1 speedy.

2 THE COURT: Okay. Well, let me -- Mr. Sheffield.

3 MR. SHEFFIELD: Defendant's waiver of speedy trial  
4 can't be inferred by fact that he didn't say anything  
5 when it got set outside of the speedy trial time. So  
6 there has to be a specific waiver and there hasn't been.

7 THE COURT: Well, I mean, I don't remember a  
8 specific waiver. And I went back and looked at the Court  
9 sheets, and I don't have anything written down where it  
10 says, speedy trial is waived. However, we did set it  
11 outside of, of the speedy trial time period. And, and I  
12 know that we had several conversations about it that  
13 we're setting it for trial, and we had acquiescence by  
14 the defendant and his counsel in regards to that. Is  
15 that -- you're saying that --

16 MR. HUTCHINS: That, that constitutes --

17 THE COURT: -- an implicit speedy --

18 MR. HUTCHINS: -- a waiver, Judge. If a defendant  
19 has not specifically set a -- set the case in the 175  
20 days, if the case is continued outside of that, then  
21 there's a waiver of speedy trial. Otherwise, I mean, if  
22 you follow the logic, then, Judge, the case can go for  
23 two or three years, and the defendant can say, well, I  
24 never specifically waived speedy. Clearly, the statute  
25 says 175 days. Anything outside of that constitutes a

1 waiver.

2 MR. SHEFFIELD: He never specifically waived, Judge.  
3 And, and the law is, is that mere acquiescence to it  
4 being set outside the speedy trial time frame is not a  
5 waiver of speedy trial. Mr. Harvey never waived speedy  
6 trial, nor did I. So I, I -- that's, of course, one of  
7 the reasons we have the other motion that we've, that  
8 we've set that -- asking for a speedy trial. So --

9 THE COURT: All right. well, let's address --

10 MR. SHEFFIELD: -- our position --

11 THE COURT: -- let's -- I understand your position.

12 Let me, let me address --

13 MR. SHEFFIELD: Okay.

14 THE COURT: -- speedy and ju -- I'll give you  
15 another opportunity to speak on that. But let's -- so  
16 let's go back to the amended information now, because we  
17 got off on speedy.

18 But do you have any other argument in regards to the  
19 amended information? What about the argument in regards  
20 to -- that the count should not contain this additional  
21 language, unlawful sexual conduct with a child or another  
22 person believed to be a child?

23 MR. HUTCHINS: Judge, I'm sorry. I don't have my  
24 statute book down here with me. Clearly, for us to be  
25 able to use the statute for these types of laws, we're

1 not talking about children being used. We're talking  
2 about adults that are posing as children. Mr. Sheffield,  
3 in his own arguments to the Court a few minutes ago, made  
4 the argument that the defendant thought that this person  
5 was someone who was 14 years old.

6 THE COURT: I mean, wouldn't the defense -- if this  
7 language wasn't in the information, wouldn't the defense  
8 be making the exact opposite argument, that they weren't  
9 on notice, that --

10 MR. HUTCHINS: Yes, Your Honor. That is our  
11 position.

12 THE COURT: -- that, that this was another person  
13 believed to be a child; and, therefore, that the  
14 information is defective? I mean, it can work both ways,  
15 right?

16 MR. HUTCHINS: It -- absolutely.

17 THE COURT: what about that, Mr. Sheffield? I mean,  
18 if that language wasn't in there, wouldn't you be here  
19 arguing the fact that, that this was another person  
20 believed to be a child, and that's not specifically  
21 alleged in the information, and so the defendant's not on  
22 notice?

23 MR. SHEFFIELD: We're, we're arguing that, that it  
24 wasn't a child, Judge. And, certainly, the, the fact of  
25 whatever Mr. Harvey believed is, is not part of this

1 statute. So that language should not be there. And,  
2 consequently, by inserting language that is an attempt to  
3 charge him with a -- with an illegal act, I mean, it,  
4 it -- it's defective. You can't just -- Mr. Hutchins  
5 just can't argue and put into an information whatever he  
6 wants. It has to comply with the law and it doesn't. So  
7 our position is it should be dismissed.

8 MR. HUTCHINS: And, and the purpose of the  
9 information, Judge, is to put the defendant on notice for  
10 what the State's allegations against him are. And that's  
11 clearly what we've done here, to let them know that,  
12 yeah, this is what you're being charged with. And based  
13 on that, Judge, we'd ask the Court deny defense's motion.

14 THE COURT: All right. The motion's denied. I'm  
15 finding that the, the information is sufficient based on  
16 this amended information that was filed yesterday. I'm  
17 also going to find that there's been no prejudice to the  
18 defendant. I mean, this defendant was on notice of the  
19 type of sexual conduct, even by virtue of the fact of  
20 what's contained in Count I, and those chapters are  
21 specifically there in Count I. And these two counts  
22 generally run together; we see them often at the same  
23 time.

24 And I'm not going to find that there's any prejudice  
25 just simply because there wasn't any Chapter 794, Chapter



1 800, or Chapter 827 specifically stated. But that's been  
2 corrected at this point. And, and any additional  
3 language is simply just to put the defendant on notice.  
4 The motion's denied.

5 All right. Now in regards to speedy trial. We have  
6 to make a determination as to when we need to set this.  
7 If the State is, is arguing and is stating that speedy  
8 trial has been waived, then, I mean, certainly, we have a  
9 different time period that we're dealing with. But, I  
10 mean, we have time next week where we could get this set  
11 on the trial calendar.

12 And I know that you might have issues with some of  
13 your witness, but that would solve any problem, because  
14 then we would be within the, the time period of any time  
15 period. And that would be required under the rules,  
16 regardless of my ruling, and we can get it set for trial  
17 next week. I've got two days. I've got Wednesday and  
18 Friday.

19 MR. HUTCHINS: And, Judge, obviously, I don't want  
20 to commit and say that I can do it next week. We  
21 obviously don't have subpoenas out for this case for next  
22 week. We have subpoenas out for the week of the 19th of,  
23 of February. We, we have one of our -- our chatter,  
24 probably one of our most important officers does not live  
25 here. She's an officer from Daytona Beach. I don't know

1 what her schedule is, and I don't want to stand here and  
2 tell the Court that I will be able to do this next week.

3 The officers that are involved are involved in  
4 several different agencies. We have an officer from  
5 wakulla. We have an officer from our state attorney's  
6 office, one from TPD, from the Sheriff's Department.  
7 Again, I don't know what these officers' --

8 THE COURT: Well, I understand.

9 MR. SHEFFIELD: -- schedules are.

10 THE COURT: I just don't want to get into the  
11 situation where I make a ruling that speedy's been waived  
12 and we set it farther out. And then, and then we have an  
13 appellate issue for that and if we -- and if the  
14 appellate court determines otherwise.

15 MR. HUTCHINS: Well, I, I think the Court, I think  
16 the Court needs to make a determination as to whether  
17 there's been a waiver of speedy and I -- because then I  
18 think that determines how we proceed from there. Our  
19 position is, Judge, that, you know, once you move the  
20 case outside the 175 days, it constitutes a waiver of  
21 speedy.

22 I mean, here we are -- this case is almost a year  
23 old. He was arrested on February the 12th. You can't  
24 come in after a year and say, well, we never waived  
25 speedy trial. We never specifically -- I mean, if the

1 case goes outside 175 days, the case law is clear that  
2 that constitutes a speedy trial.

3 So it -- our position is, obviously, there has been  
4 a waiver because the case has not been -- this is the  
5 first time, I believe, the case has been set for trial.  
6 And it has been set for trial for the week of February  
7 the 19th. That is -- no. I, I misspoke. I think it was  
8 set for trial in --

9 THE COURT: We had it set for trial --

10 MR. HUTCHINS: -- January.

11 THE COURT: -- at one other time.

12 MR. HUTCHINS: We had it set for trial in January.  
13 Again -- but that's going to be outside the time that --  
14 that's going to be outside of speedy. So, you know,  
15 obviously, our position is there has been a waiver of  
16 speedy, and the Court should treat this like a demand for  
17 speedy. We're -- obviously, we're looking at a 45-day  
18 time period. And that's, that's our position.

19 THE COURT: All right. Mr. Sheffield.

20 MR. SHEFFIELD: Judge, we're ready. We can try it  
21 next week. The reason this case got pushed at all is  
22 because of actions by the State. We, we had a tremendous  
23 amount of problem taking the deposition of the detective  
24 in this case, because I subpoenaed the witnesses. And  
25 first thing that I get is, is a call from the Assistant

1 United States Attorney in Arlington, Virginia telling me  
2 that the witnesses are not going to show up, because they  
3 were all sworn in as special agents with the, the  
4 Sheriff's -- the Marshals Department. So they, they  
5 would not show.

6 We set it up for another day and I, I finally got  
7 clearance from Arlington that they would let them show.  
8 They didn't show. We set it up for another day, and, and  
9 we -- ended up that the detective that's the main witness  
10 in this case was going to be up for the Chmielewski trial  
11 in front of Judge Walker, over in federal court. And she  
12 didn't show. And so I didn't get my -- I set -- my  
13 deposition, again, it didn't occur. I set it again and,  
14 and, finally, I had to end up going to Judge Walker over  
15 in the -- in US District Court in the Northern District  
16 and get him to enter an order directing this witness to  
17 show up for deposition.

18 None of that is our fault. We were ready to go.  
19 All we needed was one deposition. So the fact that this  
20 case got pushed is squarely on the feet of the State. We  
21 have never waived speedy trial. We've been pushing this  
22 case to get it to trial as quickly as we possibly can.

23 And I'm sitting here right to now -- if you recall,  
24 the last time we had case management, a whole group of my  
25 people from FDLE showed up and say, oh, Judge, we have

1 discovery we haven't produced. We're going to produce  
2 it. We're going to get together with Mr. Sheffield. I  
3 still don't have it. I've got nothing.

4 MR. HUTCHINS: I think it was Judge Flury who was  
5 covering for him that day.

6 MR. SHEFFIELD: Well, Judge -- and Judge Flury was  
7 sitting in for you.

8 THE COURT: Right.

9 MR. SHEFFIELD: But they showed up, and I still  
10 don't have that discovery. But, but we are ready to go  
11 to trial. We can try this case next week. It's a  
12 Tallahassee case. These people all managed to get up  
13 here when it was time for them to make these arrests. It  
14 simply appears that they don't want to come up here any  
15 other time for depositions or for trial. So we're ready  
16 to go. We haven't waived speedy trial.

17 THE COURT: All right. I'm going to find that  
18 speedy trial has been waived based on our previous  
19 conversations in regards to setting the trial outside of  
20 the 175-day time period and the defense's acquiescence to  
21 that. I will say -- and I acknowledge from Mr. Sheffield  
22 I don't have any specific notation in the file where --  
23 that -- where counsel said, specifically, that speedy  
24 trial is waived. However, based on the actions and the  
25 setting of the trial, I'm going to find that it has been