

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

STATE OF FLORIDA,

CASE NO.: 2017 CF 526

vs.

DARREL HARVEY,
Defendant.

ORDER DENYING MOTION TO CORRECT ILLEGAL SENTENCE

THIS CAUSE came before the Court upon Defendant's Motion to Correct Illegal Sentence, filed on January 25, 2023. The Court having considered the Motion, having reviewed the record, and being otherwise fully advised hereby finds as follows:

Defendant alleges the information in his case is defective because Count 1 does not "allege what illegal sexual activity proscribed by law the Defendant attempted to commit." *Defendant's Motion* at 6. However, the amended information for Count 1 cites to section 847.0135(4). *Attach. A*. Specifically, it charged Defendant with:

unlawfully and knowingly travel[ing] 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 seduce, solicit, lure, or entice, or attempt to do so, a child or another person believed to be a child, to engage in 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(4)(a), Florida Statutes.

Attach. A. Similarly, section 847.0135(4) provides:

TRAVELING TO MEET A MINOR.- Any person who travels any distance either within this state, to this state, or from this state by any means, who attempts to do so, or who causes another to do so or to attempt to do so for the purpose of engaging in any illegal act described in chapter 794, chapter 800, or chapter 827, or to otherwise engage in other unlawful sexual conduct with a child or with another person believed by the person 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:

(a) 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 sexual conduct with a child[.]

Thus, the four essential elements are:

(1) knowingly traveling within this state; (2) for the purpose of engaging in any illegal act (in violation of chapters 794, 800, or 827, or other unlawful sexual conduct) with the victim after using a computer or other electronic data storage transmission to contact a child, (3) the victim was a child or person believed by the defendant to be a child, and (4) the defendant seduced, solicited, lured, enticed or attempted to do so to engage in the illegal act or unlawful sexual conduct.

Hartley v. State, 129 So. 3d 486, 491 (Fla. 4th DCA 2014). Clearly, the amended information omits no essential elements.

Additionally, “Florida courts have consistently held that when an information cites a specific statute, the defendant is put on notice that he is charged with each of the elements of the offense contained in that statute.” *Calloway v. State*, 37 So. 3d 891, 894 (Fla. 1st DCA 2010). When the information cited the specific subsection for the unlawful conduct, the Defendant was placed on notice of each essential element of the offense and could be convicted “of any of the crimes listed in that specific section of the criminal code.” *See Id.* (finding citing section 784.045 was “sufficient notice that [the defendant] could be convicted of any of the crimes listed in that specific section of the criminal code”); *see also Richards v. State*, 43 Fla. L. Weekly D 239 at 6-7 (Fla. 2d DCA 2018) (“Where the charging document ‘references a specific section of the criminal code which sufficiently details all the elements of the offense,’ it may place the defendant “on adequate notice of the crime being charged.”); *DuBoise v. State*, 520 So. 2d 260, 265 (Fla. 1988).

Because the State cited the specific statute, the Court is not “of the opinion that the . . . information [was] so vague, indistinct, and indefinite as to [have misled] the accused and embarrass him . . . in the preparation of a defense or expose the accused after conviction . . . to substantial danger of a new prosecution for the same offense.” Fla. R. Crim. P. 3.140(o); *Price v. State*, 995 So. 2d 401, 405 (Fla. 2008). Thus, no new trial may be granted for the defect in this information. *Id.* Ground 1 is denied.

This Court previously warned Defendant of the consequences for launching a flurry of collateral attacks against his judgment and sentence. This Court explained it would not tolerate continued abuses of the postconviction process. Defendant did not heed this Court’s warning. Nor

did he heed the First District Court of Appeal's warning. *Harvey v. State*, 2023 WL 380348 at *1 (Fla. 1st DCA 2023). Instead, Defendant recreates a Motion originally filed in a different case, that charged a different offense, for a different defendant, and claims this Motion is not frivolous because the Honorable Francis Allman issued an Order to Show Cause in that separate case (Case No. 2009 CF 1060A).¹ Now, the Court will be issuing an Order to Show Cause of its own. In a contemporaneous Order, Defendant shall be ordered to show cause why he should not be barred from further pro se filings.

It is therefore,

ORDERED AND ADJUDGED that Defendant's Motion to Correct Illegal Sentence is hereby **DENIED**. Defendant has **30 days from the date this Order is rendered** in which to file a notice of appeal.

DONE AND ORDERED in Chambers in Tallahassee, Leon County, Florida this 17th day of February 2023.



STEPHEN EVERETT
CIRCUIT JUDGE

Copies to:

Office of the State Attorney; SAO2@leon77.leoncountyfl.gov

Darrel Harvey, DC# 503334
5227 Gum Trail Road
Tallahassee, FL 32304

¹ That Motion was eventually denied, and the denial was affirmed on appeal. *State v. Spencer*, 350 So. 3d 334 (Fla. 1st DCA 2022).

Attachment A

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

STATE OF FLORIDA

CASE NO. 17CF00526

vs.

SPN 248919

****AMENDED****

Darrel D. Harvey

B/M, 06/27/1968

SSN 264-91-5180

Defendant(s).

****INFORMATION****

2018 FEB 13 PM 3:23
GIVEN MARSHALL
CLERK & COMPTROLLER
LEON COUNTY, FLORIDA

FILED

INFORMATION FOR:

- Count I TRAVELING TO MEET A MINOR (F2)(ref. #6332)
- Count II SOLICITING A CHILD FOR UNLAWFUL SEXUAL CONDUCT USING
COMPUTER SERVICE OR ELECTRONIC DEVICE (F3) (ref. #6338)
- Count III TAMPERING WITH PHYSICAL EVIDENCE (F3) (ref. #3801)

IN THE NAME OF AND BY THE AUTHORITY OF THE STATE OF FLORIDA:

JACK CAMPBELL, State Attorney for the Second Judicial Circuit of the State of Florida, charges that in LEON County, Florida, the above-named defendant(s):

COUNT I: On February 12, 2017, 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 seduce, solicit, lure, or entice, or attempt to do so, a child or another person believed to be a child, to engage in 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(4)(a), Florida Statutes.

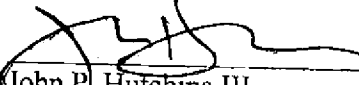
COUNT II: On February 12, 2017, did knowingly use a computer online service, internet service, local bulletin board service, or any device capable of electronic data storage or transmission to seduce, solicit, lure, or entice or attempt to seduce, solicit, lure, or entice a child or another person believed to be a child, to commit or to otherwise engage in any illegal act described in Chapter 794, Chapter 800, or Chapter 827, Florida Statutes, or to otherwise engage in any unlawful sexual conduct with a child or another person believed to be a child, contrary to Section 847.0135(3)(a), Florida Statutes.



COUNT III: On February 12, 2017, did unlawfully alter, destroy, conceal, or remove items of evidentiary value from his cellphone when law enforcement contacted him, with the purpose of impairing its verity or availability, knowing that a criminal trial, proceeding, or an investigation by a law enforcement agency was pending or about to be instituted, contrary to Section 918.13, Florida Statutes.

STATE OF FLORIDA
COUNTY OF LEON

JACK CAMPBELL, STATE ATTORNEY
SECOND JUDICIAL CIRCUIT



John P. Hutchins III
Designated Assistant State Attorney

The foregoing instrument was acknowledged before me on February 13, 2018, by John P. Hutchins III, Designated Assistant State Attorney by Jack Campbell, State Attorney for the Second Judicial Circuit of the State of Florida, who is known to me and did take an oath stating good faith in instituting the prosecution and certifying that testimony was received under oath from the material witness or witnesses for the offense pursuant to F.R.Cr.P. 3.140(g).



NOTARY PUBLIC

