Filing # 35354754 E-Filed 12/09/2015 03:53:15 PM

RECEIVED, 12/09/2015 03:53:38 PM, Clerk, Supreme Court

IN THE SUPREME COURT OF FLORIDA

MARK CHRISTIE GRIFFIS,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

_____/

CASE NO. SC14-713
1st DCA Case No. 1D13-1640
L.T. No. 03-2012-CF-1951

PETITIONER GRIFFIS' REPLY

Petitioner, MARK GRIFFIS, by and through his undersigned counsel, timely files his Reply to the State's Response, in accordance with this Court's scheduling order of November 5, 2015. As grounds, the Petitioner states:

1. In State v. Shelley, 176 So.3d 914 (Fla. 2015), this Court determined that double jeopardy principles prohibit separate convictions for solicitation [Fla. Stat. s. 847.0135(3)(b)] and traveling [Fla. Stat. s. 847.0135(4)(b)] because the statutory elements of solicitation are entirely subsumed by the statutory elements of traveling after solicitation. Consequently, the offenses are the same for purposes of the Blockburger same-elements test codified at Fla. Stat. s. 775.021(4).

2. In the case sub judice, the State argues Shelley, Id., is not controlling because Mr. Griffis' acts "…occurred in two separate and distinct acts." The State's Reply observes the information charged Griffis with committing both

offenses between June 14, 2012 and June 15, 2012. It also notes there was record evidence Griffis sent, inter alia, eight (8) e-mails on the first day and one (1) e-mail on the second day. While not dispositive, it warrants mention that in its Answer Brief before the First District Court of Appeal, the State had previously indicated the events in both counts occurred on the same day. (Answer Brief in 1D13-1640, pg. 23).

3. More significantly, Griffis was charged with a single count of solicitation of a minor by knowing use of a computer or electronic device [Fla. Stat. s. 847.0135(3) (2012)], and a single count of traveling to meet a minor after using a computer or electronic device to solicit the minor [Fla. Stat. s. 847.0135(4) (2012)]. The information alleged each offense occurred "on or between June 14, 2012 and June 15, 2012." Neither the charging instrument nor the jury verdict form included any language predicating the disputed charges on two distinct acts. Since the State clearly charged the offenses as occurring during a single criminal episode, there is no merit to its argument that there is no double jeopardy violation because the evidence could support conviction for each offense as occurring during separate criminal episodes. Where, as here, the State has charged the offenses as occurring during a single criminal episode, a reviewing court should not assume the offenses were predicated on distinct acts. See, Mizner v. State, 154

So.3d 391, 400 (Fla. 2d DCA 2014); Partch v. State, 43 So.3d 758, 761-762 (Fla. 1st DCA 2010).

4. Given that the State charged Mr. Griffis with only one use of computer devices to solicit based on conduct that occurred in the same charged timeframe as the travel offense,--his dual convictions for solicitation, i.e., unlawful use of a computer service, and traveling, violate double jeopardy notwithstanding the State's argument that there was evidence reflecting separate uses of computer devices. The very argument the State is making in its Response has been considered and rejected in Shelley v. State, 134 So.3d 1138, 1141-1142 (Fla. 2d DCA 2014), affirmed, State v. Shelley, 176 So.3d 914 (Fla. 2015); and in Mizner v. State, supra at 399-400.

WHEREFORE, Petitioner Griffis requests this Court to exercise jurisdiction in the case, summarily quash the decision under review, and remand with instruction that his conviction and sentence for unlawful use of a computer service be vacated in light of State v. Shelley, supra.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished via the Florida Courts E-Filing Portal to Brittany A. Rhodaback, Office of the Attorney General, at crimapptlh@myfloridalegal.com, and by U.S. Mail to Mr. Mark Christie Griffis, DOC# Q27892, Blackwater River Correctional Facility, 5914 Jeff Ates Rd., Milton, FL 32583, on this date, December 9, 2015.

Respectfully submitted,

NANCY A. DANIELS
PUBLIC DEFENDER
SECOND JUDICIAL CIRCUIT

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