

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

DUSTIN ELSBERRY,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

CASE NO. 1D12-6093

Opinion filed October 26, 2016.

An appeal from the Circuit Court for Leon County.
James C. Hankinson, Judge.

Nancy A. Daniels, Public Defender, and Megan Long, Assistant Public Defender,
Tallahassee, for Appellant.

Pamela Jo Bondi, Attorney General, and Angela R. Hensel, Assistant Attorney
General, Tallahassee, for Appellee.

PER CURIAM

This court previously affirmed appellant's convictions and sentences for both use of a computer service to solicit a person believed to be a child to engage in unlawful sexual conduct in violation of section 847.0135(3)(a), Florida Statutes (2011), and for thereafter traveling to meet a person believed to be a child in

violation of section 847.0135(4)(a), Fla. Stat. (2011). See Elsberry v. State, 130 So. 3d 798 (Fla. 1st DCA 2014). After issuance of that opinion, the Florida Supreme Court ruled that double jeopardy principles prohibit separate convictions for solicitation and traveling based on the same conduct. State v. Shelley, 176 So. 3d 914, 919 (Fla. 2015), reh'g denied (Oct. 9, 2015).

In light of Shelley, the Florida Supreme Court quashed our opinion in Elsberry. See Elsberry v. State, No. SC14-322 (Fla. Apr. 27, 2016). Therefore, in accordance with the mandate from the supreme court, this cause is remanded to the trial court with instructions to vacate appellant's conviction and sentence for the lesser-included offense of solicitation as prohibited by section 847.0135(3)(a).

REMANDED with instructions.

WOLF, BILBREY, and WINOKUR, JJ., CONCUR.