FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D2025-1776

HARLIN RICHARD CROWLEY,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

On appeal from the Circuit Court for Bay County.
Dustin Stephenson, Judge.

October 28, 2026

NEFF, J.

Harlin Richard Crowley appeals his judgments and sentences following a jury trial at which he was convicted of three counts of sexual battery on a person less than twelve years of age, seven counts of lewd or lascivious molestation, and fourteen counts of promoting a sexual performance by a child. All of these charges arose from video and photographic evidence depicting his sexual abuse of the victim over a period spanning August 2021 to November 2023. The trial court sentenced Crowley to ten consecutive life sentences on the battery and molestation counts, followed by consecutive terms of sex offender probation on the remaining counts. Crowley raises four grounds on appeal: (1) that the evidence was insufficient to support his convictions on counts XXI, XXII, and XXIV (each for promoting a sexual performance by

a child); (2) that the trial court erred in denying his motion to depose the minor victim; (3) that several of his convictions, charged in identical language under the same statutes and covering overlapping timeframes, violate the constitutional prohibition against double jeopardy; and (4) that the trial court abused its discretion in admitting certain rebuttal evidence.

We reverse as to counts XXI and XXIV because the State's evidence connecting Crowley to the specific exhibits underlying those counts is insufficient to uphold the convictions. We affirm as to count XXII and as to the remaining grounds. Grounds two and four require no discussion. We write to explain the deficiencies with counts XXI and XXIV and to discuss whether the double jeopardy analysis in *Lee v. State*, 258 So. 3d 1297 (Fla. 2018), applies to this case.

I. Sufficiency of the Evidence

We review Crowley's preserved sufficiency claim de novo, reviewing the trial record to ensure that the guilty verdict is supported by competent, substantial evidence regarding each element of the charged crime. *Bush v. State*, 295 So. 3d 179, 200 (Fla. 2020); *Rodriguez v. State*, 335 So. 3d 168, 171 (Fla. 3d DCA 2021). Impermissible pyramiding of inferences occurs where at least two inferences regarding the existence of a criminal act must be drawn from the evidence and then stacked to prove the crime charged. *Garcia v. State*, 373 So. 3d 1213, 1233 (Fla. 3d DCA 2023). Such stacking of inferences lacks the conclusive nature to support a conviction. *Id.* However, where the State's evidence is not pyramided, but can be put together like pieces of a puzzle, such evidence does not run afoul of this prohibition and is sufficient for the jury to arrive at a conclusion of guilt. *Id.* A jury may not draw an inference from an inference rather than from the evidence presented by the parties. Where it does, the evidence is insufficient to support a conviction. *State v. Perez Franco*, 432 So. 3d 1165, 1170 (Fla. 1st DCA 2026).

To convict on count XXI, promoting a sexual performance by a child, the jury found that Crowley produced, directed, or promoted the charged performance. Count XXI rested on a cached image from a shared Moto G Pure cellphone. The record showed

only that the image was last viewed—that is, cached to the device—on May 22, 2024, the day of Crowley's arrest. However, the users of the phone alternated. Briana Yon possessed the phone when she was arrested. The phone contained information associated with Yon as well as Crowley's Facebook login. The State did not establish who operated the phone when the image was last viewed or who initially created the image. It was also not clear who was depicted in the image, though a digital forensic analyst testified that, based on her experience, the person depicted appeared to be a child.

The jury thus had to infer from Crowley's access that he used the phone at the relevant time. From that assumption, the jury had to infer that he personally viewed the image and caused it to be cached. The jury also had to infer that Crowley, rather than someone else, had created or obtained the image in the first place—an inference the record does not independently support. The jury separately had to infer that the person in the photo was a child and was the named victim. And from these independent inferential chains, the jury found that Crowley produced, directed, or promoted the charged performance. Too many inferences, each lacking independent support, had to be stacked for the jury to reach the conclusion it did based on the evidence given and the specific crime charged. Under *Perez Franco* and *Garcia*, this stacked chain of inferences is insufficient to support count XXI.

Turning to count XXIV, the image associated with this count was a screenshot created on the Moto G Pure cellphone on November 11, 2023. The screenshot itself, which the jury examined as part of Exhibit 24, shows a FaceTime-style video call with two frames. In the upper frame of the call, the victim is shown pulling her shirt up with her breasts exposed. In the lower frame, Briana Yon is depicted as the other person on the video call. Crowley is not depicted in this screenshot.

To convict Crowley on count XXIV, the jury had to infer from Crowley's general access to the phone that he, rather than Yon, was the one using it at the moment the screenshot was created. Nothing in the exhibit or elsewhere in the record indicates that Crowley was a party to the video call the exhibit depicts. Nor is there any evidence that suggests he created the screenshot.

Despite this absence of evidence, the jury found that Crowley produced, directed, or promoted the charged performance. The record lacks competent, substantial evidence that Crowley had anything to do with producing, directing, or promoting this particular screenshot.

However, as to count XXII, we find that the State presented sufficient evidence, viewed in the light most favorable to the State, to support the conviction. The image associated with count XXII was uploaded to Crowley's Google account, showed the victim being sexually abused, had GPS data associated with it that placed it within 300 feet of a residence in which Crowley lived, and contained a specific feature—wood paneling—that correlated with other pictures linked to Crowley. Also, the phone from which the image came was an LGE LMK 500 cellphone, a phone from which came another photo specifically linked to Crowley. Thus, three independently established facts converge without any of them depending on an unproven prior inference: (1) the file was in Crowley's own personal email account—not on a device he merely had access to, but one accessed with his own credentials; (2) the GPS metadata objectively matches his own admitted residence, corroborated by his own testimony; (3) the device itself is independently associated with Crowley through another exhibit, which shows his bracelets and his hands directly on the victim. The final inferential step, that Crowley took this photo, is a single step drawn from three converging, independently corroborated facts, unlike the inferential chain required for count XXI's shared Moto G Pure cellphone.

Accordingly, counts XXI and XXIV lack sufficient evidence to support a conviction, while there is sufficient evidence to support a conviction on count XXII.

II. Double Jeopardy

Crowley contends that his convictions for counts III, VI, IX, XI through XX, XXII, and XXIII violate the prohibition against double jeopardy. He bases this assertion on the fact that the amended information charged these counts in conjunction with other counts that, based on the words of the amended information alone, are for the same crimes on the same dates. Crowley argues that "it is

impossible to know whether the jury convicted the defendant of both crimes based upon the same act." He supports this argument with citation to *Lee*, 258 So. 3d 1297, and this court's decision in *Hooks v. State*, 297 So. 3d 696 (Fla. 1st DCA 2020), which followed the Florida Supreme Court's holding in *Lee*.

Florida law is unsettled on a narrow but recurring double jeopardy question: when a defendant is convicted multiple times under the same criminal statute, based on counts charged in identical language and overlapping timeframes, may a reviewing court look to the trial record to determine whether the convictions rest on distinct acts, or must the court confine its review to the four corners of the charging document? The Florida Supreme Court's decision in *Lee* established a charging-document-only rule, but did so in a case involving convictions under different statutes, one subsumed within another. Whether that rule extends to same-statute prosecutions has recently divided the district courts of appeal and produced a certified conflict that remains unresolved.

A. What the Double Jeopardy Clause Protects

The Double Jeopardy Clause provides three protections: it protects against a second prosecution for the same offense after acquittal, against a second prosecution for the same offense after conviction, and against multiple punishments for the same offense imposed in a single prosecution. *Trappman v. State*, 384 So. 3d 742, 747 (Fla. 2024) (quoting *Justs. of Bos. Mun. Ct. v. Lydon*, 466 U.S. 294, 306–07 (1984)). Only the third protection is at issue here.

Within that third protection, *Blockburger v. United States*, 284 U.S. 299 (1932), and its progeny recognize two distinct sub-inquiries: whether the offenses at issue are the same "in law," and whether they are the same "in fact." *Trappman*, 384 So. 3d at 747 (citing *Burton v. United States*, 202 U.S. 344, 380 (1906)). These are separate inquiries. Where a defendant is convicted under two different statutes, a court must first determine whether the offenses are legally the same, ordinarily through the *Blockburger* same-elements test or an inquiry into legislative intent to authorize separate punishment. *See Valdes v. State*, 3 So. 3d 1067, 1069–70 (Fla. 2009); *Lee*, 258 So. 3d at 1301. Only once that legal-sameness question is resolved does the further, factual question

become live: whether the same conduct in fact supports both convictions. That is the posture of *Lee* itself. Before the charging-document rule in *Lee* could operate at all, the court first had to establish that each of the two lesser charges was subsumed within the greater offense. 258 So. 3d at 1302–04. *Lee* is therefore a case in which legal sameness was established through statutory comparison, and factual sameness was then resolved by confining review to the charging document.

Where, as here, a defendant is convicted multiple times under the identical statute, the legal-sameness inquiry is unnecessary. Two counts charging the same statute are, by definition, the same offense in law. There is no element-by-element comparison to perform and no question of legislative intent to authorize punishment under a second, different statute. The entire dispute is confined to the factual-sameness question: whether the separate counts rest on the same act or on distinct ones and which body of "fact" a reviewing court may consult to answer that question. That is the posture of the claim before us and the reason for the district split between *Pena-Vazquez v. State*, 278 So. 3d 755 (Fla. 3d DCA 2019), and *Dominguez v. State*, 429 So. 3d 636 (Fla. 2d DCA 2026). We agree with *Pena-Vazquez* that *Lee*'s specific methodology for answering the factual-sameness question does not govern a case that involves multiple acts of the same statutory charge, but for additional reasons we explain below.

B. *Lee v. State*: The Charging-Document Rule

Lee resolved a conflict among the district courts over the proper methodology for evaluating double jeopardy claims involving different criminal charges alleged in the same timeframe. Lee was convicted of three offenses arising from an online solicitation: traveling to meet a minor, unlawful use of a two-way communications device, and using a computer to solicit a child. *Lee*, 258 So. 3d at 1300. The information alleged the traveling offense on a specific date, but alleged the solicitation and communications-device offenses as having occurred "on one or more occasions" over an eleven-day range. This court, sitting en banc, affirmed the convictions after reviewing "the entire evidentiary record," concluding the offenses arose from separate criminal episodes. *Lee v. State*, 223 So. 3d 342, 352–53 (Fla. 1st

DCA 2017), *decision quashed*, *cause remanded*, 258 So. 3d 1297 (Fla. 2018).

The Florida Supreme Court quashed that decision. The court built on its earlier holding in *State v. Shelley*, 176 So. 3d 914 (Fla. 2015), which held that solicitation is entirely subsumed within traveling-after-solicitation under the *Blockburger* same-elements test, meaning the two offenses are legally the same. *Lee*, 258 So. 3d at 1301–03. The third charge, unlawful use of a two-way communications device, was subsumed within solicitation on the same logic, one layer deeper. *Id.* Having resolved that all three charges were legally the same, the court confined the remaining question—whether the same conduct in fact supported each charge—to the charging document. Adopting language from Judge Makar's dissent from this court's en banc decision, the *Lee* court characterized the issue as one of "constitutional sufficiency," not "evidentiary sufficiency," and stated that "[a] reviewing court's ability to find evidence in the record to support multiple convictions is insufficient to defeat a double jeopardy claim when nothing in the charging document suggests that the convictions were based on separate conduct." *Id.* at 1303–04. Because Lee's information never differentiated which of the many possible communications underlay which count, the convictions for solicitation and unlawful use of a two-way communications device were vacated. *Id.* at 1304–05.

However, *Lee*'s holding is quite narrow:

> [W]e hold that, to determine whether multiple convictions of solicitation of a minor, unlawful use of a two-way communications device, and traveling after solicitation of a minor are based upon the same conduct for purposes of double jeopardy, the reviewing court should consider only the charging document—not the entire evidentiary record.

Id. at 1304. More importantly, the entire opinion was framed around charges that are subsumed within other charges, and with the court's specific caveat that the Legislature provided no clear intent to authorize separate punishments for these crimes where they occur during the same criminal transaction. *Id.* at 1301–02.

The opinion does not, on its face, purport to announce a general rule governing same-statute prosecutions charged in the same timeframe.

C. *Pena-Vazquez v. State*: Same-Statute, Different Analysis

Pena-Vazquez, 278 So. 3d 755, presented a materially different fact pattern. Pena-Vazquez was convicted of two counts of lewd or lascivious molestation of his stepdaughter, charged in identical language and alleging the same two-year date range. *Id.* at 757. Unlike in *Lee*, no different statute or *Blockburger* subsumption question was involved. *Pena-Vazquez,* 278 So. 3d at 758. Both counts charged the identical offense. *Id.*

The Third District rejected Pena-Vazquez's double jeopardy challenge, but its reasoning proceeded in two analytically separate steps. First, the court held that Pena-Vazquez's argument that the information was "fundamentally defective" for using identical, overly broad language was a claim distinct from double jeopardy—a challenge to the sufficiency of the pleading itself—and that this theory was waived because Pena-Vazquez never moved to dismiss or sought a statement of particulars under Florida Rule of Criminal Procedure 3.140(n). *Pena-Vazquez*, 278 So. 3d at 758–60.

Second, and separately, the court addressed Pena-Vazquez's argument that the jury may have relied on a single act to convict on both counts. The court characterized this claim as one of "evidentiary sufficiency" rather than "constitutional sufficiency," distinguishable from *Lee* and *Shelley* because those cases addressed convictions under different statutes requiring a *Blockburger* analysis, not repeated convictions under a single statute. *Pena-Vazquez*, 278 So. 3d at 760–62. Reviewing the trial record on this theory, the court found that the evidence differentiated the two counts "in terms of time, place, and circumstance," and found it significant that the State had charged four identically worded counts total, with the jury convicting on two and acquitting on two. *Id.* at 761–62. This result was evidence, in the court's view, that the jury was capable of differentiating

between the charges rather than mechanically duplicating a single act.[1] *Id.* at 760–62.

D. *Dominguez v. State*: Rejection of *Pena-Vazquez* and Certified Conflict

Dominguez, 429 So. 3d 636, presented the same core scenario as *Pena-Vazquez*—multiple convictions under the same statute, based on identically worded counts—but reached the opposite conclusion. Dominguez was convicted of, among other offenses, two counts of sexual battery and two counts of lewd or lascivious battery. *Dominguez*, 429 So. 3d at 637. As to the sexual battery counts, the charging document itself distinguished the conduct, and those convictions were affirmed without difficulty. *Id.* at 640. The two lewd or lascivious battery counts, however, were identically worded, alleging conduct occurring "on one or more occasions" over the same multi-year date range, with no differentiation in the charging document, the jury instructions, or the verdict form. *Id.* at 640–41.

The Second District's majority applied *Lee*'s charging-document rule directly to this same-statute pairing instead of *Pena-Vazquez*'s analytical framework. *Dominguez*, 429 So. 3d at 640–42. The court reversed one of the two lewd or lascivious battery convictions, holding that nothing in the charging document

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[1] A rough illustration may be useful. Imagine a restaurant bill listing "Dinner for Two: $80," a price that already includes dessert, followed by a separate line for "Dessert: $12." Because the first charge already includes dessert, the second line cannot be verified simply by confirming dessert was eaten. That is not in dispute. The only live question is whether a second, additional dessert was actually ordered, and the receipt itself does not answer that. Now imagine the bill instead lists "Dinner: $40" twice, as two separate, non-overlapping entries. Because neither charge is embedded within the other, whether two dinners were actually served is an ordinary factual question, resolved the same way any billing dispute is resolved: by looking at what happened. The first scenario resembles *Lee*'s problem. The second resembles *Pena-Vazquez*'s.

distinguished the conduct underlying the two counts, and that a reviewing court may not resort to the trial record to supply the missing differentiation. *Id.* at 642. The majority expressly criticized *Pena-Vazquez*'s approach, stating that in reviewing the trial evidence to conclude "the jury had no apparent difficulty in differentiating among the counts," the Third District had done "precisely what *Lee* prohibits." *Dominguez*, 429 So. 3d at 642.

The *Dominguez* majority found particularly significant that the jury, during deliberations, submitted a written question asking what the difference was between the two identically worded counts. The court treated this as confirmation of the exact risk *Lee* is designed to guard against, in contrast to *Pena-Vazquez*'s reliance on a split verdict as reassurance that the jury had differentiated the charges on its own. *Dominguez*, 429 So. 3d at 642.

The Second District certified direct conflict with *Pena-Vazquez* on the question of whether *Lee* applies where a defendant is convicted of committing the same act upon the same victim during the same time period in violation of the same criminal statute. *Dominguez*, 429 So. 3d at 642.

E. Judge Atkinson's Alternative Framework in *Dominguez*

Judge Atkinson, concurring in part and dissenting in part in *Dominguez*, agreed with the majority's affirmance of the differentiated sexual battery counts but would have affirmed both lewd or lascivious battery counts. 429 So. 3d at 642 (Atkinson, J., concurring in part and dissenting in part). Judge Atkinson's reconciliation did not rest on *Pena-Vazquez*'s same-statute analysis. He instead reasoned that identically worded counts alleging separate violations of the same statute "can only be reasonably read as alleging separate conduct," since the only alternative would require presuming either that there was a scrivener's error or that the charging document "is a nonsensical absurdity." *Id.* at 647. Having concluded the charging document itself indicated separate conduct, Judge Atkinson turned to the Florida Supreme Court's more recent decision in *Trappman v. State*, 384 So. 3d 742 (Fla. 2024), applying its "distinct acts" framework, which turns on whether a defendant's conduct reflects "successive impulses," to confirm that the trial record bore out that

separateness. *Dominguez*, 429 So. 3d at 648–50 (Atkinson, J., concurring in part and dissenting in part).

The *Dominguez* majority rejected this reasoning on two grounds. First, it observed that *Trappman* itself involved a charging document that already differentiated the underlying conduct, meaning *Trappman* never actually tested whether the evidentiary record may cure an undifferentiated information. *Trappman*'s footnote 4 expressly declined to reach a charging-document argument raised for the first time at oral argument, because it had not been preserved below. *Dominguez*, 429 So. 3d at 641–42 (majority opinion). Second, the majority noted that the Florida Supreme Court's decision in *Dettle v. State*, 395 So. 3d 1054 (Fla. 2024)—decided after *Trappman*, though resolving a retroactivity question rather than the scope of *Lee* itself—described *Lee*'s charging-document rule as fully intact, without any suggestion that *Trappman* had modified or limited it. *Dominguez*, 429 So. 3d at 641.

F. *Lee* Does Not Extend to Identical Counts Charged Under the Same Statute and Timeframe

We are persuaded that *Lee*'s charging-document rule does not control the double jeopardy question presented here, and we decline to follow *Dominguez* to the extent it holds otherwise.

Lee's own distinction between "constitutional sufficiency" and "evidentiary sufficiency" cannot mean that facts are irrelevant to the constitutional inquiry, because the double jeopardy guarantee is itself defined by a factual predicate.[2] For double jeopardy

[2] Judge Bilbrey's dissent invokes *Dettle*, which described *Lee* as "a fundamentally procedural change" concerning "the procedure a reviewing court should use in weighing a double jeopardy claim" that "recognizes no additional scope to the defendant's Fifth Amendment double jeopardy right." *Dettle*, 395 So. 3d at 1058–59. We agree with our supreme court's description of *Lee*'s reach, which is why *Dettle* does not control here. A procedural rule does not define when a double jeopardy violation exists. It supplies a method for answering the "same in law and in fact" question the Double Jeopardy Clause poses. *Lee* confined that method to the

protection to apply at all, the offenses at issue must be "the same in law and in fact." *Trappman*, 384 So. 3d at 747 (quoting *Burton v. United States*, 202 U.S. 344, 380 (1906)). A constitutional violation cannot be established in the abstract. It requires proof, as a factual matter, that the same conduct underlies both convictions. *Lee*'s label is best understood not as removing fact from the inquiry, but as identifying which body of "fact" controls when a reviewing court cannot otherwise be confident what the jury found. In such situations, *Lee* confined review to the facts fixed in the charging document before trial, not facts assembled afterward in an attempt to reconstruct what the jury actually found.

What drove *Lee* was a concern about a reviewing court's ability to determine what the jury actually found. 258 So. 3d at 1304 ("[I]t is impossible to know whether the jury convicted Lee of all three offenses based on the same act of solicitation."). That concern is not unique to cases involving more than one statute. The same difficulty, knowing how many discrete acts occurred and which count corresponds to which act, arises just as easily when a defendant is charged twice under a single statute. What is unique to *Lee*, and to *Shelley* before it, is a second, independent problem layered on top of that one. Traveling after solicitation, by its own statutory definition, requires proof that the defendant first made a prohibited solicitation. A jury that convicts on traveling has, by the necessary operation of that offense's elements, already made a solicitation finding, whether or not it consciously treated that finding as a separate determination. The standalone solicitation count then asks whether that same, already-necessary finding is being counted a second time, or whether the State in fact proved an independent act of solicitation beyond the one built into the traveling count. The two-way-device count adds a second,

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charging document because subsumed offenses leave the record structurally unable to answer that question. *Dettle* addressed only *Lee*'s retroactivity. It did not decide—and had no occasion to decide—whether that method governs multiple convictions under a single statute, where each count is proved from its own evidence. Indeed, *Dettle* confirmed that *Lee* decided the issue in relation to "the specific convictions before it." *Dettle*, 395 So. 3d at 1061.

independent layer of the same problem, nested one level deeper, since that offense is itself subsumed within solicitation. That entanglement exists because one offense's elements are nested inside another's. Where a charging document alleges these types of subsumed acts in the same or overlapping timeframes, a reviewing court cannot tell, without guessing, whether the jury based its verdict on separate acts or a single course of conduct.[3]

Same-statute repetition does not necessarily present a comparable entanglement problem and thus should not be treated as analogous. Where the record establishes two genuinely separate acts, courts routinely sustain multiple convictions under the identical statute. *See Kramer v. State*, 313 So. 3d 207, 211 (Fla. 1st DCA 2021) (citing *State v. Meshell*, 2 So. 3d 132, 136 (Fla. 2009)) (holding that a defendant's two convictions for sexual battery did not violate double jeopardy because the offenses arose from two separate criminal acts). Proof of the elements of one count does not, as a matter of definition, also prove the elements of another count. Each count requires the jury to find the same elements anew, from whatever evidence the State offers in support of that count, without one count's proof automatically completing another's. Neither *Pena-Vazquez* nor Judge Atkinson's dissent in *Dominguez*

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[3] Subsumed charges present a specific problem from a reviewing court's vantage point. Picture a set of Russian nesting dolls. Opening the outer doll reveals a smaller one inside. But that reveals nothing about whether the smaller doll was placed there deliberately, as its own separate piece, or whether it simply came built into the larger one, inseparable from it. Traveling is the outer doll. Proving it necessarily produces the solicitation finding nested inside, whether or not the jury ever treated that finding as independent. Examining the dolls from outside cannot reliably reveal whether the inner finding was truly separate or just came bundled with the outer one. Multiple counts under the same statute present no comparable problem. Those counts are not nested inside one another at all. Each count requires the jury to find its own elements from its own evidence, so a reviewing court can examine the record behind each count independently to determine whether it rests on a separate act, without needing to guess whether one count's proof was carried in by another's.

identifies this distinction directly, but we think it is the more precise explanation for why *Lee*'s rule, addressed to a problem of entangled elements across separate statutes, does not by its own logic extend to convictions charged twice under the same statute.

This distinction has consequences for what a reviewing court can actually confirm by looking at the trial record. Where two counts charge the identical statute, the record can, at least in principle, answer the factual question directly: a reviewing court can examine the evidence offered in support of each count and determine whether it establishes a separate act, in the same way it would review the sufficiency of the evidence for any other element of any other crime. Nothing about the inquiry is different in kind from ordinary sufficiency review.

However, where the offenses are legally the same only because one is subsumed within the other, a reviewing court faces a harder problem, one that is not simply a matter of examining more or better evidence. Because proof of the greater offense already, necessarily, includes proof of the lesser one, the record will always show evidence sufficient to support both counts, regardless of whether the State proved one act or two. The difficulty is not that the record is incomplete or ambiguous. It is that the entangled elements deprive record review of its usual force: because proof of the greater offense always carries proof of the lesser, evidence that both offenses occurred cannot by itself show that the jury found two separate acts rather than one. That is why *Lee* confines the inquiry to the charging document—not because facts are irrelevant, but because, in the subsumption setting, the record cannot reliably tell a reviewing court which the jury found.

Dominguez's own facts illustrate the cost of extending *Lee* this far. Dominguez himself did not dispute that the trial evidence reflected two distinct offenses. *Dominguez*, 429 So. 3d at 650 n.7 (Atkinson, J., concurring in part and dissenting in part). The panel reversed the second conviction anyway, solely because the charging document itself failed to differentiate the two counts. *Id.* at 641–42 (majority opinion). That is the predictable result of applying *Lee*'s rule to a problem it was never designed to solve. *Dominguez* involved no entangled elements from one charge subsumed within another, and nothing in the record left any doubt

that the two counts rested on separate acts. A conviction the record actually supported was vacated anyway, because the charging document happened not to say so. The cost of that extension is not merely doctrinal. Where, as here, the record itself confirms that each count was factually distinct, extending *Lee*'s rule regardless would protect nothing the Double Jeopardy Clause actually requires. Instead, it imposes an unnecessary cost on victims of crime. Florida's Constitution instructs that "crime victims' rights and interests [be] respected and protected by law in a manner no less vigorous than protections afforded to criminal defendants." Art. I, § 16(b), Fla. Const. Extending a prophylactic rule beyond the point necessary to vindicate a defendant's rights is irreconcilable with the equally important constitutional obligation to victims. *See Bojorquez v. State*, 411 So. 3d 404, 413 (Fla. 2025) (Couriel, J., concurring) (noting that courts must give independent legal import to every phrase and clause contained in the Florida Constitution) (citing *Traylor v. State*, 596 So. 2d 957, 962 (Fla. 1992)).

The undifferentiated-conduct risk we have identified is answered here, but by the character of the evidence rather than by the structure of the charges. Where the trial record supplies objective, independently verifiable proof that the charged conduct was factually distinct, proof resting on differentiated evidence rather than on overlapping evidence that could apply to either count, there is no cause for the guesswork *Lee* is designed to prevent. A reviewing court examining such a record is not speculating about the jury's reasoning; it is confirming that no genuine ambiguity existed for the jury as to what evidence was presented for each count.

In sum, the problem *Lee* addresses is a narrow one: one subsumed offense's elements are nested inside another's, so a jury's verdict on the greater offense necessarily includes the finding for the lesser offense, whether or not the jury treated that finding as independent. Where a charging document alleges those subsumed acts over the same or overlapping timeframes, as in *Lee*, the record cannot reliably tell a reviewing court whether the jury found a genuinely separate act. That problem does not arise in same-statute, same-timeframe cases, where each count requires the jury to find its own elements from its own evidence, with no

count's proof automatically completing another's. We accordingly agree with *Pena-Vazquez* that such cases present a question of evidentiary sufficiency rather than constitutional sufficiency, and we find further support in the distinct-acts framework *Trappman* and Judge Atkinson's opinion describe.

G. Application to the Challenged Counts

Crowley's argument on this ground proceeds along two independent theories, and we address each before turning to the exhibits themselves.

Crowley's first theory is that count XXI, charged over a date range that overlaps counts XI through XX and XXII through XXIII, renders those counts duplicative of it. The theory presupposes a valid count XXI to overlap the others. Because we vacate count XXI in Part I, that predicate is gone and the theory collapses. We need not address it further.

The second theory is pairwise: that specific counts, sharing the same charged date and identical statutory language, are indistinguishable on the face of the information. We address that theory as to each combination as shown in the chart below.

Statute	Charged date	Paired counts (exhibit)
Sexual battery	April 9, 2022	Count II (Ex. 2.12) / Count III (Ex. 3.13)
Molestation	March 23, 2022	Count IV (Ex. 4.14) / Count VI (Ex. 6.16)
Molestation	August 30, 2021	Count V (Ex. 5.15) / Count IX (Ex. 9.19)
Promotion	August 30, 2021	Count XI (Ex. 1.11) / Count XV (Ex. 5.15)
Promotion	April 9, 2022	Count XII (Ex. 2.12) / Count XIII (Ex. 3.13) / Count XVII (Ex. 7.17)
Promotion	March 23, 2022	Count XIV (Ex. 4.14) / Count XVI (Ex. 6.16)
Promotion	August 31, 2021	Count XX (Ex. 10.20) / Count XXII (Ex. 22)

Each pairing or tripling rests on separately identified digital files, and the record establishes that no two of these files are the same through objective forensic markers, not inference. Each exhibit carries its own hash value, described in unrebutted

testimony as functioning as a file's unique identifier, incapable of alteration without changing the hash itself. That testimony supports the conclusion that each exhibit is a technically distinct file, a proposition the record does not contradict.

Beyond the hash values, the exhibits are independently distinguished by content and manner. Exhibit 2.12 depicts oral penetration of the victim's mouth. Exhibit 3.13 depicts genital union without penetration. These exhibits show the manner-of-commission distinction our supreme court found sufficient to establish separate criminal acts in *State v. Meshell*, 2 So. 3d 132, 135–36 (Fla. 2009), and that *Trappman* reaffirmed as evidence of successive impulses, *Trappman*, 384 So. 3d at 753–54. Exhibit 4.14 depicts Crowley's face and his direct touching of the victim. Exhibit 6.16 depicts a hand with a distinct tattoo touching the victim. Exhibit 5.15 is a separate video independently corroborated by GPS metadata. Exhibit 9.19 depicts Briana Yon in the background of a photograph, with Crowley's bracelets and wood paneling also visible. Exhibit 1.11 depicts oral contact with no face visible but distinct bracelets associated with Crowley. Exhibit 7.17 shows Crowley's face, his red hair, and his penis touching the victim's vagina. Exhibit 10.20 depicts Crowley directly touching the victim's vagina with his hand. Exhibit 22, as detailed in Part I, depicts a different act, uploaded to Crowley's personal account and independently tied to him through the very device that produced Exhibit 10.20. No two of the exhibits underlying these counts depict the same recorded conduct. Nor does Crowley contend that the various trial exhibits show the same conduct. His argument rests entirely on the charging document's language.

The State's presentation itself further confirms that it intended to charge separate conduct. Before any evidence was heard, the prosecutor explained, both to the judge prior to the jury coming in and in his opening statement to the jury, that each numbered exhibit corresponded to a specific count, walking through the exhibit and count pairings in detail. That is not a structure that leaves the State's intent ambiguous.[4] It is a

[4] Nothing in the record indicates the Appellant filed a motion for a statement of particulars under Florida Rule of Criminal Procedure 3.140(n). *See Pena-Vazquez*, 278 So. 3d at 760 (stating

presentation built around individualized evidence per count. *See Johnston v. State*, 357 So. 3d 156, 162 (Fla. 4th DCA 2023) ("The mere possibility that a juror could look to some act other than the one which the prosecutor argued to satisfy an element of the crime is insufficient to warrant a reversal of a conviction."). This is the kind of evidentiary structure that supports the presumption of separateness Judge Atkinson's opinion describes.

We recognize that *Dominguez* found the jury's own request for clarification a telling sign of confusion. No comparable event occurred here. Rather than asking the court to explain the difference between identically worded counts, the jury submitted only a request to review specific exhibits by number. This request presupposes, rather than undermines, an understanding that distinct, individually numbered exhibits supported distinct counts. That the *Dominguez* jury happened to ask for clarification on one occasion does not establish that same-statute charging of this kind inherently invites confusion, and the absence of any comparable event here is consistent with a record that gave the jury nothing to be confused about in the first place.

We also acknowledge that the situation in *Lee* involved epistemic uncertainty as to whether the jury had sufficiently separated different counts. That the elements of one crime were subsumed within another crime made an after-the-fact determination about what the jury actually found inherently difficult and, ultimately, a matter of guesswork. It is axiomatic that no criminal defendant's conviction should be affirmed by a reviewing court engaging in guesswork. Here, however, there is no uncertainty. The paired counts at issue were based on wholly different evidence, individually marked to match each count and presented to the jury in a way that made clear what evidence went

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that a defendant's failure to seek a statement of particulars waives a challenge to an information as impermissibly vague); *see also Medders v. State*, 435 So. 3d 88, 91 n.1 (Fla. 4th DCA 2026) (observing that the Fourth District's pre-*Lee* holdings that a defendant who neither moves to dismiss nor requests a bill of particulars waives a claim that the State failed to differentiate between counts have not been called into question since *Lee*).

to what count. To turn *Lee*'s holding into a one-size-fits-all rule to determine a double jeopardy constitutional violation—based on a charging document alone—does not enforce the Constitution. Instead, it risks vacating valid convictions by reference to a charging document's phrasing rather than to what was actually proven. The "in fact" prong of the double jeopardy question asks a factual question. Where, as here, there is no dispute about which evidence corresponds to which count, the most direct way to answer that question is to look at the facts that were actually presented, not a pleading document frozen in time before the presentation of any evidence.

The convictions on the counts identified in the chart above do not violate the prohibition against double jeopardy because the record establishes, through separately identified exhibits, that each pairing or tripling rests on distinct conduct. Crowley's remaining challenge—that count XXI overlapped with counts XI through XX and XXII through XXIII—does not survive Part I's disposition of count XXI. Accordingly, none of Crowley's convictions violate the prohibition against double jeopardy.

III. Conclusion

We reverse Crowley's conviction and sentence on counts XXI and XXIV. We remand with directions for the trial court to enter a judgment of acquittal on each count and to correct the judgment and sentence accordingly. We affirm Crowley's remaining convictions and sentences. Finally, we certify conflict with *Dominguez v. State*, 429 So. 3d 636 (Fla. 2d DCA 2026), to the extent it holds that *Lee*'s charging-document rule governs double jeopardy claims involving convictions under the same statute, against the same victim, during the same timeframe, without regard to the trial record.[5]

[5] This case is not at odds with our prior decision in *Hooks*. *Hooks* involved the same traveling/two-way-device pairing at issue in *Lee* itself—different statutes, one subsumed within the other, with no independent same-statute question presented. *Hooks*, 297

AFFIRMED in part; REVERSED in part; and REMANDED with directions. CONFLICT CERTIFIED.

OSTERHAUS, C.J., concurs; BILBREY, J., concurs in part and dissents in part with opinion.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

BILBREY, J., concurring in part and dissenting in part.

I concur in the majority's resolution of the sufficiency of evidence issues as discussed in section I. of the majority opinion. However, I do not read *Lee v. State*, 258 So. 3d 1297 (Fla. 2018), as narrowly as the majority. Therefore, I respectfully dissent from the majority's conclusion that there were no double jeopardy violations.

Although *Lee* involved the charging of different crimes, the concern was that "it is impossible to know whether the jury convicted Lee of all three offenses based on the same act of solicitation." *Id*. at 1304. That is the same issue before us here – did the jury convict Crowley for the same act of sexual battery on one count, same act of molestation on two other counts, or same act of promotion of sexual performance on still other counts.* The

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So. 3d at 697–98. This case presents a different scenario, as explained above.

* The same act of sexual battery is alleged in counts 2 and 3. The same acts of lewd or lascivious molestation are alleged in counts 4 and 6 as well as in counts 5 and 9. The same acts of promoting the sexual performance of a child are alleged in counts 11 and 15; 12, 13 and 17; 14 and 16; 19 and 21; and 20 and 22. Count 21 has a range of dates from August 20, 2021, to May 22,

jury certainly had evidence of Crowley committing different criminal acts. But for these counts the jury did not have allegations of different acts in the information.

The Florida Supreme Court in *Lee* held that we are to look solely at the charging document and found a double jeopardy violation had occurred because "the information does not make clear that the State relied on separate conduct to charge the offenses." *Id.* at 1304. In discussing *Lee* and *State v. Shelley*, 176 So. 3d 914 (Fla. 2015), we held that "the reviewing court should consider only the charging document, and not the entire evidentiary record, in determining whether multiple convictions are based on the same conduct for purposes of double jeopardy." *Hooks v. State*, 297 So. 3d 696, 698 (Fla. 1st DCA 2020) (citing *Lee*, 258 So. 3d at 1299, 1304).

In *Lee*, the Florida Supreme Court further stated, "A reviewing court's ability to find evidence in the record to support multiple convictions is insufficient to defeat a double jeopardy claim when nothing in the charging document suggests that the convictions were based on separate conduct." *Id.* at 1303–04. This holding applies regardless of whether we are considering the same crime or a different crime with overlapping elements. In *Dettle v. State*, 395 So. 3d 1054, 1058 (Fla. 2024), the Court reiterated this when it quoted *Lee* in stating that in *Lee* the Court "answered 'how a reviewing court should determine whether multiple convictions are based upon the same conduct.'" The Court in *Dettle* did not limit this broad language to only double jeopardy violations involving subsumed charges.

Because the language in *Lee* and *Dettle* applies to any two convictions resting upon the same alleged conduct, I would follow *Dominguez v. State*, 429 So. 3d 636, 641–42 (Fla. 2d DCA 2026), rather than *Pena-Vazquez v. State*, 278 So. 3d 755, 758 (Fla. 3d DCA 2019), which preceded *Dettle*. The court in *Dominguez* correctly recognized that a court looks only to the charging document and not the evidence in the record to determine whether a double jeopardy violation occurred. *Id.* at 640. Since the

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2024, that overlaps with counts 11 to 20 as well as counts 22 and 23.

majority opinion conflicts with *Dominguez*, I concur in the decision to certify conflict.

Jessica J. Yeary, Public Defender, and Kathryn Lane, Assistant Public Defender, Tallahassee, for Appellant.

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