

IN THE SUPREME COURT OF FLORIDA

STATE OF FLORIDA

Petitioner,

Case Number: SC14-755

v.

DEAN ALDEN SHELLEY

Respondent.

ON PETITION FOR REVIEW FROM
THE SECOND DISTRICT COURT OF APPEAL
STATE OF FLORIDA

JURISDICTIONAL BRIEF OF RESPONDENT

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STATEMENT OF THE CASE AND FACTS

The Respondent responded to a Craigslist advertisement posted in the Casual Encounters section by a police officer posing as a single mother nudist “looking for family fun.” The Respondent made arrangements via electronic communication to have sex with the “mother” and her fictitious minor daughter and was arrested when he arrived near the predetermined meeting place. *Shelley v. State*, 134 So.3d 1138 (Fla. 2d DCA 2014).

Reserving its motion to dismiss, the Respondent pled guilty to one count of traveling to meet a minor after using computer services or devices to solicit consent of a parent or legal guardian, a second degree felony in violation of Section 847.0135(4)(b), Florida Statute; and one count of use of computer services or devices to solicit consent of parent or legal guardian, a third degree felony in violation of Section 847.0135(3)(b), Florida Statutes. *Id.*

The Second District Court of Appeals held that dual convictions for both offenses in the course of one criminal transaction or episode violated the prohibition against double jeopardy. The Second District therefore affirmed Respondent’s conviction and sentence for traveling and vacated his conviction and sentence for soliciting. *Id.* In doing so, the Second District certified conflict with *State v. Murphy*, 124 So.3d 323 (Fla. 1st DCA 2013) “only to the extent that it holds that the legislature explicitly stated its intent to allow separate convictions

for soliciting and traveling for purposes of a double jeopardy analysis.” *Id.* at 1142. *Murphy* is now pending in this Court. See *State v. Murphy*, SC13-2068.

SUMMARY OF THE ARGUMENT

Petitioner’s application for discretionary review should be stayed pending resolution of *State v. Murphy*, SC13-2068. Respondent acknowledges the direct conflict between the decision under review and *Murphy*. *Murphy*, however, was pending in this Court prior to the Second District’s decision in *Shelley*.

Further, the First District’s reasoning in *Murphy*, offenses of different degrees necessarily reflect the legislative intent to authorize dual convictions, creates a broad rule of law that will have a far-reaching impact on various types of offenses. *Murphy* currently conflicts with multiple circuits, as well as with this Court, and the decision effectively abrogates Sections 775.021(4)(b)2&3, Florida Statutes. The Second District’s reasoning in *Shelley* however, is narrow and limited to Sections 847.0135(3)(b) & (4)(b), Florida Statutes. The decision in *Shelley* solely conflicts with *Murphy*.

If this Court accepts jurisdiction in *Murphy*, and finds no explicit legislative intent to allow separate punishments for these two offenses arising out of the same criminal transaction, there will be no conflict with *Shelley*. Under these circumstances, Petitioner’s application for discretionary review should be stayed pending resolution of *Murphy*.

ARGUMENT

PETITIONER'S APPLICATION FOR DISCRETIONARY REVIEW SHOULD BE STAYED PENDING THE RESOLUTION OF *STATE V. MURPHY*, 124 SO.3D 323 (FLA. 1ST DCA 2013).

Just like the Respondent, Murphy was convicted of (1) use of a computer services or devices to solicit; and (2) traveling to meet a minor after using computer services or devices to solicit in violation of Sections 847.0135(3)(b) & (4)(b), Florida Statutes. *Id.* at 326. On appeal to the First District, Murphy argued that separate punishments for the above offenses violated double jeopardy. *Id.* The First District Court of Appeal affirmed Murphy's convictions by finding no double jeopardy violation. *Id.* at 331.

In reaching its decision, the First District did not conduct the analysis set forth in *Blockburger v. United States*, 284 U.S. 299, 52 S.Ct. 180, 76 L.E.d 306 (1932), which is codified in Section 775.021(4), Florida Statutes. Instead, the First District reasoned that because one offense is designated as a third degree felony and the other as a second degree felony, the legislature had clear intent to punish solicitation and traveling after solicitation separately. *Id.* at 330-31.

Posed with the same legal question, the Second District in *Shelley* disagreed with the reasoning in *Murphy*, and found that there was no explicit statement of intent contained in the statute. Unlike in *Murphy*, the Second District therefore proceeded to a *Blockburger* analysis under Section 775.021(4), Florida Statutes.

Shelley, 134 So.3d 1138. The Second District ultimately found that dual convictions for both offenses in the course of one criminal transaction or episode violated the prohibition against double jeopardy. *Id.*

Murphy petitioned this Court for discretionary review based on the fact that the First District's reasoning (offenses of different degrees, i.e. second degree felony and third degree felony, necessarily reflect legislative intent to authorize dual convictions) is legally incorrect and in express and direct conflict with multiple courts, including this Court. One example of such conflict is demonstrated in *Gil v. State*, 118 So.3d 787 (Fla. 2013). In *Gil*, this Court held that dual convictions for violations of Sections 322.34(2) & 322.34(5), Florida Statutes violated double jeopardy. However, under the rule in *Murphy*, *Gil* would have been wrongly decided because the offenses are of different degrees. Specifically, one offense is a first degree misdemeanor, and the other a third degree felony.

Further, Murphy contends that the decision effectively abrogates Sections 775.021(4)(b)2 and 3, Florida Statutes as the legislatively prescribed means of determining legislative intent to authorize multiple punishments. A copy of the jurisdiction brief is attached as an appendix.

The legal issue of whether there is an explicit statement of the legislature's intent contained within Sections 847.0135(3)(b) & (4)(b), is a sub-issue of whether dual convictions for both offenses in the course of one criminal transaction or

episode violated the prohibition against double jeopardy. The First District's reasoning in *Murphy* creates a broad rule of law and will have a far-reaching impact on all types of cases. *Murphy* conflicts with multiple cases and courts, and further, the decision effectively abrogates section 775.021(4)(b)2 and 3, Florida Statutes. The Second District's holding in *Shelley* however limited its reasoning and analysis to the specific wording in Sections 847.0135(3)(b) & (4)(b). The decision in *Shelley* is therefore narrow. Moreover, the decision in *Shelley* solely conflicts with *Murphy*.

This Court should therefore first resolve the conflicts in *Murphy*, which was pending prior to the Second Districts decision in *Shelley*. If this Court accepts jurisdiction in *Murphy*, and finds no explicit legislative intent to allow separate punishments for these two offenses arising out of the same criminal transaction, there will be no conflict with *Shelley*. Specifically, the Second District's application of the *Blockburger* analysis in *Shelley* was not contested on appeal and is a nonissue. In fact, in certifying conflict with *Murphy*, the Second District did so “*only to the extent that it holds that the legislature explicitly stated its intent to allow separate convictions for soliciting and traveling for purposes of a double jeopardy analysis.*” *Id.* at 1142 (*emphasis added*). *Shelley*, 134 So.3d at 1142.

CONCLUSION

WHEREFORE, based on the preceding authorities and arguments,
Respondent respectfully requests that this Court stay review of this cause.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this jurisdictional brief will be furnished via the Florida Courts E-Filing Portal at the time of filing to Susan D. Dunlevy, Assistant Attorney General at CrimappTPA@myfloridalegal.com, on this the 15th day of May 2014.

CERTIFICATE OF FONT COMPLIANCE

I HEREBY CERTIFY that this brief has been prepared using Times New Roman 14 point font in compliance with Fla. R. App. P. 9.210(a)(2).

Respectfully Submitted,

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