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IN THE SUPREME COURT OF FLORIDA

CASE NO.: SC16-1195
L.T. CASE NOS.: 4D14-1910; 11-1538CFA

LESHANNON JEROME SHELLY,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

RESPONDENT'S BRIEF ON JURISDICTION

ON REVIEW FROM THE DISTRICT COURT OF APPEAL,
FOURTH DISTRICT
STATE OF FLORIDA

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STATEMENT OF THE CASE AND FACTS

The only facts relevant to this Court's decision to accept or reject Petitioner's petition for discretionary review are those contained within the four corners of the Fourth District Court of Appeal's ("Fourth District") June 1, 2016 written opinion. *See Reaves v. State*, 485 So. 2d 829, 830 n.3 (Fla. 1986). They are as follows:

> Leshannon Shelly appeals his judgment and sentence after the trial court denied his motion to suppress a videotaped confession and a jury found him guilty of first degree murder with a firearm and attempted first degree murder with a firearm. Shelly argues his confession should have been suppressed because (1) he invoked his right to an attorney and (2) his confession was involuntary based on the investigator's discussions with him regarding the death penalty. We affirm as to the second argument, without discussion, satisfied that the discussion was a proper interrogation tactic, "[m]erely informing a suspect of realistic penalties and encouraging him to tell the truth." *See Nelson v. State,* 688 So. 2d 971, 974 (Fla. 4th DCA 1997). We also affirm as to the first issue, for the reasons stated below.
>
> Officers responded to reports of gunshots fired, and found one victim dead and the other critically injured. The next day, after hearing rumors of his involvement in the shootings, Shelly voluntarily went to the jail to speak to investigators. During the course of the interrogation, it is uncontested that Shelly unequivocally invoked his right to speak to an attorney. However, the record also reveals that Shelly continued the conversation with investigators, requesting, more than once, that the officers follow up on his alleged alibi by calling his mother.
>
> "When an accused has 'expressed his desire to deal with the police only through counsel, [he] is not subject to further interrogation by the authorities until counsel has been made available to him, *unless* the accused himself initiates further communication, exchanges, or

> conversations with the police.'" *Moss v. State,* 60 So. 3d 540, 542–43 (Fla. 4th DCA 2011) (alteration in original) (emphasis added) (quoting *Edwards v. Arizona,* 451 U.S. 477, 484–85, 101 S.Ct. 1880, 68 L.Ed.2d 378 (1981)). In reviewing the record, we are satisfied that, given the totality of the circumstances and the statements made by Shelly, he was the one who reinitiated communications with the officers. Since he was the catalyst for further conversation, which eventually led to his confession, we affirm the trial court's order denying his motion to suppress the videotape.
>
> *Affirmed.*

Shelly v. State, 4D14-1910, 2014 WL 3090688 (Fla. 4th DCA June 1, 2016).

On June 29, 2016, Petitioner filed his Notice to Invoke Discretionary Jurisdiction, challenging this decision.

Thereafter, on July 14, 2016, Petitioner filed his Jurisdictional Brief.

SUMMARY OF THE ARGUMENT

This Court lacks constitutional authority to exercise its discretionary review over the Fourth District Court of Appeal's June 1, 2016 order because the decision ***does not*** expressly and directly conflict with a decision from this Court, the United States Supreme Court, or a decision from another district court of appeal. Accordingly, this Court should decline Petitioner's request to exercise discretionary review.

ARGUMENT

I. THIS COURT DOES NOT HAVE CONSTITUTIONAL AUTHORITY TO EXERCISE ITS DISCRETIONARY REVIEW OVER THE FOURTH DISTRICT COURT OF APPEAL'S JUNE 1, 2016 DECISION.

Petitioner contends that this Court may exercise its discretionary jurisdiction and review the Fourth District's decision in this case because the Fourth District applied the wrong standard of review on a motion to suppress and arrived at a decision that expressly and directly conflict's with this Court's decision in *Welch v. State*, 992 So. 2d 206 (Fla. 2008), and the United States Supreme Court's decisions in *Edwards v. Arizona*, 451 U.S. 477 (1981), and *Oregon v. Bradshaw*, 462 U.S. 1039 (1983). (*See* Petitioner's Discretionary Br. at pps. 4, 5, 7). However, this Court only has conflict jurisdiction if the district court of appeal's decision "expressly" conflicts with a decision of this Court or another district court of appeal on the same question of law. S*ee* Art. V, §3(b)(3), Fla. Const. (1980); Fla. R. App. P. 9.030(a)(2)(A)(iv).

Also, a decision of a district court of appeal is not reviewable on the ground that an examination of the record would show that it is in conflict with another appellate decision. *See Reaves*, 485 So. 2d at 830 (noting that this Court cannot review the record to establish conflict jurisdiction pursuant to Article V, section 3(b)(3) of the Florida Constitution). It is only reviewable if the conflict can be demonstrated from the district court of appeal's opinion. It cannot be implied. *See*

Dep't of Health and Rehab. Servs. v. Nat'l Adoption Counseling Serv., Inc., 498 So. 2d 888, 889 (Fla. 1986).

Moreover, while it is not necessary that the district court of appeal explicitly identify a conflicting appellate opinion in its order, the opinion must contain some facts so that the alleged conflict can be discerned by this Court. *See Gandy v. State*, 846 So. 2d 1141 (Fla. 2003) (unless the district court has explicitly identified a conflicting decision, the opinion must contain some facts so that the alleged conflict can be discerned by the court).

In this case, all that can be discerned from the Fourth District's opinion is that upon *the Fourth District's independent* "review of the record" and after considering "the totality of the circumstances and the statements made by [Petitioner]" in that record, the Fourth District found that Petitioner "was the one who reinitiated communications with the officers" after unequivocally invoking his right to speak to an attorney. *Shelly*, 2016 WL 3090688, at *1. And because Petitioner "was the catalyst for further conversation" and this "eventually led to his confession," the Fourth District affirmed the trial court's denial of his motion to suppress the videotape. *Id.* Thus, to ascertain whether or not the Fourth District's decision actually expressly conflicts with *Welch*, *Edwards*, or *Bradshaw* in this regard, this Court would have to actually review the record, which this Court cannot do.

Moreover, looking at the face of the opinion only, contrary to Petitioner's contention, it does not expressly conflict with the decisions in *Welch*, *Edwards*, or *Bradshaw*. In fact, as noted by *Edwards*, upon which *Welch* relies, once an excused expresses a desire to deal with the police only through counsel, an accused "is not subject to further interrogation by the authorities until counsel has been made available to him, *unless the accused himself initiates further communication, exchanges, or conversations with the police*." *Edwards*, 451 U.S. at 484-85 (emphasis added); *see also Welch*, 992 So. 2d at 214. In this case, the Fourth District specifically found that Petitioner "reinitiated communications with the officers" by "requesting, more than once, that the officers follow up on his alleged alibi by calling his mother." *Shelly*, 2016 WL 3090688, at *1. Thus, Petitioner validly waived his right to counsel by initiating further communication with the police, making his subsequent confession admissible.

Accordingly, this Court lacks constitutional authority to exercise its discretionary review over the Fourth District Court of Appeal's June 1, 2016 order because the order ***does not*** expressly and directly conflict with a decision from another district court of appeal or from this Court.

CONCLUSION

Wherefore, based upon the arguments presented and authorities cited herein, Respondent respectfully requests that this Court DECLINE Petitioner's request for discretionary review.

Respectfully submitted,
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this brief has been furnished this 8th day of August, 2016, via U.S. mail to: LeShannon Shelly, *pro se*, DC# K72854, Suwannee C.I. Annex, 5964 U.S. Highway 90, Live Oak, FL 32060.

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief complies with the font requirements set forth in Florida Rule of Appellate Procedure 9.210(a)(2) by using Times New Roman 14-point font.

s/Cynthia L. Comras
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