IN THE SUPREME COURT OF FLORIDA

CASE NO.: SC16-1195

D.C.A. CASE NO.: **4D14-1910**

LESHANNON SHELLY,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

ON PETITION FOR DISCRETIONARY REVIEW FROM THE DISTRICT COURT OF APPEAL OF FLORIDA FOURTH DISTRICT

PETITIONER'S BRIEF ON JURISDICTION

LeShannon Shelly, DC# K72854
Suwannee C.I. Annex
5964 U.S. Highway 90
Live Oak, Fl. 32060

Petitioner in pro se.

TABLE OF CONTENTS

TABLE OF CITATIONS

RULES OF COURT

CONSTITUTION

STATEMENT OF CASE AND FACTS

The decision below in its entirety reads:

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. 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." *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 with 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 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 (Fla. 4th DCA 2011)(alteration in original)(emphasis added)(quoting *Edwards v. Arizona*, 451 U.S. 477, 484-85 (1981)), in reviewing the record, we are satisfied that, given the totality of the circumstances and 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, 41 Fla. L. Weekly, D1309a (Fla. 4th DCA June 1, 2016).

QUESTIONS PRESENTED

Whether the decision below expressly and directly conflicts with decisions form other District Courts of Appeal or of the Supreme Court on the same Question of Law.

SUMMARY OF THE ARGUMENT

This Court has jurisdiction in this case because the District Court's decision expressly and directly conflicts with a decision of this Court on the same question of law. In the decision below, the Fourth District Court of Appeal acknowledged that "Shelly unequivocally invoked his right to speak to an attorney"; but further held that "Shelly continued the conversation with investigators requesting more than once, that the officers follow up on this alleged alibi by calling his mother." Relying on *Moss v. State*, 60 So.3d 540, 542-43 (Fla. 4th DCA 2011) which was based on *Edwards v. Arizona*, 451 U.S. 477 (1981), the court held that "[s]ince he [Shelly] 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 [confession]." This finding is in express and/or direct conflict with this Court's standard of review for motions to suppress where after an accused has invoked the right to silence or to counsel, if the accused initiates further conversation with law enforcement set forth in *Welch v. State*, 992 So.2d 206, 214-15 (Fla. 2008)(citing *Oregon v. Bradshaw*, 462 US. 1039, 1045-46 103 S.Ct. 2830, 77 L.Ed.2d 405 (1983).

Since the decision below expressly and/or directly conflicts with the decision of this Court, this Honorable Court should exercise its discretionary jurisdiction to review this cause.

ARGUMENT

THE DECISION BELOW EXPRESSLY AND DIRECTLY CONFLICTS WITH DECISIONS FROM OTHER DISTRICT COURTS OF APPEAL OR OF THE SUPREME COURT ON THE SAME QUESTION OF LAW.

Article V, Section 3(b)(3), Fla. Const. (1980) and Fla.R.App.P. 9.030(a)(2)(A)(iv), provides that the discretionary jurisdiction of the Supreme Court may be sought to review a decision of a District Court of Appeal which expressly and directly conflicts with a decision of another District Court of Appeal or of the Supreme Court on the same question of law. Decisions are considered to be in express and direct conflict when the conflict appears to be within the four corners of the majority decisions. *Reaves v. State*, 485 So.2d 829 (Fla. 1986). In the instant case, the decision below expressly and directly conflicts with the decision of the Supreme Court.

In the decision below, the Fourth District Court of Appeal affirmed the trial court's denial of Petitioner's Motion to Suppress a videotaped confession. Relying on *Moss v. State*, 60 So.3d 540 (Fla. 4th DCA 2011), the court held "[i]n reviewing the record, we are satisfied that, given the totality of the circumstances and the statements made by Shelly, [Petitioner], he was the one who reinitiated communication with the officers. Since he was the catalyst for further conversation, which eventually lead to his confession, we affirm the trial court's

order denying his Motion to Suppress the videotape." (Exhibit A). The decision in *Moss* was founded on *Edwards v. Arizona*, 451 U.S. 477, 484-85, holding "[W]hen an accused has 'expressed his desire to deal with the police only through counsel, [he] is not subject to further interrogation by the authorities, *unless* the accused himself initiates further communication, exchanges, or conversations with the police.'" *Moss* at 542-43, (alteration in original)(emphasis added).

In the decision below, it was recognized that "[d]uring the course of the interrogation, it is uncontested that Shelly [Petitioner] unequivocally invoked his right to speak to an attorney." The Court then noted that "the record reveals that Shelly [Petitioner] continued the conversation with investigators, requesting, more than once, that the officers follow up on his alleged alibi by calling his mother." (Exhibit A).

In *Welch v. State*, 992 So.2d 206 (Fla. 2008) this court held that "[w]here [ ] the accused had invoked his right to silence but later initiated a conversation with law enforcement and subsequently exercised a voluntary, knowing, and intelligent waiver after being advised of his rights for the second time, the resulting confession is admissible under *Bradshaw*." *Welch* at 215 (relying on *Oregon v. Bradshaw*, 462 US. 1039, 1045-46, 103 S.Ct. 2830, 77 L.Ed.2d 405 (1983)). However, the court in *Bradshaw* noted that in the test laid down in *Edwards* it did not hold that "the 'initiation' of a conversation by a Defendant... would amount to a waiver of a

previously invoked right to counsel." Instead, the court held "that after the right to counsel had been asserted by an accused, further interrogation of the accused should not take place unless the accused himself initiates further conversation, exchanges, or conversations with the police." *Bradshaw*, 462 U.S. at 1044, 103 S.Ct. 2834, (citing *Edwards*, 451 U.S. at 485, 101 S.Ct. at 1885). The court further held that "even if a conversation taking place after the accused has 'expressed his desire to deal with the police only through counsel,' is initiated by the accused, where re-interrogation follows, the burden remains upon the prosecution to show that subsequent events indicated a waiver of the Fifth Amendment right to have counsel present during the interrogation." *Bradshaw*, 462 U.S. at 1044, 103 S.Ct. 2834.

Based on the "four corners of the majority decision" the Fourth District Court in following the "*Edwards* rule" applied the wrong standard of review and arrived at a decision in express and direct conflict with this Court's decision in *Welch*, requiring a finding of: (1) That petitioner initiated further conversation; (2) That Petitioner was reminded of his rights under *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966); and, (3) That Petitioner knowingly and voluntarily waives those rights a second time. *Welch*, 992 So.2d 206 (Fla. 2008); *Braddy v. State*, 111 So.3d 810, 875 (Fla. 2012)(Quince, J., dissenting, in which PARIENTE J. concurs.) Although the District Court states its finding is based on "the totality of the circumstances and statements made by Shelly [Petitioner]," this

blanket statement alone cannot satisfy the requirement set forth in *Bradshaw*, 462 U.S. at 1046, 103 S.Ct. 2835. See, *Ramirez v. State*, 739 So.2d 568, 575 (Fla. 1999)("the ultimate issue of voluntariness is a legal rather than factual question")(citing *Miller v. Fenton*, 474 U.S. 104, 109 S.Ct. 445, 88 L.Ed.2d 405 (1985); *Luckheart v. State*, 776 So.2d 906, 917 (Fla. 2000)("a determination of ... the voluntariness of a confession ... requires an examination of the totality of the circumstances.")(citing *Jennings v. State*, 718 So.2d 144, 150 (Fla. 1998).

Because the District Court applied the wrong standard it arrived at an wrong result and put itself in direct and express conflict with this Court's decision in *Welch* as well as the United States Supreme Court's decisions in *Edwards* and *Bradshaw*. Therefore, this Court should exercise its discretionary jurisdiction and review the decision below.

CONCLUSION

WHEREFORE, based on the preceding authorities and arguments, Petitioner respectfully requests that the Court exercise its discretionary jurisdiction to review this cause.

Respectfully Submitted,

LeShannon Shelly, DC# K72854

Petitioner, prisoner in *pro se*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the forgoing "Brief on Jurisdiction" has been provided via U.S. Mail to: Office of the State Attorney, 2000 16th Avenue, Suite 329, Vero Beach, Florida 32960; and Office of the Attorney General, 1515 N. Flagler Drive, Suite 900, West Palm Beach, Florida 33401 by placing the document into the hands of an institutional official at Suwannee C.I. Annex for mailing on this 14TH day of JULY, 2016.

LeShannon Shelly, DC# K72854
Suwannee C.I. Annex
5964 U.S. Highway 90
Live Oak, Fl. 32060

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the foregoing Initial Brief was computer generated using Times New Roman 14 point font as required pursuant to Rule Fla.R.App.P. 9.210 (a)(2).

LeShannon Shelly, DC# K72854

Petitioner, prisoner in *pro se*

EXHIBIT

A

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

LESHANNON JEROME SHELLY,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D14-1910

[June 1, 2016]

Appeal from the Circuit Court for the Nineteenth Judicial Circuit, Indian River County; Robert L. Pegg, Judge; L.T. Case No. 312011CF001538A.

Carey Haughwout, Public Defender, and Jeffrey L. Anderson, Assistant Public Defender, West Palm Beach, for appellant.

Pamela Jo Bondi, Attorney General, Tallahassee, and Cynthia L. Comras, Assistant Attorney General, West Palm Beach, for appellee.

CONNER, J.

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 (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.

WARNER and FORST, JJ., concur.

* * *

Not final until disposition of timely filed motion for rehearing.