No. 18-5132

IN THE SUPREME COURT OF THE UNITED STATES

JONATHAN ARN BRYANT, *Petitioner*

v.

STATE OF FLORIDA, *Respondent*

ON PETITION FOR A WRIT OF CERTIORARI TO THE FIRST DISTRICT COURT OF APPEAL

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

PAMELA JO BONDI
Attorney General of Florida

CAROLYN M. SNURKOWSKI
Deputy Attorney General
Counsel of Record

TRISHA MEGGS PATE
Assistant Attorney General

OFFICE OF THE ATTORNEY GENERAL
CAPITAL APPEALS
PL-01, THE CAPITOL
TALLAHASSEE, FL 32399-1050
(850) 414-3300
(850) 487-0997 (FAX)

QUESTIONS PRESENTED

Petitioner states the issues as follows:

1. Whether the State of Florida's use of Bryant's custodial statements against him at trial violated Bryant's Fifth, Sixth, and Fourteen Amendment rights against self-incrimination and rights to counsel where the statements came after Bryant indicated to law enforcement that he wanted to terminate the interrogation or have a lawyer present during questioning.

2. Whether the trial court violated Bryant's Fifth, Sixth, and Fourteen Amendment rights to due process and to have an impartial jury where the trial court prohibited Bryant from questioning potential jurors about his sole theory of defense during voir dire.

Respondent restates the Questions Presented in the following manner:

1. Whether Petitioner's Fifth, Sixth, and Fourteen Amendment rights against self-incrimination and to have counsel were violated when during an interrogation, petitioner stated he might want a lawyer if it were serious and he did not want to answer some of the questions law enforcement asked during the interview.

2. Whether trial court violated Bryant's Fifth, Sixth, and Fourteen Amendment rights to due process and to have an impartial jury when the trial court prohibited Bryant from asking the jurors what would happen if they were searching the internet and clicked on an imagine of the Eiffel Tower.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CONSTITUTIONAL PROVISIONS

STATUTES

RULES

IN THE SUPREME COURT OF THE UNITED STATES

No. 18-5132

JONATHAN ARN BRYANT, *Petitioner*

v.

THE STATE OF FLORIDA, *Respondent*

ON PETITION FOR A WRIT OF CERTIORARI TO THE FIRST DISTRICT COURT OF APPEAL

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

OPINIONS BELOW

The unreported decision of the First District Court of Appeals is provided in Petitioner's Appendix as Appendix A-1. The transcript of the interview is provided in the appendix as Respondent's Appendix A. Documents in the appendices are referred to as Petitioner's or Respondent's Appendix A, B, and so forth, followed by a page number.

JURISDICTION

The First District Court of Appeal issued its unreported decision affirming petitioner's conviction and sentence on January 11, 2018, and denied the Motion for rehearing on March 1, 2018. The petition for writ of certiorari was filed on May 30, 2018. The petition was timely. *See* Sup. Ct. R. 13.3 (. . . if a petition for rehearing is timely filed in the lower court by any party, or if the lower court appropriately entertains an untimely petition for rehearing or *sua sponte* considers rehearing, the time to file the petition for a writ of certiorari for all parties (whether or not they requested rehearing or joined in the petition for rehearing) runs from the date of the denial of rehearing or, if rehearing is granted, the subsequent entry of judgment.); 28 U.S.C. § 2101(c). Jurisdiction exists pursuant to 28 U.S.C. § 1257. This Court has jurisdiction.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment of the United States Constitution provides:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

The Sixth Amendment of the United States Constitution provides:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

The Fourteenth Amendment of the United States Constitution, section one, provides:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

The State of Florida charged petitioner with numerous counts involving the possession of child pornography. In this case, an officer investigating child pornography by using peer to peer sharing software which showed that child pornography was downloaded from an IP address associated with petitioner's home. Officers obtained a search warrant to search the home where petitioner was the only resident at that time. Petitioner gave a statement to law enforcement while other officers were conducting the search. Petitioner moved to suppress that statement. The interview was recorded and transcribed.

During the interview, Petitioner waived his Miranda rights. (Resp. App. A at 139,141). Prior to asking any factual questions, Investigator Smith told Petitioner, "[i]f you don't want to answer a question, just say, Mike, I'd rather not answer that question." Smith then repeated, a second time, that if Petitioner did not want to answer a question, then to just tell him so. (Resp. App. A at 142). Petitioner indicated that he had read the statement of rights and understood them. Petitioner indicated that he wanted to make a statement and answer questions. Petitioner stated that he did not want a lawyer at that time but then said, "I don't know, I might - - I might want a lawyer if - - if it's serious." (Resp. App. A at 143). Investigator Evans responded as follows:

> "Well, what that's asking is do you want a lawyer present before you are willing to talk to us. You can always get a lawyer. But that question specifically is asking you, are you willing to answer my questions now, without a lawyer present. You can always stop the questioning and say, I think I should talk to my lawyer, or, I think I need to go find a lawyer." (Resp. App. A at 143).

Petitioner responded, "okay." Evans reiterated what he said above a second time. Petitioner then indicated that he understood what he was doing, that no promises or

threats had been made to him, and that no pressure or coercion of any kind had been used against him. (Resp. App. A at 143).

After questioning Petitioner for some time, the investigator asked Petitioner how old some of the people were on the videos he was looking at, referring to the ones which made him feel what he was doing was wrong. (Resp. App. A at 154-155). Petitioner stated that he did not know if he wanted to talk about that and the investigator moved on to other questions. (Resp. App. A at 155). Later on, Petitioner stated that he was uncomfortable with another question and that he did not want to answer it. The investigator said that was ok and moved on. (Resp. App. A at 160). The investigator asked Petitioner how much stuff on his computer would be "extra-special embarrassing," definitely wrong, and/or maybe illegal. Petitioner responded that he would really prefer to have a lawyer for that question. The investigator said that was ok and moved on. (Resp. App. A at 163).

After speaking for a bit, the investigator noted that there were certain questions Petitioner did not want to answer and that it was ok. (Resp. App. A at 166-167). When the investigator asked Petitioner if there was anything else he wanted them to know, Petitioner responded that there was not anything else he was willing to provide. (Resp. App. A at 167). The investigator asked Petitioner what a word meant and Petitioner responded by asking if they could skip that question. (Resp. App. A at 170). The investigator asked if Petitioner did not want to answer the question and Petitioner responded that the word had multiple meanings. (Resp. App. A at 170-171). The investigator asked if a certain file was looked at or downloaded by Petitioner. (Resp. App. A at 171). Petitioner indicated that there were things that he did not want to answer. The investigator said that was fine and that he would not ask the question again. (Resp. App. A at 172). After questioning Petitioner some more, the investigator stated as follows: "Let me - - let me just ask you, again, because I don't - - again, I'm

very honest and upfront, Are you still willing to talk to us? It's just you want to say, I don't want to answer that question-" Petitioner interjected with a yes. The investigator continued on with his sentence and said "-and get a lawyer-" Petitioner interjected with a yes. The investigator still continued on with his sentence and said, "-but you're still willing to talk to us about other questions?" Petitioner said yes. The investigator made it clear that if Petitioner said he was done, then he would stop talking to him. (Resp. App. A at 179-180).

Petitioner moved to suppress the statement arguing that the officers did not honor his right to remain silent when he did not want to answer the questions and the officers diminished the serious nature of the charges. (Pet. at App C). At the conclusion of the suppression hearing and after listening to the audio or the recording of the interview, the trial court found that the statement "I might want a lawyer if this is serious" was not a question. The trial court stated that, "I might want" was not the same as "I think I want." The trial court also found that, although there may have been some deception used during the interview, it was not to induce a waiver. In the written order the trial court simply stated that it found that: "The Defendant did not unequivocally ask for an attorney during that interview. (Pet. at App. D)

Petitioner proceeded to a jury trial. During voir dire, after defense counsel asked a series of questions about the potential jurors' experience with computers and peer sharing without objection. Defense counsel then stated to the potential jurors, the following:

> MR. WEINSTOCK: Let me ask a question. Let's assume that you're on a site that says "Click here to download a picture of the Eiffel Tower," and you click it, and a file gets downloaded to your computer.
>
> PROSPECTIVE JUROR: Yes, sir.
>
> MR. WEINSTOCK: Okay. Do you now have a picture of the Eiffel Tower on your computer?

(Vol. Pg 140). The prosecutor objected on the grounds that defense counsel was presenting his theory of defense, which was not appropriate at that time. The trial court sustained the objection.

During the trial, a law enforcement officer in the Computer Crimes Unit discovered a suspected file associated with petitioner's computer in a peer to peer sharing network. He described how he traced it to petitioner's computer. Officers obtained a search warrant and searched petitioner's computer. They found 68 files of child pornography. Petitioner recalled some of the officers during his case in chief and presented evidence that peer to peer user can engage in bulk downloads and you may not know if the title of the file correlates to its content until you open it. The jury found petitioner guilty as charged.

On appeal, petitioner raised several claims including challenges to the denial of his motion to suppress and the jury selection issue. Along with addressing the merits of the claims, the State responded that the motion to suppress issue was only partially preserved. The State argued that at trial, defense counsel had argued that the officers minimized his rights and petitioner intended to terminate the interview, but did not argue he had unequivocally asked for counsel. The State argued that the jury selection issue was not preserved for appeal, the questions were not limited, and any error was harmless. The First District Court of Appeal per curiam affirmance without written opinion. (Petitioner's Appendix at A-1).

REASON FOR DENYING THE WRIT

I: Whether this court should exercise its certiorari jurisdiction to review the unwritten decision to affirm the trial court's finding that petitioner's statement that he might want a lawyer if it were serious and refusal to answer some of the specific questions during an interview asked of him were an ambiguous and equivocal request?

Petitioner asserts that this Court should grant certiorari review because the state court has violated his Fifth Amendment rights as set forth in *Miranda v. Arizona*, 384 U.S. 436 (1966) because the trial judge denied his motion to suppress finding his statement that he might want a lawyer if it was serious and his refusal to answer some questions were not an unequivocal request for counsel or to cease the interrogation. Petitioner also asserts that the state court denied his right to a fair trial by limiting his statements during voir dire. Petitioner is incorrect. Petitioner has failed to present a conflict of law or even that the State has pushed the limits of this Court's precedent. In this case the trial court followed this Court's precedent and properly denied the motion to suppress because petitioner statements were equivocal. Secondly, the state court did not limit counsel from asking the jurors questions, but instead, prevented counsel from testifying to the venire panel.

A major consideration in this Court's decision to grant review certiorari is whether there is conflict on a significant legal issue among federal circuit courts and state supreme courts. In the rules of this Court regarding the considerations governing review on writ of certiorari, Rule 10, provides:

> (a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;

> (b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals;
>
> (c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

U.S. Sup.Ct. Rule 10. A petition for a writ of certiorari to invoke "this Court's appellate jurisdiction of state criminal judgments, 'is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor.'" *Fay v. Noia*, 372 U.S. 391, 436 (1963), overruled in part by *Wainwright v. Sykes*, 433 U.S. 72 (1977), and abrogated by *Coleman v. Thompson*, 501 U.S. 722 (1991). Petitioner is asking this Court to review an unpublished decision of the First District Court of Appeals, which has no precedential value. *Dep't of Legal Affairs v. Dist. Court of Appeal, 5th Dist.*, 434 So. 2d 310, 311 (Fla. 1983)(holding that aa per curiam appellate court decision with no written opinion does not have any precedential value). Because the State court decision merely states "affirmed" it cannot conflict with a decision of another state court of last resort or of a United States court of appeals, decide an important question of federal law that has not been, but should be, settled by this Court, or decided an important federal question in a way that conflicts with relevant decisions of this Court. No such conflict is presented in this petition. Nor does this case test the limits of this Court's precedent.

The Fifth Amendment provides that "[n]o person ... shall be compelled in any criminal case to be a witness against himself." U.S. Const., Amdt. 5. In *Miranda v. Arizona*, 384 U.S. 436 (1966), the Court, adopted a set of prophylactic measures to protect a suspect's Fifth Amendment right, "announced that police officers must warn a suspect prior to questioning that he has a right to remain silent, and a right to the

presence of an attorney." *Maryland v. Shatzer*, 559 U.S. 98, 103-04 (2010). If a suspect indicated that he or she wishes to remain silent or wants an attorney, the interrogation must cease. Id. at 104 Nevertheless, "a suspect can waive these rights." Id.

The "[i]nvocation of the Miranda right to counsel 'requires, at a minimum, some statement that can reasonably be construed to be an expression of a desire for the assistance of an attorney.'" *Davis v. United States*, 512 U.S. 452, 459 (1994), citing, *McNeil v. Wisconsin*, 501 U.S. 171, 178 (1991). This Court stated that "if a suspect makes a reference to an attorney that is ambiguous or equivocal in that a reasonable officer in light of the circumstances would have understood only that the suspect might be invoking the right to counsel, our precedents do not require the cessation of questioning." *Id.* This Court held that "after a knowing and voluntary waiver of the Miranda rights, law enforcement officers may continue questioning until and unless the suspect clearly requests an attorney." *Id.* Finally, if a suspect has unequivocally asserted his right to counsel, the suspect 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 v. Arizona*, 451 U.S. 477, 484-85 (1981).

In the case at hand, police interviewed petitioner prior to his arrest while officers were searching his home pursuant to a search warrant. The interview was recorded and transcribed. Petitioner waived his Miranda rights. (Resp. App. A at 139,141). Prior to asking any factual questions, Investigator Smith told Petitioner, "[i]f you don't want to answer a question, just say, Mike, I'd rather not answer that question." Smith then repeated, a second time, that if Petitioner did not want to answer a question, then to just tell him so. (Resp. App. A at 142). Petitioner indicated that he had read the statement of rights and understood them. Petitioner indicated that he was willing to make a statement and answer questions. Petitioner stated that he did not want a

lawyer at that time but then said, "I don't know, I might - - I might want a lawyer if - - if it's serious." (RII-143). Investigator Evans responded as follows:

> "Well, what that's asking is do you want a lawyer present before you are willing to talk to us. You can always get a lawyer. But that question specifically is asking you, are you willing to answer my questions now, without a lawyer present. You can always stop the questioning and say, I think I should talk to my lawyer, or, I think I need to go find a lawyer." (RII-143).

Petitioner responded, "okay." Evans reiterated what he said above a second time. Petitioner then indicated that he understood what he was doing, that no promises or threats had been made to him, and that no pressure or coercion of any kind had been used against him. (Resp. App. A at 143).

After questioning Petitioner for some time, Petitioner admitted to viewing pornography and stated he preferred the people to be legal. The investigator asked Petitioner how old are some of the people were on the videos, which were not of a legal age and had made him feel like what he was doing was wrong. (Resp. App. A at 154-155). Petitioner stated that he did not know if he wanted to talk about that and the investigator moved on to other questions. (Resp. App. A at 155). Later on, Petitioner stated that he was uncomfortable with another question about when was the last time he viewed porn that made him uncomfortable and that he did not want to answer it. The investigator said that was ok and moved on. (Resp. App. A at 160). The investigator asked Petitioner how much stuff on his computer would be "extra-special embarrassing," definitely wrong, and/or maybe illegal. Petitioner responded that he would really prefer to have a lawyer for that question. The investigator said that was ok and moved on. (Resp. App. A at 163).

After speaking for a bit, the investigator noted that there were certain questions Petitioner did not want to answer and that it was ok. (Resp. App. A at 166-167). When the investigator asked Petitioner if there was anything else he wanted them to know,

Petitioner responded that there was not anything else he was willing to provide. (Resp. App. A at 167). The investigator asked Petitioner what a word meant and Petitioner responded by asking if they could skip that question. (Resp. App. A at 170). The investigator asked if Petitioner did not want to answer the question and Petitioner responded that the word had multiple meanings. (Resp. App. A at 170-171). The investigator asked if a certain file was looked at or downloaded by Petitioner. (Resp. App. A at 171). Petitioner indicated that there were things that he did not want to answer. The investigator said that was fine and that he would not ask the question again. (Resp. App. A at 172). After questioning Petitioner some more, the investigator stated as follows: "Let me - - let me just ask you, again, because I don't - - again, I'm very honest and upfront, Are you still willing to talk to us? It's just you want to say, I don't want to answer that question-". Petitioner interjected with a yes. The investigator continued on with his sentence and said "-and get a lawyer-" Petitioner interjected with a yes. The investigator still continued on with his sentence and said, "-but you're still willing to talk to us about other questions?" Petitioner said yes. The investigator made it clear that if Petitioner said he was done, then he would stop talking to him. (Resp. App. A at 179-180).

In *Davis v. United States*, 512 U.S. 452,462(1994), this Court affirmed the Military judges finding that Davis' statement that "'Maybe I should talk to a lawyer'—was not a request for counsel[.]" This Court found the "[t]he NIS agents therefore were not required to stop questioning petitioner, though it was entirely proper for them to clarify whether petitioner in fact wanted a lawyer." Id. Other Courts have made similar findings. *State v. Spears*, 184 Ariz. 277, 286, 908 P.2d 1062, 1071 (1996)(finding that the statement that "You want to arrest me for stealing a car, then let me call a lawyer and I'll have a lawyer appointed to me and, because this is going no where [sic]. I didn't steal her car" was an ambiguous request for counsel); *Burket*

v. Angelone, 208 F.3d 172, 197 (4th Cir. 2000)(holding that Burket's statement "I think I need a lawyer," did not invoke his right to counsel); *State v. Harris*, 741 N.W.2d 1, 6 (Iowa 2007)(finding that Harris's statement "If I need a lawyer, tell me now" was not sufficient to invoke his right to counsel); *United States v. Montes*, 602 F.3d 381, 385 (5th Cir. 2010)(the defendant's statement "Maybe I should get an attorney" or "Do I need an attorney?" was ambiguous and did not clearly invoke his right to counsel); *United States v. Whiteford*, 676 F.3d 348, 362 (3d Cir. 2012)(finding that the defendant's statement that he had consulted with an attorney who told him to cooperate unless he "got stumped" was not an objectively identifiable request for counsel); *United States v. Medunjanin*, 752 F.3d 576, 587 (2d Cir. 2014)(finding that Medunjanin's question as to whether his lawyer had been notified when the search warrant was served was unclear and ambiguous). Likewise, in this present case, petitioner stated that he he did not want a lawyer at that time but then said, "I don't know, I might - - I might want a lawyer if - - if it's serious" was not an unequivocal request for counsel. Moreover, even though the investigator was not required to, he nevertheless clarified petitioner's intentions by saying that is what we are asking you and are you willing to answer my questions now without a lawyer. (RII-143). Petitioner's other response later in the interview was also not an unequivocal request for counsel, as petitioner said he would prefer to have a lawyer for that question.

Petitioner also did not invoke his right to remain silent by refusing to answer some of the investigator's questions. This Court applied the *Davis* standard for determining whether the accused has invoked his or her right to remain silent requiring the invocation to be unambiguous and unequivocal. *Berghuis v. Thompkins*, 560 U.S. 370, 381 (2010). In this case, petitioner made statements that he did not want to answer a question. Moreover, even though it was not required after petitioner declined to answer several questions, the investigator made sure petitioner was still willing to talk

to them and answer other questions. The officer reiterated that if petitioner said he was done, they would stop talking to him. (Resp. App. A at 179-180). Therefore, the officer did not push the limits of what this Court has authorized, but instead, the officer did more than what this Court has required, by clarifying whether petitioner wanted to continue to speak to them.

The State court's decision to affirm is consistent with the decisions of other courts. See *United States v. Sherrod*, 445 F.3d 980, 982 (7th Cir. 2006)(finding that Sherrod's statements that he was " not going to talk about nothin. " was ambiguous and equally susipitable as being considered "a taunt—even a provocation—as it is an invocation of the right to remain silent.") ; *United States v. Teleguz*, 492 F.3d 80, 88 (1st Cir. 2007)(finding that "defendant's choice, after signing a Miranda waiver, to selectively answer questions, is not in itself an unequivocal assertion of his right to remain silent."); *United States v. Shi*, 525 F.3d 709, 729 (9th Cir. 2008)(finding Shi's statement to the Agent "I don't want to talk about the accident" was an ambiguous); *United States v. Plugh*, 648 F.3d 118, 124–25 (2d Cir. 2011)(finding that Plugh's only statements— 'I am not sure if I should be talking to you' and 'I don't know if I need a lawyer'—were appropriately deemed 'ambiguous[.]'").

Accordingly, the trial court's decision to find the statements of petitioner to be equivocal in this case is consistent with the decisions of this Court and numerous other courts. Therefore, the State has not pushed the limits of this Court's precedent much less created a conflict of law, and there is no grounds for certiorari review.

II: Whether this Court should exercise its certiorari jurisdiction to review the unwritten decision to affirm the trial court's decision to sustain an objection to petitioner's question to the jurors regarding what would happen if they clicked on an imagine of the Eiffel Tower when searching on the internet?

Petitioner also contends that the State court violated his right to a fair and impartial jury by restricting a question he asked in voir dire. Again, petitioner is seeking review of an unpublished decision of the First District Court of Appeal, which has no precedential value, which does not conflict with a decision of another state court of last resort or of a United States Court of Appeals, decide an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court. No such conflict is presented in this petition. Nor does this case test the limits of this Court's precedent.

Petitioner is correct that "[v]oir dire plays a critical function in assuring the criminal defendant that his Sixth Amendment right to an impartial jury will be honored. Without an adequate voir dire, the trial judge's responsibility to remove prospective jurors who will not be able impartially to follow the court's instructions and evaluate the evidence cannot be fulfilled." *Rosales-Lopez v. United States*, 451 U.S. 182, 188 (1981). Nevertheless, in order to show that petitioner was denied a constitutional right during jury selection, a defendant must show that the question which the trial judge refused to give rendered the defendant's trial fundamentally unfair. *Mu'Min v. Virginia*, 500 U.S. 415, 425–26 (1991)("To be constitutionally compelled, however, it is not enough that such questions might be helpful. Rather, the trial court's failure to ask these questions must render the defendant's trial fundamentally unfair."). Therefore, this Court has recognized that the trial court has broad discretion regarding in conducting voir dire. *Ham v. South Carolina*, 409 U.S. 524, 527–28,(1973)(recognizing that the Due Process Clause allows for broad discretion of the court "as to form and number of questions permitted" in jury selection and finding that the trial judge had not abused that discretion by refusing to allow the defendant to question the jury about the fact that he had a beard); *Aldridge v. United*

States, 283 U.S. 308, 310 (1931)(providing that "[t]he questions to the prospective jurors were put by the court, and the court had a broad discretion as to the questions to be asked."). Other courts have held the same. *United States v. Delgado-Marrero*, 744 F.3d 167, 201 (1st Cir. 2014)(holding that"'no hard-and-fast formula dictates the necessary depth or breadth of voir dire,' ... and we review the trial judge's voir dire questioning for abuse of discretion[.]), citations omitted; *United States v. Cervantes*, 706 F.3d 603, 613 (5th Cir. 2013)(finding no abuse of discretion by "the magistrate judge's refusal to question potential jurors about the law of entrapment, a defense which Cervantes intended to rely on at trial."); *United States v. Cunningham*, 694 F.3d 372, 393 (3d Cir. 2012)(finding no abuse of discretion when the judge failed to provide more detailed descriptions of the videos which would be played in the child pornography trial); *United States v. Treacy*, 639 F.3d 32, 47 (2d Cir. 2011)(finding no abuse of discretion when the trial court refused to issue Treacy's proposed questionnaire and did not inquire into whether prospective jurors had biases against corporate American); *United States v. Ledee*, 549 F.2d 990, 992 (5th Cir. 1977)(holding that "it is not an abuse of that discretion to refuse to allow inquiries of jurors as to whether they can accept certain propositions of law.").

In the case at bar, during voir dire, after defense counsel asked a series of questions about the potential jurors' experience with computers and peer sharing without objection, defense counsel stated to the potential jurors, the following:

> MR. WEINSTOCK: Let me ask a question. Let's assume that you're on a site that says "Click here to download a picture of the Eiffel Tower," and you click it, and a file gets downloaded to your computer.
>
> PROSPECTIVE JUROR: Yes, sir.
>
> MR. WEINSTOCK: Okay. Do you now have a picture of the Eiffel Tower on your computer?

(Vol. Pg 140). The prosecutor objected on the grounds that defense counsel was presenting his theory of defense, which was not appropriate at that time. The trial court sustained the objection. Petitioner did not try to re-phrase the question or ask a different question.

The State court did not abuse its discretion, much less violate Petitioner's constitutional rights, by sustaining the objection. The question was a poorly worded question. If the juror had answered the question that by clicking on the Eiffel Tower you would get the Eiffel Tower, it would not have been evidence of a bias anymore than if the juror would have said he or she did not know what would occur. Petitioner was not prevented from asking other questions about the jurors computer usage, knowledge, or skills. The State court decision to affirm the conviction in this case was consistent with numerous other cases, did not create a conflict of law and does not involve an important issue. Therefore, petitioner has failed to allege grounds to support this Court's review.

Accordingly, this Court should deny the petition for writ of certiorari. Petitioner is seeking review of a per curiam affirmance without a written opinion which has no precedential value. Moreover, the trial court's rulings in this case were consistent with the decisions of this Court and numerous other courts. The State has not pushed the limits of this Court's precedent much less created a conflict of law, and there is no grounds for certiorari review.

CONCLUSION

The petition for writ of certiorari should be denied.

Respectfully submitted,

PAMELA JO BONDI
ATTORNEY GENERAL

Carolyn M. Snurkowski
Deputy Attorney General
Counsel of Record

TRISHA MEGGS PATE
ASSISTANT ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL
CAPITAL APPEALS
PL-01, THE CAPITOL
TALLAHASSEE, FL 32399-1050
(850) 414-3603
(850) 487-0997 (FAX)