No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

ASHLEY McARTHUR,
Petitioner,

v.

STATE OF FLORIDA,
Respondent.

On Petition for Writ of Certiorari to the Florida First District Court of Appeal

PETITION FOR WRIT OF CERTIORARI

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A. QUESTION PRESENTED FOR REVIEW

Whether a law enforcement officer's minimization/downplaying of a defendant's rights set forth in *Miranda v. Arizona*, 384 U.S. 436 (1966), renders a subsequent waiver of those rights involuntary.

B. PARTIES INVOLVED

The parties involved are identified in the style of the case.

C. TABLE OF CONTENTS AND TABLE OF AUTHORITIES

1. TABLE OF CONTENTS

2. TABLE OF CITED AUTHORITIES

a. Cases

b. Statutes

c. Other Authority

The Petitioner, ASHLEY McARTHUR, requests the Court to issue a writ of certiorari to review the opinion/judgment of the Florida First District Court of Appeal entered in this case on April 16, 2021 (A-3)[1] (review denied by the Florida Supreme Court on August 20, 2021 (A-9)).

D. CITATION TO ORDER BELOW

McArthur v. State, 320 So. 3d 247 (Fla. 1st DCA 2021).

E. BASIS FOR JURISDICTION

The jurisdiction of the Court is invoked pursuant to 28 U.S.C. § 1257 to review the final judgment of the Florida First District Court of Appeal.

F. CONSTITUTIONAL PROVISION INVOLVED

The Fifth Amendment to the Constitution provides that no person "shall be compelled in any criminal case to be a witness against himself." U.S. Const. amend. V. The Fifth Amendment protection against compelled self-incrimination also provides the right to counsel at custodial interrogations. *See Edwards v. Arizona*, 451 U.S. 477, 482 (1981).

[1] References to the appendix to this petition will be made by the designation "A" followed by the appropriate page number.

G. STATEMENT OF THE CASE AND STATEMENT OF THE FACTS

The issue in this case concerns whether a defendant's waiver of her constitutional rights against self-incrimination and right to counsel is valid if law enforcement officers minimize and downplay the significance of the *Miranda* warnings. The Petitioner was charged with murdering Taylor Wright (i.e., one count of first-degree murder). The prosecution alleged that the offense occurred between September 8, 2017, and September 9, 2017. The prosecution's theory of the case was that Ms. Wright had requested the Petitioner to hold some money (approximately $34,000) for her in an account (i.e., money that was the subject of Ms. Wright's pending divorce proceeding), and that the Petitioner killed Ms. Wright because Ms. Wright was asking the Petitioner to return the money. The defense's theory of the case was that there was no physical or scientific evidence linking the Petitioner to Ms. Wright's death. The case proceeded to trial in August of 2019, and during the trial, the prosecution relied substantially on statements that the Petitioner gave during an October 19, 2017, interrogation. Ultimately, the jury returned a guilty verdict and the Petitioner was sentenced to life imprisonment.

Prior to trial, the Petitioner filed a motion to suppress her statements from pretrial interrogation – arguing that she did not knowingly and intelligently waive her *Miranda* rights. Following a suppression hearing, the trial court denied the motion and the Petitioner's statements were admitted into evidence during the trial.

On direct appeal, the Petitioner argued that the trial court erred by denying her motion to suppress. The state appellate court affirmed the trial court's order. (A-3).

H. REASON FOR GRANTING THE WRIT

The question presented is important.

The Fifth Amendment to the Constitution protects against self-incrimination. This Fifth Amendment protection also provides the right to counsel at custodial interrogations. It is well settled that when an individual is taken into custody and subjected to questioning, she must be advised of these rights (i.e., the right to remain silent and the right to the presence of an attorney during questioning). *See Florida v. Powell*, 559 U.S. 50, 59-60 (2010). As explained below, in the instant case, law enforcement officers *minimized* and *downplayed* the significance of the Petitioner's *Miranda* rights – thereby rendering her subsequent waiver of those rights involuntary.[2]

Prior to trial, the Petitioner filed a motion to suppress her statements to law enforcement officers. (A-11). In the motion, defense counsel asserted the following:

> COMES NOW Defendant, Ashley Britt McArthur, by and through her undersigned attorney and pursuant to Florida Rule of Criminal Procedure 3.190(h), the Fifth Amendment to the United States Constitution and Article 1 Section 9 of the Florida Constitution, and hereby moves this Honorable Court to suppress statements made by Mrs. McArthur and as grounds, therefore, states the following:
>
> 1. Mrs. McArthur has been indicted on one count of violation of Section 782.04 and Section 775.087, Florida Statutes.
>
> 2. On or about October 19, 2017, Det. Ghigliotty called Mrs. McArthur and told her she could come get her telephone which was being stored at the police station.

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[2] The Due Process Clause of the Fourteenth Amendment prohibits the prosecution's use of involuntary confessions. *See Miller v. Fenton*, 474 U.S. 104, 109 (1985).

3. Mrs. McArthur came to the police station to retrieve her phone on October 19, 2017.

4. Once at the police station, Mrs. McArthur was directed to a small interrogation room. The room had 3 chairs, a table and no windows.

5. After Mrs. McArthur entered the interrogation room, law enforcement officers closed the door behind her.

6. Mrs. McArthur sat in the interrogation room by herself, with the door closed, for approximately five minutes.

7. Officer Chad Willhite and Officer Richard Ghigliotty then entered the interrogation room.

8. They closed the door behind them.

9. Both officers sat within approximately two to three feet of Mrs. McArthur.

10. The officers positioned themselves between Mrs. McArthur and the door.

11. Officer Ghigliotty began working on some paperwork at the table.

12. Officer Willhite then initiated a conversation with Mrs. McArthur.

13. Officer Willhite started the conversation with some small talk. The conversation included such things as did Mrs. McArthur get any sleep last night and questions about the non-profit organization for which Mrs. McArthur volunteers.

14. Then there is some brief discussion about Mrs. McArthur's cell phone.

15. Officer Ghigliotty then asked how Mrs. McArthur has been doing. He also inquires if Mrs. McArthur had talked to "Cass" ("Cass" refers to Cassandra Waller, Taylor Wright's girlfriend).

16. There then is some conversation about Taylor Wright's ex-husband, Jeff Wright.

17. Officer Ghigliotty then asks if Jeff Wright, Taylor Wright's ex-husband, talked to Mrs. McArthur about Drake. (Drake is Taylor Wright's son.)

18. Officer Ghigliotty then asks Mrs. McArthur if she has heard anything else about Taylor Wright.

19. There was continued discussion about Taylor Wright's background and her disappearance.

20. Officer Ghigliotty then informs Mrs. McArthur that they've come across some things that they're not really sure what to make of it. He added that it could be just something civil or something they had an agreement on.

21. Officer Ghigliotty tells Mrs. McArthur, he is going to ask her

about it.

22. Officer Ghigliotty adds that, because they don't know the nature of it, he needs to read "something" to her.

23. Officer Ghigliotty then says, "I'll try to breeze through this real quick."

24. Officer Ghigliotty then reads what appears to be Miranda Rights from a piece of paper. He asks Mrs. McArthur is she understands that.

25. He then slides the piece of paper across the table to Mrs. McArthur. Mrs. McArthur signs the piece of paper.

26. Officer Ghigliotty then begins to question Mrs McArthur about some bank records they located.

27. The questioning of Mrs. McArthur then continues for well over another hour. The questioning includes telling Mrs. McArthur that she is not telling the officers everything. The officers attack Mrs. McArthur's account of her time line with Taylor Wright. The officers use cell phone tower records to confront Mrs. McArthur.

28. At the same time Officer Ghigliotty and Officer Willhite were questioning Mrs. McArthur, a search warrant was being executed at 2201 Britt Road.

29. After sitting in the interrogation room for approximately one hour and forty-five minutes and be[ing][sic] interrogated by two law enforcement officer[s] [sic], Mrs. McArthur requested an attorney.

30. After [the] [sic] questioning of Mrs. McArthur ended, she was held in the interrogation room for almost another two hours.

31. Mrs. McArthur was eventually released from the Pensacola Police Department only to be arrested about an hour later.

32. Clearly Officer Ghigliotty called Mrs. McArthur to the police station, not to return her phone, but rather to interrogate her.

33. The officers gave "mid-stream" Miranda warnings and downplayed the significance of the Miranda Rights.

34. The waiver of Mrs. McArthur's rights against self-incrimination was not voluntary, knowingly, or intelligent and the statements were not voluntarily given. The waiver was a product of coercion and/or deception on the part of the officers. The State bears a heavy burden to demonstrate that Mrs. McArthur knowingly and intelligently waived her privilege against self-incrimination and the right to counsel.

(A-11-15). A suppression hearing was held on February 20, 2019. (A-16-79). During the suppression hearing, the defense introduced the interrogation recording from

October 19, 2017. During the interrogation, the following occurred:

INVESTIGATOR GHIGLIOTTY: Good morning. How you been doing?

THE DEFENDANT: Good.

INVESTIGATOR GHIGLIOTTY: Did you have a good night?

THE DEFENDANT: I'm tired.

INVESTIGATOR WILLHITE: Tired. You didn't sleep good?

. . . .

INVESTIGATOR WILLHITE: Okay. What time is his plane?

THE DEFENDANT: Six.

INVESTIGATOR WILLHITE: He's boarding soon.

THE DEFENDANT: Yeah.

INVESTIGATOR WILLHITE: Try and take an early flight. Just get there.

THE DEFENDANT: He flew (unintelligible). He flew her to Miami and then to DC.

INVESTIGATOR WILLHITE: (Unintelligible).

INVESTIGATOR GHIGLIOTTY: That is going the wrong way.

THE DEFENDANT: Yeah.

. . . .

INVESTIGATOR GHIGLIOTTY: Here's your phone. It's in the same condition. If you want to look at it and make sure it's in the same condition it was when you left it?

THE DEFENDANT: It's a (unintelligible).

INVESTIGATOR GHIGLIOTTY: Yeah , I agree, but. So your black iPhone, my signature, we're returning it back over to you on the 19th. If you'll sign there. How you been doing?

THE DEFENDANT: Okay. Just busy.

INVESTIGATOR GHIGLIOTTY: Yeah. Talk to Cas [Casandra Waller] lately?

THE DEFENDANT: I haven't talked to her lately. I – she – I would text her or message her every now and then, (unintelligible). She hasn't (unintelligible).

INVESTIGATOR GHIGLIOTTY: How's she doing?

. . . .

INVESTIGATOR GHIGLIOTTY: Huh. All right. Anyone else come forward to let you know anything, you know, all his friends heard anything?

THE DEFENDANT: I haven't – I mean, again, I don't know any of her friends really. I mean, like, Cas is the only, like, Facebook friend that we have in common.

INVESTIGATOR GHIGLIOTTY: Oh , really?

THE DEFENDANT: Yeah. So we have got her other circle. I don't know, you know. So, I mean, (unintelligible) Cas would (unintelligible) or whatever, but other than that, I don't have any, like, social friends in common.

INVESTIGATOR GHIGLIOTTY: Yeah. What was Jeff saying exactly? Was he concerned or was he –

(A-80, A-83-86). After several minutes of this "small talk" and questions about Taylor Wright, the officers then said the following:

INVESTIGATOR GHIGLIOTTY: You know, well, (unintelligible) so we've come across, like I said, several things. *We don't know whether it's civil* or something y'all had agreements on or whatever, so I was going

to ask you about those, if you don't mind, if you have some time.

THE DEFENDANT: Okay.

INVESTIGATOR GHIGLIOTTY: But with that, because we don't know the nature of it –

THE DEFENDANT: Yeah.

INVESTIGATOR GHIGLIOTTY: – I need you to read *something*.

THE DEFENDANT: Okay.

INVESTIGATOR GHIGLIOTTY: Cool?

THE DEFENDANT: Uh-huh.

INVESTIGATOR GHIGLIOTTY: Okay. I'll read through this real quick. *If it turns out it's just civil issues and that's not what we deal with*.

So before we ask you any questions, you must understand your rights.

You have the right to remain silent. Anything you say can be used against you in court. You have the right to talk to a lawyer for advice before we ask you any questions. You have a right to have a lawyer with you during questioning. If you cannot afford a lawyer, one will be appointed for you before questioning, if you wish.

If you decide to answer questions now without a lawyer present, you have the right to stop answering any time. Do you understand that?

THE DEFENDANT: (No audible response)

INVESTIGATOR GHIGLIOTTY: (Unintelligible) it read it, you're welcome to?

Okay?

INVESTIGATOR WILLHITE: We think y'all may be business partners in something, that's why we're asking to make sure.

(A-91-92) (emphasis added).

The Petitioner submits that the admission of her statements from the October 19, 2017, interrogation violated *Miranda* and her constitutional right to counsel and

right to remain silent. To be admissible in evidence, an interrogation statement must be voluntary – the product of a "free and rational choice." *Johnson v. State*, 696 So. 2d 326, 329 (Fla. 1997). "[T]he ultimate issue of 'voluntariness' is a legal question requiring independent federal determination." *Miller v. Fenton*, 474 U.S. 104, 110 (1985). The burden is on the prosecution to show that *Miranda* rights were administered and that a defendant agreed to waive them. *See Miranda*, 384 U.S. at 475. Proof of waiver must be by a preponderance of the evidence. *See Colorado v. Connelly*, 479 U.S. 157, 168-169 (1986). "Only if the totality of the circumstances surrounding the interrogation reveal both an uncoerced choice and the requisite level of comprehension may a court properly conclude that the *Miranda* rights have been waived." *Moran v. Burbine*, 475 U.S. 412, 421 (1986). In *Ramirez v. State*, 739 So. 2d 568, 575 (Fla. 1999), the Florida Supreme Court held that the determination of whether a defendant validly waived *Miranda* rights is a two-fold inquiry:

> First, the relinquishment of the right must have been voluntary in the sense that it was the product of free and deliberate choice rather than intimidation, coercion, or deception. Second, the waiver must have been made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it. Only if the "totality of the circumstances surrounding the interrogation" reveal both an uncoerced choice and the requisite level of comprehension may a court properly conclude that the *Miranda* rights have been waived.

Id. (citations omitted).

The Petitioner submits that the prosecution in the instant case is unable to meet its "heavy burden" to demonstrate that she knowingly and intelligently waived her *Miranda* rights. *See Ross v. State*, 45 So. 3d 403, 418 (Fla. 2010) (citations omitted). The law enforcement officers goaded the Petitioner into coming to the police

department under the guise of retrieving her phone – knowing that the sole purpose in asking her to come to the police department was to question her about Ms. Wright's disappearance. Once the interrogation began, in attempting to get the Petitioner to waive her *Miranda* rights, the officers delayed reading *Miranda* warnings to the Petitioner until they created a false sense of security. And when the officers finally read the *Miranda* rights, they significantly downplayed the significance of those rights:

> INVESTIGATOR GHIGLIOTTY: You know, well, (unintelligible) so we've come across, like I said, several things. *We don't know whether it's civil* or something y'all had agreements on or whatever, so I was going to ask you about those, if you don't mind, if you have some time.
>
> THE DEFENDANT: Okay.
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> INVESTIGATOR GHIGLIOTTY: But with that, because we don't know the nature of it –
>
> THE DEFENDANT: Yeah.
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> INVESTIGATOR GHIGLIOTTY: – I need you to read *something*.
>
> THE DEFENDANT: Okay.
>
> INVESTIGATOR GHIGLIOTTY: Cool?
>
> THE DEFENDANT: Uh-huh.
>
> INVESTIGATOR GHIGLIOTTY: Okay. I'll read through this real quick. *If it turns out it's just civil issues and that's not what we deal with*.
>
> So before we ask you any questions, you must understand your rights.

(A-91-92) (emphasis added). Based on the foregoing, the Petitioner's subsequent statements were involuntary. "The police may not use misinformation about *Miranda* rights to nudge a hesitant suspect into initially waiving those rights and speaking with

the police." *Dooley v. State*, 743 So. 2d 65, 69 (Fla. 4th DCA 1999), *approved of in Cuervo v. State*, 967 So. 2d 155, 165-66 (Fla. 2007) (finding the prophylactic effect of *Miranda* to be rendered a nullity where police seek statements in a manner that misleads the accused's understanding of his or her rights).

In support of her argument, the Petitioner relies on *Doody v. Ryan*, 649 F.3d 986 (9th Cir. 2011). In *Doody*, the Ninth Circuit Court of Appeals held that the defendant's confession was made involuntarily, in part, because the law enforcement officer repeatedly minimized the *Miranda* warning's significance. *See Doody*, 649 F.3d at 1002-1003. Specifically, in *Doody*, the officer implied to Doody that "the warnings were just formalities." *Id.* at 1002. As in *Doody*, in the instant case, the law enforcement officers improperly minimized the significance of the Petitioner's *Miranda* rights.

The Petitioner also relies on the Florida Supreme Court's decision in *Ross*. In *Ross*, the Florida Supreme Court held that the defendant's statements to law enforcement officers were not voluntary because (among other things), the law enforcement officers minimized the significance of the *Miranda* rights:

> We next review whether the police minimized and downplayed the significance of the *Miranda* rights once they were given. This factor is important to ensure that a suspect who is provided with a tardy administration of the *Miranda* warnings truly understands the importance and the effect of the *Miranda* warnings in light of the problems faced when warnings are delivered midstream. While a "careful and thorough administration of *Miranda* warnings serves to cure the condition that made an unwarned statement inadmissible," where police minimize and downplay the significance of the warnings, the very purpose of Miranda is undermined.
>
> . . . .
>
> Immediately prior to providing Ross with his *Miranda* rights,

Detective Waldron stated to Ross:

> Waldron: There's a couple of things that I need to go over with you real quick. There's a couple of things I discovered, and before we go any further I want to cover this with you, *it's just a matter of procedure, um, based on everything we're talking about*.
>
> Ross: So am I being arrested?
>
> Waldron: Nope. At this time you and I are talking, okay? And I would like to talk to you some more. But before I can do that I need to go over this. You're not in handcuffs or anything like that, okay?

This strategy, employed after the hours of unwarned interrogation, de-emphasized the significance of the *Miranda* warnings. By referring to it as a matter of procedure, the detective conveyed the clear impression that the warnings were merely a bureaucratic formality.

Ross, 45 So. 3d at 428-429 (emphasis in the original). As in *Ross*, in the present case, the agents improperly minimized and downplayed the significance of the *Miranda* rights. After spending several minutes talking to the Petitioner, the officers finally got around to discussing *Miranda* rights with the Petitioner, and in doing so, the officers made comments that were similar to the improper "it's just a matter of procedure" comment in *Ross* (i.e., "so we've come across, like I said, several things[; *w*]*e don't know whether it's civil* or something y'all had agreements on or whatever, so I was going to ask you about those, if you don't mind, if you have some time" and "I need you to read something . . . I'll read through this real quick[; *i*]*f it turns out it's just civil issues and that's not what we deal with*"). These actions resulted in the *Miranda* warnings being improperly minimized and downplayed. As explained by the court in *Ross*, the giving

of the *Miranda* warnings in the instant case were "likely to mislead and deprive" the Petitioner "of knowledge essential to h[er] ability to understand the nature of h[er] rights and the consequences of abandoning them." *Id.* at 428. Ultimately, when the "totality of the circumstances" in this case are considered, it is evident that the prosecution did not meet its "heavy burden" to demonstrate that the Petitioner knowingly and intelligently waived her privilege against self-incrimination and the right to counsel.

The giving of *Miranda* rights to a criminal suspect is not a game – and law enforcement officers should not "push the envelope" in an effort to nudge a hesitant person to waive his or her constitutional right to counsel and right to remain silent. As explained by the Florida Supreme Court in *Ross*, "where police minimize and downplay the significance of the warnings, the very purpose of *Miranda* is undermined." *Ross*, 45 So. 3d. at 428. The Petitioner submits that it is necessary for the Court to provide further guidance to law enforcement officers regarding what can – *and cannot* – be done when administering *Miranda* rights.

By granting the petition for writ of certiorari in the instant case, the Court will have the opportunity to answer the question of whether a law enforcement officer's minimization and downplaying of a defendant's *Miranda* rights renders a subsequent waiver of those rights involuntary. This is an important question that has the potential to impact numerous criminal cases nationwide. The Petitioner prays the Court to exercise its discretion to hear this important matter.

I. CONCLUSION

The Petitioner requests the Court to grant her petition for writ of certiorari.

Respectfully Submitted,

/s/ Michael Ufferman

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