No. _____

IN THE

Supreme Court of the United States

HECTOR SANCHEZ-TORRES,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Florida

PETITION FOR A WRIT OF CERTIORARI

THIS IS A CAPITAL CASE

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CAPITAL CASE

QUESTIONS PRESENTED

1. Whether the appropriate interpretation of *Colorado v. Connelly*'s "essential link" between coercive police activity and a suspect's confession is a "motivating cause" test or a more stringent "quid pro quo" bargain test?

2. Subsidiary Question: Where law enforcement has made threats to arrest a family member and those threats have been conveyed to the suspect, is the appropriate inquiry to determine the voluntariness of a suspect's subsequent confession whether the officers had probable cause to lawfully carry out such threats?

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PETITION FOR WRIT OF CERTIORARI

PARTIES TO THE PROCEEDING

Petitioner, HECTOR SANCHEZ-TORRES, a death-sentenced Florida prisoner, was the appellant in the Florida Supreme Court. Respondent, the State of Florida, was the appellee below. Mr. Sanchez-Torres respectfully urges this Honorable Court issue a writ of certiorari to review the judgment and decision of the Florida Supreme Court.

CITATION TO OPINION AND RECORD BELOW

The decision of the Florida Supreme Court is reported at 322 So. 3d 15 (Fla. 2020), as corrected on May 13, 2021 (SC19-211), and is attached to this Petition as Exhibit 1 of the Appendix. The decision of the Florida Supreme Court as originally

issued on March 12, 2020, is attached as Exhibit 3.

Mr. Sanchez-Torres's motion for rehearing and clarification was filed on April 23, 2020, and denied in light of the Florida Supreme Court's corrected opinion on May 13, 2021. Mr. Sanchez-Torres's motion for rehearing based on the corrected opinion was filed on May 27, 2021. This motion for rehearing was denied on August 5, 2021.

"PCR." will be used to refer to the record on appeal as compiled for Petitioner's state postconviction proceeding which resulted in the instant opinion for which a petition of certiorari is sought (SC19-211).

The abbreviation "R." will be used to refer to the first 6 volumes in the record compiled for Petitioner's direct appeal to the Florida Supreme Court (SC11-1760). "T." will be used to refer to Petitioner's trial transcript, which corresponds to volumes 7 through 9 for the same appeal. "Supp. T." refers to the supplemental transcript in the same appeal.

STATEMENT OF JURISDICTION

Mr. Sanchez-Torres invokes this Court's jurisdiction to grant the Petition for Writ of Certiorari to the Florida Supreme Court on the basis of 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

The Fifth Amendment provides, in relevant part:

> No person . . . shall be compelled in any criminal case to be a witness against himself . . . .

The Sixth Amendment provides, in relevant part:

> In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence.

The Fourteenth Amendment provides, in relevant part:

> [No] State [shall] deprive any person of life, liberty, or property, without due process of law.

STATEMENT OF THE CASE

To understand the decisions of law enforcement and the prosecution in this case, one must begin with the fact that Hector Sanchez-Torres had already capitulated to a completely unrelated homicide. On September 25, 2008, law enforcement contacted Hector Sanchez-Torres at his apartment and asked him if he would be willing to speak to them regarding the shooting of Levi Rollins. (T. 86-88). Sanchez-Torres voluntarily drove to the police station. (T. 94, 138). He admitted to shooting Rollins, causing his death, over threats Rollins made against Sanchez-Torres's girlfriend and unborn baby. (T. 107-11). Sanchez-Torres candidly stated, "I did it brother." (T. 107). Sanchez-Torres was placed under arrest that day.

Meanwhile, law enforcement was also investigating the murder of Eric Colon, whose body had been found on the side of the road two weeks earlier with a single gunshot wound to the head. There were no witnesses to the crime and no clear suspects.

Sanchez-Torres's younger sister, J.S., who was fifteen years old at the time, lived in an apartment with her mother and uncle. (T. 246). Her brother, Hector Sanchez-Torres, lived separately in his own apartment with a roommate, Markeil Thomas. (*Id.*).

J.S. testified that on September 30, 2008—five days after her brother had been taken into custody regarding the unrelated shooting of Rollins—she went into her Uncle Carlos's room and found a cell phone. (T. 246). It was plugged into a charger.

(*Id.*).

> She found a contact listing for "mom" and called it. A woman answered. She was crying and explained that the cell phone belonged to her murdered son [Eric Colon]. Sanchez-Torres's sister then hung up and called her mother, who told her to turn off the phone and wait for her to come home. Sanchez-Torres's sister also called Markeil Thomas, the codefendant in this case and Sanchez-Torres's good friend and roommate, who told her to turn off the phone and pull out the battery, which she did. She gave the phone to Thomas, and her mother got it from him.

Sanchez-Torres v. State, 130 So. 3d 661, 664-65 (Fla. 2013). Specifically, J.S. testified that her mother "told me to turn off the phone and to not do anything with it and to wait for her [to] get home." (T. 250). Markeil Thomas came to the house first and took the phone from her; then her mom came home and took possession of the phone. (T. 250-51). J.S. testified that she never saw the phone again after that. (*Id.*).

> Detective Sharman with the Clay County Sheriff's Office spoke with Sanchez-Torres's mother, Maria Torres, on October 1, 2008. Torres stated that she had found the phone and that her daughter had used the phone to call someone who said the phone belonged to her son. Torres stated that she had taken the phone from her daughter and had thrown it in the trash. At some point later, Torres told law enforcement that she had given the cell phone to someone who had destroyed it. The Clay County Sheriff's Office was then able to locate pieces of the phone.
>
> On October 2, Detective Sharman visited Sanchez–Torres in the Duval County Jail to question him about the phone. Sanchez–Torres stated that Thomas had bought the phone from an acquaintance known as "D." When informed that the phone belonged to a murder victim, Sanchez–Torres denied having anything to do with the murder.

Sanchez-Torres, 130 So. 3d at 664-65.

Sanchez-Torres stated that he believed the phone belonged to Thomas but did not implicate himself in the murder of Eric Colon. (T. 230). Sanchez-Torres remained in custody pursuant to charges for the admitted murder of Levi Rollins.

Markeil Thomas was also questioned by the police in 2008 and stated he bought the phone from someone else. *See Thomas v. State*, 310 So. 3d 1285, 1287 (Fla. 1st DCA 2021). However, Thomas did not implicate himself in the murder of Eric Colon at that time. *Id.* The investigation into the death of Eric Colon stalled.

The turning point did not come until March 5 of the following year. On March 5, 2009, Detective West contacted Sanchez-Torres's mother, Maria Torres at her home. "When he met with her, he informed her that he had drafted an arrest warrant for her for tampering with the cell phone and showed her an unsigned arrest warrant." *Sanchez-Torres*, 130 So. 3d at 664-65. West testified that he confronted Maria Torres with the arrest warrants and she became very upset and cried. (T. 289).

Maria Torres testified that "[t]hey [the detectives] said that if Hector [Sanchez-Torres] didn't talk to them, they were going to arrest me and [my daughter J.S.] and they showed me the paper." (Supp. T. 190). The paper "was—how do you put it, an arrest warrant." (*Id.*). Maria Torres had never seen an arrest warrant before. (*Id.* at 191). The unsigned arrest warrants had both Maria Torres's name on it and Sanchez-Torres's 15-year-old sister's name [J.S.] on it.

The same day, March 5, 2009, Detective West went to J.S.'s school and made contact with Sanchez-Torres's sister. (T. 297). J.S. testified that she was in algebra class when she was called to the security office. (Supp. T. 203-04). Detective West and another detective spoke to her; there was no parent or other adult in the room. (*Id.*). J.S. told the detectives that "I gave the phone to my mom and she took it, I knew nothing else of it." (Supp. T. 207). However, "they believed that I knew more

than what I told them, which I didn't, and that's whenever they pulled out the arrest warrants." (*Id*. at 208-09).

The detectives showed J.S. three warrants and "[t]hey just pointed out where it said like arrest warrant and where it said my mom's name, *my name*, and my uncle's name." (*Id*.) (emphasis added). J.S. had never seen an arrest warrant before. (*Id*.). The detectives told her "if you don't tell us what you know, your mom could be arrested, *you* and your uncle, you know [could be arrested]." (*Id*. at 209) (emphasis added). The detectives told her she "will lose everything that you worked [for]." (*Id*.). J.S. started crying and believed that "something like that [being arrested] could happen because of the way [the detectives] made me feel." (*Id*. at 210). After school, J.S. told her mom what happened. (*Id*. at 211).

The next day, Maria Torres spoke with her son during their regularly scheduled phone call. She told Sanchez-Torres what had occurred, and told him that "they want him to talk to them about the case." (Supp. T. 192). After she spoke with her son, Maria Torres called Detective West and advised him that Sanchez-Torres would speak with him. (T. 270; Supp. T. 192-93).

Sanchez-Torres finally spoke to law enforcement about the shooting. Sanchez-Torres, then 19-years old, told Detective West he did not want his mother to get in trouble. (T. 291). In a videotaped statement, Sanchez-Torres told him that he and Markeil Thomas robbed the victim, and Markeil Thomas shot the victim. (T. 275). However, the detectives emerged with a written confession from Sanchez-Torres that *he* was the shooter. (T. 274, 292-93).

The written confession describes that Sanchez-Torres and Thomas Markeil—his co-worker and roommate—decided that they wanted to obtain some marijuana to smoke. (T. 272-73). They went out in Sanchez-Torres's car looking for marijuana. He and Thomas drove past the victim on the right-hand side of the street and the idea of robbing him came to mind. (T. 273). In the written confession, Sanchez-Torres had a gun and shot the victim after forcing the victim to give him the contents of his pockets. (T. 274).[1]

After obtaining the written confession, Detective West transported Sanchez-Torres to a second location to re-record Sanchez-Torres's statement; however, in this second videotaped interview, Sanchez-Torres stated that while he agreed to rob the victim, he again insisted that Markeil Thomas shot the victim, which was consistent with his first videotaped statement. (T. 276). Throughout the interview, Detective West spoke about how difficult the situation was for his mother. (T. 294). Detectives continued to interrogate Sanchez-Torres until he changed his confession to be consistent with the written statement and agreed that he was the shooter. (T. 276).

On March 30, 2009, Sanchez-Torres was indicted on one count of premediated murder, resulting in the death of Erick Joel Colon, and one count of armed robbery. (R. 1).

In trial level proceedings, Sanchez-Torres was represented by attorneys Kate Bedell and Quentin Till. On April 29, 2011, Sanchez-Torres pled guilty to first-degree

[1] Sanchez-Torres's proffered testimony was that he and Thomas planned only to rob the victim, not to kill him. (T. 320-21).

premeditated murder and armed robbery. (T. 39-59). He also waived a penalty phase jury. (T. 78-80).

His guilty plea was not pursuant to any plea deal with or concessions from the State; the death penalty was still on the table. During his guilty plea colloquy, the judge asked Sanchez-Torres to explain in his own words why he was pleading guilty. (T. 49). Sanchez-Torres's response was alarming because it indicated he was convinced he was guilty solely because he was there and failed to report the shooting:

> The Court: Explain to me, if you would, then in your own words why you wish to plead guilty.
>
> The Defendant: Because I know I took part in the act, but I can't—you know what I'm saying, I know I'm guilty one way or another. I know I didn't actually kill Mr. Eric Colon, *but just by—by being there* I know it *makes me just as guilty because I didn't report it* or anything like that, so I'm just trying to do what's right by me and my family, sir.

(T. 49-50) (emphasis added). No one—not defense counsel, the prosecutor, or the court—commented on this statement.

Afterwards, the State read a factual basis into the record for both the murder and the armed robbery charges. (T. 53-54). Ms. Bedell clarified that while they stipulated to the factual basis, she noted that "obviously Mr. Sanchez believes that he was not the shooter." (T. 58). Regarding the armed robbery charge, the judge asked Mr. Sanchez:

> The Court: Well, are you pleading that at some point during the armed robbery, Mr. Sanchez-Torres, you were in possession of a firearm?
>
> The Defendant: No, sir, I wasn't.
>
> The Court: Then I can't accept the plea.

(T. 59). The State urged the court to accept the plea to armed robbery instead as a "best interest" or "no contest" plea. While the plea to armed robbery was accepted instead as a "no contest" plea, the plea to first-degree murder was accepted as an ordinary plea of guilty. The judge accepted the pleas as freely and voluntarily entered on both the murder and armed robbery counts. (T. 59-60).

In the penalty phase proceedings, the State opted to pursue the death penalty against Sanchez-Torres and took the position that Sanchez-Torres was the shooter, rather than Thomas, although as the court noted "Thomas has also testified he was the shooter." (T. 338). During the State's proceedings against Thomas, held before the same judge on June 14, 2011, the prosecution stated "the best evidence that is evidence outside of this case is likely that Mr. Sanchez Torres is the shooter because he has a prior homicide. However, excluding that prior homicide from this case you have two individuals who are both pointing the finger at each other . . . ."

In Sanchez-Torres's postconviction proceedings, he argued that his trial counsel rendered ineffective assistance by failing to file a motion to suppress his confession. The *Strickland* standard for ineffective assistance of counsel requires a showing that (1) counsel rendered deficient performance and (2) prejudice, i.e. a reasonable probability of a different result. *Strickland v. Washington*, 466 U.S. 668 (1984).

An evidentiary hearing was held, in which postconviction counsel questioned Sanchez-Torres's two trial attorneys as to why they did not file a motion to suppress.

Their testimony demonstrates that each trial attorney thought the motion to suppress was the other's responsibility.

> The following exchange took place with Ms. Bedell:
>
> Q: And did he [Sanchez-Torres] suggest anything to you that he felt intimidated or threatened because of the detectives making threats they were going to arrest his mother and sister?
>
> A: I know that Mr. Till had discussed that with me. I don't know that [Sanchez-Torres] specifically said that to me.
>
> . . .
>
> Q: Did you or anyone on the Defense team file a Motion to Suppress the statements that Sanchez made to the police that he was the shooter because he felt threatened and intimidated over the issues with his mother and sister?
>
> A: Anything involving the actual facts and allegations against him in terms of the homicide *would have been Mr. Till's responsibility.*
>
> Q: Okay.
>
> . . .
>
> Q: Okay. So . . . what portion of the case were you responsible for handling?
>
> A: Penalty.
>
> Q: I'm sorry?
>
> A: Penalty phase.
>
> Q: Only the penalty phase?
>
> A: Yes, sir.

(PCR. 2660-62) (emphasis added).

> The following exchange took place with Mr. Till:
>
> Q: [D]o you recall having any meetings with Ms. Bedell where she expressed any concern about the confession or that a suppression motion should be filed to suppress the statement confessing the murder?
>
> A: I—I did not—no. . . . I did not go into the day-to-day proceedings and preparation. I just had a—a lot of confidence in her . . . that she would be prepared for trial.

. . .

Q: Well I—I guess I'm trying to articulate from you—and you've given me . . . your reasoning about the jury, but were there other factors involved other than just not wanting to put this before a jury, that the—there was no suppression motion filed on the confession . . . [d]id that . . . come into any discussion between you and Ms. Bedell?

A: . . . A—a Motion to Suppress his—his confession, I—I think what Clay County authorities did probably warranted, you know, by going into the Duval County Jail, not informing me—me, who—who was representing him at the time . . . and getting the ball rolling by putting pressure on his mom to have him give incriminating statements to get them off the hook; you know, they—they were—they had arrest warrants when they went to the jail, showed him, you know, so yeah, it's—so was it coerced? To me it sounds pretty close to it.

. . . you know, it—it—it—maybe there should have been a—a—a Motion to [Suppress]—a Motion to Suppress can be heard at—at any time.

. . .

The Court: Would [the negotiations with the State] have factored into . . . the reasons why you didn't file a Motion to Suppress? [2]

A: It very well could have been, Judge. Like I said, the day-to-day operation, *including the filing of a Motion to Suppress, that would be Kate Bedell's bailiwic[k]—that would be her prerogative.*

(PCR. 2709, 2731-34) (emphasis added).

This is quintessential deficient performance. The failure to file a suppression motion was not a product of "strategy." *See e.g.*, *Kimmelman v. Morrison*, 477 U.S. 365, 385 (1986) (trial attorney failed to file suppression motion, not due to strategic consideration, but because of attorney's ignorance). This is not a case in which a

[2] The circuit court found that the attorneys were not deficient for failing to file a motion to suppress based on this very "strategy" that the judge suggested at the evidentiary hearing. (PCR. 1088-89). However, as seen here, neither of the two attorneys testified that this had in fact been their strategy or that they had actually considered, but decided against, filing a motion to suppress.

favorable bargain was struck in exchange for declining to file a suppression motion. Each attorney simply testified to the belief that a motion to suppress was the other attorney's responsibility.

Given the above testimony, the Florida Supreme Court did not address the deficient performance prong on postconviction appeal. Instead, the Florida Supreme Court focused only on the prejudice prong. In such a case, the prejudice prong of *Strickland* turns on the viability of the unpursued motion to suppress.

A confession's voluntariness depends on whether the State engaged in "coercive police activity" and whether the defendant's "will was overborne" by the circumstances surrounding the confession. *Colorado v. Connelly*, 479 U.S. 157, 167 (1986); *Dickerson v. United States*, 530 U.S. 428, 434 (2000). "[C]oercive police activity" is a necessary predicate to the finding that a confession is not "voluntary." *Connelly*, 479 U.S. at 167. This voluntariness test takes into consideration the totality of the circumstances—"both the characteristics of the accused and the details of the interrogation." *Dickerson*, 530 U.S. at 434. This inquiry is highly fact specific. The determination "depend[s] upon a weighing of the circumstances of pressure against the power of resistance of the person confessing." *Id.* (citing *Stein v. New York*, 346 U.S. 156, 185 (1953)).

Several state and federal courts have considered the question of whether a threat to arrest a suspect's family member constitutes coercive police conduct. The resounding answer is that "such a threat does not render a confession involuntary *if* the police have probable cause to arrest the family member and thus could lawfully

carry out the threat." *United States v. Ortiz*, 943 F. Supp. 2d 447, 456 (S.D.N.Y. 2013) (collecting cases); *Thompson v. Haley*, 255 F.3d 1292, 1296–97 (11th Cir. 2001) (holding that threat to arrest third party did not render the confession involuntary where the police had probable cause to arrest third party). The converse is that, where the police do *not* have probable cause to arrest a suspect's family member, a threat to do so is coercive. *United States v. Finch*, 998 F.2d 349, 355-56 (6th Cir. 1993) (threat that the defendant's mother or girlfriend would be arrested for cocaine unless someone admitted ownership was coercive where there was no probable cause to believe that either the mother or girlfriend were involved); *United States v. Irons*, 646 F. Supp. 2d 927, 948, 966-68 (E.D. Tenn. 2009) (finding that, where officers faked arrest of defendant's wife and police officer friend, police engaged in coercive activity because they lacked probable cause to actually arrest officer); *United States v. Bolin*, 514 F.2d 554, 560–61 (7th Cir. 1975) (holding, in the Fourth Amendment context, that a defendant's consent to search was not voluntary where the police threatened to arrest his girlfriend despite having no basis for suspecting her of wrongdoing); *United States v. Andrews*, 847 F. Supp. 2d 236, 249–50 (D. Mass. 2012) (holding that an unfounded threat to arrest a suspect's mother rendered the suspect's confession involuntary).

Although state and federal courts generally agree that the presence or absence of probable cause is the keystone when determining whether threats to arrest family members renders a confession involuntary, because this subsidiary question is fairly included within this petition, this case would provide the Court with an opportunity

to comment on this matter.

In this case, detectives showed unsigned arrest warrants for evidence tampering to both Sanchez-Torres's mother and 15-year-old sister. These arrest warrants had been filled out with both the mother's and sister's names. Regarding Maria Torres, on postconviction appeal the Florida Supreme Court found that the officers' actions were not improper coercion because the "detectives did in fact have probable cause to arrest Ms. Torres." *Sanchez-Torres v. State*, 322 So. 3d 15, 22 (Fla. 2020), *reh'g denied*, 2021 WL 1921973 (Fla. May 13, 2021). However, no such parallel finding for probable cause could be made for Sanchez-Torres's teenage sister.

The Florida Supreme Court did not comment on the lack of probable cause to arrest J.S. for evidence tampering. Rather, the Florida Supreme Court focused on the causal relationship between the officer's coercive actions and Sanchez-Torres's confession by honing in on the fact that, during the March 6, 2009 interview, the detectives made no "offers or promises in exchange for his confession," stating that a "promise" must have been made "in return for" or "quid pro quo" for Sanchez-Torres's confession. *Sanchez-Torres*, 322 So. 3d at 22.

As an additional note, despite the officers showing J.S. an arrest warrant with her own name it, pointing out where her name was written on the warrant, and telling her if she did not "tell us what you know, your mom could be arrested, *you* and your uncle, you know [could be arrested]," and "[y]ou will lose everything," the Florida Supreme Court wrote that "she testified that the detectives did *not* threaten to arrest

her."[3] *Id.* Because this statement is merely an erroneous reading of the record, however, little comment will be made on it in a petition to this Court. This petition focuses on the Florida Supreme Court's first statement, that the lack of an explicit *quid pro quo* meant that Sanchez-Torres's trial attorneys could not have established his confession was coerced.

The defendant's 15-year-old sister found the phone in her uncle's room and immediately turned the phone over to her mother. The Florida Supreme Court was silent as to whether the threat to arrest J.S. was improper because of the lack of probable cause. It is evident under the law, however, that the mere act of finding the phone and, quite appropriately, turning it over to her parent or legal guardian, does not constitute probable cause for tampering or destruction of evidence. *See Costanzo v. State*, 152 So. 3d 737, 738 (Fla. 4th DCA 2014) ("[A] defendant's equivocal conduct toward evidence is insufficient to demonstrate the intent necessary for a section 918.13 violation; merely discarding evidence from one's person, without more, does not amount to a violation of the statute."); *E.I. v. State*, 25 So.3d 625, 627 (Fla. 2d DCA 2009) ("[T]he offense of tampering is committed only when the defendant takes some action that is designed to actually alter or destroy the evidence rather than just removing it from his or her person.").

The Florida Supreme Court focused on whether there was concrete evidence that the threats made to arrest J.S. were causally linked to Petitioner's confession by

[3] This appears to be a misreading of J.S.'s testimony, because J.S. testified the officers told her that her mom, "***you*** and your uncle" could be arrested. (Supp. T. 209).

way of an express bargain. Despite the lack of probable cause to arrest J.S., the Florida Supreme Court concluded that, because the police had not struck an express bargain with the accused for his confession, the officer's actions were not coercive, i.e. did not directly produce Petitioner's confession.

The police did not directly negotiate with Sanchez-Torres for his confession; rather, the officers spoke to Sanchez-Torres's family members outside of the interrogation room. The implications arising from brandishing an arrest warrant with one's name on it, and J.S.'s name on it, are clear. The officers instructed Sanchez-Torres's mother to tell her son to speak with them. His mother was made to understand that she and her daughter J.S. would be arrested if Sanchez-Torres did not speak to the police about Eric Colon. All this was communicated to Sanchez-Torres through his mother. Nevertheless, the Florida Supreme Court wrote that, in the course of Sanchez-Torres's interrogation, the detectives made no "offers or promises in exchange for his confession," citing Florida case law that a "promise" must have been "in return for" or "quid pro quo" for Sanchez-Torres's confession. *Sanchez-Torres*, 322 So. 3d at 22 (*citing Blake v. State*, 972 So. 2d 839, 844 (Fla. 2007) ("Florida courts have repeatedly required that the alleged promise "induce," be "in return for," or be a "quid pro quo" for the confession.")).

Therefore, the Florida Supreme Court concluded that "a motion to suppress the confession would not have been granted," and "no prejudice can result from failure to file a motion that would not have been successful." *Id.*

REASONS FOR GRANTING THE WRIT

This case presents an important question regarding this Court's involuntary confession jurisprudence, on which multiple state courts of last resort have differing interpretations. The question of which is the correct interpretation or test for determining the "essential link" between coercive police activity and a suspect's confession has practical and legal significance. It will determine how far law enforcement officers are allowed to go, as long as their coercive conduct does not occur directly inside of the interrogation room.

In 1986, this Court stated "[a]bsent police conduct *causally related* to the confession, there is simply no basis for concluding that any state actor has deprived a criminal defendant of due process of law." *Colorado v. Connelly*, 479 U.S. 157, 164-65 (1986) (emphasis added) (reasoning that the lower court's approach failed to "recognize the *essential link* between coercive activity of the State . . . and a resulting confession by a defendant"). This Court has also stated that "causation in that sense [of "but for" causation] has never been the test of voluntariness." *Hutto v. Ross*, 429 U.S. 28, 30 (1976). While this Court has stated but-for causation is *not* correct in *Hutto v. Ross*, this Court has not further explicated on the nature of this "essential link," or causal relationship.

At least four state courts of last resort have developed more specific articulations of this "essential link" which are in tension with each other. Florida has proliferated case law interpreting this causal relationship to be nothing less than a *quid pro quo* bargain. *See Blake v. State*, 972 So. 2d 839, 844 (Fla. 2007); *Evans v.*

State, 911 So.2d 796, 800 (Fla. 1st DCA 2005) (finding statements made by agent was not "the cause of the defendant's eventual confession" where there was "no *quid pro quo* for the alleged promise"); *Green v. State*, 878 So.2d 382, 385 (Fla. 1st DCA 2003) ("The comments here never rose to the level of an express *quid pro quo* bargain in return for appellant's confession.").[4] This is exemplified in the instant case.

Florida's interpretation of the causal relationship appears to require concrete, tangible evidence of causation: without an express statement by the suspect informing the officers why he is making the decision to confess, i.e. a *quid pro quo* with the officers, the court can have no way of knowing what, among many potential factors, is motivating the accused to confess. In the lower court, the circuit judge focused on the fact that "the detective did not know at the time" if the Defendant already knew of the arrest warrants and "a direct threat or promise" was not made "to Defendant" directly during the interview. (PCR. 1090-92). The court also reasoned that "[e]ven if the 'threat' to arrest [J.S.], as stated to [J.S.], was considered improper police conduct, the Court finds that there is no causal connection between the threat and the confession. The alleged 'threat' and interview occurred a day

[4] Despite the fact that other Florida cases have stated it is "not correct to say that the absence of an express 'quid pro quo' bargain insulates police misconduct from claims of undue influence or coercion," *see Johnson v. State*, 268 So. 3d 806, 809 (Fla. 4th DCA 2019); *Ramirez v. State*, 15 So. 3d 852, 856 (Fla. 1st DCA 2009) ("The State suggests that Appellant's statement cannot be considered involuntary because the detective did not make an express 'quid pro quo' bargain with him. We disagree."), the Florida Supreme Court continues to place outsized emphasis on whether there was an express quid pro quo bargain, as in this case.

apart[5] and Detective West did not repeat the 'threat' to Defendant." (PCR. 1092).

By contrast other states have developed case law on the causal link which focuses on the accused's point of view: California, Maine, and Maryland. These interpretations appear to be more consistent with this Court's established voluntariness jurisprudence.

The California Supreme Court has developed its own specific articulation of the causal link: asking if the officers' actions were the "proximate cause" or "motivating cause" of the confession. *People v. Benson*, 52 Cal. 3d 754, 778 (Cal. 1990) ("A confession is 'obtained' by a promise within the proscription of both the federal and state due process guaranties if and only if inducement and statement are linked, as it were, by 'proximate' causation."); *People v. Cunningham*, 61 Cal. 4th 609, 643 (Cal. 2015). "This rule raises two separate questions: was a promise of leniency either expressly made or implied, and if so, did that promise motivate the subject to speak?" *People v. Tully*, 54 Cal. 4th 952, 986 (Cal. 2012). Once it is determined that "impermissible threats and promises were made," the question becomes "whether they were the 'motivating cause' of defendant's statement." *People v. Vasila*, 45 Cal. Rptr. 2d 355, 361-62 (Cal. Ct. App. 1995).

In *Vasila*, the "turning point in the interrogation appears to have been [Detective] Smiley's promise that defendant would be released on his own

[5] Although the circuit court correctly noted the threats were made on the previous day, March 5, Sanchez-Torres did not learn of the threats until March 6, when he spoke with his mother. Sanchez-Torres promptly confessed the same day he learned of the threats against his mother and sister.

recognizance that day." *Id*. Conversely, he was told that, otherwise, he could be held for 12 to 24 hours. *Id*. The Court concluded that the detective's promise was the "motiving factor" in the defendant's decision to lead the investigators to the firearms were and therefore, he had been coerced into testifying against himself. *Id*.

Similarly, in *People v. Perez*, the defendant "denied any knowledge of the murder for approximately 25 minutes." *People v. Perez*, 243 Cal. App. 4th 863, 876 (Cal. Ct. App. 2016). The turning point in the case did not occur until the sergeant gave the defendant his "word" that the defendant could have his "life" and "we are not gonna charge you with anything" if he were to cooperate. *Id*. Immediately after these statements, Perez responded that he "d[id] have some information," and proceeded to confess his involvement in the crimes. *Id*. "In light of these facts, there can be no doubt that the sergeant made an express promise of leniency that was a motivating cause of the defendant's confession." *Id*. Accordingly, the court concluded the confession must be suppressed. *Id*.

Maine also has interpreted this causal relationship with an eye towards the "motivating cause" of the confession. "A confession, otherwise freely and voluntarily made, is not vitiated by an improper promise of leniency unless such promise was the motivating cause of the confession." *State v. Wiley*, 61 A.3d 750, 756 (Me. 2013); *State v. Tardiff*, 374 A.2d 598, 601 (Me. 1977).

The Supreme Judicial Court of Maine, in *State v. Hunt*, expressed that "[t]he determination of the extent to which a false promise of leniency has *induced* a defendant's confession is an issue where some clarification is needed" and noting "we

have not precisely defined the contours of the analysis of the causal nexus between the conduct of law enforcement officers and the defendant's decision to make incriminating statements." *State v. Hunt*, 151 A.3d 911, 920-21 (Me. 2016) (emphasized in original). Maine has clarified the degree to which police conduct appears to be the motivating cause of the defendant's decision to confess is one of the factors to be considered in determining whether that conduct constituted improper inducement, "and, thus, the extent to which the officer's statements will play a role in the ultimate voluntariness determination." *Id.*

Maryland has developed a two-part version of the voluntariness test for when a confession is "preceded or accompanied by threats or promises of advantage." The first prong of this two-part standard, called the *Hillard* test, "is an objective one. We determine whether the police or a State agent made a threat, promise, or inducement." *Harper v. State*, 873 A.2d 395, 405 (Md. 2005) (citing *Hillard v. State*, 406 A.2d 415 (Md. 1979)). The defendant's subjective belief that the officer is promising or threatening something does not matter for this first prong. However, the second prong of the *Hillard* test focuses on the accused's point of view: "The second prong of the *Hillard* test triggers a causation analysis to determine whether there was a nexus between the promise or inducement and the accused's confession." *Id.*; *Knight v. State*, 850 A.2d 1179, 1189 (Md. 2004) ("The second prong inquires as to the defendant's reliance on the inducement in making the statement."). "As to the second factor, the reliance, or nexus, between the inducement and the statement, to determine whether a suspect relied upon an offer of help from an interrogating

authority in making a confession we examine the particular facts and circumstances surrounding the confession." *Winder v. State*, 765 A.2d 97, 117 (2001). The second prong of the *Hillard* test appears to be substantially similar to the "motivating cause" tests of Maine and California.

The differences in these causal relationship tests can be outcome determinative. Given the above examples, one can see that under a "motivating cause" or similar interpretation of the causal relationship, Sanchez-Torres's confession would have been found involuntary. On October 2, 2008, the first time he was questioned in relation to the murder of Erick Colon, Sanchez-Torres refused to implicate himself. The investigation stalled for the next six months while he maintained his silence. The turning point in the case occurred on March 5, 2009, when Sanchez-Torres's sister, J.S., was threatened with an arrest warrant by Detective West and another law enforcement officer.

On March 6, 2009, Sanchez-Torres's mother, who had also been threatened, conveyed the message to her son that both she and J.S. would be arrested if he did not talk to the police; afterwards, she relayed to Detective West that her son was ready to talk now. Detective West then went to visit Sanchez-Torres that same day and, unsurprisingly, Sanchez-Torres provided him with a confession. There can be no doubt that the threats made against his family were the "motivating cause" of Sanchez-Torres's confession.

This demonstrates a conflict between multiple state courts of last resort. Despite the obvious fact that a direct line can be drawn between the threats made

against J.S. by Detective West and Sanchez-Torres's confession given the very same day he learned of those threats, in Florida, the highest state court held that the link between Detective West's coercive actions and the suspect's confession was not established simply because the suspect did not strike a *quid pro quo* bargain with the police in the interrogation room—that is, that he failed to say aloud that he was offering his confession on the express condition of, or in exchange for, the freedom of his sister. Accordingly, the Florida Supreme Court would have Petitioner prove that the officer made an explicit promise to arrest his sister if he did not confess, a promise that any police officer possessing a modicum of intelligence would refrain from making.

Certiorari should be granted to determine whether this *quo pro quo* bargain test developed by Florida courts is a proper interpretation of the "essential link" this Court described in *Colorado v. Connelly*. Sanchez-Torres argues that the Florida Supreme Court's decision reduces this Court's involuntary confession jurisprudence to hollow technicalities. If the "essential link" between police misconduct and a suspect's confession must be nothing less than the high standard of an explicit *quid pro quo* deal, police officers wishing to induce a suspect's confession through unconstitutional threats against family members will almost always be able to avoid this pitfall.

Whether Florida's "quid pro quo" bargain or a "proximate cause"/ "motivating cause" test as used in at least three other states is the correct interpretation of this causal link has important legal significance for criminal defendants in this country.

It also has practical significance with respect to criminal investigation decisions that are being made by police officers every day.

CONCLUSION

Petitioner, Hector Sanchez Torres, requests that certiorari review be granted.

Respectfully submitted,

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