NO. 21-6563

IN THE SUPREME COURT OF THE UNITED STATES

HECTOR SANCHEZ-TORRES,
Petitioner,

v.

STATE OF FLORIDA,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF FLORIDA

BRIEF IN OPPOSITION
TO PETITION FOR A WRIT OF CERTIORARI

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Capital Case

QUESTION PRESENTED (Rephrased)

Whether the Supreme Court of Florida incorrectly applied this Court's decision in *Strickland v. Washington*, 466 U.S. 668 (1984), when it affirmed the trial court's denial of Petitioner's claim of ineffective assistance of trial counsel for failure to file a motion to suppress Petitioner's confession.

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OPINION BELOW

Petitioner challenges the decision by the Supreme Court of Florida affirming the trial court's denial of a claim of ineffective assistance of trial counsel for failing to file a motion to suppress; that decision appears as *Sanchez-Torres v. State*, 322 So. 3d 15 (Fla. 2020).

JURISDICTION

This Court's jurisdiction to review the final judgment of the Supreme Court of Florida is permissible under 28 U.S.C. § 1257. However, this Court should decline to exercise jurisdiction in this case because the Florida Supreme Court's decision does not implicate an important or unsettled question of federal law, does not conflict with another state court of last resort or a court of appeal of the United States, and does not conflict with relevant decisions of this Court. In short, no compelling reasons exist to grant a writ of certiorari in this case. Sup. Ct. R. 10.

STATEMENT OF THE CASE AND FACTS

Petitioner's Murders

During the late night hours of July 20, 2008, or the early morning hours of July 21, 2008, Petitioner murdered Levi Rollins in Duval County, Florida (the Duval County murder). *See Sanchez-Torres v. State*, 130 So. 3d 661, 665 (Fla. 2013). Petitioner shot the victim three times. *See* Vol. VII, pp. 86, 110. The first two bullets hit the victim in the right forearm and abdomen. *Id.* at 89. The last bullet hit the "right rear side of [the victim's] head." *Id.* at 88.

During the late night hours of September 9, 2008, or the early morning hours of September 10, 2008, Petitioner murdered Eric Colon in Clay County, Florida (the Clay County murder). *See* Vol. VII, pp. 156-58, 162, 164, 182-83; *see also Sanchez-Torres*, 130 So. 3d at 664. While the victim was walking home, Petitioner shot the victim "once in the head." *Sanchez-Torres*, 130 So. 3d at 664. Petitioner and his roommate, Markeil Thomas, took "money, weed, and [a] cell phone" from the victim. Vol. VIII, p. 321.

Petitioner's Confessions and Interviews with Petitioner's Mother and Sister

On September 25, 2008, Petitioner confessed to the Duval County murder. *See* Vol. VII, pp. 88-89, 107-10, 122, 128, 138, 147; *see also Sanchez-Torres*, 130 So. 3d at 665 ("[Petitioner] had confessed to shooting the victim in the Duval County murder. . . ."). Petitioner has been in custody since that date. *See* Supp. Rec. Vol. I, p. 59.

Following Petitioner's incarceration and confession to committing the Duval County murder, on September 30, his sister discovered a cell phone in her uncle's

room in her family's apartment and "recognized that it was not one of her brother's cell phones." *See Sanchez-Torres*, 130 So. 3d at 664; *see also* Vol. VIII, pp. 232, 246, 269. The phone belonged to the Clay County murder victim. *See Sanchez-Torres*, 130 So. 3d at 664. On the phone, Petitioner's sister "found a contact for 'mom' and called it." *Sanchez-Torres*, 130 So. 3d at 664. The mother of the Clay County murder victim answered. *Id.* At some point during the conversation, the Clay County murder victim's mother "began crying and told [Petitioner's sister] that the cell phone belonged to her murdered son." *Id.* At that point, Petitioner's sister "hung up." *Id.*; *see also* Supp. Rec. Vol. II, p. 206.

After hanging up, Petitioner's sister called her mother as well as Petitioner's roommate (and co-defendant for the Clay County murder trial), Markeil Thomas. *See Sanchez-Torres*, 130 So. 3d at 664; *see also* Vol. VIII, p. 231. Petitioner's mother told Petitioner's sister "to turn off the phone and wait for her to come home." *Id.* Thomas told Petitioner's sister "to turn off the phone and pull out the battery, which she did." *Id.* Eventually, Thomas (who lived in an apartment in the same apartment complex as Petitioner's family and was Petitioner's roommate[1]) arrived at the residence; Petitioner's mother arrived sometime thereafter. *See* Vol. VIII, pp. 249-51.

During the State's presentation of aggravation evidence in the penalty phase, Petitioner's sister testified that she gave the cell phone to Thomas, who then gave it to Petitioner's mother. *See* Vol. VIII, pp. 249-51. But, during the defense presentation of mitigation evidence, Petitioner's sister testified that she gave the

[1] *See* Vol. VIII, pp. 205, 246.

phone to her mother. *See* Supp. Rec. Vol. II, p. 207 ("after I finished telling them that I gave the phone to my mom and she took it . . .").

In the direct appeal proceedings, the Supreme Court of Florida found that Petitioner's sister gave the phone to Thomas, not Petitioner's mother. *See Sanchez-Torres*, 130 So. 3d at 664 ("Sanchez-Torres' sister also called Markeil Thomas, the codefendant in this case and Sanchez-Torres' 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."); *but see id.* ("[Petitioner's mother] stated [to a detective with the Sheriff's Office] that she had taken the phone from her daughter and had thrown it in the trash.").

The testimony by Petitioner's sister during the State's presentation of aggravation supports the determination that Petitioner's sister gave the phone to Thomas. *See* Vol. VIII, pp. 249-51:

Q What did you do?
A After she asked me that and she told me whose it was I told her I had to call her back.
Q And you hung up?
A Yes, sir.
Q And did you ever call her back?
A No, because I called my mom.
Q Did you also call someone else?
A Yes, sir.
Q Who was that?
A Markeil.
Q Is that Markeil Thomas?
A Yes, sir.
Q Do you recall who you called first?
A I think I called Markeil first.
Q Let me ask you this, when you spoke to your mother did you tell her about this conversation?
A Yeah.

Q And what did she tell you to do?
A She told me to turn off the phone and to not do anything with it and to wait for her get home.
Q Okay. And after you spoke to your mom did you turn off the phone?
A Yes, sir.
Q Did you do anything with the phone with respect to the battery or anything else?
A Yeah. Whenever I call Markeil he told me to turn off the phone and take the battery out.
Q And so you turned off the phone and took the battery out?
A Yes.
Q Why did you call Markeil?
A Because I know he's my brother's friend and they live together so I figured he would know.
Q Was he also like a brother to you?
A Yes, sir.
Q And later that same day of this conversation did your mom come home and ultimately take possession of that phone and battery from you?
A No, sir.
Q Who took possession of that phone?
A At first Markeil did. Then my mom got there and then my mom took it from Markeil.
Q So Markeil got there before your mom?
A Yes.
Q And he took the phone?
A Yeah.
Q And then when your mom got home she took it from him?
A Yes, sir.

After receiving the cell phone, Petitioner's mother gave it to someone who "destroyed it." *Sanchez-Torres*, 130 So. 3d at 664; *see also* Vol. VIII, p. 234 ("She said that she got scared and she gave it to a friend and told him to get rid of it.").

On October 1, 2008, "Detective Sharman with the Clay County Sheriff's Office spoke with [Petitioner's] mother . . . [who] stated . . . that her daughter had used the phone to call someone who said the phone belonged to her son." *Sanchez-Torres*, 130 So. 3d at 664. Initially, Petitioner's mother stated "that she had taken the phone

from her daughter and had thrown it in the trash." *Id.* Later, Petitioner's mother "told law enforcement that she had given the cell phone to someone who had destroyed it." *Id.* After that, law enforcement officers were "able to locate pieces of the phone." *Id.*

On October 2, 2008, Petitioner was questioned about the Clay County murder, but he denied any involvement. Vol. VIII, pp. 203, 221; *see also Sanchez-Torres*, 130 So. 3d at 664-65 ("On October 2, Detective Sharman [with the Clay County Sheriff's Office] visited [Petitioner] in the Duval County Jail to question him about the phone. . . . When informed that the phone belonged to a murder victim, [Petitioner] denied having anything to do with the murder.").

On March 5, 2009, Detective West with the Clay County Sheriff's Office interviewed Petitioner's mother. *See* Vol. VIII, p. 286; *see also Sanchez-Torres*, 130 So. 3d at 665 ("Detective West, also with the Clay County Sheriff's Office, testified that he spoke with [Petitioner's mother] on March 5, 2009, when he interviewed her at her home.").

During the interview, Detective West showed Petitioner's mother an unsigned arrest warrant for tampering with evidence. *See* Vol. VIII, pp. 288-89; *see also Sanchez-Torres*, 130 So. 3d at 665 ("When [Detective West] met with [Petitioner's mother], 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*, 322 So. 3d at 22 ("[Petitioner's mother] testified that detectives showed her an unsigned arrest warrant for evidence tampering. . . .").

At trial, Detective West was asked whether he "told [Petitioner's mother] that if there was not [an] arrest made in the death of [the Clay County murder victim, then] she would be arrested." Vol. VIII, p. 289. Detective West answered: "Not that I recall." *Id.* Detective West testified that he confronted Petitioner's mother with the unsigned arrest warrant because "I wanted to make sure she was telling me the truth about what she knew about the case." *Id.* at 290-91.

When Detective West was asked whether he told Petitioner's mother "that her daughter could also be arrested," he testified: "No, ma'am." Vol. VIII, p. 289. Petitioner's mother gave Detective West permission to speak with Petitioner's sister, who was a minor at the time. *See* Vol. VIII, p. 297; *see also* Supp. Rec. Vol. I, p. 194.

Petitioner's mother testified that the detectives "threatened to arrest her if [Petitioner] did not talk to them." *Sanchez-Torres*, 322 So. 3d at 22; *see also* Supp. Rec. Vol. I, p. 190 ("They said that if Hector didn't talk to them, they were going to arrest me and Joanna and they showed me the paper."). Petitioner's mother also testified that the detectives wanted her to contact Petitioner. *See* Supp. Rec. Vol. I, p. 197:

> Q The police never told you to contact your son, did they?
> A Did — can you repeat the question?
> Q Yes. The police, neither one of the detectives there asked you to contact your son for them, did they?
> A Yes. They did.
> Q If they asked you to contact your son, why didn't you go contact your son immediately if you thought it was so important that you might be arrested and they had made that request? Why didn't you do that?
> A Because I couldn't talk to him. I have to wait until he call me to talk to him.

Q You could have gotten in your car and driven to talk to your son, couldn't you?
A At that moment I didn't think of that.
Q But you could have done that. And you knew they were going to talk to your daughter, correct?
A Yes.

The detectives also interviewed Petitioner's sister at her high school. *See* Supp. Rec. Vol. II, p. 203. Petitioner's sister testified that the detectives produced arrest warrants for her, her mother, and her uncle. *See* Supp. Rec. Vol. II, p. 208. However, the lower court found that law enforcement officers did not threaten to arrest Petitioner's sister during that interview. *See Sanchez-Torres*, 322 So. 3d at 22:

> [Petitioner's sister] testified that detectives questioned her about finding the victim's phone in [Petitioner's] room. But although [Petitioner's sister] said she was shown unsigned arrest warrants, she testified that the detectives did *not* threaten to arrest her. The detectives also testified that [Petitioner's sister] was never told she might be arrested.

(Emphasis in original.) *See also id.* ("As to the detectives' conversations with [Petitioner's] family members, they did not tell [Petitioner's sister] she might be arrested. . . ."). The record supports this finding. *See* Supp. Rec. Vol. II, p. 209:

Q Did they say they were going to arrest you?
A No, sir.

On March 6, 2009, the day after Detective West showed her an unsigned arrest warrant for evidence tampering, Petitioner's mother spoke with Petitioner, who instructed her to inform law enforcement that he wanted to speak with them. *See Sanchez-Torres*, 130 So. 3d at 665 ("[Petitioner's mother] testified that the next day, she told [Petitioner] about what happened, and he told her to contact the detectives and tell them to come see him."); *see also Sanchez-Torres*, 322 So. 3d at 22

("[Petitioner's mother] testified that she spoke to [Petitioner] the next day and told him about the purported threat. She testified that [Petitioner] then asked to meet with the detectives. . . .").

On March 6, 2009, Detective West received a phone call from Petitioner's mother indicating that Petitioner wanted to speak with the police. *See* Vol. VIII, p. 270; *see also* Supp. Rec. Vol. I, p. 59; *Sanchez-Torres*, 130 So. 3d at 665 ("After Detective West received a phone call from [Petitioner's mother], in which she stated that [Petitioner] wanted to speak to him, [the detective] proceeded to the Duval County Jail to interview [Petitioner]."). Detective West was "very shocked" when he received the call. Vol. VIII, p. 290.

After receiving the call from Petitioner's mother, Detective West went to the jail to interview Petitioner. *See* Vol. VIII, p. 270. Detective West testified that "he did not know if [Petitioner] even knew about the unsigned arrest warrants at the time" of this interview. *Sanchez-Torres*, 322 So. 3d at 22. During the interview, Petitioner "made it clear that he did not want his mother to get trouble." Vol. VIII, p. 291. However, no law enforcement officer promised Petitioner that his mother would not get into trouble if he simply confessed. *See Sanchez-Torres*, 322 So. 3d at 22 ("The detectives did not threaten or mistreat [Petitioner] during his requested interview, and although [Petitioner] mentioned during the interview that he did not want his mother getting in trouble, the detectives made no offers or promises in exchange for his confession."); *see also* Vol. VIII, p. 294:

> Q Let's talk about the techniques that you used on [Petitioner]. You started with threatening his mother with an arrest?

A Wrong.

Of note, the record does not indicate that Petitioner ever expressed a concern about his sister getting arrested.

Initially, Petitioner stated that Thomas shot the victim of the second murder. *See Sanchez-Torres*, 130 So. 3d at 665 ("During the initial part of the interview, [Petitioner] stated that Thomas had shot the victim and drew a diagram of the scene and the body to describe what happened."). However, after Detective West left the interview room, Petitioner wrote a statement indicating that, after Petitioner committed an armed robbery of the victim, the victim "tried to take a swing at me but before he could get around I shot him." Vol. VIII, p. 274; *see also Sanchez-Torres*, 130 So. 3d at 665 ("Detective West left the room, and [Petitioner] wrote out a three-page handwritten statement, in which [Petitioner] stated that he, and not Thomas, had shot the victim."). Petitioner was alone in the interview room when he wrote the statement. *See* Vol. VIII, p. 276.

Next, Detective West took Petitioner to a different location where, during a videotaped interview, Petitioner stated that Markeil Thomas shot the victim of the Clay County murder. *See Sanchez-Torres*, 130 So. 3d at 665 ("Detective West returned to the room and took [Petitioner] to a different location in order to conduct a videotaped interview. [Petitioner] then told Detective West again that Thomas was the shooter.").

Duval County Murder Trial

For the Duval County murder, Petitioner was "found guilty of first-degree murder . . . and was sentenced to life in prison in December 2009." *Sanchez-Torres*, 130 So. 3d at 665.

Clay County Murder Trial and Direct Appeal

For the Clay County murder, Petitioner "pled guilty to first-degree murder and armed robbery." *Sanchez-Torres*, 130 So. 3d at 664. Petitioner "waived a penalty-phase jury." *Id.* The Duval County murder conviction served as a prior violent felony aggravator during the penalty phase of the Clay County murder trial. *Id.* at 665. For the Clay County murder, Petitioner received a "sentence of death." *Id.* at 664. On July 3, 2013, the Supreme Court of Florida affirmed Petitioner's convictions and death sentence for the Clay County murder. *See id.* at 676.

Clay County Post-Conviction Appeal

On March 12, 2020, the Supreme Court of Florida affirmed the denial of Petitioner's post-conviction claims in the Clay County murder case. *See Sanchez-Torres*, 322 So. 3d at 24. The Petitioner raised twelve post-conviction claims, one of which alleged ineffective assistance of trial counsel for failure to file a motion to suppress his confession. *See id.* at 21. According to Petitioner, "the trial court would have granted a motion to suppress because the investigating detectives coerced the confession by threatening to arrest [Petitioner's] mother and sister." *Id.*

The post-conviction court held that Petitioner had neither demonstrated deficient performance nor prejudice under *Strickland*. On appeal, the Florida

Supreme Court affirmed on the basis that failing to file such a motion did not prejudice the Petitioner because the motion would have been unsuccessful.

The court provided the following analysis in rejecting the claim on appeal:

> [Petitioner] has not demonstrated that the detectives' conduct was improperly coercive. The detectives did not threaten or mistreat [Petitioner] during his requested interview, and although [Petitioner] mentioned during the interview that he did not want his mother getting in trouble, the detectives made no offers or promises in exchange for his confession. *See Blake v. State*, 972 So. 2d 839, 844 (Fla. 2007) ("Before finding the confession inadmissible, Florida courts have repeatedly required that the alleged promise 'induce,' be 'in return for,' or be a 'quid pro quo' for the confession."). In fact, Detective West testified that he did not know if [Petitioner] even knew about the unsigned arrest warrants at the time he confessed to Mr. Colon's murder.
>
> As to the detectives' conversations with [Petitioner's] family members, they did not tell [Petitioner's mother] she might be arrested, and informing [Petitioner's mother] she could be arrested for tampering with evidence was not a coercive means of extracting [Petitioner's] confession because the detectives did in fact have probable cause to arrest [Petitioner's mother]. *See Thompson v. Haley*, 255 F.3d 1292, 1297 (11th Cir. 2001) ("Whether a threat to prosecute a third party was coercive depends upon whether the state had probable cause to believe that the third party had committed a crime at the time that the threat was made. . . ."). Prior to the conversation in question, the detectives learned that [Petitioner's mother] had made efforts to destroy the victim's cell phone when she discovered that her daughter had found the phone in [Petitioner's] room.
>
> [Petitioner] argues that the detectives committed felony extortion by threatening to arrest [Petitioner's mother], but extortion is to "maliciously threaten" someone for certain enumerated benefits, § 836.05, Fla. Stat. (2019), and Florida courts have held that "maliciously" means "intentionally and without any lawful justification." *O'Flaherty-Lewis v. State*, 230 So. 3d 15, 18 (Fla. 4th DCA 2017) (citing *Dudley v. State*, 634 So. 2d 1093, 1094 (Fla. 2d DCA 1994)). Law enforcement officers have a lawful justification for threatening to arrest individuals for violating the law.
>
> Because the record does not establish that [Petitioner's] confession was involuntary under the totality of the circumstances, we

> hold that a motion to suppress the confession would not have been granted. Because defense counsel cannot be deficient for failing to file a meritless motion, and because no prejudice can result from failure to file a motion that would not have been successful, we affirm the postconviction court's denial of this ineffective assistance of counsel claim.

Sanchez-Torres, 322 So. 3d at 22-23, *reh'g denied*, SC19-211, 2021 WL 1921973 (Fla. May 13, 2021), and *reh'g denied*, SC19-211, 2021 WL 3429119 (Fla. Aug. 5, 2021).

The Supreme Court of Florida acknowledged that "[i]t is not necessary that any direct promises or threats were made to the accused, but to establish that a statement was involuntary, there must be a finding of coercive police conduct." *Sanchez-Torres*, 322 So. 3d at 22. However, the court noted that Petitioner's claim of a coerced confession was based on purported threats to his mother and sister. *Id.* at 21. Examining the "totality of the circumstances," the court held that "the record does not establish that [Petitioner's] confession was involuntary. . . ." *Id.* at 23.

REASON FOR DENYING THE WRIT

Defense Counsel Was Not Ineffective in Failing to File a Meritless Motion to Suppress Petitioner's Confession and the Petition Relies upon Disputed Facts Rather than a Conflict with any Decision of this Court or Unsettled Question of Law to Support Certiorari Review

Petitioner's entire argument for certiorari review rests upon disputed issues of fact. Therefore, Petitioner fails to raise an important or unsettled question of federal law. Additionally, Petitioner concedes that, if the lower court's factual determinations are correct, then there is no conflict between the decision below and any decision from this Court, a federal court of appeals, or a state court of last resort.

Petitioner challenges the Supreme Court of Florida's decision to affirm the trial court's denial of a claim of ineffective assistance of trial counsel for failure to file a motion to suppress. Petitioner forgoes any direct challenge to the lower court's application of this Court's decision in *Strickland v. Washington*, 466 U.S. 668 (1984). Instead, Petitioner argues that the lower court's analysis of the putative motion to suppress[2] tainted its prejudice prong analysis under *Strickland*. *See, e.g.*, Petition, p. 12 ("[T]he Florida Supreme Court did not address the deficient performance prong on postconviction appeal. Instead, the Florida Supreme Court focused only on the prejudice prong. *See Strickland v. Washington*, 466 U.S. 668, 697, 104 S. Ct. 2052, 2069 (1984) ('If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, which we expect will often be so, that course should be followed.'). In such a case, the prejudice prong of *Strickland* turns on the viability of the unpursued motion to suppress."); *see also Sanchez-Torres*, 322 So. 3d at 21 ("We have repeatedly held that if a defendant does not demonstrate that a motion to suppress would have been successful and that the evidence in question would have been excluded, he cannot establish that he was prejudiced by a failure to file a motion to suppress.").

Of note, Petitioner fails to acknowledge that the lower court made findings under both of *Strickland*'s prongs. *See Sanchez-Torres*, 322 So. 3d at 23 ("Because

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[2] *See generally Schaff v. United States*, No. CV213-072, 2014 WL 3925280, at *5 (S.D. Ga. Aug. 11, 2014) ("[T]here is no evidence before the Court that a putative motion to suppress would have been granted on this basis. Thus, Schaff does not meet the *Strickland* standard and is not entitled to his requested relief.").

defense counsel cannot be *deficient* for failing to file a meritless motion, and because no *prejudice* can result from the failure to file a motion that would not have been successful, we affirm the postconviction court's denial of this ineffective assistance of counsel claim.") (emphases added); *see also Strickland*, 466 U.S. at 701 ("Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim.").

Regardless of whether the merits of the putative motion to suppress relate to the deficient performance or prejudice prong of *Strickland* (or both), Petitioner attacks the lower court's application of this Court's caselaw dealing with coerced confessions.[3] Specifically, Petitioner claims that the lower court's coercion analysis placed "outsized emphasis on whether there was an express *quid pro quo* bargain" between the detectives and Petitioner. Petition, p. 18 n.4. Of note, however, Petitioner fails to acknowledge that the lower court recognized that a *quid pro quo* finding is not necessary to establish coercive police conduct. *See Sanchez-Torres*, 322 So. 3d at 22 ("It is not necessary that any direct promises or threats were made to the accused, but to establish that a statement was involuntary, there must be a finding of coercive police conduct.").

Additionally, Petitioner fails to acknowledge that the lower court based its decision on the "totality of the circumstances" surrounding the confession. *See Sanchez-Torres*, 322 So. 3d at 23 ("Because the record does not establish that

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[3] This case presents a poor vehicle to address the voluntariness of Petitioner's confession because the issue comes to this Court on post-conviction review and through the filtering lens of *Strickland* and its considerable deference to counsel.

[Petitioner's] confession was involuntary under the totality of the circumstances, we hold that a motion to suppress the confession would not have been granted."); *see generally Colorado v. Connelly*, 479 U.S. 157, 177 n.2 (1986), quoting *Greenwald v. Wisconsin*, 390 U.S. 519, 521 (1968) ("Considering the totality of these circumstances, we do not think it credible that petitioner's statements were the product of his free and rational choice.").

Nevertheless, Petitioner argues that this Court should accept jurisdiction in order to "further explicate[ ] on the nature of [the] 'essential link,' or causal relationship" between the alleged police misconduct and the voluntariness, *vel non*, of a defendant's confession. Petition, p. 17; *see also id.* at 23 ("Certiorari should be granted to determine whether this *quid pro quo* bargain test developed by Florida courts is a proper determination of the 'essential link' this Court described in *Colorado v. Connelly*."). Petitioner argues that the lower court incorrectly limited its coercion analysis by focusing exclusively on whether law enforcement officers engaged in a direct *quid pro quo* bargain with Petitioner during the interview in question, to wit: confess and we will not arrest your sister. *See Sanchez-Torres*, 322 So. 3d at 22:

> [Petitioner] has not demonstrated that the detectives' conduct was improperly coercive. The detectives did not threaten or mistreat [Petitioner] during his requested interview, and although [Petitioner] mentioned during the interview that he did not want his mother getting in trouble, *the detectives made no offers or promises in exchange for his confession*. *See Blake v. State*, 972 So. 2d 839, 844 (Fla. 2007) ("Before finding the confession inadmissible, Florida courts have repeatedly required that the alleged promise 'induce,' be 'in return for,' or be a 'quid pro quo' for the confession."). In fact, Detective West testified that he

> did not know if [Petitioner] even knew about the unsigned arrest warrants at the time he confessed to Mr. Colon's murder.

(Emphasis added.) *See also* Petition, pp. 15-16 ("The Florida Supreme Court focused on whether there was concrete evidence that the threats made to arrest [Petitioner's sister] were causally linked to Petitioner's confession by way of an express bargain.").

Additionally, Petitioner claims that the detectives negotiated through implication — i.e., by making a threat to arrest Petitioner's sister, the detectives implied that Petitioner's confession would prevent her arrest.[4] *See, e.g.*, Petition, p. 16. Thus, Petitioner argues that the lack of an express agreement during the interview does not, by itself, demonstrate that his "trial attorneys could not have established his confession was coerced." Petition, p. 15.

Notably, Petitioner does not challenge any threat to arrest his mother or the lower court's determination that officers enjoyed probable cause to do so. *See* Petition, p. 14; *see also Sanchez-Torres*, 322 So. 3d at 22 ("[I]nforming [Petitioner's mother] she could be arrested for tampering with evidence was not a coercive means of extracting [Petitioner's] confession because the detectives did in fact have probable cause to arrest [her]."). Indeed, Petitioner's mother admitted that she lied to police and gave the phone to someone who destroyed it. *See Sanchez-Torres*, 130 So. 3d at 664 ("[Petitioner's mother] stated that she had taken the phone from her daughter and

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[4] In making this argument, Petitioner fails to account for the possibility that a listener may infer something that the speaker did not imply. *See generally* https://www.vocabulary.com/articles/chooseyourwords/imply-infer/ ("*Imply* and *infer* are opposites, like a throw and a catch. To *imply* is to hint at something, but to *infer* is to make an educated guess. The speaker does the *implying*, and the listener does the *inferring*.").

thrown it in the trash. At some point later, [she] told law enforcement that she had given the cell phone to someone who had destroyed it."). Therefore, any threats to arrest Petitioner's mother are not at issue here — only the purported threat to the sister is. *See generally* Petition, p. 14.

Petitioner's Claim Rests on Disputed Facts and Adverse Factual Findings

Petitioner's claim of coercion depends upon three factual assertions that lack adequate support in the record. First, Petitioner alleges that law enforcement officers threatened to arrest his sister. Second, Petitioner asserts that his sister gave the victim's phone to her mother, not Petitioner's co-defendant. And third, Petitioner alleges the officers told Petitioner's mother to relay to him the threat to arrest his sister.

At best, these three assertions involve disputed issues of fact. Because these disputed facts are critical to Petitioner's argument, this case presents a poor vehicle to address whether the actions of law enforcement officers qualify as coercive. *Cf.* Sup. Ct. R. 10 ("A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law."). Moreover, the state court factual findings in resolving this claim must be given substantial deference by this Court. *See Hernandez v. New York*, 500 U.S. 352, 366 (1991) (noting that "in the absence of exceptional circumstances, we would defer to the state-court factual findings, even when those findings relate to a constitutional issue") (citations omitted). Since the factual findings underlying this

claim are critical to the outcome and are supported by the record, there is no substantial or important federal claim for this Court to address.

Furthermore, if the lower court's factual determinations are correct (e.g., Petitioner's sister removed the battery from the phone of the Clay County murder victim and then gave the phone to Markeil Thomas, not her mother), then Petitioner concedes that there is no conflict between the decision below and any decision from this Court, from the federal appellate courts, or from other state courts of last resort. *See* Sup. Ct. R. 10(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. . . ."); *see also* Petition, pp. 12-14 (conceding that probable cause to arrest a family member does not render a confession involuntary).

Petitioner alleges the lower court misinterpreted the testimony of his sister — specifically, that the court failed to recognize she testified the officers threatened to arrest her. *See* Petition, p. 15 n.3. In making this assertion, Petitioner ignores his sister's testimony that the officers did not say that they were going to arrest her when they interviewed her. *See* Supp. Rec. Vol. II, p. 209:

Q Did they say they were going to arrest you?
A No, sir.

Nevertheless, Petitioner interprets his sister's testimony by adding the words "could be arrested" to the end of a sentence. *Compare* Supp. Rec. Vol. II, p. 209 ("And they were saying, you know, if you don't tell us what you know, your mom could be arrested, you and your uncle, you know. How would your life be like then? You will lose everything that you worked up to."), *with id.* at 6 ("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*]. . . .'") (emphasis added); *see also id.* at 14 (same).

However, Petitioner fails to account for the possibility that the court reporter incorrectly structured the testimony of his sister. Instead of "you and your uncle, you know" falling at the end of a sentence, those words could be the beginning of the next sentence to read: "You and your uncle, you know, how would your life be like then?" Under this interpretation, the officer asked Petitioner's sister to imagine what life would be like for her and her uncle if her mother was arrested — not what her life would be like if she and her uncle were arrested along with her mother. Thus, at best, Petitioner raises a factual dispute as to whether detectives threatened his sister with arrest.

Without any citation to the record, Petitioner asserts that his sister "found the phone in her uncle's room and *immediately turned the phone over to her mother.*" Petition, p. 15 (emphasis added). In making this assertion, Petitioner directly contradicts his own recitation of the facts. *See* Petition, p. 4 ("Markeil Thomas came to the house first and took the phone from her; then her mom came home and took possession of the phone."). Additionally, Petitioner ignores the aggravation testimony of his sister. *See* Vol. VIII, p. 251:

Q Who took possession of that phone?
A At first Markeil did. Then my mom got there and then my mom took it from Markeil.
Q So Markeil got there before your mom?
A Yes.
Q And he took the phone?
A Yeah.
Q And then when your mom got home she took it from him?

A Yes, sir.

Furthermore, Petitioner disputes one of the lower court's factual determinations. *See Sanchez-Torres*, 130 So. 3d at 664:

> [Petitioner's] sister then hung up and called her mother, who told her to turn off the phone and wait for her to come home. [Petitioner's] sister also called Markeil Thomas, the codefendant in this case and [Petitioner'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.*

(Emphasis added.)

Nevertheless, Petitioner makes this factual assertion in order to argue that 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." Petition, p. 15. According to Petitioner, the lack of probable cause as to his sister means that any threat to arrest her was coercive as to him. *See* Petition, p. 14. At best, however, Petitioner raises a factual dispute as to whom Petitioner's sister gave the phone: Markeil Thomas or her mother.

Petitioner claims that the law enforcement officer who threatened to arrest Petitioner's sister "instructed" Petitioner's mother to communicate that threat to Petitioner. *See* Petition, p. 16. In making this assertion, Petitioner does not include a citation to the record. Additionally, Petitioner ignores the testimony from an officer that he was "very shocked" when he received a phone call from Petitioner's mother. Vol. VIII, p. 290. According to that officer, he did not confront Petitioner's mother with the unsigned arrest warrant to try to get Petitioner to speak with him. *Id.* at

291. Rather, the officer "wanted to make sure she was telling [him] the truth about what she knew about the case." *Id.* at 290-91.

Admittedly, Petitioner's mother testified that the detectives told her to contact her son. *See* Supp. Rec. Vol. I, p. 197. Additionally, Petitioner's mother also testified that the detectives "threatened to arrest her if [Petitioner] did not talk to them." *Sanchez-Torres*, 322 So. 3d at 22; *see also* Supp. Rec. Vol. I, p. 190. However, it does not appear that Petitioner's mother ever testified that a detective instructed her to relay to her son any threat to arrest her daughter. And while Petitioner "made it clear [during the police interview] that he did not want his mother to get trouble," the record does not indicate that Petitioner ever expressed a concern about his sister getting arrested. Vol. VIII, p. 291. Additionally, Detective West testified that "he did not know if [Petitioner] even knew about the unsigned arrest warrants at the time" of this interview. *Sanchez-Torres*, 322 So. 3d at 22.

Finally, no evidence in the record indicates that a law enforcement officer promised Petitioner that his sister would not get into trouble if he simply confessed. *See Sanchez-Torres*, 322 So. 3d at 22 ("The detectives did not threaten or mistreat [Petitioner] during his requested interview, and although [Petitioner] mentioned during the interview that he did not want his mother getting in trouble, the detectives made no offers or promises in exchange for his confession."); *see generally* Vol. VIII, p. 294:

> Q Let's talk about the techniques that you used on [Petitioner]. You started with threatening his mother with an arrest?
> A Wrong.

Thus, at most, Petitioner raises a factual dispute as to whether detectives told Petitioner's mother to communicate to Petitioner the purported threat to arrest his sister. Any subjective reasons Petitioner may have had for his confession, including any concern for his family members, independent of any police misconduct or coercion, did not render his confession involuntary. *See Connelly*, 479 U.S. at 166-67 (rejecting the notion that the Court was required to conduct "sweeping inquiries into the state of mind of a criminal defendant who has confessed . . ." independent of "any coercion brought to bear on the defendant by the State").

There Is No Conflict with this Court's Opinions or that of Lower Courts

In his own recitation of the facts, Petitioner concedes that his sister gave the Clay County victim's phone to Markeil Thomas, not her mother. *See* Petition, p. 4 ("Markeil Thomas came to the house first and took the phone from her; then her mom came home and took possession of the phone."). Additionally, Petitioner's sister testified that, as instructed, she turned the phone off and removed the battery prior to giving the phone to Markeil Thomas (Petitioner's co-defendant). *See* Vol. VIII, pp. 249-51. Thus, it appears that the detectives did have probable cause to arrest Petitioner's sister. *See generally Commonwealth v. Wright*, 99 A.3d 565, 570 (Pa. Super. Ct. 2014) ("In his affidavit of probable cause to search the cell phone, Detective Kenneth Ruckel stated criminal suspects commonly remove batteries from cell phones in order to avoid GPS detection.").

Furthermore, Petitioner concedes that probable cause to arrest a defendant's family member renders any threat to do so non-coercive. *See* Petition, pp. 12-13:

> 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."
>
> . . . .
>
> [S]tate and federal courts generally agree that the presence or absence of probable cause is the keystone when determining whether threats to arrest family members render a confession involuntary. . . .

(Emphasis in original.)

As found in state court, and conceded here, the detectives conduct with regard to the mother was based on a truthful discussion of her role in disposing the phone and probable cause to arrest. Further, Petitioner concedes that the existence of probable cause to arrest his sister would have rendered any threat to do so non-coercive as to him. *Connelly*, 479 U.S. at 163 (noting that "coercive government misconduct" was necessary to suppress a confession). Because the record clearly supports a finding of probable cause, Petitioner concedes a lack of any conflict that would support the exercise of this Court's certiorari jurisdiction.

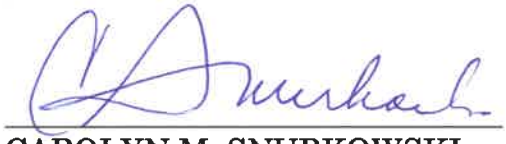
Conclusion

In conclusion, Petitioner has not demonstrated that the Florida Supreme Court's opinion decided an important question of federal law in a manner that conflicts with a decision of this Court. Nor has Petitioner shown that this case presents an unsettled question among any lower state or federal court. Consequently, this Court should decline to exercise its certiorari jurisdiction.

CONCLUSION

This case presents no constitutional question or controversy worthy of this Court's review. Therefore, Respondent respectfully submits that this Court should deny the petition.

Respectfully submitted,
ASHLEY MOODY
ATTORNEY GENERAL



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