No. 21-6563

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

REPLY BRIEF FOR PETITIONER

THIS IS A CAPITAL CASE

KARIN L. MOORE - *Counsel of Record*
THOMAS L. VORACEK
Capital Collateral Regional Counsel – Northern Region
1004 DeSoto Park Drive
Tallahassee, Florida 32301
(850) 487-0922
Karin.Moore@ccrc-north.org

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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REPLY TO STATE'S BRIEF IN OPPOSITION

In its Brief in Opposition, the State posits that "the record clearly supports a finding of probable cause" as to the ability of officers to legally arrest Petitioner's sister J.S., and that such is fatal to any exercise of this Court's certiorari jurisdiction. BIO at 25. The State does not cite any Florida state court case or statute providing the clear support of probable cause the State alleges.

In fact, the only authority the State does cite for support that there was probable cause to arrest the petitioner's sister is the case of *Commonwealth v. Wright*, 99 A. 3d 565, 570 (Pa. Super. Ct. 2014). Specifically, the State excerpts a passage from the case describing an assertion on a law enforcement officer's affidavit in support of a petition for a search warrant. BIO at 24. That case is not germane to the instant Petition, however, having to do with whether police officers properly seized a cellphone as an item of evidence and nothing at all to do with probable cause on any tampering with evidence charge. *Com. v. Wright*, 570-71. In other words, the State cites to an out-of-state case for a state-law proposition, and the case does not involve the same issue at all.

Furthermore, the State does not respond at all to Petitioner's state-law authority that there was no probable cause to arrest Petitioner's fifteen-year-old sister for simply turning the cellphone off, removing the battery, and turning it over to an adult. *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.").

Likewise, other than one unavailing and confusing citation that is neither authoritive nor on-point, the State makes no effort to rebut Petitioner's point, as outlined in his initial Petition for Certiorari, as to the differing interpretations amongst several state courts of last resort regarding the correct interpretation or test for determining the "essential link" between coercive police activity and a suspect's confession. *See Colorado v. Connelly*, 479 U.S. 157, 164-65 (1986); *Hutto v. Ross*, 429 U.S. 28, 30 (1976). As Petitioner said in his original Petition, this case presents an important question of federal Constitutional law and the chance for this Court to comment on this significant legal area that governs criminal law cases and investigations every single day.

The Florida Supreme Court's analysis, misinterpreting the record evidence that showed that officers coerced Petitioner's statement by threatening his fifteen-year-old sister with unlawful arrest, was flawed in not finding *Strickland* error by Petitioner's counsel in not filing a motion to suppress. Petitioner's fifteen-year-old sister testified that she was interrogated alone, without any adult with her, presented with an arrest warrant with her name on it, and told by detectives that if she didn't "tell us what you know, your mom could be arrested, you and your uncle. . . you will lose everything that you worked [for]." (Supp. T. 208-09).

The State's attempts to waive this threat away by hypothesizing that it is somehow a transcription error in the record below are both untimely and not supported by the rest of the record. The time to correct a transcript would have been on direct appeal, not on a Brief in Opposition to a Petition for a Writ of Certiorari. Further, Petitioner steadfastly refused to speak until his mother informed him of law enforcements' threatened arrest of those closest to him, his mother and his fifteen-year-old sister. Petitioner's immediate statement proves the existence of the threat – why else would he speak to police after maintaining his silence for six months other than his new understanding that his mother and sister were at risk of arrest?

A motion to suppress Petitioner's statement would have prevailed even under the Florida Supreme Court's unduly restrictive "quid pro quo" reading of *Colorado v. Connelly* had that court correctly apprehended the threats made to Petitioner's fifteen-year-old sister. *Sanchez-Torres v. State*, 322 So. 3d 15, 22 (Fla. 2020) (*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.")). It certainly would have prevailed under California and Maine's "proximate cause" and "motivating cause" tests. *People v. Benson*, 52 Cal. 3d 754, 778 (Cal. 1990); *People v. Cunningham*, 61 Cal. 4th 609, 643 (Cal. 2015); *State v. Wiley*, 61 A.3d 750, 756 (Me. 2013); *State v. Tardiff*, 374 A.2d 598, 601 (Me. 1977). As such, Petitioner's case is a provident opportunity for this Court to explicate on the law in this area.

CONCLUSION

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

Respectfully submitted,

/s/ Karin L. Moore
KARIN L. MOORE - *Counsel of Record*
THOMAS L. VORACEK
Capital Collateral Regional Counsel – Northern Region
1004 DeSoto Park Drive
Tallahassee, Florida 32301
(850) 487-0922
Karin.Moore@ccrc-north.org

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