

No. 22-6778

IN THE
SUPREME COURT OF THE UNITED STATES

MI-IN-GUN JUSTIN CHARETTE A/K/A JUSTIN MARSHALL CRITT,

Petitioner,

v.

STATE OF MINNESOTA,

Respondent.

On Petition for a Writ of Certiorari to the
Supreme Court of the State of Minnesota

REPLY BRIEF FOR PETITIONER

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TABLE OF CONTENTS

PAGE

TABLE OF AUTHORITIES.....	ii
REPLY BRIEF FOR PETITIONER	1
1. THE ONLY ISSUE BEFORE THE COURT IS WHETHER A SUSPECT CAN REQUEST COUNSEL WHEN CUSTODIAL QUESTIONING IS IMMINENT	1
a. Whether Petitioner properly requested counsel when custodial questioning was imminent is not before the Court.....	2
b. Petitioner requested counsel on June 28th when custodial questioning was imminent.....	4
2. THE COURT HAS NOT DECIDED WHETHER A SUSPECT CAN REQUEST COUNSEL WHEN CUSTODIAL QUESTIONING IS IMMINENT AND THERE IS A SPLIT AMONG LOWER COURTS RELATED TO THE QUESTION.....	6
3. UNLIKE <i>GUPTA</i> AND <i>PARDON</i> , THIS IS THE IDEAL CASE FOR THE COURT TO DECIDE THE ISSUE	8
4. THE COURT SHOULD GRANT CERTIORARI.....	10
CONCLUSION	11

TABLE OF AUTHORITIES

CASES:	PAGE
<i>Edwards v. Arizona</i> , 451 U.S. 477 (1981).....	6, 8
<i>Gupta v. Maryland</i> , 138 S.Ct. 201 (2017).....	8, 9
<i>Gupta v. State</i> , 156 A.3d 785 (Md. App. 2017)	8, 9
<i>McGoldrick v. Compagnie Generale Transatlantique</i> , 309 U.S. 430 (1940)	2
<i>McNeil v. Wisconsin</i> , 501 U.S. 171 (1991)	10
<i>Minnick v. Mississippi</i> , 498 U.S. 146 (1990)	6
<i>Miranda v. Arizona</i> , 384 U.S. 436 (1966).....	10
<i>Montejo v. Louisiana</i> , 556 U.S. 778 (2009).....	8, 10
<i>Pardon v. Jones</i> , 577 U.S. 975 (2015).....	8, 9
<i>Pardon v. State</i> , 930 So.2d 700 (Fla. Dist. Ct. App. 2006).....	9
<i>United Air Lines, Inc. v. Mahin</i> , 410 U.S. 623 (1973).....	3

PETITIONS FOR WRIT OF CERTIORARI:	PAGE
<i>Gupta v. Maryland</i> , (No. 17-12), 2017 WL 2839358 (U.S.).....	9
<i>Pardon v. Jones</i> , (No. 15-377), 2015 WL 13732209 (U.S.).....	9

REPLY BRIEF FOR PETITIONER

The State's brief in opposition provides no legitimate justification for the Court to deny the petition for a writ of certiorari on the narrow issue presented. Rather, the State attempts to shield the issue from the Court's review by misstating the narrow issue that the Minnesota Supreme Court decided and by ignoring the confusion and conflict that currently exists among lower courts related to the issue. Because this is the ideal case for the Court to decide the narrow issue presented, the Court should reject the State's arguments and grant the petition.

1. THE ONLY ISSUE BEFORE THE COURT IS WHETHER A SUSPECT CAN REQUEST COUNSEL WHEN CUSTODIAL QUESTIONING IS IMMINENT.

Instead of addressing the narrow issue that the Minnesota Supreme Court decided regarding whether Petitioner *could* request counsel when custodial questioning was imminent, the State focuses its brief on the issue of whether Petitioner *did* request counsel when custodial questioning was imminent. (Resp.'s brf. 1, 8, 11, 15-18.) Specifically, the State asserts throughout its brief that the Court should deny the petition because Petitioner's requests for counsel took place during a "noninterrogative interaction." (Resp.'s brf. 1, 13, 15, 17.) The Court should reject the State's argument for two reasons.

First, because the Minnesota Supreme Court only decided the threshold question of whether Petitioner could request counsel, the question of whether Petitioner requested counsel when custodial questioning was imminent is not before the Court and will be decided by the Minnesota Supreme Court on remand. Second,

even if the question is before the Court, the record clearly establishes that Petitioner requested counsel when custodial questioning was imminent.

- a. Whether Petitioner properly requested counsel when custodial questioning was imminent is not before the Court.

Because the Minnesota Supreme Court only answered the threshold legal question of whether Petitioner could request counsel when custodial questioning was imminent, the issue of whether Petitioner requested counsel when custodial questioning was imminent is not currently before the Court. When a state court of last resort decides a single threshold issue, that is the only issue that the Court can review. *See McGoldrick v. Compagnie Generale Transatlantique*, 309 U.S. 430, 434 (1940) (concluding that the Court must “refrain from deciding questions not presented or decided in the highest court of the state whose judicial action we are called upon to review”). In other words, the Court does not decide issues that the state court of last resort did not decide, but instead must leave those issues for the state court to decide on remand. *Id.* (“Upon the remand of this cause for further proceedings not inconsistent with this opinion, the state courts will be free to decide any federal question remaining undecided here which, in conformity with their own procedure, may be raised for decision there, and the remand will be without prejudice to further presentation of any such question to this Court”).

In this case, the parties briefed two issues before the Minnesota Supreme Court: (1) whether Petitioner could request counsel when custodial questioning was imminent; and (2) if Petitioner could request counsel, whether Petitioner properly requested counsel when custodial questioning was imminent. (App’s 11/15/21 Minn.

S.Ct. brf.; Resp.'s 12/16/21 Minn. S.Ct. brf.) The Minnesota Supreme Court only decided the threshold question of whether Petitioner *could* request counsel and did not reach the second question of whether Petitioner properly requested counsel when custodial questioning was imminent. Indeed, the Minnesota Supreme Court expressly stated: “[b]ecause we hold that [Petitioner] did not have a Fifth Amendment right to counsel on the night of June 28, we need not decide whether his statements were ‘clear and unequivocal’ invocations of that right.” (App. 15 n.7.) In sum, because the issue of whether Petitioner requested counsel when custodial questioning was imminent was not decided by the Minnesota Supreme Court, that issue is not currently before the Court and will be decided by the Minnesota Supreme Court on remand.¹

¹ The State further argues that the Minnesota Court of Appeals’ holding that Petitioner did not properly request counsel is an independent ground for deciding Petitioner’s case. (Resp.’s brf 18-19.) As discussed, because the Minnesota Supreme Court only answered the threshold question of whether Petitioner could request counsel, the supreme court did not reach the issue that the court of appeals decided of whether Petitioner properly requested counsel. (App. 15 n.7.) Because the Minnesota Supreme Court did not reach the question, the court of appeals’ holding is not an independent ground for deciding the case. *See United Air Lines, Inc. v. Mahin*, 410 U.S. 623, 630-31 (1973) (“The possibility that the state court might have reached the same conclusion if it had decided the question purely as a matter of state law does not create an adequate and independent state ground that relieves this Court of the necessity of considering the federal question”). Instead, whether Petitioner properly requested counsel will be decided by the Minnesota Supreme Court on remand.

- b. Petitioner requested counsel on June 28th when custodial questioning was imminent.

Even if the issue raised by the State is before the Court, the record establishes that Petitioner properly requested counsel on June 28th when he was in custody and custodial questioning was imminent. The evidence presented by the State at the evidentiary hearing established the following:

- On June 28, 2016, detectives wanted to speak with Petitioner regarding the fire and the body located inside the house. (3/9/17 T. 22.)²
- Police officers arrested Petitioner and told him that “detectives wanted to speak with him at the police station.” The officers then drove Petitioner to the police station. (3/9/17 T. 45.)
- The detectives were waiting at the police station to question Petitioner when he arrived in the interview room. (3/9/17 T. 23.)
- Prior to Petitioner arriving in the interview room, the intention of the detectives was to interview Petitioner when he entered the interview room. (3/9/17 T. 25-26.)
- When Petitioner arrived at the police station, he was brought directly to the interview room to be questioned. (3/9/17 T. 25.)
- The video recording device in the interview room was activated and recording when Petitioner entered the interview room. (3/9/17 T. 25, 28.)

² “3/19/17 T.” refers to the transcript from the March 19, 2017, evidentiary hearing.

- After Petitioner entered the interview room, he requested an attorney two separate times. (3/9/17 T. 30-31, 32, 50; App. 3, 30, 35.)
- While the detectives intended to interview Petitioner on June 28th, the detectives decided to postpone the interview until the following day, June 29th, because of Petitioner's behavior inside the interview room. (3/9/17 T. 26, 27.)

These uncontroverted facts establish that, at the time Petitioner requested counsel on June 28th, custodial questioning was imminent. Petitioner was told he was going to the police station to be questioned on June 28th, the detectives intended on questioning Petitioner in the interview room on June 28th, and Petitioner requested an attorney immediately upon entering the interview room on June 28th. As such, when Petitioner asked for an attorney inside the interview room on June 28th, custodial questioning was imminent.

Importantly, Petitioner did not argue at the Minnesota Supreme Court, and is not arguing now, that questioning was imminent because questioning took place on June 29th, the day after he requested counsel. Rather, Petitioner's argument has consistently been that questioning was imminent when Petitioner requested counsel because law enforcement intended on questioning him on June 28th, immediately after he requested counsel. (App's 11/15/21 Minn. S.Ct. brf 21 ("questioning was imminent because [Petitioner's] invocation took place in the interview room immediately before the detectives were to begin their questioning").

Moreover, because Petitioner requested counsel when custodial questioning was imminent on June 28th, law enforcement was prevented from initiating contact

with Petitioner and questioning him on June 29th, regardless of why law enforcement chose not to interview him on June 28th. *See Edwards v. Arizona*, 451 U.S. 477, 484-85 (1981) (concluding that when a suspect has “expressed his desire to deal with police only through counsel, he is not subject to further interrogation by the authorities until counsel has been available to him, unless the accused himself initiates further communication, exchanges, or conversations with the police”); *see also Minnick v. Mississippi*, 498 U.S. 146 (1990) (holding that once an individual in custody invokes his right to counsel, interrogation not only must immediately cease but may not be resumed until counsel is present). In other words, the reason why the detectives chose not to interview Petitioner after he requested counsel on June 28th is irrelevant to the analysis of whether Petitioner requested counsel when questioning was imminent on June 28th. As such, Petitioner requested counsel when custodial questioning was imminent on June 28th, which prevented law enforcement from initiating contact and interviewing him on June 29th. *See Edwards*, 451 U.S. at 484-85.

2. THE COURT HAS NOT DECIDED WHETHER A SUSPECT CAN REQUEST COUNSEL WHEN CUSTODIAL QUESTIONING IS IMMINENT AND THERE IS A SPLIT AMONG LOWER COURTS RELATED TO THE QUESTION.

Respondent claims that the Court has previously answered the question presented and that there is no conflict among lower court related to the question. (Resp.’s brf. 1, 7-15.) This is nonsense. As discussed in detail within Petitioner’s petition, courts across the country, including the Minnesota Supreme Court, have indicated that the answer to the question of whether a suspect can request counsel

when questioning is imminent is unclear because this Court has yet to answer the question. (Pet. 9-11; App. at 8.)

Further, the State asserts that there is no conflict among lower courts because “courts have consistently applied this Court’s precedent to the facts before them by carefully examining whether the suspect’s invocation occurred in the context of custodial interrogation.” (Resp.’s brf. 15.) It may be true that courts have applied the existing law and have attempted to determine what “context of interrogation” means. But, as is clear from Petitioner’s petition, courts across the country, including the Minnesota Supreme Court, are in conflict related to what “context of interrogation” means and whether it includes a suspect requesting counsel when custodial questioning is imminent. (Pet. 11-16.) Indeed, the Minnesota Supreme Court, when siding with the minority position that a suspect cannot request counsel when custodial questioning is imminent, acknowledged that there is a conflict among courts on the issue. (App. 8 (“Some federal and state courts have interpreted these decisions to mean that defendants can invoke their Fifth Amendment rights when interrogation is ‘imminent’”).) But the court refused to align itself with courts that allow a suspect to request counsel when questioning is imminent because this Court has yet to decide the issue. (App. 10 (“Because the U.S. Supreme Court has never held that a suspect can invoke their Fifth Amendment right to counsel when interrogation is imminent, we are not inclined to expressly adopt an ‘imminent interrogation’ rule at this time”).) In sum, lower courts, including the Minnesota Supreme Court, have clearly indicated that this Court has not answered the question

presented, which has resulted in conflicting decisions from courts across the country. The Court should therefore grant certiorari to provide needed clarity and to resolve the conflict that currently exists among lower courts.

3. UNLIKE *GUPTA* AND *PARDON*, THIS IS THE IDEAL CASE FOR THE COURT TO DECIDE THE ISSUE.

The State asserts that the Court should deny the petition because the issue presented is similar to the issue presented in two other cases—*Gupta v. Maryland*, 138 S.Ct. 201 (2017) and *Pardon v. Jones*, 577 U.S. 975 (2015)—where this Court denied petitions for writ of certiorari. (Resp.’s brf. 7, 11-12.) By claiming that the petitions submitted in *Gupta* and *Jones* are “nearly identical” to the Petition in this case, the State overlooks the factual differences in the cases and the differences in the issues presented to the Court. For two reasons, therefore, this case is a better vehicle for the Court to answer the question than *Gupta* and *Pardon*.

First, this is a better case factually. Here, Petitioner requested counsel after he entered the interview room where law enforcement intended to question him. In *Gupta*, the defendant requested counsel while he was in a holding cell prior to being approached for interrogation. *Gupta v. State*, 156 A.3d 785, 804 (Md. App. 2017). Indeed, in *Gupta*, the Court of Appeals of Maryland indicated that the situation may have been different had the defendant requested counsel while inside the interview room. *Id.* (“At no time after entering the interrogation room until the end of the fifty-five-minute interrogation did Mr. Gupta ask for the assistance of counsel”). Unlike Petitioner, the defendant in *Gupta* requested counsel before he was ever approached for interrogation. *See Montejo v. Louisiana*, 556 U.S. 778, 797 (2009) (“What matters

for *Miranda* and *Edwards* is what happens when the defendant is approached for interrogation, and (if he consents) what happens during the interrogation”). Similarly, in *Pardon*, the defendant asked for counsel when he was being transported to the police station. *Pardon v. State*, 930 So.2d 700, 702 (Fla. Dist. Ct. App. 2006). Unlike Petitioner, who requested counsel when he was inside the interview room where questioning was going to take place, the defendant in *Pardon* did not request counsel when custodial questioning was imminent or even at the location where custodial interrogation was to take place. In sum, factually this case is a better case to review the issue presented than *Gupta* and *Pardon*.

Second, the issue presented in this case is much narrower than the issues presented in *Gupta* and *Pardon*. The question presented in *Gupta* was “[w]hether or under what circumstances an individual may invoke the Fifth Amendment right to counsel in anticipation of interrogation.” *Gupta v. Maryland*, (No. 17-12), WL 2839358 (U.S.), at ii. The issue in *Pardon* was whether the defendant requested counsel when police intended to question the defendant “at some point in the near future.” *Pardon v. Jones*, (No. 15-377) 2015 WL 13732209 (U.S.), at i. In contrast to the questions presented in *Gupta* and *Pardon*, the question presented in this case is narrow, which will allow the Court to provide a clear and concise answer. In sum, the Court should conclude that, unlike *Gupta* and *Pardon*, this case is the ideal vehicle for the Court to decide the narrow question presented.

4. THE COURT SHOULD GRANT CERTIORARI.

The time has come for the Court to provide guidance to lower courts regarding whether a suspect can request counsel when custodial questioning is imminent. Following *Miranda v. Arizona*, 384 U.S. 436 (1966), *McNeil v. Wisconsin*, 501 U.S. 171 (1991), and *Montejo v. Louisiana*, 556 U.S. 778 (2009), courts across the country have divided on the question presented, which has created uncertainty and inconsistent application of *Miranda*'s prophylactic rules. Moreover, the denial of a suspect's request to have counsel present for imminent custodial questioning—merely because the request was articulated prior to the start of questioning—must be scrutinized by the Court. Because this case is the perfect vehicle for the Court to answer the narrow question presented, certiorari should be granted in this case.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

June 15, 2023

Respectfully submitted,

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A handwritten signature in black ink, appearing to read 'A. Erickson', with a stylized flourish at the end.

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