No. 23-6789 ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

RANDOLPH MAYA - PETITIONER

vs.

STATE OF FLORIDA - RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO

SIXTH DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA

PETITION FOR A WRIT OF CERTIORARI

Randolph Maya
Wakulla C.I. Main Unit
110 Melaleuca Drive
Crawfordville, FL 32327-4963

QUESTION(S) PRESENTED

1. Can a party knowingly call a witness it expects to testify contrary to previous statements in order for those statements to entered as substantive evidence before a jury?

2. Is giving the standard 2.13 Prior Inconsistent Statement as Impeachment instructions confusing, contradictory or misleading when prior grand jury testimony was used for impeachment and is also entered as substantive evidence?

LIST OF PARTIES

[✓] All parties appear in the caption of the case on the cover page.

[ ] All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[ ] For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix ____to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the United States district court appears at Appendix _____to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[✓] For cases from **state courts**:

The opinion of the highest state court [6th DCA] to review the merits appears at Appendix A to the petition and is

[✓] reported at 2023 WL 3399301; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] unpublished.

The opinion of the _____ Florida, appears at Appendix _____to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] unpublished.

JURISDICTION

[ ] For cases from **federal courts:**

The date which the United States Court of Appeals decided my case was _____ .

[ ] No petition for rehearing was timely filed in my case.
[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.
[ ] An extension of time to file the petition for writ of certiorari was granted to and including _____(date) on _____(date) in Application No. _____ .

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

[✓] For cases from **state courts:**

The date on which the highest state Court decided my case was _____ A copy of that decision appears at Appendix _____.

[✓] A timely petition for rehearing was thereafter denied on the following date: October 25, 2023, and a copy of the order denying rehearing Appears at Appendix B.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including _____(date) on _____(date) in Application No. _____.

The jurisdiction of this Court is invoked under U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Florida Constitution

Article I

Section 9, 21

Article V

Section 3(b)(3)

United States of America Constitution

Fifth Amendment
Sixth Amendment
Fourteenth Amendment

STATEMENT OF THE CASE

Petitioner, Randolph Maya was arrested and charged with Attempt Domestic Violence First Degree Murder on September 30, 2018 stemming from an altercation between his wife Jodi Maya and himself which occurred at their home located at 308 Dixie Hwy in Auburndale, Florida. Petitioner and victim's 15 year old daughter called 911 at 7:47 pm September 30, 2018 and reported a disturbance.

Tia Maya, victim and petitioner's daughter, told Polk County Detective Fulcher when questioned alone regarding the incident, that she saw her father's back to her and could not see her father's arms or hands or what he was doing, but saw him between her legs, on top of her while she was sitting on the toilet. Tia said she saw this while looking through the slightly open bathroom door. (600, 601) The victim, Jodi Maya was transported to Winter Haven Hospital September 30, 2018 where she died October 1st 2018 at 6:55 am. On 10/02/18, at approximately 9:55 am, Dr. Nelson Polk County Medical Examiner performed an autopsy and ruled cause of death as asphyxia and the manner of death as a homicide.

On 10/02/18, Petitioner was charged with first degree murder. (23) Detective Fulcher then met Tia Maya at her school on October 3, 2018 alone without any adult, C.P.I. officer or guardian present and questioned Tia again with the same results of September 30. After Detective Fulcher searched Tia's phone, he noticed text made to her sister Alexa Maya and cousin Alyssa Ramirez. A C.P.I. then took Alexa's phone and made a copy of a text she had received from Tia. The C.P.I. then gave the copies of texts to Detective Fulcher. (822)(823)

Tia was questioned before the grand jury regarding those text that were on Alexa's phone, which were from Tia to Alexa and regarding text sent to her cousin Alyssa Ramirez. After Detective Fulcher had searched Alyssa's phone. The text between Tia and her cousine Alyssa, were about hospital records Alyssa's mother Sylvia Ramirez had received from a friend of heres that sent Sylvia medical records of the victim Jodi Maya. Alyssa then was texting Tia this information discussing possible scenarios of what had occurred to Tia's mother Jodi[3] Maya. In one text Tia stated "I thought he just choked her."

The grand jury indicted Petitioner on the charge of first degree murder on October 11th, 2018. Two months before the upcoming November 2021 trial the Statute filed a written motion for a finding of unavailability of Tia Maya due to her lack of memory or in the alternative, a finding that memory loss was feigned. The State argued that Tia's testimony was critical to the State's case and Tia was influenced by jail calls, email and virtual communications between Tia and her father and between Tia and her brother Hunter Maya, implying that Tia should not testify or that she should not remember much.(597)

A pretrial hearing was held October 29, 2021 Tia was not present because she was in the hospital having a baby. (594) State Attorney's office investigator David Lopez testified regarding the August 17, 2021 meeting with Tia, when she indicated that she did not remember what happened on the night of September 30, 2018. She was provided transcripts to refresh her memory. She gave a very brief (575) statement as to what she recalled, but didn't recall what the State was looking for.

At pretrial, the prosecutor reiterated her argument from the written motion and said "it's clear to the State that she's going to come in and say that she doesn't remember the facts of the homicide itself." The prosecutor conceded that while she was seeking to introduce Tia's grand jury testimony at trial as substantive evidence, her statements to law enforcement would not be admissible for that purpose. Judge Harb took motion under advisement to be decide at trial. (575)(588)

The trial took place during the first week of November 2021 before Circuit Judge Julal Harb and a jury. The State's key witness was Tia Maya. Because Tia testified that she had little or no memory of the events of the night her mother Jodi had died, the prosecution was allowed to introduce (as substantive evidence) here grand jury testimony and (as impeachment) out-of-court statements she made when questioned by Detective Fulcher.

Defendant Petitioner [5] Randolph Maya did not testify nor did he put up any defense. At the conclusion of the evidence, arguments, instruction, and deliberations, the jury returned a verdict of guilty of the lesser included offense of second degree murder. (119)(120)(121) At the December 16, 2021 sentencing hearing all four of Randolph Maya's and Jodi Maya's children - - Tia Maya, Brandon Maya, Hunter Maya and Alexa Maya - - spoke of their love for their father and requested leniency. Two long time friends and Hunter May's girlfriend testified also in Randolph Maya's behalf. Judge Harb imposed a sentence of 45 years imprisonment. (120-121)

REASONS FOR GRANTING THE PETITION

Petitioner's case hinges on the admissibility and inadmissibility of hearsay and hearsay within hearsay. The statements admitted to the jury were highly prejudicial to the petitioner's defense and were critical to the State's case. (575) "The theory of admissibility is not that the prior statement is true and the in-court testimony is false, but that because the witness has not told the truth in one of the statements, the jury should disbelieve both statements." (quoting *Pearce v. State of Florida,* 880 So.2d 561. Supreme Court of Florida decision.)

One of the issues the petitioner states is the Sixth District Court of Appeal's opinion expressly and directly conflicts with the Florida Supreme Court's opinion in *Morton v. State of Florida,* 689 So.2d 259, 264 (Fla. 1997), receded from on other grounds in *Rodriguez v. State,* 753 So.2d 29 (Fla. 2000) and *Bradley v. State,* 214 So.3d 648 (Fla. 2017); *Lawrence v. State,* 274 So.3d 1199, 1202 (Fla. 2nd DCA 2019); *Bleich v. State,* 108 So.3d 1132 (Fla. 5th DCA 2013); *Hernandez v. State,* 31 So.3d 873, 878-79 (Fla. 4th DCA 2010).

While a party may in appropriate circumstances impeach its own witness, it may not knowingly call a witness for the primary purpose of introducing an otherwise inadmissible statement as stated in Cf. *Bartholomew v. State,* 101 So.3d 888, 894 (Fla. 4th DCA 2012) the Morton rule and also agreed that under the circumstances of Randolph Maya's case "it is sensible to assume that the State called Tia Maya for the primary purpose of introducing her grand jury testimony." However, the opinion goes on the conclude:

> this did not violate the rule in Morton. Morton disallows evidence "otherwise inadmissible." Unlike prior inconsistent statements that may be used only for impeachment, prior grand jury testimony is not hearsay and may be used as substantive evidence § 90.801(2)(a), Fla. Stat. (2021); *Moore v. State of Florida,* 452 So.2d 559, 562 (Fla. 1984).
> (footnote omitted)

Thus, one of the questions in this case is whether the "primary purpose" doctrine applies to prior inconsistent out-of-court statements and which may be considered as substantive evidence under Fla. Stat. § 90.801(2)(a). (598) Petitioner submits that it does apply, and that the proper analysis turns on the phrase "otherwise admissible." A witness' grand jury testimony is an out-of-court statement and as such, it is hearsay [§ 90.801(1)(c) and is not independently admissible, if it were independently admissible non-hearsay, a party could introduce it to prove the truth of the matter asserted even if the witness doesn't testify, or if the witness testified and said nothing inconsistent].

Grand jury testimony may be conditionally admissible, it can become non-hearsay if and only if (1) the declarant testifies at trial and is subject to cross-examination and (2) the grand jury testimony is inconsistent with the witness' in-court testimony. Therefore, if a party calls a witness mainly or entirely as a vehicle to introduce his or her (606-607) otherwise inadmissible out-of-court statement(s) the logic of the "primary purpose" rule applies regardless of whether the prior statements are admitted for impeachment alone or also substantive evidence. See e.g. *State v. Blankenship,* 830 S.W. 2d 1, 10 (Mo. 1992)(prior inconsistent statements may under certain circumstances become substantive evidence and, as

such, admissible" Just as soon as the inconsistency appears from the [in-court] testimony") The out-of-court statements, including those made before a grand jury, thus qualify as "otherwise inadmissible," and a party should not be permitted to call the witness to the stand if, as here, the primary motivation for calling Tia Maya was to convert otherwise inadmissible hearsay, hearsay within hearsay and multiple hearsay into damaging substantive evidence. (600-606)

In the written opinion, the Sixth DCA panel further acknowledged and agreed "the State should not be permitted to intentionally put before the jury testimony, inadmissible as substantive evidence, with the hope that the jury will not be capable of following the court's instructions that the evidence may be used solely for impeachment." The opinion secondly continues to conclude:

> In Maya's case, there is no danger the jury would be confused or improperly consider impeachment evidence as substantive evidence because the grand jury testimony was not offered as impeachment evidence; it was substantive evidence properly admitted under 90.801(2)(a)

The Petitioner contends the court records show Florida Supreme Court Jury Instructions 2.13 Prior Inconsistent Statement as Impeachment were given:

> The evidence that a witness may have made a prior statement that is inconsistent with his or her testimony in court should be considered only for the purpose of weighing the credibility of the witness' testimony and should be considered only for the purpose of weighing the credibility of the witness' testimony and should not be considered as evidence or proof of the truth of the prior statement or for any other purpose.

The following section was then added to the standard 2.13 Jury Instructions by the trial court:

> However, the grand jury testimony of Tia Maya has been admitted into evidence not only for impeachment purposes but also as substantive evidence and should be considered as evidence in this case. (109)R)

Petitioner contends the Jury instruction 2.13 are confusing or weighing the credibility for the jury (117, 118). Furthermore, the Florida Supreme Court has put a comment at the bottom of the 2.13 Jury instruction that states:

> This instruction should not be used for prior inconsistent statements that are admissible as substantive evidence and not merely as impeachment, e.g., prior testimony at a trial, hearing or other proceeding (90.801(2)(a), Fla. Stat.) or statements by a defendant (90.803(18), Fla. Stat.) this instruction was adopted in 2018 (238 So.3d 192 Florida Supreme Court)

Contrary to the 6th DCA opinion, the petitioner states the Florida Supreme Court added the comments to Jury instruction 2.13 to eliminate the "danger" or possibility that the jury would improperly consider or be confused with the "Prior Inconsistent Statement as Impeachment jury instructions 2.13 and even more so with the added modifications given Tia Maya's grand jury testimony "undue influence." Since the Grand Jury testimony contained hearsay within hearsay and multiple hearsay it should also comply with Fla. Stat. 90.805 wuch as quoted in *Noack v. State,* 260 So.3d 1172 ("Double or multiple hearsay, i.e. a hearsay statement which includes other hearsay statement, is admissible when both State's conform to the requirements of a hearsay exception.")(822-823)

The State stated that Tia Maya "is a critical witness" (581R). Being that the only physical evidence the State had against petitioner were various pieces that could contain DNA such as the victim's clothes, nails, bucal swabs, neck swabs, Defendant's clothes, nails bucal swabs, writs swabs were never tested for DNA according to the State. Clarity is needed in the questions presented. Petitioner hoped the Florida Supreme Court would answer them and now ask the United States Supreme Court to answer these questions of great importance in order to serve justice well and certify conflicts.

Petitioner wishes for a new trial in a fair arena. In the interest of Justice and Fairness to Petitioner and future defendants in the State of Florida, Petitioner ask for the writ of certiorari to remedy his rights which were violated according to State and Federal Constitution under the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution and State of Florida Constitution Article I, § 9, 21 and Article V, §, 3(B)(3). In regards to his due process, equal protection of the law and of a fair and an impartial trial, Petitioner respectfully pleads the court for a writ of certiorari and pray it will be granted for all reasons stated.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

Randolph Maya, *pro se*
DC# H07196
Wakulla C.I. Main Unit
110 Melaleuca Drive
Crawfordville, FL 32327-4963