

No. 18-6908

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In The Supreme Court of the United States

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**LIVINGSTON MANNERS,**  
Petitioner,

vs.

**RONALD CANNELLA, KARRIE SABILLON**  
**and the CITY OF HOLLYWOOD, FLORIDA,**  
Respondents.

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On Petition for Writ of Certiorari to the  
United States of  
Appeals for the Eleventh Circuit

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**BRIEF IN OPPOSITION OF**  
**CITY OF HOLLYWOOD, FLORIDA**

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## QUESTION PRESENTED

(Restated)

Does the federal "exclusionary rule" apply to a state law false arrest claim to exclude evidence of a traffic infraction so as to negate the defense of probable cause to arrest for fleeing and eluding in violation of section 316.1935, Florida Statutes? <sup>1</sup>

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<sup>1</sup> Because Manners' claim of excessive force in violation of 42 U.S.C. §1983 was brought against the police officers and not the City of Hollywood, Florida, the City does not respond to the question Manners poses concerning that claim.

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## STATEMENT OF THE CASE

### **I. Proceedings Below**

Manners asserted claims against Officer Cannella under 42 U.S.C. § 1983 for excessive use of force and malicious prosecution, against Officer Sabillon under 42 U.S.C. § 1983 for excessive use of force, and against the City for false arrest under state common law. (DE 35). The defendants moved for summary judgment on all counts of the complaint. (DE 58, 60). The district court granted summary judgment in favor of the defendants on the grounds that the officers had probable cause to stop and arrest Manners. (DE 89, 90). The district court also found that the officers had not used excessive force. Manners moved for reconsideration, which motion the district court denied. (DE 94, 109).

Manners appealed the district court's final judgment to the Eleventh Circuit, which affirmed the summary judgment entered in favor of the defendants. The Eleventh Circuit found that a genuine issue of material fact existed as to whether or not Manners had run a stop sign. However, it affirmed summary judgment based upon Manners' admitted failure to stop his vehicle when he knew that the officer had activated his emergency lights and sirens, giving rise to probable cause to believe that the statute statutory crime of fleeing and eluding had been committed, pursuant to section 316.1935, Florida Statutes.

## **II. Factual Background**

The facts giving rise to Manners' arrest for violation of section 316.1935, Florida Statutes, are set forth in the accurate statement of the Eleventh Circuit in its decision. Close to three in the morning on June 24, 2014, Officer Cannella, on patrol in a marked police vehicle in reference to recent thefts in the area, observed Manners sitting in his car on the side of a residential street, Plunkett Street. Officer Cannella testified that he then saw Manners pull away from the side of the street and run a stop sign. Manners denied that he ran the stop sign. Officer Cannella followed Manners in his police vehicle. Officer Cannella testified that he activated his emergency lights and sirens behind Manners' vehicle. Manners admitted that he saw the lights and heard the sirens, that he knew the vehicle was a police car and that the activation of the lights and sirens meant he should stop. It was undisputed that Manners did not stop when he saw the lights and heard the sirens. Instead, he continued to drive until he reached a gas station, anywhere from 14.4 seconds to "about two minutes" later.

## **REASONS FOR DENYING THE PETITION**

The petition does not present a compelling reason for the Court, in its discretion, to grant certiorari. Sup. Ct. Rule 10. The petition does not present a conflict between the Eleventh Circuit's decision in this case and other Circuit Court decisions concerning the "exclusionary rule." *Id.*

**I. Manners did not present the "exclusionary rule" argument to the District Court or Eleventh Circuit and neither court passed upon it.**

Manners asks the Court to grant certiorari to consider whether the federal "exclusionary rule" should apply to his civil lawsuit against the City and police officers. Manners claims that there is a conflict between *Black v. Wigington*, 811 F. 3d 1259, 1269 (11th Cir. 2016), where the Eleventh Circuit joined the Second and Fifth Circuits in holding that the "exclusionary rule" did not apply in federal civil rights actions, and the case of *McCullum v. Geelhood*, 742 Fed. Appx. 985, 989 (6th Cir. 2018), where the Sixth Circuit held that false affidavit testimony, excluded under *Franks v. Delaware*, 98 S. Ct. 2674 (1978), could not be used in defense of a federal civil rights claim to demonstrate probable cause.

As a threshold issue, the Court should not grant certiorari because this case does not present a conflict. Manners did not raise the "exclusionary rule" below and the Eleventh Circuit did not pass upon it. *See United States v. Williams*, 504 U.S. 36, 41 (1992) ("Our traditional rule... precludes a grant of certiorari only when 'the question presented was not pressed or passed upon below.'"); *see also, e.g., Star Athletica, L.L.C. v. Varsity Brands, Inc.*, 137 S. Ct. 1002, 1008 (2017) ("We generally do not entertain arguments that were not raised below... because [i]t's not the Court's usual practice to adjudicate either legal or predicate factual questions in the first instance.").



**II. Probable cause to arrest Manners for violating section 316.1935 does not depend upon the evidence that application of the "exclusionary rule" would theoretically exclude.**

The Court should deny certiorari for the additional reason that the Eleventh Circuit's decision would not change in this case, had the "exclusionary rule" been raised and applied. Manners' apparent theory is that application of the "exclusionary rule" would have precluded any judicial reliance on Officer Cannella's testimony that he saw Manners run the stop sign because, Manners contends, that testimony was false.<sup>2</sup>

Manners' theory overlooks the Eleventh Circuit's holding. Under Florida law, probable cause is an affirmative defense to the common law claim for false arrest Manners brought against the City. *See, e.g., Mailley v. Jenne*, 667 So. 2d 1250, 1251 (Fla. Dist. Ct. App. 2004). The Eleventh Circuit did not base its affirmance on the theory that Officer Cannella had probable cause to stop Manners for running the stop sign. Rather, the Eleventh Circuit held that, regardless of whether Officer Cannella ran the stop sign, as Cannella testified, or did not run the stop sign, as Manners testified, there was probable cause to arrest Manners for violating section 316.1935.

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<sup>2</sup> As bears emphasis, neither the District Court nor the Eleventh Circuit determined that Officer Cannella's testimony was false. Furthermore, there was no predicate finding that Officer Cannella lied about Manners running the stop sign in criminal court, nor was there any sort of suppression hearing concerning this disputed fact.

According to this state criminal statute:

It is unlawful for the operator of any vehicle, having knowledge that he or she has been ordered to stop such vehicle by a duly authorized law enforcement officer, willfully to refuse or fail to stop the vehicle in compliance with such order, willfully flee in an attempt to elude the officer, and a person who violates this subsection commits a felony of the third degree.

§316.1935(1), Fla. Stat.

Under Florida law, "regardless of the legality of the initial stop (or attempted stop), the statutory offense of fleeing and eluding does not require the lawfulness of the police action as an element of the offense." *State v. McCune*, 772 So.3d 596 (Fla. Dist. Ct. App. 2000); *see also DeRosa v. Rambosk*, 732 F. Supp. 2d 1285, 1295 (M.D. Fla. 2010), *aff'd in part sub nom. DeRosa v. Sheriff of Collier Cty.*, 416 F. App'x 839 (11th Cir. 2011) ("A driver is required to stop regardless of the lawfulness of the police decision to direct the vehicle to stop."). "To accept [Manner's] view in this case would mean that any vehicle signaled to stop by the police, where the vehicle's driver believes, rightfully or wrongfully, that the stop is improper, would feel justified in not stopping despite the command of law enforcement." *State v. Kirer*, 120 So.3d 60, 63-64 (Fla. Dist. Ct. App. 2013); *see United States v. Orisnord*, 483 F.3d 1169, 1182-83 (11th Cir.2007) (explaining the potential for danger involved in vehicular fleeing situations).

Thus, application of the "exclusionary rule" to preclude Officer Cannella's testimony, that Manners failed to stop at a stop sign, would have no bearing on the Eleventh Circuit's conclusion that there existed probable cause to arrest Manners for

violation of section 316.1935. The Court should deny certiorari for this additional reason.

### CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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