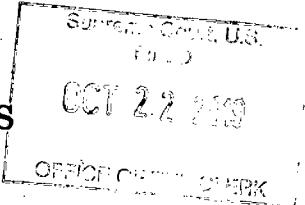


19-645 ORIGINAL

NO: \_\_\_\_\_



IN THE SUPREME COURT OF THE UNITED STATES

DAVID P. MORAN — PETITIONER

V

STATE OF FLORIDA — RESPONDENT

ON A PETITION FOR WRIT OF CERTIORARI TO THE FIFTH DISTRICT  
COURT OF APPEAL DAYTONA BEACH, FLORIDA

PETITION FOR WRIT OF CERTIORARI

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Lake City, FL 32025  
Pro Se Litigant

## **QUESTIONS PRESENTED**

1. Should a writ of mandamus compelling the Court to issue a subpoena be automatically granted when the defendant has adequately shown an entity violated an earlier subpoena for records only?
2. Should the Florida Rules of Criminal Procedures 3.361 have a specific provision added to allow subpoenas to be issued by pro se litigant's with trial court approval upon adequate showing of the necessity for the record?

## **LIST OF PARTIES**

**Fifth District Court of Appeal**  
300 South Beach Street  
Daytona Beach, Florida 32114

**Office Of The Attorney General**  
444 Seabreeze Boulevard  
5th Floor  
Daytona Beach, Florida 32118

**Orange County Circuit Court**  
Ninth Judicial Circuit  
425 North Orange Avenue  
Orlando, Florida 32801

**Office Of The State Attorney**  
Ninth Judicial Circuit  
415 North Orange Avenue  
Suite 300  
Orlando, Florida 32801

**Winter Garden Police Department**  
251 West Plant Street  
Winter Garden, Florida 34787

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and/or Clarification

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**Appendix D.** Orange County Circuit Court Denies Motion for reconsideration  
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**Appendix E.** Original Subpoena Order and Chain of Custody Form

## TABLE OF AUTHORITIES

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### CONSTITUTIONAL PROVISIONS

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**IN THE SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI**

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

**OPINIONS BELOW**

The opinion of the Fifth District Court of Appeal appears at Appendix A to the petition and is unpublished.

## **JURISDICTION**

The date on which the highest state Court decided my case was October 16th, 2019. A copy of that decision appears at Appendix B.

The jurisdiction of this Court is invoked under 28 U. S. C. §1257

## CONSTITUTIONAL PROVISIONS

U. S. Constitution Amendment Fourteen ..... 5

.nor shall any state deprive any person of life, liberty, or property, without  
due process of law.

Florida Constitution Article One Section 24 ..... 6

The Florida Constitution requires that the public have full access to public records, which includes any public record made or received in connection with the official business of any public body, officer, or employee of the State of Florida.

## **STATEMENT OF FACTS**

## **TRIAL PROCEEDINGS**

The following is a list of relevant trial proceedings. July 11<sup>th</sup> 2017 Subpoena duces tecum records only. July 24<sup>th</sup> 2017 to July 27<sup>th</sup> 2017 trial.

## **APPELLATE PROCEEDINGS**

February 19<sup>th</sup> 2019 direct appeal per curiam affirmed. June 3<sup>rd</sup> 2019, Subpoena duces tecum records only Orange County Circuit Court. June 11<sup>th</sup> 2019 Subpoena duces tecum records only denied. June 26<sup>th</sup> 2019 Motion for reconsideration of subpoena duces tecum Orange County Circuit Court. July 16<sup>th</sup> 2019 Motion for reconsideration of subpoena duces tecum denied. July 26<sup>th</sup> 2019 Writ of mandamus Fifth District Court of Appeal. August 5<sup>th</sup> 2019 Amended writ of mandamus Fifth District Court of Appeal. September 12<sup>th</sup> 2019 Both writ's of mandamus denied. September 25<sup>th</sup> 2019 Motion for rehearing and/or clarification of Writ of Mandamus Fifth District Court of Appeal. October 16<sup>th</sup> 2019 motion for rehearing and/or clarification of writ of mandamus denied.

## **STATEMENT OF CASE**

The petitioner requested two chain of custody forms that are associated with two body camera files taken by Officer Fragoso of the Winter Garden Police Department. The first file depicts Fragoso speaking to the petitioner's boss about a simple battery. The second file depicts events from a point 11 seconds after the petitioner was shot by police. The chain of custody form from the first Fragoso body camera file was properly provided by Winter Garden Police Department to trial

counsel. (See Appendix E). The chain of custody form from the second Fragoso body camera file was not provided in violation of the subpoena issued by trial counsel on July 11<sup>th</sup> 2017. Not providing the petitioner with this chain of custody form that should already be in his possession is an ongoing violation of his U. S. Constitutional 14<sup>th</sup> Amendment right to due process. The petitioner has a good faith belief the file in question was tampered with using video editing software. The petitioner needs this form for the hard data it contains within it. The petitioner believes this form will show the "TRUE" start time of the file in question proving the Winter Garden Police Department tampered with the file.

Judge Adams in denying the pro se petition for subpoena duces tecum cited the petitioner makes no argument as to why he needs this form. This is a blatantly false statement as the petitioner makes the exact argument specified here. The case laws Judge Adams cites in her denial do not apply to this situation at all. The petitioner is not requesting any documents from the Court or state attorney. Furthermore, the petitioner never asked for any "free transcripts". The petitioner is willing to pay for this one piece of paper through his grandmother if the Winter Garden Police Department desired to be compensated for it. The petitioner is a wrongfully convicted man in prison and cannot make the trip to see these records in person. In denying the motion for reconsideration of the subpoena duces tecum, Judge Adams cites that there is no provision in rule 3.361 of the Fla. R. Crim. P. that allows for discovery during post conviction phase. This situation does not apply either since it is not new discovery the petitioner is seeking. The petitioner is trying

to obtain a chain of custody form that should have been in his possession for over two years now. If the Winter Garden Police Department had not violated the original subpoena the petitioner would already posses this form.

On February 19<sup>th</sup> 2019, the petitioner's direct appeal was per curiam affirmed. This form as well as other case information are now a matter of public record. "The Florida Constitution requires that the public have full access to public records, which includes any public record made or received in connection with the official business of any public body, officer or employee of the State of Florida (Article 1§24, Fla. Const). This Constitutional right of public access to government records is virtually unfettered save for certain Constitutional and statutory exemptions. Courts must construe the public records law liberally in favor of openness and any exemptions from disclosure are construed narrowly and limited to their designated purpose. (Chandler v City of Sanford 121 So. 3d. 657 (5<sup>th</sup> DCA 2013)) (Lightbourne v McCollum 969 So. 2d. 326 (FSC 2007)) (Florida Constitution (Art.1 § 24)).

The petitioner realizes he does not have the authority to issue a subpoena directly. This is why he petitioned the trial Court for it. The petitioner submitted a writ of mandamus to the Fifth District Court of Appeal when the trial Court denied both subpoena's. The information is an essential piece of evidence that could alone have changed the verdict in favor of the petitioner. The demand for this one piece of paper is neither burdensome or unreasonably broad. The time involved in this request should take the Winter Garden Police Department CSI less than five

minutes. "Three prongs on Subpoena; 1. The Subpoena is within the statutory authority of the agency. 2. The information sought is relevant to the inquiry. 3. The demand is not unreasonably broad or burdensome." (Inspector General of the United States Department of Agriculture v. Griffin 972 F. Supp. 676 (USDC 11<sup>th</sup> Cir. 1996)).

"Subpoenas for production of tangible evidence before the Court may be issued by the clerk of Court or by any attorney of record in an action". (Fla. R. Crim. P. 3.361 (a)). "A subpoena for production of tangible evidence before the Court shall state the name of the Court and the title of the action and shall command each person to whom it is directed to produce tangible evidence at a time and place specified in the subpoena." (Fla. R. Crim. P. 3.361(b) (1))

The trial Court and State Attorney office both have not made any attempt to hold the Winter Garden Police Department accountable for violating the original subpoena. "A witness who refuses to obey a subpoena may be held in contempt." (Fla. R. Crim. P. 3.361 (d)).

#### **REASONS FOR GRANTING PETITION**

The pro se litigant needs more power to be able to acquire the discovery he/she needs to be able to fight his/her case. Regardless of whether an entity violated a subpoena or not the pro se litigant should be constitutionally entitled to any favorable discovery in his case. Public defenders are often burdened with large case loads and sometimes omissions occur. Despite that not being the situation in this case there needs to be a provision built into Fla. R. Crim. P. 3.361 to allow the

pro se litigant to issue his own subpoena with trial Court approval upon adequate showing that the evidence he/she needs is material to his/her case. Additionally a writ of mandamus should be automatically granted upon adequate showing that an entity violated an earlier subpoena. This will ensure that all pro se litigant's have a fair chance of winning their appeals.

## CONCLUSION

This petition for a writ of certiorari should be granted. This request is made in good faith. The petitioner swears the facts contained in this petition for writ of certiorari are true and correct.

Respectfully submitted,

/s/ D. Moran  
David P. Moran X97428  
Pro Se Litigant

Date: October 23rd 2019