

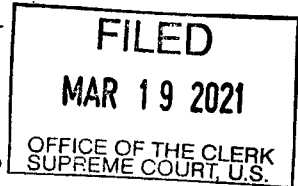
21-7265

ORIGINAL

---

IN THE  
SUPREME COURT OF THE UNITED STATES

---



VICTOR MANNS,-- Petitioner,

V.

STATE OF FLORIDA, ET.AL.-- Respondent.

**ON PETITION FOR WRIT OF CERTIORARI TO**

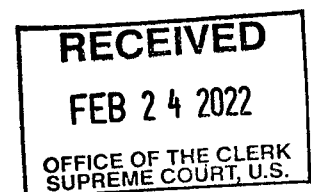
**SECOND DISTRICT COURT OF APPEALS**

(NAME OF THE LAST COURT THAT RULED ON THE MERITS OF YOUR  
CASE)

**PETITION FOR WRIT OF CERTIORARI**

VICTOR MANNS, *pro se*  
DC # K20425

MAYO CORRECTIONAL INSTITUTION  
8784 U.S. Hwy. 27 West  
MAYO, FLORIDA 32066



### **QUESTIONS PRESENTED**

When a Detective Under Oath admits multiple times she did not properly Mirandarize defendant, and a Defendant testifies Miranda warnings were never given, can a suspect provide an implied waiver under these circumstances?

### **LIST OF PARTIES**

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

[ x ] All parties **do not** appear in the caption of the case on the cover page.

all parties to the proceeding in the court whose judgment is the subject of this petition is a follows:

Attorney General, Ashley Moody.

### **RELATED CASES**

- CF-16-7451
- 2D19-1828

## **TABLE OF CONTENTS**

OPININON BELOW.....	pg. 1
JURISDICTION.....	pg. 3
CONSTITUTIONAL AND STATUORY PROVISIONS INVOLVED.....	pg. 5
STATEMENT OF THE CASE.....	pg. 6
REASONS FOR GRANTING THE WRIT.....	pg. 25
CONCLUSION.....	pg. 32

## **INDEX TO APPENDICES**

APPENDIX A-DECISION OF STATE COURT OF APPEALS;

APPENDIX B-DECISION OF STATE TRIAL COURT.

## **TABLE OF AUTHORITES CITED CASES**

### **PAGE NUMBERS**

<u>Aguila v. Frederic</u> , 45 Fla. L. Weekly D2043(Fla.3 <sup>rd</sup> DCA 2021).....	30
<u>Hall v. State</u> , 248 So.3d 1227, 1229-30 (Fla. 1 <sup>st</sup> DCA 2018).....	26
<u>Miranda v. Arizona</u> , 384 U.S. 436, 86 S.Ct 1602, 16 L. Ed. 2d 694 (1966).....	26
<u>North Carolina v. Butler</u> , 441 U.S. 369, 373.....	30
<u>Tanner v. State</u> , 46 Fla. L Weekly D135 (2 <sup>nd</sup> DCA 2021).....	27
<u>Ramirez v. State</u> , 739 So. 2d 568 (Fla. 1999).....	27

### **STATUTES AND RULES**

Fed. R. Crim. P. 11

**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**

☐ 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 published.

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 to review the merits appears at Appendix "A" to the petition and is

☒ reported at 2D19-1828; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

The opinion of the 10<sup>th</sup> Judicial Circuit Court (Polk County, Florida) court appears at Appendix "B" to the petition and is

☒ reported at 2016CF-007451-xx; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished.

## **JURISDICTION**

☐ For cases from **federal courts**:

The date on 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.\_\_\_\_A\_\_\_\_\_.

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 December 23, 2020.

A copy of that decision appears at Appendix "A".

☐ A timely petition for rehearing was thereafter denied 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.: \_\_\_\_ A \_\_\_\_.

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

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

United States Constitution, Amendment V;

United States Constitution, Amendment XIV.

**STATEMENT OF THE CASE**  
**INTERROGATION OF VICTOR MANNS**  
By Det. Wright

Pg. 820

**Wright:** Why are you here?

**Manns:** Ion know why. (inaudible)

**Wright:** But you said you were a physic.

**Manns:** Ion know why I'm here though.

Pg. 834

**Wright:** Well what do you think you being accussed of?

**Manns:** I don't know, that's what I'm saying is I.

Pg. 835

**Wright:** What do you think about First Degree Murder?

**Manns:** Un-Uh-Un, I don't know.

**Wright:** What do you think about never seeing your kids again?

Pg. 836

**Wright:** Victor, I need to hear your side.

**Manns:** My side of what?

**Wright:** I need to hear your side of what happened.

**Manns:** I don't got no side, I ain't, I can't confess to something I ain't do

**Wright:** I didn't ask you to confess to anything.

**Manns:** That's what I'm saying. So talking about a side. If i'm telling you everything I did, winding up to, I know what you (inaudible) going back and I

ain't got no side, I ain't did nothing so...that's just where we gotta leave that. I can't tell you nothing I don't know.

Pg. 846

**Wright:** Did you mean to shoot him? Did you want to shoot him? Is that what you meant to do? Did you go there, uh, tell me is it premeditated? Did you go there and plan on shooting this dude?

**Manns:** If I tell you I'm a family guy – .

Pg. 848

**Wright:** But when I sit here and look at you and when a jury sits there and looks at you, when your family sits there and looks at you, when your kids as they grow up, sit there and look at you.... when someone has to answer the question that your daddy went there and killed a man or your dad was just trying to take care of you kids and shit went bad, there's a difference is, is there daddy a killer?

**Manns:** Hell –

Pg. 850

**Wright:** So what happen this time it was so different? You've had a gun before?

**Manns:** No, I didn't.

**Wright:** Did you mean to kill him?

Pg. 876

**Wright:** Did he give you the gun then or did you already have it?

**Manns:** He gave it to me. I, ion, ion even own a gun (inaudible) I wouldn't even know where that gun at.

**Wright:** Well what you do with it afterwards?

**Manns:** I dropped it and I guess Freddy got it.

**Wright:** Where did you drop it at?

**Manns:** Close by the school.

Pg. 886

**Wright:** Is the gun right up next to the fence?

**Manns:** It ain't like right on the fence, it's in there somewhere. I don't (inaudible) saying I can't.

Pg. 899

**Wright:** Did you see him go down?

**Manns:** I didn't see. I didn't, running for my fucking life.

**Wright:** When did, when did you hear he died?

**Manns:** I, I seen that Facebook.

Pg. 901

**Wright:** You just popped off some rounds trying to get away?

Pg.909

**Wright:** So the gun is gonna be somewhere in here.

**Manns:** Yes ma'am

**Wright:** Alright, I'm going to go look for it.

## **MOTION TO SUPPRESS HEARING**

A hearing on the motion to suppress as well as another motion was conducted on 2/28/19. In the motion, Petitioner cited to the following deficiencies with the Miranda waiver: lack of a written waiver, the time between alleged waiver and the interrogation failure to re-mirandize, unheeded request to loosen his handcuffs and Petitioner being cold during the interrogation. The State presented two witnesses Det. Tonya Wright and (former) Dep. Steven Britten. Petitioner testified in his own behalf at the motion hearing.

**The following statements reflect the record on appeal Tonya Wright questioned by Steven Alamia:**

Q: "Did you read Miranda?"

A: "I did."

Q: "Okay, and what did that contain-Miranda rights, what did you read to him?"

A: "I read it from my card. Did you want me to read it?"

Q: "Yes. Could you please read that for the Court?"

A: "Sure. You have the right to remain silent, anything you say- 'sorry its kind of rubbed off now,' but anything you say can and will be used against you in a Court of law. You have the right to talk to a lawyer before and during any questioning. If you cannot afford to hire an attorney, one will be appointed to represent you before any questioning if you wish. You can decide at any time to exercise these rights and answer any questions or make any statements. Do you understand each of these rights?"

Q: "Okay. And did he indicate that he understood?"

A: "Yes"

Q: "Okay. And then what happened after you finished reading Miranda to him?"

A: "Just prior to reading Miranda I expla- I introduced myself, told who I was and I read him Miranda. Then I told him he would be taken to our main office, which is the Sheriffs operation center in Winter Haven, and I would meet him there."

Q; "Did he indicate anything to you at that time about either not wanting to talk to you or about invoking any of those rights you read?"

A: "No"

Q: "Okay. How soon after that did you meet up with him again?"

A: "It was approximately an hour or so."

Q: "Did you have any conversation with Deputy Britten?"

A: "I did. I asked if -"

Q: "What did he - what conversations did you have with Deputy Britten?"

A: "I asked Deputy Britten if Victor Manns had said anything, and he said that he had just talked about his kids."

Q: "Did Deputy Britten indicate to you that Victor Manns either said he didn't want to talk to you or that he wanted to invoke any of the rights you read to him?"

A: "No."

Q: "Did you interview Victor Manns?"

A: "I did."

Q: "Okay. At any point either before you interviewed or during that interview did he indicate to you that he either didn't want to talk to you or he wanted to invoke any of his rights?"

A: "No."

Q: "Was that interview recorded?"

A: "It was audio and video recorded."

#### **CROSS-EXAMINATION BY COUNSEL OLIVERO**

Q: "You indicated that you read Miranda at the arrest location, correct?"

A: "That is correct"



Q: "Okay. Did you have Mr. Manns indicate acknowledgment after each right was read?"

A: "No"

Q: "Okay. Did you ask him at that time if he wanted to waive his rights?"

A: "I asked him if he understood his rights and he said yes."

Q: "You did not ask him at that time if he wanted to waive those rights and speak to you, correct?"

A: "No."

Q: "Okay. When you went to the Sheriffs Operation center did you re-read Miranda?"

A: "No."

Q: "Did you ever ask him if he wanted to waive his rights and speak with you?"

A: "No."

Q: "Do you - and you don't know if he ever did state that he wanted to invoke his rights or do anything like that while he was out of your care, do you?"

A: "Deputy Britten did not indicate that he did, that he only discussed his kids, family."

Q: "Did you have him sign a written waiver of rights?"

A: "No."

Q: "While he was being interviewed he was handcuffed, correct?"

A: "That is correct."

Q: "He was in an interview room, correct?"

A: "That is correct."

Q: "With you and Detective Smith, correct?"

A: "That is correct."

Q: "Okay. He was only in boxer shorts, correct?"

A: "That is correct."

Q: "And he was actually handcuffed behind his back?"

A: "That is correct"

Q: "And several times he mentioned during his interview that he wanted the cuffs loosened, that they were tight, correct?"

A: "I don't recall that, but that's possible."

#### **TESTIMONY OF DEPUTY STEVEN BRITTEN**

Q: "Okay - were you involved in the arrest of a Victor Manns involving a murder case?"

A: "I transported him."

Q: "Okay - and where did you transport him from?"

A: "I'm not sure where the scene was. I think it was in Mulberry."

Q: "But that was from the arrest scene?"

A: "Yes"

Q: "Was Tonya Wright there?"

A: "Yes."

Q: "Did Tonya Wright have any contact with the defendant before you transported him?"

A: "I believe she spoke to him while he was in the back of my car."

Q: "Okay. And then what did you do after you left the scene?"

A: "I drove him to the SOC., the main Sheriffs Office."

Q: "Did you have any role with the case other than transport?"

A: "I did not"

Q: "Did you have any conversation with the defendant that you remember?"

A: "Not that I remember."

Q: "At any point do you recall whether the defendant ever either invoked any of his rights or said he didn't want to talk to Tonya Wright or any of the Detectives?"

A: "I don't remember that. No."

Q: "If that had occurred would you have let Tonya Wright know that?"

A: "Absolutely."

### **CROSS-EXAMINATION BY COUNSEL OLIVERO**

Q: "You said Detective Wright spoke to him while he was in the back of the car.

Did you hear what that conversation was?"

A: "I don't believe so"

Q: "Did you ever hear her read him Miranda?"

A: "I don't recall"

Q: "Now, you don't remember him invoking or saying anything while you were transporting him, but that doesn't mean it didn't happen does it?"

A: "I don't recall."

Q: "You don't recall?"

A: "I don't recall our conversation at all in the car."

Q: "So you don't recall a conversation at all?"

A: "I don't remember what we were saying, No - if we spoke at all or if it was a quiet ride or we just, you know, talked around. I'm not sure."

**Victor Manns, the witness herein being duly sworn, was examined and testified as follows:**

Q: "Mr. Manns, do you ever recall Detective Tonya Wright reading you Miranda warnings?"

A: "No."

Q: "Did she ever read you Miranda warnings?"

A: "No."

Q: "No further questions."

The Court: "State, any cross?"

Mr. Alamia: No, your Honor.

### **TRIAL**

Victor Manns, Petitioner, was charged by way of an indictment with five (5) offenses, to wit: 1.) First Degree Murder; 2.) Robbery with a firearm; 3.) Burglary of a conveyance while armed with a firearm; 4.) Possession of a firearm by a convicted felon, which was severed; 5.) Unlawful use of two-way communication device. Jeffery William Morrow Jr. (victim) was alleged to have been murdered in Polk County, Florida on Sunday, September 4, 2016. At trial numerous law enforcement officers testified and victims from collateral crimes, as well as Blake Fitez, the surviving victim testified about the incident on Sept. 4, 2016. The two and half hour interrogation was also played for the jurors at trial.

## **DIRECT EXAMINATION BY STEVEN ALAMIA**

Dr. Frumkin testified at trial the following: pg.931

Q: And briefly, doctor, can you tell us the difference between voluntariness to waive Miranda and vulnerabilities for false confessions.

A: Well, they're two different issues. You Know, for Miranda waiver to be valid, you know, understanding your legal rights and right to a lawyer, whatever you say can be used against you, you have the right to remain silent. Those sort of things, has to be knowingly, intelligently, and voluntarily. Voluntariness to do with police overstepping their bounds and extracting a Miranda waiver against a person's will. The vulnerability to the false confession is different certainly one would look at police interrogation tactics but I'm not in court saying that the interrogation was involuntary. Thats a legal determination. But I'm talking about how Mr. Manns as an individual puts him at greater risk in terms of the interrogation tactics that were used.

pg. 958

Q: Now, you're also testifying regarding the tactics that were used that we already went over. And its your testimony, one, the defendant was extremely uncomfortable during the interrogation. Those are your words right?

A: Yes.

Q: How do you know that?

A: The video speaks for itself. He keeps on telling law enforcement that the handcuffs are hurting, can you take them off, can you put the handcuffs in front of me. I'm really cold, can you give me something to wear. Over and over again he's telling law enforcement that.

Q: Now, one of the things you also testified to is that the officers keep telling him that basically he did it and they don't accept his denials, right?

A: (nods head affirmatively.)

pg. 959

Q: And you said that happens over and over and over again right?

A: Yes.

Q: Okay. And is that also panned out on the video?

A: Yes.

Q: Now, the other thing you testified to was that they lie about the evidence or exaggerate the evidence.

A: Well, I wouldn't say all the evidence. There is a number of things that Mr.

Manns said in the interrogation that's not supported my understanding by the evidence. And some of the things that he's told by law enforcement-- you like

there's a videotape of him running from the scene, my understanding is that there's no videotape that's being presented of him running from the scene of the crime

pg.960

Q: But you keep bring up this one video.

A: Well, that's important, yes.

Q: Okay is that the only thing or is it --is there a lot of other things?

A: In terms of the police lying or misleading about evidence?

Q: Yes.

A: Well, I mean the whole minimization/ maximization is very misleading in terms of making it seem like--well,they gave some sort of statement. I don't want to get the words wrong but something to the effect that if you don't say you did this, you know, the jury is going to think you're this bad person, you may get the death penalty or something like that. I think that was very misleading.

pg 964

A: I would agree that he's stuck because the matter-- the 20 or so

times he's denying that he committed the offense that's not working for him.

Q: Right. So he's yielding? He's yielding to their questioning? Is that what



your saying?

A: No. Eventually he shifts to a different response.

A: Well, law enforcement, the two detectives wouldn't accept Mr. Manns, you know repeated denials that he didn't commit the offense and it is someone who you know, maybe if he didn't shift higher than the average person maybe would have held out even longer but I don't know because the interrogation was very adverse where he was uncomfortable handcuffed behind his back and was cold and all these other things but repeatedly he denied over and over again he didn't do the offense.

#### **DIRECT EXAMINATION OF Dr. GAMACHE**

pg 1333

Q: Okay. And then I want to go--what about psychological coercion, did you see that as a factor in this case?

A: I observed some behaviors that are recognized as potentially coercive, psychologically coercive by law enforcement. It is common tactics or strategy that they're taught in terms of how to do interrogations.

Q: Okay. And you did see some of that in this interview?

A: I did.

## DIRECT CROSS EXAMINATION OF TONYA WRIGHT

pg. 1263

Q: Now you testified earlier that you read Miranda to Mr. Manns at his house, correct?

A: That's correct.

Q: Did you have him acknowledge each one of those before you asked him that?

A: No.

Q: Did you ask him if he wanted to waive his rights and speak to you?

A: No, I did not.

Q: And was that around approximately 2:00, 2:30, correct?

A: That's correct.

Q: And then when you got to the interview room, that was around 4:00, 4:30?

A: Yes, ma'am.

Q: Did you ever have him acknowledge his rights before he spoke to you at the time?

A: Not at that time, No.

Q: Did you ask him if he wanted to waive those rights and speak to you?

A: Not at that time, No.

Q: So you do have training in obviously being a law enforcement, officer, correct?

A: That's correct.

Q: You're trained in how to interview a witness, correct?

A: I have some training correct.

pg. 1265

Q: And you're trained in how to interview suspects, correct?

A: That is correct.

Q: And do you follow and adhere to all of the training that you're taught?

A: No, I do not.

pg. 1266

Q: And the interrogation was from around 4:00 to 6:30 am?

A: That's correct.

Q: And we saw that he was handcuffed behind his back, correct?

A: Yes, ma'am.

Q: And you never offered to provide him any food or water, correct?

A: I did not.

Q: But you never at any point after that said anything to the effect of

remember I read you those rights, should I read them again or do you want to talk to me or anything like that?

A: No.

**The prosecutor mentioned the statements several times in closing and rebuttal arguments.**

pg. 1439, line 2-8

“ We talked a lot in this trial, the Attorney's in their questions and the witnesses, the experts, we talked a lot about the quote, confession, interview, the interragation, the statement of the defendant, two hours of which is very strong evidence in this case and very important evidence”

pg 1441, line 4-8

“ But theres something else thats very, very strong in this case and thats the fact that the defendant Victor Manns confessed. He confessed to doing it you have a two hour interview in evidence.”

pg. 1493, line 8-9

“ All of the evidence points to Victor Manns and he confessed.”

pg. 1443, line 7-9

“Everything about that statements reads true. He confessed in a way that leaves no reasonable doubt regarding his guilt.”

Mr. Manns did not testify at trial. Petitioner was found guilty as charged. He was sentenced to life in prison.

### **DIRECT APPEAL**

Appellant Counsel J. Rafael Rodriguez argued the trial court erred in denying defendants motion to suppress statements on direct appeal. The Trial Court based its decision on a finding that there was an Implied waiver of Miranda Rights.

Per Curiam. Affirmed without opinion.  
(Answer brief of Appellee)  
Supplement added for review

## **REASONS FOR GRANTING THE PETITION**

Mr. Manns' case should be granted because this case is of such imperative public importance and requires immediate determination in this court due to direct conflict with relevant decisions of this Court. Manns is entitled to relief because Det. Wright failed to advise him of his rights and interrogated him in violation of principles espoused in *Miranda*, making it impossible for Mr. Manns to give an implied waiver. The detective failed to specifically give the defendant his *Miranda* rights before asking him questions which were reasonably likely to elicit, and did elicit, incriminating responses which the state presented at trial in their entirety. Manns contends that the trial court should have granted his motion to suppress his statements. There was no sufficient substantial competent evidence that Mr. Manns was ever read *Miranda* rights or validly waived his rights to give an implied waiver based on the record. Also, even if detective Wright would have read petitioner his constitutional rights, they would have not been properly administered due to detective's own testimony at deposition, the motion to suppress hearing on 2/28/19 and at defendant's trial where she testified multiple times, she never had Manns acknowledge all his rights. She never had Manns sign any written waiver, and she never asked Manns if he wanted to waive any rights. The trial court erred to concede that petitioner provided an implied waiver by

subsequently speaking with detectives. The trial courts ruling was premised on an unreasonable determination of the facts presented at the motion to suppress hearing and an unreasonable application of clearly established Federal and State law. Rather the Supreme Court should make such a determination for the proper decision for this case. “The Supreme Court determined in *Miranda v. Arizona* that the States may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogations of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination.” *Hall v. State*, 248 So.3d 1227, 1229-30 (Fla. 1<sup>st</sup> DCA 2018) quoting *Miranda v. Arizona*, 384 U.S. 436, 444 (1966). Whether the rights were validly waived must be ascertained from two separate inquiries: First, the relinquishment of the right must have been voluntary in the sense that it was the product of free and deliberate choice rather than intimidation, coercion, or deception. Second, the waiver must have been made with full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it. Mere answering of question is insufficient to show a implied waiver.

In reversing Ramirez v. State, 739 So.2d 568 (1999) the court ruled that his initial statement was inadmissible because it was elicited during custodial interrogation in the absence of the Miranda warnings, the full confession was also inadmissible since a valid waiver was not shown. Sanctioning the admission of Manns statements under these circumstances will unreasonably extend the application and reach of the principle of implied waiver found by the trial court beyond holding and findings of all the foregoing cited cases. So the Supreme Court should make such a determination to the questioned inquired. Petitioner asserts that because he responded to detectives questions does not make it an implied waiver. In decisions in Tanner v. State, 96 Fla. L. Weekly D135 (2<sup>nd</sup> DCA 2021) an intra district conflict expressly and directly conflicts with Manns's case. In the case of Tanner, the detective did not expressly ask Tanner if he wished to waive his Miranda rights. The detective simply explained his rights, assumed he wanted to make a statement, and moved onto question him. Prior to trial, Tanner filed a motion to suppress statements. He alleged that the police ignored his invocation of his right to remain silent and continued to question him, eliciting incriminating statements. Firstly, both the United States and Florida constitution provide that persons shall not be “compelled” to be witnesses against themselves in any criminal matter. **U.S. Const. Amend V and Fla. Const. Art. 1 & 9.** Thus



to be admissible in a criminal trial the State must prove that the confession was not compelled, but was voluntarily made. In contrast the statements were not voluntarily made and the State did not prove the confession was not compelled. Manns secondly asserts he should be reversed and remanded like Tanner v. State, where the detective admitted to not asking Tanner if he wished to waive his rights.

Furthermore, Steve Britten sat in the front of the car and testified he didn't recall Detective Wright reading Miranda. There was no discussion or reference of Miranda during the two-hour interrogation. The facts show at most, that defendant merely acquiesced in his interrogation under the color of police authority. The totality of the circumstances show that the questioning took place in the station & the interrogators did not secure a written waiver of the Miranda rights at the outset. This case reflects a blatant violation of the United States Supreme Court's relevant decision in *Miranda v. Arizona*, which is why Manns case requires immediate attention in this court. Mr. Manns contends he could not indicate in any way to give an implied waiver of the Miranda rights if he was never advised of Miranda. The Supreme Court should exercise the Court's supervisory power so issues such as that of Manns and future similar cases that arise will have clarity with this question on implied waiver. Manns denied the offenses 26 times before he gave an incriminating statement to law enforcement. (The 26 denials of the

offense would be sufficient to prove that Manns would have constituted an unequivocal and clear indication that Manns would have not want to talk about the offenses with detective Tonya Wright. If afforded the opportunity would have invoke his right to remain silent based upon the video.) Therefore, with officer Britten and Mr. Manns testimony, that would out weigh the crediblity of Detective Wright to show that Miranda was not read. The trial court erred by (1) denying petitioner's motion to suppress confession without competent, substantial evidence and (2) the trial court reached the incorrect legal conclusion. The video clearly demonstrates that Manns was in custody, that Detective Wright did not provide Miranda warnings, there was no Miranda form signed, there was no reference of Miranda rights, petitioner was never told he was free to leave and all the questions indicated that the detectives considered Manns a suspect. Furthermore, there was no careful and thorough administration of Miranda warnings later given at any time.

Under Miranda, the requirement of an appropriate Miranda warning is that the suspect has to be told or asked if he wishes to waive his rights and speak with law enforcement and to obtain an implied waiver, which was never done in this case. (While an express waiver “ is not inevitably either necessary or sufficient to establish waiver “ an express written or oral statement of waiver of the right to

remain silent or of the right to counsel is usually strong proof of the validity of that waiver” See North Carolina v. Butler, 441 U.S. 369,373. The admission of Manns incriminating statements were in violation of the fifth amendment privilege against self- incrimination which qualifies as irreparable harm justifying the issuance of a writ of Certiorari. See Aguila v. Frederic, 45 Fla. L. Weekly D2043 (Fla. 3<sup>rd</sup> DCA 2021) The Court in Ramirez quoted Miranda as follows: “The requirment of warnings and waiver of rights is fundamental with respect to the fifth admendment privilege and not simply a preliminary ritual to existing methods of interrogation” Miranda, 384 U.S. at 476, 86 S. Ct. 1602 further, “Unless and until [Miranda] warning and waiver are demonstrated by the prosecution at trial, no evidence obtained as a result of interrogation can be used against [ defendant ]. Therefore, the Detective was required to read Miranda in order to secure an implied waiver. The trial court should have granted the motion to suppress statements. Mr. Manns admission of the audio/video statements cannot be deemed harmless error beyond a reasonable doubt. Petitioner's transcripts and recorded interrogation were provided and played to the jury. In closing argument, the prosecutor repeatedly mentioned Mr. Manns confession. Therefore it is impossible to say that Manns confession did not contribute to the verdict. Petitioner's interrogation was an essential centerpiece to the State's case. The State in response to direct appeal

made no attempt to argue how the erroneous admission of Mr. Manns statement were harmless error. Therefore this matter should be settled by this court due to judicial discretion and petitioner had never consented an implied waiver.

### **CONCLUSION**

The Petition for a Writ of Certiorari should be granted.

Respectfully Submitted

/s/ Victor Manns  
Victor Manns, DC #K20425  
Mayo C.I. (Annex)  
8784 U.S. Hwy. 27 West  
Mayo, Fla. 32066