

No. 18-9419

ORIGINAL

Supreme Court, U.S.
FILED

MAY 21 2019

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

Mario Laron Waiters — PETITIONER
(Your Name)

vs.

United States of America — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Fourth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Mario Laron Waiters
(Your Name)

FCI Fort Dix - P.O. Box 2000
(Address)

Joint Base MDL, New Jersey 08640-5433
(City, State, Zip Code)

N/A

(Phone Number)

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MAY 24 2019

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SUPREME COURT, U.S.

QUESTION(S) PRESENTED

Whether the Virginia Statute 19.2-72 violates due process and equal protection and is unconstitutional as it applied to this case. The requirements are so low that statute violates my 1st, 4th, 5th and 14th amendments.

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Whether both the District Court and the Appeals Court of the Fourth (4th) Circuit erred in their decision to not suppress evidence based on an illegal arrest when the statute of Virginia, 19-272 violates due process in attempting to pose that both probable cause and good faith did not apply?

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:

TABLE OF AUTHORITIES CITED

CASES

PAGE NUMBER

See Addendum for TABLE OF AUTHORITIES.

STATUTES AND RULES

OTHER

CASES

PAGE NUMBER

1. Giordenello v. United States.....11I
357 U.S. 480, 485 (1985)
2. Graham v. Gaghon.....11K, 11L
831 F.3d 176 (2016)
3. Hines v. Davidowitz.....11L
312 U.S. 52
4. Illinois v. Gates.....11K
462 U.S. at 238-39
5. Jones v. United States.....11K
362 U.S. at 271
6. Merchant v. Fairfax County.....11K
778 F. 2d 636 (4th Cir. 2012)
7. Smith v. Munday.....11K
848 F.d 248 (4th Cir 2016)
8. Spinelli v. United States.....11K
393 U.S. 410
9. United States v. Blackwood.....11L
913 F. 2d 139,142 (4th Cir 1990)
10. United States v. Clyburn.....11I
24 F. 3d 613,616 (4th Cir 1994)

* * *

STATUTES AND RULES

19.2-72

TABLE OF CONTENTS

| | |
|--|---|
| OPINIONS BELOW | 1 |
| JURISDICTION..... | |
| CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED | |
| STATEMENT OF THE CASE | |
| REASONS FOR GRANTING THE WRIT | |
| CONCLUSION..... | |

INDEX TO APPENDICES

APPENDIX *A* Vol 1 1425

APPENDIX *B* Joint Appendix

APPENDIX *C* Brief

APPENDIX D

APPENDIX E

APPENDIX F

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 VIII to the petition and is

☒ reported at 2019 U.S. Lexis 1425; 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 Joint Appendix; 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 _____ 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 _____ 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.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was Jan 16, 2019.

☐ 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: Feb. 20, 2019, and a copy of the order denying rehearing appears at Appendix Vol 1.

☐ An extension of time to file the petition for a 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 _____.
A copy of that decision appears at Appendix _____.

☐ 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 a 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).

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was Jan 16, 2019.

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☐ An extension of time to file the petition for a 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 _____.
A copy of that decision appears at Appendix _____.

☐ 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 a 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

~~13th~~ 4th, 5th & 14th Amendments due process violation

STATEMENT OF THE CASE

Whether the Virginia Statute 19.2-72 violates due process and equal protection and is unconstitutional as it applied to this case. The requirements are so low that statute violates my 1st, 4th, 5th and 14th amendments.

Whether both the District Court and the Appeals Court of the Fourth (4th) Circuit erred in their decision to not suppress evidence based on an illegal arrest when the statute of Virginia, 19.2-72 violates due process in attempting to pose that both probable cause and good faith did not apply?

Statement of Facts

I. BACKGROUND

Mr. Waiters is a 35-year old American citizen who was born in Georgia. He was the only child of Tommy Walker and Sharon Waiters, who never married. The family relocated to the Northern Virginia area sometime around 1997, and though his father was active in his life until he was killed in an automobile accident in 2006, Mr. Waiters was primarily raised by his mother and is a high school graduate. Mr. Waiters has three maternal half-siblings who all live in the metropolitan Washington, D.C. area and with whom he maintains regular contact. (Sentencing Report, pages 15-16) Mr. Waiters has two young children with whom he had regular visitation prior to his incarceration and he continues to be in contact with them, via telephone, while in custody.

Mr. Waiters has a criminal record, beginning sometime in 2002, including the 2005 felony conviction that was an element of this offense. However, Mr. Waiters has never committed a violent crime and he has only been incarcerated for more than 90 days one time before. Most of Mr. Waiters' past charges have been dismissed on the government's motion, including all 14 of the alleged offenses that led to Mr. Waiters' arrest in this case.

II INDICTMENT, TRIAL AND SENTENCING

A. The Fairfax County Case

Mr. Waiter was originally arrest by the Fairfax County Police Department on 14 associated credit card theft charges on July 31, 2016. A handgun was found on his person at the time of his arrest, leading to two additional charges, and Mr. Waiters was held ||or nearly a year in Fairfax County awaiting trial.

When Fairfax County Police officers and the Commonwealth's Attorney were unable to prove probable cause for his arrest at a preliminary hearing, and after multiple continuances for the government, the charges were dismissed on the Commonwealth's motion. It was only then that the United States Attorney stepped in to prosecute Mr. Waiters.

B. The Indictment

Mr. Waiters was charged, in the Eastern District of Virginia, with one count of "having been convicted of a crime punishable by imprisonment for a term exceeding one year, did knowingly possess in and affecting interstate commerce, a firearm and ammunition, that is, a Taurus Model 380, .380 caliber revolver, and .380 caliber ammunition, all of which had been shipped and transported in interstate and foreign commerce," in violation of 18, U.S.C. § 922(g)(1) and § 924(a)(2).

C. Motion to Suppress

Prior to the trial, previous counsel for Mr. Waiters filed a motion to suppress the gun and ammunition, alleging that the Fairfax County arrest warrants were obtained without a proper showing of probable cause. Previous counsel addressed the fact that Virginia law does not require a written complaint to obtain an arrest warrant, and that no record is kept of any statements made to a magistrate or any questions that magistrate may have asked before issuing a warrant. Previous counsel also noted that the Commonwealth could not prove probable cause at a preliminary hearing and dismissed all of the underlying charges.

The point of the argument was that because Virginia does not require a written document to obtain an arrest warrant and does not require that any meaningful record be produced or kept, there is no way to prove that the magistrate acted as an independent judicial officer rather than a rubber stamp for the police. The United States Attorney relies on the notion that the Fairfax County Police officer who arrested Mr. Waiters and found his gun acted in good faith, though they never produced a witness to testify that the warrants were obtained legally. The trial court overruled the motion without hearing testimony.

D. Trial

At trial, two Fairfax County Police detectives testified about their parts in the investigation and arrest of Mr. Waiters. The first detective testified that he had no

involvement with the investigation of Mr. Waiters' case but did take part in the search of Mr. Waiters subsequent to his arrest and the seizure of the gun that became the subject of this prosecution. The second detective testified that she served Mr. Waiters with the additional warrants related to his possession of a handgun that were obtained after he was detained. Additionally, Mr. Waiters' sister testified that her brother had previously been arrested and that they had telephone conversations while he was in jail. The Government offered testimony from one government agent, who testified about the alleged statements made by Mr. Waiters while he was being transported to the Alexandria courthouse. Finally, a government agent testified as an expert regarding the firearms involve in the case.

Examining the evidence in the light most positive to the government's case, ample evidence was produced to show that Mr. Waiters had been convicted of a crime punishable of over one year in jail prior to the case at bar. The government also produced sufficient evidence that Mr. Waiters possessed both a firearm and ammunition at the time he was arrested and that the firearm had been placed in interstate commerce, as required by statute.

The real issue in this case was whether the search of Mr. Waiters incident to his arrest, based on the arrest warrant obtained by the Fairfax County Police Department, was legal. The

defense argued, as they had at the suppression hearing, that the arrest of Mr. Waiters itself was improper because it was not based on probable cause.

At the conclusion of the government's case, the government rested. Following a discussion with the trial court about his right to testify and his right to remain silent the Defendant chose not to testify or present any further evidence. The Defendant renewed his objection to the ruling of the trial court on the motion to suppress. Closing arguments were made and the trial judge ruled that Mr. Waiters was guilty as charged before remanding him to custody, ordering the preparation of a Pre Sentence Report and setting a date for sentencing.

Summary of Argument

1) Mr. Waiters was charged with possessing a firearm after a conviction punishable by more than one year in prison. The issue raised by Mr. Waiters was that the arrest warrants obtained by the Fairfax County Police Department were not based on Probable Cause, making the search of his person incident to the arrest illegal and rendering the firearm recovered from the search inadmissible. He did not argue the constitutionality of the statute at the time.

2) The government did not prove that the Fairfax County Police ever had probable cause to arrest and search Mr. Waiters. Mr. Waiters argued at the hearing on his motion to suppress that because Virginia does not have a requirement that an officer provide either a written complaint or an audio recorded complaint to obtain an arrest warrant and no record was produced or kept, there is no way to know what evidence the Fairfax County Police Department had offered in support for the issuance of the arrest warrants against Mr. Waiters. And the fact that the commonwealth could not prove probable cause at the preliminary hearing in the Fairfax General District begs the question of whether the magistrate required them to produce anything at all. 50 Joint Appendix 43. Mr. Waiters' attorney for the suppression, and his attorney for the trial sentencing and appeal both argued this. The determination made by the trial court was that issue was not

relevant because there were 14 arrest warrants issued by magistrate and the officers who arrested Mr. Waiters were entitled to rely on those warrants in good faith. 51

3) Unfortunately, the Appeals Court of the 4th Circuit ruled the same way. Mr. Waiters is now arguing to the United States Supreme Court that the statute itself 19.2-72 Virginia Code is unconstitutional and there was no probable cause to arrest Mr. Waiters. If both the Trial Court and the Appeals Court ruled that good faith was appropriate, the requirements for the issue of a warrant for arrest in Virginia are so low that Mr. Waiters 1st, 4th, 5th and 14th amendments are being violated. The Federal Rules of Criminal Procedure are not met by the Virginia Process.

4) The question for the United States Supreme Court is whether the Virginia Statute 19.2-72 is unconstitutional. The government in Mr. Waiters trial and in his previous appeal claims that the arrest warrants issued by Fairfax County Magistrates are valid, but without being able to provide any proof that the police officers who obtained those warrants did so legally. 55 Joint Appendix 51-51, 101, 104. Even Mr. Waiters' attorney stated that "the Supreme Court would have to overturn the way Virginia Courts issue warrants for arrests, and while I personally believe that they should, there is little chance they actually will." See Exhibit A.

5) The United States Government brought the charge of

felon in possession of a firearm after the Fairfax County Attorney could not meet the minimal probable cause standard required at a Preliminary hearing in a Virginia General District. The United States attorney did not produce anything that would show that the Fairfax County Police had sufficient probable cause to obtain arrest warrants or what evidence the magistrate used to determine a factual basis for probable cause.

6) The issue here for this Supreme Court is that the 14 underlying arrest warrants issued by three different magistrates in Fairfax, Virginia violate Mr. Waiters's 1st amendment right to information, his 4th amendment right to be free from an illegal search and seizure and his 5th and 14th amendment rights to due process of law and equal protection.

7) Neither the Virginia Code 19.2-72 or the Virginia Supreme Court rules require either a written sworn statement or audio sworn statement listing the evidence in support of probable cause that alleged Mr. Waiters had committed a crime. No record was produced or kept. Rule 3A.3 of the Virginia Supreme Court states:

The complaint shall consist of sworn statements of a person or persons of facts relating to the commission of an alleged offense. The statements shall be made upon oath before magistrate empowered to issue arrest warrants. The magistrate may require the sworn statements to be reduced to writing and signed if a complaint is a law enforcement officer, but shall require the sworn statements to be reduced to writing if the complaintant is not a law enforcement officer.

8) The 4th amendment of the United States Constitution

states: "no warrant shall issue, but upon probable cause supported by oath or affirmation and particularly describing the place to be searched or the person or things to be seized.

9) The Federal Rules of Criminal Procedure clearly address the issue that the oath or affirmation must be in writing. Criminal Rule 3 and 4 provide that an arrest warrant shall be issued only upon a written and sworn complaint. (1) setting forth the essential facts constituting the offense charged, and (2) showing that there is probable cause to believe that such an offense has been committed and the defendant has committed it. Giordenello v. United States, 357 U.S. 480, 485 (1985).

10) This clearly is both a due process and equal protection violation. The 4th Circuit has well settled law that "the validity of the search warrant obtained by state officers is to be tested by the requirements of the Fourth Amendment of the U.S. Constitution, not by the state law standards when the admissibility of evidence in federal court is at issue. United States v. Clyburn, 24 F.3d C13, 614 (4th Cir. 1994).

11) The main argument here for the United States Supreme Court to determine is whether, because the testimony offered to the Commonwealth's magistrate was not preserved and no testimony was offered to the trial court it was therefore impossible for both Mr. Waiters and the Federal Court to do their respective jobs and to determine whether there was probable cause to arrest Mr. Waiters. The magistrate judge dismissed the 14 counts

stating there was no probable cause from the evidence.

12) There is no plausible way to determine whether the police actually acted in good faith. Without any record, Mr. Waiters' due process has been violated due to how the Virginia statute is written. Even Virginia warrants for search, have a stricter requirement standard than their arrest warrants. In Virginia's warrant requirement for search (19.2-54), sworn written affidavit must accompany the oral testimony. How can the search of a person or things to be seized be more stringent than the actual arrest of a person?

13) Both his former attorneys tried valiantly to argue that there was no probable cause. The attorneys also should have argued the Constitutionality of the statute because, if a magistrate judge in Federal Court and the Appeals Court both can rule that there was good faith on the part of the arresting officers without any information to prove otherwise, this goes against everything the country stands for. James Madison once said, "Show me the man, I'll show you the crime." Well, in this case, if Virginia can arrest anyone without any proof that probable cause existed, James Madison's statement will be the rule of the land.

14) This statute allows the government to arrest anyone and see if they committed any other crime. Why not throw out all requirements for search and seizure and require no proof of probable cause? Why should we keep a record of anything such as

REASONS FOR GRANTING THE PETITION

hopes the Supreme Court of the United States will grant certiorari, rule that the Virginia Statute 19-2.72 is unconstitutional and rule that there was no probable cause to arrest him, and in turn good faith could not apply.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Mario Waiters
Mario Waiters

Date: 5/20/19