

IN THE
SUPREME COURT OF THE UNITED STATES

Jonathan Thomas Wright,

Petitioner.

vs.

State of West Virginia,

Respondent.

On Petition for a Writ of Certiorari to
The Supreme Court of Appeals of West Virginia

PETITION FOR A REHEARING

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QUESTION PRESENTED

WHETHER SUBSTANTIAL INTERVENING CIRCUMSTANCES EXISTED THAT THE EVIDENCE AND OFFICER TESTIMONY WHICH FORMED THE BASIS OF THE CONVICTION SHOULD HAVE BEEN EXCLUDED UNDER THE EXCLUSIONARY RULE BECAUSE OF VIOLATIONS OF DUE PROCESS PROTECTIONS.

TABLE OF CONTENTS

QUESTION PRESENTED	ii
LIST OF PARTIES	iii
TABLE OF AUTHORITIES	v
OPINION BELOW	1
JURISDICTION	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	2
STATEMENT OF THE CASE	2
REASONS FOR GRANTING THE WRIT	6
THIS COURT SHOULD RESOLVE THE ISSUE OF WHETHER SUBSTANTIAL INTERVENING CIRCUMSTANCES EXISTED THAT THE EVIDENCE AND OFFICER TESTIMONY WHICH FORMED THE BASIS OF THE CONVICTION SHOULD HAVE BEEN EXCLUDED UNDER THE EXCLUSIONARY RULE BECAUSE OF VIOLATIONS OF DUE PROCESS PROTECTIONS.	6
CONCLUSION	12
INDEX TO APPENDICES	14

INDEX TO APPENDICES

APPENDIX A

Opinion Below (Pet. App. 1-9).....	14
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APPENDIX B

Arrest Report and West Virginia DUI Information Sheet (Pet. App. 10-19).....	24
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LIST OF PARTIES

[X] 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

Cases

<i>Brewer v. Williams</i> , 430 U.S. 387 (1977)	6, 11
<i>Miranda v. Arizona</i> , 384 U.S. 436 (1966)	2, 5, 7, 10
<i>Rhode Island v. Innis</i> , 446, U.S. 291 (1980)	6, 10
<i>State of WV v. Hinkle</i> , 200 W. Va. 280, 489 S.E.2d 287 (1996), Syllabus 2	5, 9

Statutes

28 U.S. Code § 1257(a)	2
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IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2019

**JONATHAN THOMAS WRIGHT,
PETITIONER,**

vs.

**STATE OF WEST VIRGINIA,
RESPONDENT**

**ON PETITION FOR A WRIT OF CERTIORARI TO
THE SUPREME COURT OF APPEALS OF WEST VIRGINIA**

PETITION FOR REHEARING

Pursuant to Supreme Court Rule 44, Jonathan Thomas Wright respectfully prays for rehearing of the Court's decision issued on October 7, 2019 and review of the judgment of the Supreme Court of Appeals of West Virginia in this case.

OPINION BELOW

The decision of the Supreme Court of Appeals of West Virginia, Memorandum Decision No. 18-0296 (2019) is reproduced in the appendix to this petition at Pet. App. 1-9.

JURISDICTION

The Supreme Court of the United States issued its denial of the Petitioner's Writ of Certiorari on October 7, 2019. Pursuant to Supreme Court Rule 44, this petition for rehearing is filed within 25 days of this Court's decision in this case. The jurisdiction of this Court is invoked under 28 U.S. Code § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Exclusionary Rule provides:

Improperly elicited self-incriminatory statements gathered in violation of the Fifth Amendment and evidence gained in situations where the government violated the Petitioner's Sixth Amendment right to counsel cannot be used as evidence in a court proceeding.

The Due Process Clause provides:

No person shall . . . be deprived of life, liberty, or property, without due process of law.

The Equal Protection Clause of the Fourteenth Amendment, Section 1, provides:

Nor shall any State . . . deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

The substantial underlying circumstances and controlling effect of protections of the Exclusionary Rule, the Due Process Clause of the Fifth and Fourteenth Amendments, and the Equal Protection Clause of the Fourteenth Amendment rendered the evidence supporting the Criminal Complaint in this case

a violation of due process rights under *Miranda v. Arizona* (1966) making the Criminal Complaint invalid on its face. Substantial intervening circumstances existed in that this issue was consistently raised on appeal and remained undisputed.

During a medical incident while walking on a public street, the Petitioner called 911 for assistance. The police response was to arrest him for DUI. The Petitioner has a medically documented neurological disability for which he takes prescribed, non-narcotic medications. This disability manifests as impaired thought processes (i.e., fugue states, loss of train of thought, confusion, etc.), impaired physical traits (i.e., shaking or tremors, excessive sweating, unsteady gait, etc.), and accompanying psychological stressors (i.e., anxiety, depression, etc.). At the time of his arrest, the Petitioner was impaired due to his disability and the side effects of his medications which cause dizziness, drowsiness, weakness, blurred vision, nausea, vomiting, anxiety, dry mouth, and/or shaking (tremors). This is supported by medical records and communication from the Petitioner's attending physician, Dr. Richard Ko, which was entered as evidence in the Petitioner's Motion to Dismiss as part of his medical defense. The Petitioner's Motion to Dismiss was denied by Magistrate Robin Waters.

Due to apparent bias and inappropriate conduct, the Petitioner filed a motion asking Magistrate Robin Waters to recuse herself from hearing this case based on her personal friendship with the Prosecution's only witness, Officer Shane Semones. Magistrate Waters refused and her subsequent actions showed extreme bias against

the Petitioner, including refusing to accept written motions, making arguments for the Prosecution, and refusing to allow the Petitioner to enter arguments. The Petitioner filed a judicial complaint against Magistrate Waters which was never investigated. The Petitioner then filed a Writ of Prohibition with the Circuit Court Judge John D. Beane and included with it an appeal of the Wood County Magistrate Court's denial of his Motion to Dismiss which included the issues of the medical defense and Miranda violations. The two remaining circuit judges could not hear the case because Judge Robert Waters is Magistrate Robin Waters' husband and Jason Wharton was the prosecutor when the Petitioner was charged. The Writ of Prohibition and the appeal of the Petitioner's Motion to Dismiss were denied by Circuit Court Judge Beane without a hearing.

The Petitioner was convicted of first offense DUI before Magistrate Waters who sentenced him to fines and 48 hours jail time based on "just how this case has progressed" in obvious retaliation. The Petitioner appealed the conviction to Wood County Circuit Court Judge John D. Beane who denied the appeal.

The Petitioner's Appeal to the Supreme Court of Appeals of West Virginia included an appeal of the conviction, the Writ of Prohibition, the Petitioner's Motion to Dismiss, the Motion to Suppress, and excessive punishment of 48 hours jail time without consideration for time served. The Supreme Court erroneously refused to hear the issues raised on appeal from the Writ of Prohibition and the Motion to Dismiss. These issues of law underlie and are supplemental to the Petitioner's Writ of Certiorari and the grounds for the request for a rehearing.

Substantial intervening circumstances existed that the Petitioner was experiencing a medical incident rather than inebriation which has never been denied by the Respondent. In *State of WV v. Hinkle*, 200 W. Va. 280, 489 S.E.2d 287 (1996) Syllabus Point 2 the Court requires that when a medical defense is introduced, the prosecution must prove voluntariness. The medical defense has been raised at every level of the Petitioner's appeal and remains undisputed and the Respondent has also never addressed the issue of voluntariness or provided evidence or argument to support it.

The evidence and officer testimony relating to the Petitioner's statements and permissions given at the scene, during transport, during booking, and during the interview which were used during the pre-trial motion hearings, criminal trial, and subsequent appeals violated *Miranda v. Arizona* (1966). On the night of his arrest, while in this fugue state, the Petitioner was required to give informed consent for the Intoximeter test and waive his Miranda rights by agreeing to participate in an interview with Officer Semones. The inaccurate information obtained from the Petitioner was recorded in the officer's police report, the unsigned West Virginia DUI Information Sheet, and recited during the officer's testimony. In *Miranda v. Arizona* (1966), this Court held that defendants must be able to understand their Miranda rights and voluntarily waive them in order for such evidence to be admitted. This is supported by *Schmerber v. California*, 384 U.S. 757 (1966), *Rhode Island v. Innis*, 446, U.S. 291 (1980), and *Brewer v. Williams*, 430 U.S. 387 (1977). Thus, legal precedent supports the fact that the Petitioner's statements

should have been inadmissible and, as a result, the Criminal Complaint should have been deemed invalid.

REASONS FOR GRANTING THE WRIT

THIS COURT SHOULD RESOLVE THE ISSUE OF WHETHER SUBSTANTIAL INTERVENING CIRCUMSTANCES EXISTED THAT THE EVIDENCE AND OFFICER TESTIMONY WHICH FORMED THE BASIS OF THE CONVICTION SHOULD HAVE BEEN EXCLUDED UNDER THE EXCLUSIONARY RULE BECAUSE OF VIOLATIONS OF DUE PROCESS PROTECTIONS.

The Exclusionary Rule provides that improperly elicited self-incriminatory statements gathered in violation of the Fifth Amendment and evidence gained in situations where the government violated the Petitioner's Sixth Amendment right to counsel cannot be used as evidence in a court proceeding. The Due Process Clause of the Fifth and Fourteenth Amendments provides that no person shall be deprived of life, liberty, or property without due process of law. Substantial intervening circumstances existed that the evidence and officer testimony obtained in this case and used during the hearing (Pet. App. 10-19) violated *Miranda v. Arizona*, 384 U.S. 436 (1966). making the Criminal Complaint invalid.

The Petitioner is medically disabled and has been diagnosed with severe neurological impairments including sleepwalking (i. e., somnambulism), narcolepsy, delayed sleep phase disorder, nightmare disorder, and PTSD. The Petitioner has a history of sleepwalking and fugue-state events supported by medical evidence. Letters from treating physician, Dr. Richard Ko, indicate that the Petitioner has no control of his actions while in a fugue state, no ability to form intent, and no

knowledge or understanding of his circumstances during these disabling medical events. The Petitioner regularly takes prescription, non-narcotic medications to treat these medical conditions which have side effects including dizziness, drowsiness, weakness, blurred vision, nausea, vomiting, anxiety, dry mouth, and/or shaking (tremors). This medical defense has been raised at every level of the appeal process and has never been disputed.

During a medical incident, the Petitioner, while walking on a public street, called 911 for assistance. Upon arrival at the scene, Officer Semones arrested the Petitioner for driving under the influence, even though no evidence existed that the Petitioner had been driving. The timeline is as follows: (1) The Wood County 911 Call Center Report shows Officer Semones arrived on the scene at 05:07 AM and arrested the Petitioner at 05:19 AM. Officer Semones testified that, while on the scene, he performed four field sobriety tests and waited the requisite 15 minutes prior to administering the PBT as well as numerous other procedures such as running the Petitioner's license, examining the vehicle, and questioning the Petitioner during this time; (2) The Petitioner was transported to the Parkersburg Police Department which took approximately five minutes.; (3) When Officer Semones was approximately one block away from the station, he testified that the Petitioner was not coherent enough to understand why he was unable to move his hands and admitted he could have been medically impaired; (4) The Petitioner arrived at the station at 05:30:55 AM; (5) At 05:37 AM, the Petitioner was asked to sign the Informed Consent Form; (6) During the 20 minute observation period

between 5:40 a.m. to 6:00 a.m., the booking video shows the Petitioner cover his mouth indicating regurgitation and wave his arm in an attempt to get assistance with no response from any officers; (7) At 6:00 AM, the Intoximeter Test was administered and registered a BAC of 0.132; (8) At 6:01 AM, the Petitioner was asked to sign the Miranda warning and was then interviewed by Officer Semones over the next 10 minutes. Officer Semones' written statements and his testimony clearly indicated the Petitioner was impaired during the interview when he stated,

"I asked if he was operating the vehicle, what street he was on, where did he start from. All of those answers were, 'I don't know.' Where he was going, he said he had no idea. Direction of travel, what time he started, he had no idea. He knew he was in Wood County, he was in Parkersburg. He said that he had last eaten at approximately 10:00 that night before, and that he had watched a movie and went to bed. As I spoke with him, he advised that he had drank one beer at the time that he had taken his medication. He advised that his medication consisted of two anti-depressants, a Prazosin tablet and a Clonazepam, all of which were prescribed to him by his doctor. He said he drank a beer along with his medication and then went to bed and had no recollection of the events that transpired after."

Officer Semones also testified that neurological disorders and antidepressants can negatively impact the field sobriety tests (e.g., "Nystagmus is present when there is a central nervous system depressant such as alcohol or benzodiazepines in the person's system" and "... Lack of convergence ... is an indication that the person is also impaired on alcohol or central nervous system depressants.") Therefore, Officer Semones' testimony confirms that the Petitioner's medical condition and medications were impairing. Yet, Officer Semones contended that this was a standard DUI and included inaccurate statements made by the Petitioner at the scene, during transport, during booking, and during the interview in his police

report, unsigned Arrest Report and WV DUI Information Sheet, pre-trial motion hearing testimony, and his testimony during the criminal trial.

The Petitioner filed a Motion to Dismiss in Wood County Magistrate Court based on a medical defense citing *State of WV v. Hinkle*, 200 W. Va. 280, 489 S.E.2d 287 (1996) in Syllabus Point 2, in which the Court held: **'Unconsciousness (or automatism) is not part of the insanity defense, but is a separate claim which may eliminate the voluntariness of a criminal act. The burden of proof on this issue, once raised by the defense, remains on the State to prove that the act was voluntary beyond a reasonable doubt. [Emphasis added]'**

The Motion to Dismiss also argued that the Petitioner's Miranda protections had been violated and that all evidence obtained in violation of Miranda should be suppressed. Under *Miranda v. Arizona* (1966) , this Court held that both inculpatory and exculpatory statements made in response to interrogation by a Petitioner in police custody were admissible only if the Petitioner was informed of the right to consult with an attorney before and during questioning and of the right against self-incrimination before police questioning, and that the Petitioner not only understood these rights, but voluntarily waived them. Yet, Officer Semones continued to process the Petitioner accepting permissions given by the Petitioner to undergo sobriety tests and to be interviewed while in this fugue state. In *Miranda*, the Court also held that "the prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the Petitioner

unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination. . . ." In *Rhode Island v. Innis*, 446, U.S. 291 (1980), this Court found, "Miranda safeguards come into play whenever a person in custody is subjected to either express questioning or its functional equivalent. That is to say, the term 'interrogation' under Miranda refers not only to express questioning, but also to any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect." According to *Brewer v. Williams*, 430 U.S. 387 (1977), this Court found that individuals' rights were violated when police elicited incriminating admissions from the Petitioner not through formal questioning but through a series of conversations with the Petitioner. See also *Schmerber v. California*, 384 U.S. 757 (1966)

Magistrate Robin Waters refused to accept the Petitioner's written Motion to Dismiss and required the disabled, *pro se* Petitioner to enter his arguments orally. This is a violation of Fourteenth Amendment equal protection protections since nondisabled Petitioners are permitted to do so. She then continually interrupted him and presented arguments for the Respondent while the Respondent said nothing. Magistrate Waters ultimately refused to allow the Petitioner to continue presenting his arguments and stated that it appeared he wanted to go to trial, so the case would be taken to trial. Although the Respondent entered no arguments disputing the Motion to Dismiss, the Motion was denied by Magistrate Waters. The Motion to Dismiss included Officer Semones' documented acknowledgement on the

first page of the Arrest Report that the Petitioner was not capable of understanding his rights, was not Mirandized, and did not give permission to be interviewed (Pet. App. 10). Officer Semones repeatedly testified to statements included in his arrest report he claimed were made by the Petitioner without acknowledging the Petitioner's impaired, incoherent state, such as taking medication with alcohol. Since the Respondent has never disputed these facts raised on appeal, both the medical defense and the Miranda violations stand uncontested.

Due to apparent bias and inappropriate conduct, the Petitioner moved for Magistrate Waters to recuse herself due to her personal friendship with the Prosecution's only witness, Officer Semones. Magistrate Waters refused and her subsequent actions showed extreme bias against the Petitioner, including refusing to accept written motions, making select recordings of the hearings such as omitting *voir dire* and jury instructions, making arguments for the Prosecution during pre-trial motion hearings, and refusing to allow the Petitioner to enter arguments challenging the Prosecution's evidence or witness testimony. The Petitioner filed a judicial complaint against Magistrate Waters for misconduct. The complaint was never investigated. The Petitioner filed a Writ of Prohibition with Circuit Court Judge John D. Beane and included with it an appeal of the Wood County Magistrate Court's denial of his Motion to Dismiss which included the medical defense and Miranda violation. The two remaining circuit judges could not hear the case because Judge Robert Waters is Magistrate Robin Waters' husband and Jason Wharton was the prosecutor when the Petitioner was charged. The Writ of

Prohibition and the appeal of the Petitioner's Motion to Dismiss were denied even though Magistrate Waters never filed a response or disputed it.

At the conclusion of the criminal trial, the Petitioner was convicted of first offense DUI and Magistrate Robin Waters sentenced the Petitioner to fines and 48 hours jail time "just based on how this case has progressed" in obvious retaliation of his vigorous defense against violations of his right to a fair and impartial hearing. The Petitioner appealed the conviction to Circuit Court Judge John D. Beane who denied the appeal. The Petitioner appealed his conviction, denial of the Writ of Prohibition, and the denial of his Motion to Dismiss to the Supreme Court of Appeals of West Virginia which erroneously refused to hear arguments from the Petitioner's Motion to Dismiss stating that the issues of medical defense and Miranda violations were not raised on appeal in the lower court.

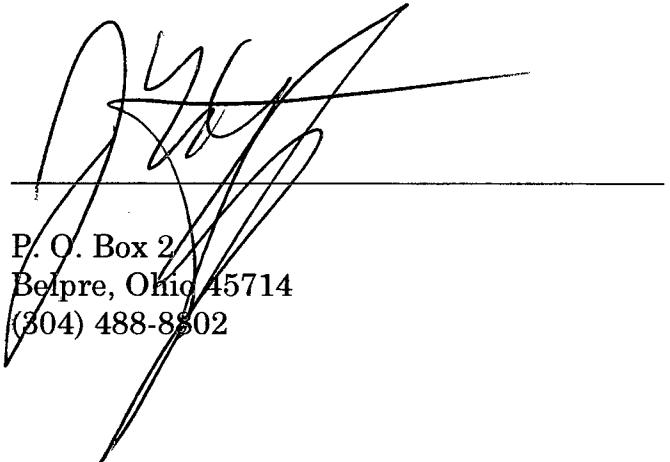
CONCLUSION

This is a case of egregious and blatant violations of due process protections and the denial of the Petitioner's right to a fair and impartial hearing. The Petitioner's medical defense provided a clear and documented alternative to the allegation of DUI which remains undisputed. Therefore, the Respondent could not reach the legally required burden of proof for a criminal conviction. Further, the undisputed Miranda violations should have led to the suppression of the Respondent's evidence and the case should have been dismissed. Substantial

intervening circumstances clearly existed that violation of the Petitioner's Constitution rights led to his wrongful conviction.

WHEREFORE, the Petitioner respectfully requests that his Petition for a Rehearing of his Writ of Certiorari be granted.

Respectfully submitted,
JONATHAN THOMAS WRIGHT,
PRO SE PETITIONER



P. O. Box 2
Belpre, Ohio 45714
(304) 488-8802

CERTIFICATE OF PETITIONER

Jonathan T. Wright, *pro se* Petitioner, attests that the attached **PETITION FOR REHEARING OF THE WRIT OF CERTORARI** for Case No. 19-5252 is restricted to the grounds of intervening circumstances of a substantial or controlling effect and other substantial grounds not previously presented. This Petition is presented in good faith and not for delay. The Brief contains 2,995 words and comprises 13 pages in accordance with Rule 44 formatting requirements.

I certify under penalty of perjury that the foregoing is true and correct.

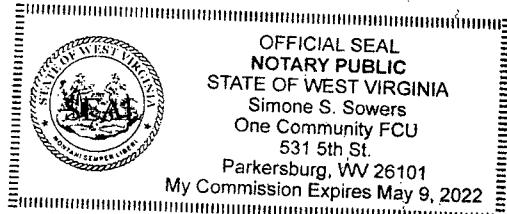
Respectfully submitted,
JONATHAN THOMAS WRIGHT,
PRO SE PETITIONER

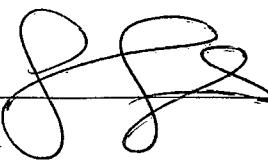
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STATE OF WEST VIRGINIA

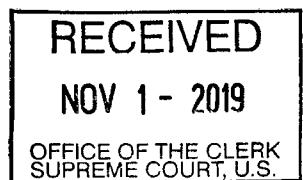
COUNTY OF WOOD

Subscribed and sworn before me this 28th day of October, 2019.




Notary

My commission expires May 9th 2022



No. 19-5252

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 2019

JONATHAN THOMAS WRIGHT,
Petitioner,

v.

STATE OF WEST VIRGINIA,
Respondent.

CERTIFICATE OF SERVICE

Jonathan Thomas Wright, *pro se* Petitioner, certifies pursuant to Rule 29 of this Court, that on October 28, 2019, he served the within PETITION FOR REHEARING OF WRIT OF CERTIORARI on counsel for Respondent by causing a copy to be deposited in the United States mail, first-class postage pre-paid, addressed to:

Lindsay S. See, Solicitor General
West Virginia Attorney General's Office
1900 Kanawha Blvd. East
Capitol Complex, Bldg. 1, Rm. 26E
Charleston, WV 25305

All parties required to be served have been served.



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**Additional material
from this filing is
available in the
Clerk's Office.**