

Thomas Waters

-v-

John Stewart et al

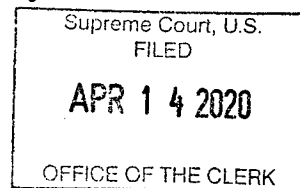
United States Supreme Court

Case # 19-7319

JL

Motion for rehearing
under rule 44 Supreme
Court rules...

I Thomas Waters, acting Pro-se would like to respectfully ask this honorable for a rehearing. Due to covid-19, I have no access to court and I'm forced to do this motion by hand. I feel like this motion should be granted because, my case is in conflict with a number of other 1983 civil cases that has also ruled on the same issues I'm addressing. The ruling in my case is so far departed from the controlling and accepted usual course of judicial proceeding, that this most honorable court should exercise it's supervisory power to address this injustice ruling... First it is without question a number of genuine issues of material facts is in dispute in my case. Thus, under accepted supreme court laws and Fed. Rules. civil. pro, summary judgment should not have been granted in my case. "see" Anderson-v- Liberty Lobby 106 S.Ct 2548 and rule 56(a) Fed. rule. civil. pro. This court ruled in "Anderson" 477 U.S. 242, that a issue of material fact is genuine if it has a real basis in the record, or if it might affect the outcome of the suit under governing law. Rule 56(c) Fed. Rules. civil. pro. states that summary judgment shall only be granted if the movant shows that there is "NO" genuine dispute as to "ANY" material fact... Such is not the issue in my case. This was made evident in docket # 184 pages 8-9 also "see" exhibit A petition for certiorari case # 19-7319. The judge ruled in docket # 184 that after viewing the evidence in the light most favorable to me, the record before the court contains competing factual claims sufficient to create genuine issues of material facts as to the "QUANTITY" of force used by the officers, as well as the "Circumstances" under which the force was used... This motion for rehearing should be granted because the defendants never offered any new evidence that "Changed" the "Quantity" of force used by the officers nor was any new evidence submitted that "changed" the "Circumstances" under



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which the force was used. Thus it is clear that in view of the evidence in the light most favorable to me a number of genuine issues of material facts still exist and summary judgment is not appropriate in my case... As stated in Smith v. City of Homer 394 F.3d 689 excessive force inquiry nearly always requires a jury to sift through disputed factual contentions, and draw inferences there from. Other 31983 civil courts have held on many occasions that summary judgment in excessive force inquiry's nearly always should be granted "sparingly", and the reasonableness of force is ordinarily a question for the jury. Because such excessive force claims always turns on a jury's credibility determination my case is no different. The defendants in my case has intentionally and intelligently fabricated documents and affidavits in this civil case. Such unlawful actions clearly undermines the judicial system and results in fundamental unfairness. Which is why I feel the need to call on this honorable court to exercise it's supervisory power to address this injustice. Looking to the "circumstances" under which the force was used, on 3-12-15 the defendants claim they got an unrecorded anonymous 911 call. The call reported 2 black men fighting and one had a gun. When the police made contact with me I was not fighting nor did the defendants claimed I looked like I was fighting. I was in my yard at my house. "see" exhibit A lease agreement. This honorable court ruled in Florida v. J.L. 529 U.S. 266, that the police cannot use anonymous 911 calls to stop or search a person. The 4th cir followed this ruling in U.S. v. Brown 401 F.3d 588 and U.S. v. Reeves 512 F.3d 125. Ruling that such a anonymous 911 caller who's contemporaneous account of seeing someone participate in a ~~drug~~ drug deal and the driver had a gun. The 4th cir ruled that the 911 call was insufficient to justify a "Terry" stop. The call did not provide sufficient corroboration to make the 911 call credible or reliable in it's assertion of illegality. "see" Reeves 512 F.3d 125. Surely the unrecorded 911 call in my case also didn't provide sufficient corroboration, because the call wasn't recorded and no one truly knows what the caller reported. I was protected

by the 4th amendment because I was in my yard at my house. As stated in *Coolidge v. New Hampshire* 91 S.Ct 2022. A search or seizure carried out on a suspect's premises without a warrant is unreasonable unless the police can show the presence of exigent circumstances. The police in my case made no such showing. I also had a legitimate expectation of privacy due to the fact that I was at my house. "see" exhibit A. Also a valid stop does not automatically entitle an officer to conduct a "frisk" or protective pat down of outer clothing for weapons. "see" U.S. v. *Stacy*; 160 F.3d 164. Because a frisk is a serious intrusion upon the sanctity of the person. "see" *TERRY* 392 U.S. 17. Both lower courts overlooked this issue in my case. This court ruled in *Tennessee v. Garner* 471 U.S. 1, that the test for excessive force in an arrest context requires balancing the nature and quality of the intrusion on the individual's 4th amendment interests against the importance of the government's interests alleged to justify the intrusion. This constitutional question was never asked or addressed by either court in my case. To grant the defendant's summary judgment without addressing or asking the constitutional 4th amendment question of intrusion set out in "*Garner*" 471 U.S. 1, would make my case a rogue opinion that so far departs from the accepted and usual course of judicial proceedings that it clearly in essence represents discrimination and racism towards me. This ruling states that a black man who was at his house in his yard is not protected by the U.S. constitution's 4th amendment, which conflicts with this court's ruling in "*J.L.*" 529 U.S. 266. A case in which this court protects U.S. citizens from being stopped, attacked, or searched by the police due to anonymous 911 calls. My case clearly deviates from rulings like "*J.L.*" 529 U.S. 266, "*Reaves*" 512 F.3d 125 and "*Brown*" 401 F.3d 588. Which calls for this honorable court to intervene and once again set the course standard, and principles to be followed when dealing with excessive force cases.

My case follows no set course and is rough, my case is conflicted with Fed. rules. civil. pro 56 (c), (1), (A) and Orsi -v- Kickwood 999 F.2d 86. which states that to show that a genuine dispute of material fact exists a party may not rest upon the mere allegations or denials in his pleading. Rather the party must present evidence supporting his position by citing particular parts of materials in the record including documents affidavits or other materials. I've clearly made such a showing in my case yet summary judgment was still granted. First looking to what's clearly a genuine dispute of material fact, that should have sent my case to a jury. The defendants claim after getting this anonymous 911 call they arrived at 439 S. Morris street which is clearly the address listed on my lease agreement. "see" exhibit A. The police reported in exhibit B - Incident report that they saw the suspect walk behind a mobile home after he stuck the gun into his right pocket. This information was also reported to an ATF agent "see" exhibit C. I offered the court evidence to show that this is a genuine dispute. using the defendants testimony from my trial, my exhibit D1-3 has o/c. Strickland stating that he never saw me stick the gun into my pocket. And him and o/c. Stewart collaborated on the incident report. It was o/c. Stewart who told o/c. Strickland to fabricate the incident report and falsely report that the officers "saw" me stick the gun into my pocket. Such a showing clearly puts this issue in dispute. The requirement is that "No" genuine disputes of material facts exist for summary judgment to be granted. "see" Anderson 477 U.S. 242 ... The next genuine issue of material fact that's in dispute is that the defendants claimed I was told to put my hands up, at first I did but then reached for the gun in my back pocket. "see" exhibit B and C. This is a very important dispute that only a jury in a civil case can address. As stated in Jacobs -v- N.C. 6 F.3d 562. The district court cannot weigh evidence or make credibility determinations. I offered the court evidence to show that I never reached for anything. "see" exhibit E. which has o/c. Stewart yelling "If you'd reached for it you'd be dead". This statement indicates that I never reached for anything. Also this information

is. 2 part of the record. "see" docket #228 page #4-5 also exhibit G certiorari petition docket #19-7319. The judge states that the defendants "assert" that the Plaintiff put his hands up at first then reached for the pocket where the gun was. The Plaintiff "asserts" that he did not reach for his gun, and points to the "DVD" video in which Stewart can be heard saying "To" Plaintiff "If you'd reached for it you'd be dead"... on page #12 of docket #228 the judge states clearly that a dispute of facts exists as to whether Plaintiff reached for the gun when the defendants approached him... This is enough to send this civil case to trial under Fed. Rule. Civil. Pro 56 (2). The court shall only grant summary judgment if the movant shows that there is "NO" genuine dispute as to "ANY" material fact. Such is not the issue in my case the record reflects that disputed issue of material fact exist. Which is why I'm respectfully asking for a rehearing. A number of 31983 courts have ruled that ultimately the most important "Graham" 490 U.S. 396 factor is whether the suspect posed an immediate threat to the safety of the officers or others. "see" Matkos - v - Aguirano 661 F.3d 433. Which also ruled that when considering if the suspect posed an immediate threat to the police a "simple statement" by the officers that they feared for their life or safety is "NOT" enough, there must be objective factors to justify such a concern. "see" Matkos 661 F.3d 433 In my case the defendants made no showing to justify a concern that they feared for their life or safety. The simple statement made by officers in exhibits B and C that I reached for the gun is clearly not supported by the evidence I submitted to the court. Thus as stated in Waterman v. Patton 393 F.3d 471 force justified at the beginning of an encounter is not justified even seconds later if the justification for the initial force has been eliminated. My case is also in conflict with the "Waterman" 393 F.3d 471 ruling as stated by the defendants in my exhibit F1-2 use of force forms. The defendants initial justification for using force was that I reached for the right pocket where the pistol was located. This initial justification was eliminated by my exhibit E page 162 of my trial transcript in which the government reads the dash cam audio to the

Jury. which has otc. Stewart yelling "If you'd reached for it." which indicates I never reached for any thing... Thus, in viewing all the evidence in the light most favorable to me. This unrecorded 911 call was sufficiently unreliable and did not give the police reasonable suspicion to make the stop in the first place in light of "J.L." 529 U.S. 272 "Reeves" 572 F.3d 123 or "Brown" 401 F.3d 588. No court ever addressed this issue, which is clearly an error in light of "Garner" 471 U.S. 1 which states the test for excessive force in an arrest a context requires balancing the nature and quality of the intrusion on a individual's 4th amendment ~~interests~~ ~~interests~~ interests against the importance of the governments interests alleged to justify the intrusion. No court looked at or reviewed this issue. Also, my evidence exhibit D1-3 clearly puts the issue of did the police see me stick the gun into my pocket in dispute. The defendants claim they saw this "see" exhibit C, my exhibit D1-3 indicates that this story was fabricated... my exhibit E next puts in dispute the issue of did the police witness me reach for the gun. Being that these genuine issues of material facts are still in dispute, summary judgment should not be granted in my case. As the "Waterman" 393 F.3d 471 court pointed out the officers was not entitled to summary judgment on the merits of excessive force because a reasonable jury could conclude that a perception by the officers that the plaintiff posed a threat of serious physical harm to them would have been unreasonable. The same is true in my case, which is why I'm respectfully asking for this rehearing motion to be granted. No reasonable jury would believe that I reached for a gun as the police reported "see" exhibit C and F. When I have the audio of the officer yelling "If you'd reached for it" "see" exhibit E... No reasonable jury would believe I stuck a gun into my back pocket like the officers reported "see" exhibit C. When I have testimony from the officer saying that he did not intend witness me stick the gun into my pocket he only put this into his report because another police told him to. "see" exhibit D1-3. My case would also be in conflict with cases like

Scott v. Harris 550 U.S. 272, which ruled that when parties tell 2 different versions of what took place. The court should not adopt the version of facts that is so utterly discredited by the record that no reasonable jury would believe it. ... The last genuine issue of material fact that is in dispute is the "Quantity" of force used by the officers. Once again as the district court judge pointed out in docket #184 page 8-9, the record before the court contains competing factual claims sufficient to create genuine issues of material facts as to the "Quantity" of force used by the officers. ... The "Quantity" of force used by the officers never changed this genuine issue of material fact is still in dispute. Thus summary judgment should not be granted in my case. As the 9th cir pointed out in "Smith" 394 F.3d 689 it is necessary to assess the quantum of force used in an arrest. The 3 factors articulated in "Graham" and other factors bearing on the reasonableness of a particular application of force, are not considered in a vacuum but only in relation to the amount of force used to effect a particular seizure. This is an analysis neither court ever explicitly undertook. "See" Chew v. Gates 27 F.3d 1441 ... once again no reasonable jury would believe that the police only shot me once with the taser like he reported in my exhibit G page 48 of Strickland's - direct the defendant claims he only shot me once in the front torso with the taser. I offered the court evidence showing I was never shot in the front torso I was shot 4 times from the back of my body "see" exhibit # 1-5. I was shot in the back, the back of my left hand, the back of my right hand, and the back of my ~~leg~~ leg when I got to the police department. Thus, the defendant's version of facts "see" exhibit G, is so blatantly contradicted by the record "see" exhibit # 1-5 that no reasonable jury could believe the defendant's version of facts. My case is also in conflict with Ghazzawi v. Ann Arundel County 659 Fed. Appx 731 which ruled that photographs of Ghazzawi's injuries are consistent with his account of the incident. The 4th cir thus concluded that if a jury were to credit "Ghazzawi's" version of events it could reasonably return a verdict in his favor. ... The

Same would be true in my case. What reasonable person would believe that the police only shot me once with the taser when I have the pictures and medical records to show I was shot 4 times? The district court would have to weigh evidence and make credibility determinations to answer any of the 3 disputed issues listed in this motion. My case should have been sent to a jury by granting the defendants summary judgment. My case falls outside usual course of accepted §1983 civil cases like *Orem v. Reppenn* 523 F.3d 442 which ruled that the use of a taser to punish and intimidate a pretrial detainee is not objectively reasonable and is contrary to clearly established law. Summary judgment was not granted in this case... The *Oliver v. Fiorino* 586 F.3d 898 court ruled that excessive force violation of the 4th amendment was shown because repeated tasing goes beyond complete physical capitulation and was grossly disproportionate to any threat posed and unreasonable under all the circumstances... The *Wernert v. Green* 419 Fed. Appx 337 court ruled that the use of a taser on a detainee who was all ready in hand cuffs and restrained in the back seat violated the 4th amendment... The defendants also claim I was resisting because I didn't get on the ground when they first asked me to. As stated in *Bryan v. MacPherson* 630 F.3d 805, not all non-compliance constitutes active resistance supporting a substantial use of force. In my case I never committed a crime for the police to tell me to arrest me or force me to get on the ground. I never stuck a gun into my pocket "see" exhibit D1-3. I never reached for the gun "see" exhibit E, and I never tried to flee from the officers. Thus I was never actively resisting. Summary judgment also wasn't granted in the "Bryan" 630 F.3d 805 case... The *Cavanough v. Wood* 5. Cross City 625 F.3d 661 court ruled that the use of force by way of a taser unquestionably seizes the victim in an abrupt and violent manner. The actions of tasing a person who does not pose a threat, was given no warning before being tased was unreasonable and violated the 4th amendment. Summary judgment was not granted in this case... The *Casey v. City of Federal Heights* 509 F.3d 1278 court ruled that the police that tased a person who appeared to pose no threat and was given no warning or chance to comply with the

officers demands violated the 4th amendment. ... The Myers v. Taylor 2015 U.S. Dist Lexis 162791 court ruled that the Plaintiff presented evidence that established disputed questions of material facts as to the Plaintiff's excessive force claims like "WHY" exactly did the police feel the need to use force? Whether the Plaintiff was reasonably given an adequate opportunity to comply before force was used? Was the Plaintiff actively resisting? Summary judgment also wasn't granted in the "Myers" 162791 case. ... The Yates v. Terry 817 F.3d 877 court ruled that it is clearly established that police are not entitled to use unnecessary, gratuitous, or disproportionate force by repeatedly tasing a non-violent misdemeanor who presented no threat to the safety of the officers or others, was not actively resisting arresting ~~and~~ or trying to flee. Summary judgment also was not granted in the "Yates" 817 F.3d 877 case. ... Thus the listed §1983 civil excessive force cases is good law and established precedent within all federal circuits. I am entitled to equal protection of law under the 14th amendment. The §1983 cases listed is the accepted and usual course of judicial proceedings when addressing excessive force claims. The ruling in my case when viewing the evidence in the light most favorable to me "Also" see docket #184, is so far departed from this accepted, usual course of judicial proceedings that it calls for honorable court to exercise its supervisory powers to correct this error and prevent a manifest of injustice, uphold the U.S. Constitution, along with Fed. Rules. Civil. Pro 56(c), (d), (e), and 56(c)(2). This motion should also be granted to protect my 4th and 14th amendment rights. ... Lastly I would like for the court to review my exhibits I for J, I did not have copies of these documents when I filed my first petition. My exhibit I dated June 10, 2019 is a document from the district court in which I made a payment to the court requesting a copy of the transcript listed on my trial exhibit list "Exhibit 2A" U.S. v. Waters 4:15-cr-158-BHH. The clerk stated that this document is not "Available". My exhibit J is a order from the 4th cir granting my motion to compel the government to turn over this transcript that was used at my trial. This motion was granted but the 4th cir never ruled on the issue. No federal

Court has reviewed this transcript. My exhibit B-1, is order from the district court stating that none of the events take place in the view of the camera, but the transcript is or the audio is extremely faint and leaves some factual assertions unclear or in dispute. Every thing in audio/transcript is favorable to me and supports all of my claim. The transcript has Ofc. Stewart yelling "If you'd reached ~~out~~ for it you'd be dead" which indicates that I never reached for it. Also the police claimed he only tased me once "see" exhibit G yet my exhibit H 1-5 shows I was tased 4 times also the transcript would show that the taser was shot over 6 times, and Ofc. Stewart is heard yelling "Do it again" then the taser went off the 2nd time. My civil rights was violated and the case was dismissed based off of the information on the DVD audio yet no court has reviewed the contents that's actually on the DVD and the district court claims the transcript of the DVD is not available "see" exhibit I. Thus this motion for rehearing should be granted because my case is a rogue opinion that states I'm not protected by any federal laws or any federal constitutional amendment. A legal action under §1983 allows a Party who has been deprived of a federal right under color of state law to seek relief "see" City of Monterey v. Del. Monterey, Ltd 526 U.S. 687. To be successful under §1983 a Plaintiff must establish 2 essential elements 1.) That a right was secured by the constitution or laws of the United States, and was violated... 2.) That right alleged was violated by a Person acting under color of state law. "see" West v. Atkins 487 U.S. 42. I've made both showings in my case and summary judgment was still granted. I would like to respectfully ask for a rehearing. This case would affect a lot of U.S. citizens, who deal with over policing, excessive force, and rogue officers who attack people at their homes and in the streets taking away life and liberty without due process. This court is the only court that can fix this injustices. If the police are allowed to murder and attack U.S. citizens without any consequences whats the point of the 4th, 8th, and 14th amendments? Whats the point of having cases like "Graham" 490 U.S. 386 and "Garner" 105 S.Ct 1694 if these laws don't really protect me? or U.S. citizens?

Respectfully
Thomas Waters
~~Thomas Waters~~

5-23-20 (10)

Thomas Waters

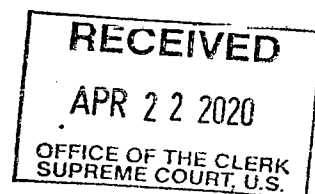
John Stewart et al

U.S. Supreme Court

CASE # 19-7319

certification of counsel
under rule 44-1.2 presents
in good faith and not to
delay...

I Thomas Waters acting pro se, now offers this certification of counsel on the counsel on record on or in this case, I offer this certificate in support of my petition for rehearing, I've briefly stated 3 legitimate genuine issues of material facts that are in dispute that would effect the outcome of the suit, thus summary judgment is not appropriate in this case because the defendants version of facts are so blatantly contradicted by the evidence on the record that no reasonable jury could believe it and the district court and court of appeals should have adopted this version of facts in light of Scott v. Harris 550 U.S. 372. My case is a rogue opinion that represents oppression and manifest injustice. This opinion is so far departed from the accepted and usual course of judicial proceedings "which are also listed in this petition" as to call for this most honorable court to exercise its supervisory powers to fix and address this

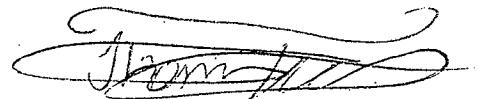


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issue... This petition is also being filed in forma pauperis under rule 39 of the Supreme Court rules. I would only like to respectfully ask this most honorable court to read the petition for rehearing it is presented in good faith and not for delay. To grant the defendants summary judgment in this case is a ruling that is not in accordance with "Scott" 550 U.S. 372, "Graham" 490 U.S. 396, "Garner" 471 U.S. 1, or "J.L." 539 U.S. 266 as well as the Fed. Rules. Civ. Pro 56(c)(1)(A), and 56(c2). This ruling states that a black man who was in his yard at his house when the police got on anonymous 911 call of a fight and a gun is not protected by the U.S. Constitution's 4th amendment, and summary judgment can be granted even if a number of genuine issues of material facts are in dispute... I would like to respectfully ask this honorable court to read, review, and grant this motion for rehearing to correct on clear error of law, prevent a manifest or injustice, and uphold the U.S. constitution...

Respectfully

Thomas Waters



4-9-20

Thomas Waters

-v-

John Stewart et al

U. S. Supreme Court

CASE # 19-7319

Certification stating
that the grounds are
limited to intervening
circumstances under
rule 44 of the rules of
court ...

I Thomas Waters, hereby certify that this motion for rehearing is limited to intervening circumstances and substantial grounds not previously presented ... The issues of excessive force, fabricated police affidavits, and a missing transcript from my trial are the only issues addressed in this motion. To have this most honorable court review or hear this case, which is clearly a rogue opinion that represents oppression and manifest injustice. This opinion also is so far departed from the accepted and usual course of judicial proceedings that it calls for this most honorable court to exercise its supervisory powers to fix this injustice. Addressing or reviewing this case will affect and correct a lot of injustice actions of police officers violation free citizens 4th amendment rights. So many Americans are being denied equal protection rights, due process rights, and 4th amendment protections due to over policing by under trained rogue police officers. This is my only avenue to request help to correct the injustices not only done to me by these

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OFFICE OF THE CLERK
SUPREME COURT, U.S.

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roque officers. But this is my only avenue to lay and stop over policing in African and low income communities. The opinion in my case clearly states that a black man is not equally protected by the 4th amendment or other federal laws that's listed in this motion. These case laws have never been over ruled or over turned, thus the laws are still good law yet I am not protected by any of them, Even though the defendant's version of facts are so blatantly contradicted by the evidence on the record that no reasonable could believe it. This case should be accepted to set back in motion the precedent lower courts must follow when officers use excessive force and fabricate documents to try to cover up there unlawful actions... I would like to respectfully ask this most honorable court to grant this motion because this opinion is so far departed from the accepted and usual course of judicial proceedings that it calls for this court to exercise it's supervisory powers...

Respectfully

Thomas Waters

~~Thomas Waters~~

5-23-20

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

