

2.12.22

MR. LESTER WATERS JR.
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I'm writing the court because I would like to file for an extension to file for rehearing. Due to Covid and the prison national lockdown, I will not be able to complete the legal work necessary to complete a motion in a timely manner.

Thanks in advance
Lester Waters Jr.

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FEB 28 2022

OFFICE OF THE CLERK
SUPREME COURT, U.S.

United States Court of Appeals
For the Eighth Circuit

No. 20-3659

United States of America

Plaintiff - Appellee

v.

Lester Waters, Jr.

Defendant - Appellant

Appeal from United States District Court
for the District of South Dakota - Western

Submitted: January 20, 2022

Filed: February 7, 2022

[Unpublished]

Before COLLTON, BENTON, and STRAS, Circuit Judges.

PER CURIAM.

Lester Waters Jr. received a 240-month sentence after a jury found him guilty of four counts of assault, 18 U.S.C. § 113(a)(3), (a)(6), and two counts of discharging a firearm during a crime of violence, 18 U.S.C. § 924(c)(1)(A)(iii). An *Anders* brief questions whether the district court¹ should have suppressed Waters's pre-*Miranda*-

¹The Honorable Jeffrey L. Viken, United States District Judge for the District of South Dakota, adopting the report and recommendations of the Honorable Daneta Wollmann, United States Magistrate Judge for the District of South Dakota.

warning statements. See *Anders v. California*, 386 U.S. 738 (1967); see also *Miranda v. Arizona*, 384 U.S. 436 (1966). And a pro se supplemental brief raises a host of other issues.

We conclude that the challenged statements were admissible. Some were made “on his own initiative,” *Stumes v. Solem*, 752 F.2d 317, 322–23 (8th Cir. 1985); others related to “public safety,” *United States v. Jones*, 842 F.3d 1077, 1082 (8th Cir. 2016); and still others were responses to requests for clarification, see *Butzin v. Wood*, 886 F.2d 1016, 1018 (8th Cir. 1989).

Waters’s pro-se claims do not fare any better. He has not raised a colorable challenge to the composition of the jury pool, see *United States v. Rodriguez*, 581 F.3d 775, 790 (8th Cir. 2009); the jurors themselves did not commit any prejudicial misconduct, see *United States v. Tucker*, 137 F.3d 1016, 1030 (8th Cir. 1998); and there is no evidence that any of the witnesses perjured themselves, see *United States v. Lewis*, 976 F.3d 787, 796 (8th Cir. 2020). Nor was he entitled to have the jury instructed on a lesser-included offense, see *United States v. Felix*, 996 F.2d 203, 208 (8th Cir. 1993); or have the government disclose anything else, see *United States v. Pendleton*, 832 F.3d 934, 940 (8th Cir. 2016). Finally, he cannot now challenge the admissibility of his own evidence from trial. See *Ohler v. United States*, 529 U.S. 753, 755 (2000).

We have also independently reviewed the record and conclude that no other non-frivolous issues exist. See *Penson v. Ohio*, 488 U.S. 75, 82–83 (1988). We accordingly affirm the judgment of the district court and grant counsel permission to withdraw.