

No. 22-5174

ORIGINAL

Supreme Court, U.S.
FILED

JUN 22 2022

OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

LESTER WATERS, JR. — PETITIONER
(Your Name)

vs.

UNITED STATES OF AMERICA — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
UNITED STATES DISTRICT COURT WEST DIVISION

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

PETITION FOR WRIT OF CERTIORARI

LESTER WATERS, JR.

(Your Name)

FCI BIG SPRING
1900 SIMLER AVE

(Address)

BIG SPRING, TX, 79720

(City, State, Zip Code)

N/A

(Phone Number)

QUESTION(S) PRESENTED

* HOW COULD LESTER WATERS,JR. WAIVE HIS RIGHTS "KNOWINGLY AND INTELLIGENTLY" WHILE UNDER THE INFLUENCE OF A SUBSTANCE "ALCOHOL" ? PER BERGHUIS v. THOMPKINS, 560 U.S 370,383,130 S. Ct 2250,176 L. ED. 2d 1098 (2010) A WAIVER IS " KNOWING AND INTELLIGENT" WHEN IT IS MADE WITH FULL AWARENESS OF BOTH THE NATURE OF THE RIGHT ABANDONED AND THE CONSEQUENCE OF ABANDONING THE RIGHT AND A WAIVER IS "VOLUNTARY" WHEN THE COURT CAN DETERMINE THAT THE WAIVER WAS A PRODUCT OF THE SUSPECT'S FREE AND DELIBERATE CHOICE.

*HOW WAS LESTER WATERS,JR. PROTECTED AGAINST "SELF-INCRIMINATION" WHEN HE WAS NEVER READ HIS MIRANDA RIGHTS BEFORE BEING INTERROGATED. PURSUANT TO MINRANDA v. ARIZONA,384 U.S 436,86 S. Ct.1602, 16L. ED. 2d. 694 (1966) "certain warnings must be warnings must be given before a suspect's statement made during custodial interrogation [can] be admitted into evidence."

BROCK v. LOGAN COUNTY SHERIFF'S DEPT OF ARKANSAS, 3 F.3d 1215,1217 (8th Cir.1993) ("the remedy for the alleged miranda violation is the exclusion from evidence of any compelled self-incrimination, not a civel right's action")

HOW WAS LESTER WATERS,JR. MIRANDA SAFEGUARD NOT PROTECTED WHEN BEING QUESTIONED IN THE BACKSEAT OF PATROL CAR BY OFFICER HUNTER? RHODE ISLAND v. INNIS 446 U.S 291, 300-01 (1980) "The miranda safeguards come into play whenever a person in custody is subjected to either express questioning or its functional equivalent"

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
BERGHUIS v. THOMPKINS, 560 U.S 370,383,130 S. Ct 2250, 176 L. ED 2d 1098(2010)	
MIRANDA v. ARIZONA, 384 U.S 436, 86 S. Ct 1602, 16 L. ED. 2d 694 (1966)	
BROCK v. LOGAN COUNTY SHERIFF'S DEPT OF ARKANSAS, 3 F.3d 1215,1217 (8th Cir 1993)	
RHODE v. INNIS, 446 U.S. 291,300-01(1980)	
LOISELL v. DIRECTOR OF IOWA DEPARTMENT OF CORRECTIONS, 178 F.3d 1019, 1023 (8TH Cir. 1999)	
PENNSYLVANIA v. MUNIZ, 496 U.S 582,600-01 (1990)	

STATUTES AND RULES

- *18 U.S.C §§ 113(a)(3) AND 1153
- *18 U.S.C §§ 113(a)(3) AND 1153
- *18 U.S.C § 924(c)(1)(A)(iii)
- *FED.R.CRIM.P.33(a)
- *FED.R.CRIM.P.7(c)(1)
- *FED.R.CRIM.P.12(2)
- *FED.R.CRIM.37(a)(1)(2)(3)

OTHER

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:

RELATED CASES

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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 unpublished.

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 _____ 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 MAY 19, 2022.

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 a writ of certiorari was granted to and including MARCH 3, 2022 (date) on JULY 7, 2022 (date) in Application No. 21 A 466.

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. 21 A 466.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

FIFTH AMENDMENT

- *COMPELLED TO ENGAGE IN SELF-INCrimINATION ON A CRIMINAL MATTER
- *DUE PROCESS CLAUSE THE CONSTITUTIONAL PROVISION THAT PROHIBITS THE GOVERMENT FROM UNFAIRLY OR ARBITRARILY DEPRIVING A PERSON OF LIFE, LIBERTY, OR PROPERTY.

STATEMENT OF THE CASE

.INTRODUCTION

A GRAND JURY INDICTED DEFENDANT LESTER WATERS, JR., IN A SIX-COUNT INDICTMENT. (DOCKET 19). MR. WATERS IS CHARGED IN COUNTS I AND IV WITH ASSAULT WITH A DANGEROUS WEAPON IN VIOLATION OF 18 U.S.C §§ 113(a)(3) AND 1153; IN COUNTS II AND V WITH ASSAULT RESULTING IN SERIOUS BODILY INJURY IN VIOLATION OF 18 U.S.C §§ 113(a)(6) AND 1153; AND IN COUNTS III AND VI WITH DISCHARGING, BRANDISHING OR POSSESSING OR A FIREARM DURING AND IN RELATION TO A CRIME OF VIOLENCE IN VIOLATION 18 U.S.C § 924(c)(1)(A)(III). *Id.* IN COUNTS I AND II THE ALLEGED VICTIM IS ELGIE IRON BEAR AND IN COUNTS IV AND V THE ALLEGED VICTIM IS CHARLES JANIS. *Id.*

PENDING BEFORE THE COURT IS DEFENDANT'S MOTION TO SUPPRESS HIS STATEMENTS MADE TO SUPPRESS HIS STATEMENTS MADE TO LAW ENFORCEMENT ON JANUARY 25, 2018. (DOCKETS 61 & 76 AT P.4:6-11). MR. WATERS "DOES NOT SEEK SUPPRESSION OF [a] JANUARY 29[] [2018,] STATEMENT AT THE PINE RIDGE ADULT OFFENDERS FACILITY." (DOCKET 76 AT P.4:8-11). THE UNITED STATES OPPOSES DEFENDANT'S MOTION. (DOCKET 83).

DEFENDANT'S SUPPRESSION MOTION WAS REFERRED TO MAGISTRATE JUDGE DANETA WOLLMANN FOR A REPORT AND RECOMMENDATION PURSUANT TO 28 U.S.C § 636(b)(1)(B) AND THE COURT'S MARCH 9, 2015, STANDING ORDER. THE MAGISTRATE JUDGE CONDUCTED AN EVIDENTIARY HEARING ON NOVEMBER 20, 2018, AT WHICH TWO WITNESSES TESTIFIED AND FOUR EXHIBITS WERE RECEIVED INTO EVIDENCE. (DOCKETS 74&76). THE PARTIES SUBMITTED POST-HEARING BRIEFING. (DOCKETS 79 & 83). THE MAGISTRATE JUDGE ISSUED A REPORT AND RECOMMENDATION ("R&R") CONCLUDING DEFENDANT'S MOTION SHOULD BE GRANTED IN PART AND DENIED IN PART. (DOCKET 87 AT P.1). DEFENDANT TIMELY FILED OBJECTIONS TO THE R&R. (DOCKET 91). THE GOVERNMENT FILED A RESPONSE TO DEFENDANT'S OBJECTIONS. (DOCKET 92).

UNDER THE FEDERAL MAGISTRATE ACT, 28 U.S.C. § 636(b)(1), IF A PARTY FILES WRITTEN OBJECTIONS TO THE MAGISTRATE JUDGE'S PROPOSED FINDINGS AND RECOMMENDATIONS, THE DISTRICT COURT IS REQUIRED TO "MAKE A DE NOVO DETERMINATION OF THOSE PORTIONS OF THE REPORT OR SPECIFIED PROPOSED FINDINGS OR RECOMMENDATIONS TO WHICH OBJECTION IS MADE." *Id.* THE COURT MAY "ACCEPT, REJECT, OR MODIFY, IN WHOLE OR IN PART, THE FINDINGS OR RECOMMENDATIONS MADE BY THE MAGISTRATE JUDGE." *Id.*

THE COURT COMPLETED A DE NOVO REVIEW OF THOSE PORTIONS OF THE R&R TO WHICH OBJECTIONS WERE FILED. FOR THE REASONS STATED BELOW, THE COURT FINDS THE R&R IS AN APPROPRIATE APPLICATION OF THE LAW TO THE FACTS PRESENTED BY THE PARTIES AT THE SUPPRESSION HEARING. FOR THE REASONS STATED BELOW, THE DEFENDANT'S OBJECTIONS ARE OVERRULED AND THE R&R IS ADOPTED IN ITS ENTIRETY. THE COURT GRANTS IN PART AND DENIES IN PART DEFENDANT'S SUPPRESSION MOTION.

DEFENDANT'S OBJECTIONS

DEFENDANT'S OBJECTIONS TO THE R&R ARE SUMMARIZED AS FOLLOW:

1. MR. WATERS OBJECTS GENERALLY TO ALL FACTUAL FINDINGS AND LEGAL CONCLUSIONS MADE BY THE MAGISTRATE JUDGE.

2. MR. WATERS OBJECTS TO THE MAGISTRATE JUDGE'S FINDING THAT OFFICER HUNTER DID NOT DECEIVE THE DEFENDANT.

3. MR. WATERS SHOULD HAVE BEEN ADVISED OF HIS MIRANDA RIGHTS STATEMENTS WERE ADMISSIBLE UNDER THE PUBLIC SAFETY (DOCKET 91). "FOR THE FOREGOING REASONS", MR. WATERS ARGUES "DISTRICT COURT SHOULD NOT ACCEPT THE MAGISTRATE COURT'S [R&R] ... AND SHOULD GRANT DEFENDANT'S MOTION TO SUPPRESS." *Id* AT P.3

REASONS FOR GRANTING THE PETITION

THE REASONS FOR GRANTING THIS PETITION ARE AS FOLLOWS, LESTER WATERS, JR. WAS NOT READ HIS MIRANDA RIGHTS. IN ADDITION TO NOT BEING INFORMED OF HIS RIGHTS LESTER WATERS, JR. DID NOT VOLUNTARY CONSENT TO WAIVING HIS RIGHTS UNDER A INTELLIGENT MIND. THE OFFICER OVER STEP THE CONSTITUTION WHEN HE INTERROGATED LESTER WATERS, JR. IN THE BACKSEAT OF THE PATROL CAR. HE FAILED TO TAKE INTO ACCOUNT LESTER WATERS, JR. BEING UNDER THE INFLUENCE OF "ALCOHOL" SUBSTANCE.

LESTER WATERS, JR. WAS DECIEVED BY OFFICER HUNTER BECAUSE OF A PRIOR RELATIONSHIP WITH HUNTER FROM CHILDHOOD. LESTER WATERS, JR. WOULD NOT HAVE MADE A SATEMENT TO ANYOTHER OFFICER UNDER THE CIRCUMSTANCES, BUT OFFICER HUNTER PLAYED ON THERE RELATIONSHIP. LESTER WATERS, JR. SHOULD BE GRANTED HIS PETITION FOR ALL REASONS LISTED ABOVE BECUASE WITH THE DUE PROCESS OF LAW BEING FOLLOWED LESTER WAS SUBJECTED TO OFFICER HUNTER TAKING ADVANTAGE OF HIM WHILE UNDER THE INFLUENCE OF A SUBSTANCE. HE MADE STATEMENTS THAT WERE SELF INCRIMINATING SOLELY BECAUSE OF BEING UNDER THE INFLUENCE OF ALCOHOL.

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

LESTER WATERS, JR. — PETITIONER
(Your Name)

VS.
UNITED STATES OF AMERICA — RESPONDENT(S)

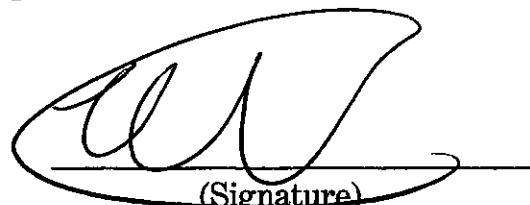
PROOF OF SERVICE

I, LESTER WATERS, JR., do swear or declare that on this date, JUNE 22, 20 22, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

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

Executed on JUNE 22, 20 22

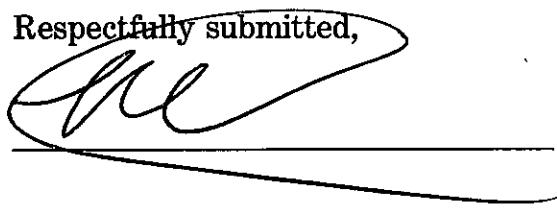


(Signature)

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John Doe". It is written in a cursive style with a large, stylized 'J' and 'D'.

Date: JUNE 22, 2022