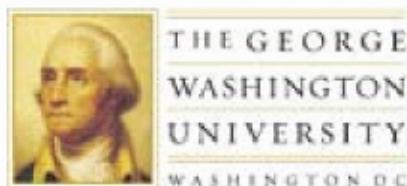


# The Burger Court Opinion Writing Database

*North Carolina v. Butler*

441 U.S. 369 (1979)

Paul J. Wahlbeck, George Washington University  
James F. Spriggs, II, Washington University in St. Louis  
Forrest Maltzman, George Washington University



Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

November 21, 1978

Re: 78-354 - State of North Carolina v. Butler

Dear Potter:

My minutes show ~~five~~<sup>5/4</sup> votes to grant and  
reverse outright and I so vote.

Regards,

LESB

Mr. Justice Stewart

Copies to the Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

April 1, 1979

MEMORANDUM TO THE CONFERENCE:

Re: 78-354) United Steelworkers of America v. Weber  
      )  
78-435) Kaiser Aluminum & Chem Corp v. Weber  
      )  
78-436) U.S. v. Weber

I have reported to Lewis on the Conference, and I now vote to affirm in the above case.

I would, as I stated at Conference, much prefer to have employers free to initiate their own private programs to give minorities preferential treatment. However, I can find no principled basis to avoid the explicit language of the relevant statutory provisions which foreclose such programs based on race.

Accordingly, I have requested Bill Brennan to take responsibility for the assignment.

Regards,

WRB

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

April 19, 1979

Re: 78-354 - North Carolina v. Butler

Dear Potter:

I join.

Regards,

WRB

Mr. Justice Stewart

Copies to the Conference

1st Draft

Supreme Court of the United States

STATE OF NORTH CAROLINA v. WILLIE THOMAS BUTLER, AKA TOP CAT

Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

No. 78-354, Decided November \_\_, 1978  
From: Mr. Justice Brennan  
Circulated: 21 NOV 1978

MR. JUSTICE BRENNAN, dissenting.

Recirculated:

Miranda v. Arizona, 384 U.S. 436, 470 (1966), held that "[n]o effective waiver of the right to counsel during interrogation can be recognized unless specifically made after the warnings we here delineate have been given." (emphasis added). In so holding, the Court affirmed the decision in Carnley v. Cochran, 369 U.S. 506, 516 (1962), which held that "[p]resuming waiver from a silent record is impermissible." In that case, the Court stated that in the absence of an allegation of an "affirmative waiver ....there is no disputed fact question requiring a hearing." Id.

There is no allegation of an affirmative waiver in this case. As the Court concedes, the respondent here refused to sign the waiver form, and "said nothing when advised of his right to an attorney." There was, therefore, no "disputed fact question requiring a hearing," and the district court was in error in holding one. In the absence of an express written or oral waiver, the Supreme Court of North Carolina correctly granted a new trial. I would affirm the decision of the North Carolina Supreme Court.

Chief Justice  
Justices Stewart  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Powell

## 1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

STATE OF NORTH CAROLINA *v.* WILLIE THOMAS  
BUTLER, aka TOP CAT

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT  
OF NORTH CAROLINA

No. 78-354. Decided November —, 1978

MR. JUSTICE BRENNAN, dissenting.

*Miranda v. Arizona*, 384 U. S. 436, 470 (1966), held that “[n]o effective waiver of the right to counsel during interrogation can be recognized unless *specifically* made after the warnings we here delineate have been given.” (Emphasis added). In so holding, the Court affirmed the decision in *Carnley v. Cochran*, 369 U. S. 506, 516 (1962), which held that “[p]resuming waiver from a silent record is impermissible.” In that case, the Court stated that in the absence of an allegation of an “affirmative waiver . . . there is no disputed fact question requiring a hearing.” *Ibid.*

There is no allegation of an affirmative waiver in this case. As the Court concedes, the respondent here refused to sign the waiver form, and "said nothing when advised of his right to an attorney." There was, therefore, no "disputed fact question requiring a hearing," and the District Court was in error in holding one. In the absence of an express written or oral waiver, the Supreme Court of North Carolina correctly granted a new trial. I would affirm the decision of the North Carolina Supreme Court.

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

April 10, 1979

RE: No. 78-354 North Carolina v. Butler

Dear Potter:

In due course I shall circulate a dissent in the  
above.

Sincerely,



Mr. Justice Stewart

cc: The Conference

1st Draft

Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

Supreme Court of the United States from: Mr. Justice Brennan  
STATE OF NORTH CAROLINA v. WILLIE THOMAS ~~BUHLER~~ Recirculated: 12 APR 1979  
No. 78-354, Decided April \_\_\_, 1979 Recirculated: \_\_\_\_\_

MR. JUSTICE BRENNAN, dissenting.

Miranda v. Arizona, 384 U.S. 436, 470 (1966), held that "[n]o effective waiver of the right to counsel during interrogation can be recognized unless specifically made after the warnings we here delineate have been given." (emphasis added). Support for this holding was found in Carnley v. Cochran, 369 U.S. 506, 516 (1962), which held that in the absence of an allegation of an "affirmative waiver ... there is no disputed fact question requiring a hearing." Ibid (emphasis added).

There is no allegation of an affirmative waiver in this case. As the Court concedes, the respondent here refused to sign the waiver form, and "said nothing when advised of his right to the assistance of a lawyer." Ante, at 2. Thus, there was no "disputed fact question requiring a hearing," and the trial Court erred in holding one. In the absence of an "affirmative waiver" in the form of an express written or oral statement, the Supreme Court of North Carolina correctly granted a new trial. I would, therefore, affirm its decision.

The rule announced by the Court today allows a finding of waiver based upon "infer[rence] from the actions and words of the person interrogated." Ante, at 4. The Court thus shrouds in half-light the question of waiver, requiring courts to construct inferences from ambiguous words and gestures. The present case is a clear example. As the Court acknowledges, there is a disagreement over whether respondent was orally advised of his rights at the time he made his statement. Ante,

1,2,3

Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: Mr. Justice Brennan

Circulated: \_\_\_\_\_

Recirculated: 13 APR 1979

*printed*  
1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 78-354

State of North Carolina,  
Petitioner,  
v.  
Willie Thomas Butler. } On Writ of Certiorari to the Supreme Court of North Carolina,

[April —, 1979]

MR. JUSTICE BRENNAN, with whom MR. JUSTICE MARSHALL and MR. JUSTICE STEVENS join, dissenting.

*Miranda v. Arizona*, 384 U. S. 436, 470 (1966), held that “[n]o effective waiver of the right to counsel during interrogation can be recognized unless *specifically* made after the warnings we here delineate have been given.” (Emphasis added.) Support for this holding was found in *Carnley v. Cochran*, 369 U. S. 506, 516 (1962), which held that in the absence of an allegation of an “affirmative waiver . . . there is no disputed fact question requiring a hearing.” *Ibid.* (Emphasis added.)

There is no allegation of an affirmative waiver in this case. As the Court concedes, the respondent here refused to sign the waiver form, and “said nothing when advised of his right to the assistance of a lawyer.” *Ante*, at 2. Thus, there was no “disputed fact question requiring a hearing,” and the trial Court erred in holding one. In the absence of an “affirmative waiver” in the form of an express written or oral statement, the Supreme Court of North Carolina correctly granted a new trial. I would, therefore, affirm its decision.

The rule announced by the Court today allows a finding of waiver based upon “infer[rence] from the actions and words of the person interrogated.” *Ante*, at 4. The Court thus shrouds in half-light the question of waiver, allowing courts to construct inferences from ambiguous words and gestures.

Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

from Mr. Justice Stewart

20 NOV 1978  
Circulated

1st DRAFT

## SUPREME COURT OF THE UNITED STATES

STATE OF NORTH CAROLINA *v.* WILLIE THOMAS  
BUTLER, AKA TOP CAT

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT  
OF NORTH CAROLINA

No. 78-354. Decided November —, 1978

PER CURIAM.

The respondent was arrested by an FBI agent in New York on a fugitive warrant from North Carolina. The agent testified that immediately after the arrest he fully advised the respondent of the rights delineated in *Miranda v. Arizona*, 384 U. S. 436. The respondent was then taken to the New Rochelle FBI office, where he was again informed of his *Miranda* rights. Given the Bureau's "Advice of Rights" form, the respondent then read it himself. When asked if he understood his rights, he replied that he did. The respondent refused to sign the waiver at the bottom of the form. He was told that he need neither speak nor sign the form, but that the agents would like him to talk to them. The respondent replied, "I will talk to you but I am not signing any form." He then made inculpatory statements. The agent testified that the respondent said nothing when advised of his right to an attorney.

At trial the respondent objected to the admission of his statements. The trial court then heard testimony from the arresting agent outside the presence of the jury. The court found

"the statement made by the defendant, William Thomas Butler, to Agent David C. Martinez, was made freely and voluntarily to said agent after having been advised of his rights as required by the *Miranda* ruling, including his right to an attorney being present at the time of the inquiry and that the defendant, Butler, understood his

Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: Mr. Justice Stewart

13

Circulated: \_\_\_\_\_

2nd DRAFT

Recirculated: 21 NOV 1978

## SUPREME COURT OF THE UNITED STATES

STATE OF NORTH CAROLINA *v.* WILLIE THOMAS  
BUTLER, AKA TOP CAT

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT  
OF NORTH CAROLINA

No. 78-354. Decided November —, 1978

PER CURIAM.

The respondent was arrested by an FBI agent in New York on a fugitive warrant from North Carolina. The agent testified that immediately after the arrest he fully advised the respondent of the rights delineated in *Miranda v. Arizona*, 384 U. S. 436. The respondent was then taken to the New Rochelle FBI office, where he was again informed of his *Miranda* rights. Given the Bureau's "Advice of Rights" form, the respondent then read it himself. When asked if he understood his rights, he replied that he did. The respondent refused to sign the waiver at the bottom of the form. He was told that he need neither speak nor sign the form, but that the agents would like him to talk to them. The respondent replied, "I will talk to you but I am not signing any form." He then made inculpatory statements. The agent testified that the respondent said nothing when advised of his right to an attorney.

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"the statement made by the defendant, William Thomas Butler, to Agent David C. Martinez, was made freely and voluntarily to said agent after having been advised of his rights as required by the *Miranda* ruling, including his right to an attorney being present at the time of the inquiry and that the defendant, Butler, understood his

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: Mr. Justice Stewart

Circulated: 10 APR 1979

1st DRAFT

Recirculated: \_\_\_\_\_

## SUPREME COURT OF THE UNITED STATES

78-354

State of North Carolina,  
Petitioner,  
v.  
Willie Thomas Butler.

On Writ of Certiorari to the Supreme Court of North Carolina.

[April —, 1979]

MR. JUSTICE STEWART delivered the opinion of the Court.

In evident conflict with the present view of every other court that has considered the issue, the North Carolina Supreme Court has held that *Miranda v. Arizona*, 384 U. S. 436, requires that no statement of a person under custodial interrogation may be admitted in evidence against him unless, at the time the statement was made, he explicitly waived the right to the presence of a lawyer. We granted certiorari to consider whether this *per se* rule reflects a proper understanding of the *Miranda* decision. — U. S. —.

The respondent was convicted in a North Carolina trial court of kidnaping, armed robbery, and felonious assault. The evidence at his trial showed that he and a man named Elmer Lee had robbed a gas station in Goldsboro, N. C., in December 1976, and had shot the station attendant as he was attempting to escape. The attendant was paralyzed, but survived to testify against the respondent.

The prosecution also produced evidence of incriminating statements made by the respondent shortly after his arrest by FBI agents in the Bronx, N. Y. on the basis of a North Carolina fugitive warrant. Outside the presence of the jury, FBI Agent Martinez testified that at the time of the arrest he fully advised the respondent of the rights delineated in the *Miranda* case. According to the uncontested testimony of

*Willie T. Butler*  
10 APR 1979

5-6

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: Mr. Justice Stewart

Circulated: \_\_\_\_\_

Recirculated, 11 APR 1979

2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

78-354

State of North Carolina, Petitioner,  
v. Willie Thomas Butler. } On Writ of Certiorari to the Supreme Court of North Carolina.

[April —, 1979]

MR. JUSTICE STEWART delivered the opinion of the Court.

In evident conflict with the present view of every other court that has considered the issue, the North Carolina Supreme Court has held that *Miranda v. Arizona*, 384 U. S. 436, requires that no statement of a person under custodial interrogation may be admitted in evidence against him unless, at the time the statement was made, he explicitly waived the right to the presence of a lawyer. We granted certiorari to consider whether this *per se* rule reflects a proper understanding of the *Miranda* decision. — U. S. —.

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Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE POTTER STEWART

April 24, 1979

MEMORANDUM TO THE CONFERENCE

Cases held for North Carolina v. Butler, No. 78-354  
Three cases have been held for North Carolina v. Butler: North Carolina v. Connley, No. 78-582; Patman v. United States, No. 78-5552; and Stewart v. United States, No. 78-6007.

North Carolina v. Connley, No. 78-582

(Certiorari to the North Carolina Supreme Court)

The respondent was convicted of first degree murder. After his arrest by FBI agents, he was informed of his Miranda rights. He refused to sign a written waiver form, but did agree to talk to the agents. He never expressly waived his right to counsel. The respondent then made inculpatory statements that were introduced into evidence at his trial over his counsel's objection. The trial court held that the totality of the circumstances showed that the respondent had made an effective waiver of his rights under Miranda. The North Carolina Supreme Court, relying on its recent decision in Butler, reversed on the ground that Miranda required an express waiver of the right to have an attorney present. The North Carolina court also found an unrelated hearsay problem. Because it held that a new trial was required on the Miranda ground, it did not consider whether the other evidentiary problem constituted reversible error.

The State seeks certiorari on the same issue it presented in Butler. This case should be granted, vacated, and remanded for reconsideration in light of the Butler decision.

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE BYRON R. WHITE

November 30, 1978

Re: No. 78-354 - North Carolina v. Butler

Dear Potter,

I would now vote to grant and hear argument in this case before attempting to settle the differences with respect to the issue involved.

Sincerely yours,

*Byr*

Mr. Justice Stewart

Copies to the Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE BYRON R. WHITE

April 12, 1979

Re: 78-354 - State of North Carolina  
v. Butler

Dear Potter,

I agree.

Sincerely yours,



Mr. Justice Stewart  
Copies to the Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

April 10, 1979

Re: No. 78-354 - State of North Carolina v.  
Willie Thomas Butler

Dear Potter:

I shall await the dissent.

Sincerely,

T.M.

T.M.

Mr. Justice Stewart

cc: The Conference

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

April 12, 1979

Re: No. 78-354 - State of North Carolina v.  
Willie Thomas Butler

Dear Bill:

Please join me in your dissent.

Sincerely,



T.M.

Mr. Justice Brennan

cc: The Conference

Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

November 20, 1978

Re: No. 78-354 - North Carolina v. Butler

Dear Potter:

Please join me in your per curiam.

Sincerely,

*Harry*

Mr. Justice Stewart

cc: The Conference

April 11, 1979

Re: No. 78-354 - North Carolina v. Butler

Dear Potter:

By a separate circulated note, I am joining the second draft of your opinion in this case. Nevertheless, I would feel much happier if your quotation from and citation to Johnson v. Zerbst, on pages 5-6, were completely eliminated. Johnson concerned a waiver of a constitutional right, whereas, I think, the Miranda rule is prophylactic; I would prefer not to have an implication that the standard for constitutional waiver applies here.

I suspect the dissent will take off on Johnson v. Zerbst. One could then footnote a response by describing it as of constitutional caliber.

Sincerely,

HAB

Mr. Justice Stewart

*cc: [unclear] after tele. call*

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

April 11, 1979

Re: No. 78-354 - North Carolina v. Butler

Dear Potter:

Please join me in your recirculation of April 11.

Sincerely,

H. A. B.

Mr. Justice Stewart

cc: The Conference

Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: Mr. Justice Blackmun

Circulated: 20 APR 1979

No. 78-354 - North Carolina v. Butler

Recirculated: \_\_\_\_\_

MR. JUSTICE BLACKMUN, concurring:

I join the opinion of the Court. My joinder, however, rests on the assumption that the Court's citation to Johnson v. Zerbst, 304 U.S. 458, 464 (1938), ante, at 5-6, is not meant to suggest that the "intentional relinquishment of a known right" formula -- the formula Zerbst articulated for determining the waiver vel non "of fundamental constitutional rights," 304 U.S., at 464 -- has any relevance in determining whether a defendant has waived his "right to the presence of a lawyer," ante, at 5, under Miranda's prophylactic rule.

To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: Mr. Justice Blackmun

Circulated: \_\_\_\_\_

Recirculated: 2-6 Ark 1979

*Printed*  
1st DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 78-354

State of North Carolina,  
Petitioner,  
*v.*  
Willie Thomas Butler. } On Writ of Certiorari to the Supreme Court of North Carolina.

[April —, 1979]

MR. JUSTICE BLACKMUN, concurring.

I join the opinion of the Court. My joinder, however, rests on the assumption that the Court's citation to *Johnson v. Zerbst*, 304 U. S. 458, 464 (1938), *ante*, at 5-6, is not meant to suggest that the "intentional relinquishment of a known right" formula—the formula *Zerbst* articulated for determining the waiver *vel non* "of fundamental constitutional rights," 304 U. S., at 464—has any relevance in determining whether a defendant has waived his "right to the presence of a lawyer," *ante*, at 5, under *Miranda*'s prophylactic rule.

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

November 20, 1978

No. 78-354 North Carolina v. Butler

Dear Potter:

Please join me in your Per Curiam.

Sincerely,



Mr. Justice Stewart

lfp/ss

cc: The Conference

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

November 20, 1978

Re: No. 78-354 North Carolina v. Butler

Dear Potter:

Please join me.

Sincerely,

*WR*

Mr. Justice Stewart

Copies to the Conference

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

April 10, 1979

Re: No. 78-354 - North Carolina v. Butler

Dear Potter:

Please join me.

Sincerely,



Mr. Justice Stewart

Copies to the Conference

Supreme Court of the United States  
Washington, D. C. 20542

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

November 30, 1978

Re: 78-354 - North Carolina v. Butler

Dear Potter:

Although I originally voted to deny, I would prefer argument on the merits to a summary disposition and therefore now join Byron in voting to grant.

Respectfully,



Mr. Justice Stewart  
Copies to the Conference

*Cert. granted 11/26*

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

April 12, 1979

RE: No. 78-354 - State of North Carolina v. Willie  
Thomas Butler

Dear Bill:

Please join me in your dissent.

Respectfully,



Mr. Justice Brennan

Copies to the Conference