
IN THE SUPREME COURT OF MISSISSIPPI
No. 2019-CT-00024-SCT

MICHAEL SHANE BUFORD
Appellant

v.

STATE OF MISSISSIPPI
Appellee

On Appeal from the Circuit Court of the
First Judicial District of Harrison County, Mississippi

APPELLEE'S SUPPLEMENTAL BRIEF

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ORAL ARGUMENT NOT REQUESTED

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CERTIFICATE OF INTERESTED PERSONS

Under M.R.A.P. 28(a)(1), governmental parties need not furnish a certificate of interested persons.

LYNN FITCH
Attorney General of Mississippi

/s/ Barbara Byrd

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STANDARD OF REVIEW

The standard of review for the suppression of evidence is abuse of discretion. *Chamberlin v. State*, 989 So. 2d 320, 336 (Miss. 2008). In considering whether to grant a motion to suppress, the trial court has the sole authority to determine witness credibility. *Moore v. State*, 933 So. 2d 910, 918 (Miss. 2006). “[The court’s] determination should not be overturned without a substantial showing that the trial judge was manifestly wrong.” *Id.* When reviewing the denial of a motion to suppress evidence, this Court must determine whether the trial court’s factual findings, considering the totality of the circumstances, are supported by credible evidence. *Id.* at 914. “Review of the record is not limited to evidence presented to the trial judge at the suppression hearing; this Court may look to the entire record to determine whether the trial judge’s findings are supported by substantial evidence.” *Galloway v. State*, 122 So. 3d 614, 669 (Miss. 2013).

STATEMENT OF THE CASE

Officers from the Pearl Police Department responded to a property owned by Sybil Brooks after she contacted them to complain that trespassers were occupying her rental home without permission. (Tr. 137). Officers encountered Michael Buford and his wife at the property. (Tr. 138; 155). Buford told the officers that he had an agreement with the homeowner through which, in exchange for his work in renovating the property, he could live there. (Tr. 139). But Buford had

no proof of this agreement and did not even know the homeowner's name. (Tr. 139).

Officer Marc Gatlin testified that the living room area and one of the bedrooms appeared to be almost empty. (Tr. 145). But the back bedroom contained many possessions, including clothing and bags, which made it appear that this is where Buford and his wife had been staying. (Tr. 145).

When Officer Brad Wunningham arrived, no search had been conducted. (Tr. 16). Buford consented to a search of his person and authorized Officer Wunningham "to search him for anything illegal." (Tr. 16; 140; 162). Officer Wunningham conducted the search and found a tin snus can¹ containing what appeared to be crystal methamphetamine.² (Tr. 140; 163). Officer Marc Gatlin testified that, as soon as Officer Wunningham pulled out the can, he manually activated his body camera because he recognized that the substance contained in the can appeared to be crystal meth. (Tr. 144). The moment that Buford gave his consent and the moment the drugs were recovered was not captured. (Tr. 152; 173). After Officer Wunningham recovered the drugs, he handcuffed Buford and placed him in custody.³ (Tr. 165; 167).

¹ A photo of the snus can was admitted at trial as Exhibit S-1.

² A drug analyst confirmed that the substance contained 2.16 grams of methamphetamine. (Tr. 180).

³ Buford claims that Exhibit S-2 shows that he was handcuffed *before* the search occurred. (Petition 4). Thus, according to Buford, any consent he might have given was "tainted" because he was illegally detained. (Petition 4). The video, however, *does not* show what Buford says it shows. The officer's body cam did not capture the search. Instead, the footage shows an officer handcuffing Buford while

Before trial, Buford moved to suppress the evidence of his drug possession. (CP 33). In his petition, Buford claimed that the officers violated his Fourth Amendment right to be free from an unreasonable search and seizure when they, without a warrant, kicked the door in and detained him without advising him why they were there or what they were investigating. (CP 34). He denied ever giving consent for the officers to search his person or the property, which he claimed he had permission to occupy. (CP 34).

At the pretrial suppression hearing, Brooks testified that she had a rental agreement with Jason Sebren. (Tr. 31, 33). Sebren had allowed the Bufords to move into the property without Brooks' permission. (Tr. 31; 37-38). After Sebren abandoned the property and the agreement, Brooks contacted authorities to have the Bufords removed. (Tr. 31-32). Brooks maintained that she had no agreement with Buford. (Tr. 37). He had never entered into a lease with her, and he had no right to remain on her property. (Tr. 37).

Officer Jeannie Easterling was the first officer to respond to the residence after to Brooks' complaint. At the suppression hearing, Officer Easterling testified that she walked up to the trailer, knocked on the door, and Buford opened it. (Tr.

another officer, leaning against a door, examines what looks like a packet that the arresting officer had handed him. The video then shows the officer completing the arrest by finishing handcuffing Buford and then completing his search of the Buford's pockets—the search, by that time, having also become a search incident to arrest. Officer Gatlin testified that he activated his camera *after* the drugs were discovered and as the arrest was occurring. Contrary to Buford's claim, Exhibit S-2 supports the testimony that Buford was not detained or under arrest when he consented to the search.

40, 42). She identified herself, told him why she was there, and asked Buford if he was supposed to be there. (Tr. 40, 42). At some point, Buford's wife walked out. (Tr. 40). Officer Easterling testified that Buford was nice and cooperative. (Tr. 43). At no point did he ask to see a search warrant. (Tr. 44). Instead, he answered all of her questions but could not present any proof of his right to be at the property. (Tr. 43). Officer Easterling testified that she did not conduct a safety search herself because she was waiting for other officers to arrive. (Tr. 43). When they arrived fifteen to twenty minutes later, the male officers searched Buford while Officer Easterling searched his wife. (Tr. 43, 46).

At the suppression hearing, Officer Winningham testified that, by the time he arrived on scene, three other officers were already inside the residence. (Tr. 14). He asked Officer Easterling whether she had searched Buford and she advised that she had not. (Tr. 14). Officer Winningham then asked Buford for consent to search his person and he assented. (Tr. 14). Officer Winningham recovered what appeared to be crystal meth and later placed Buford under arrest. (Tr. 15).

Buford was also called to testify at the suppression hearing. (Tr. 49). He claimed that, though he and Brooks had discussed her desires for him to leave, Brooks knew he was living at her property and had agreed to give him limited time to arrange to move. (Tr. 51). According to Buford, the next thing he knew, the police were knocking on his door. (Tr. 51). Buford testified that when the police arrived, they asked if he was Jason Sebren. (Tr. 51). Buford said, "No," and the

police asked who he was. (Tr. 51). Buford testified that he told the police to get a warrant. (Tr. 51). Buford testified that, after approximately twelve minutes, he grew concerned that the police officer would kick the door in. (Tr. 52). So he went to unlock the door and saw eight officers in the yard. (Tr. 52). Buford testified that, once the door was cracked, the officers shoved the door in and said they didn't need a warrant. (Tr. 52).

Buford claimed that he never gave consent for the officers to come onto the property, and he did not consent to the search of his person. (Tr. 53). He denied ever having seen the snus can or the drugs in it. (Tr. 56). He claimed it was not on his person on the day of his arrest. (Tr. 57). A pipe that was found in the residence was marked for identification during the suppression hearing. (Tr. 58). Buford's wife had allowed the officers to search the residence and directed them to a room that she said contained her stuff and Buford's. (Tr. 15). The glass pipe, which contained methamphetamine residue, was in an unlocked chest belonging to Buford.⁴ (Tr. 16, 61). Buford denied any knowledge of the pipe. (Tr. 58). He claimed that the stuff in the room belonged to himself, his wife, and Sebren. (Tr. 59).

After considering arguments, the trial court found that Brooks owned the property, and that Buford had no right to be there. (Tr. 67). Based on Buford's

⁴ Finding that the State presented insufficient support to validate the wife's consent to search the property, the trial court found that the pipe found in the bedroom should be suppressed. (TR. 27).

consent to search, an officer who was legally on the scene searched Buford's person. (Tr. 67). As a result of the search, the officer located what was believed to be an unlawful controlled substance. Based on these facts, the trial court held that the evidence should not be suppressed and was admissible. (Tr. 67). The case proceeded to trial where Buford was convicted. (CP 65).

Buford appealed, and the Court of Appeals entered its opinion affirming his conviction on September 29, 2020. Buford filed his Motion for Rehearing on October 13, 2020. The Court of Appeals denied his motion on January 19, 2021. On February 2, 2021, Buford, through counsel, filed a Petition for Writ of Certiorari and asked this Court to reverse the Court of Appeals' findings and conclusions. This Court granted Buford's petition on April 8, 2021. The State now files this supplemental brief.

ARGUMENT

The trial court did not abuse its discretion in refusing to suppress the evidence found on Buford's person after he consented to a search of it. Buford argues that the Court of Appeals erred in affirming the trial court's decision to deny his motion to suppress the evidence obtained as the result of a lawful search conducted after he gave an officer consent to search his person for anything illegal. (Petition 2). Buford suggests that this Court should reverse his conviction and remand for a new trial based on his arguments (1) that he was unlawfully detained, rendering his consent invalid, and (2) that the search of the tin can exceeded the scope of his consent. (Petition 2). Both arguments are meritless.

I. The Court of Appeals Correctly Concluded that Buford was Never Detained and that He Voluntarily Consented to the Search of His Person and Anything on Him.

The Fourth Amendment to the United States Constitution, and Article 3, Section 23 of the Mississippi Constitution protect individuals from unreasonable searches and seizures. U.S. CONST. amend. IV; MISS. CONST. art. 3, § 23. As a general rule, searches without a valid warrant are prohibited unless an exception applies. *May v. State*, 222 So. 3d 1074, 1078 (Miss. Ct. App. 2016) (citing *Galloway*, 122 So. 3d at 669). A search is not unreasonable when the party searched has given his consent. *Id.*

As this Court has noted, “the question whether a consent to search was in fact ‘voluntary’ or was the product of duress or coercion, express or implied, is a question of fact to be determined from the totality of the circumstances.” *Graves v. State*, 708 So. 2d 858, 863 (Miss. 1997) (citation omitted). Further,

the United States Supreme Court stated that “the question whether a consent to a search was in fact ‘voluntary’ or was the product of duress or coercion, express or implied, is a question of fact to be determined from the totality of the circumstances.” [. . .] The United States Supreme Court directed the courts to look to whether the circumstances were coercive, occurred while in the custody of law enforcement or occurred in the course of a station house investigation. The court must also look to the individual's maturity, impressionability, experience, and education. Further, the court should consider whether the person was excited, under the influence of drugs or alcohol, or mentally incompetent. If the consent occurred while the defendant was being generally cooperative, the consent is more likely to be voluntary; however, if the defendant agreed and then changed his mind, the consent should be suspect.

Id. (citing *Schneckloth v. Bustamonte*, 412 U.S. 218, 226-28 (1973)).

Buford argues that the consent he gave was not valid because it was given during a period of unlawful detainment. (CP 34; Appellant’s Brief 10; Petition 2). The Court of Appeals correctly concluded that this argument was meritless because Buford never was detained—he consented to the search of his person at a time when he was not under arrest and was free to leave the premises. (Opinion 8).

In his Motion to Suppress, Buford claimed that he demanded to see a warrant and that he was unlawfully detained when officers kicked in the door. (CP 34). He disputed the suggestion that he ever gave officers consent to search and claimed that the controlled substance was not located on his person but was near him. (CP 34). But the evidence presented at the hearing and at trial supports the trial court’s conclusion that, based on the totality of the circumstances, Buford did consent, and that his consent was knowingly and voluntarily given. *See Moore*, 933 So. 2d at 918 (finding that the trial court has the sole authority to determine witness credibility when deciding whether to grant a motion to suppress). Buford’s claim that officers denied his demands to see a warrant or that they kicked the door in are supported only by his own testimony. Multiple officers testified that they were at the property to get Buford to leave. They testified that Buford let them in and that, at all times, Buford cooperated with the officers. They searched his person after he gave consent, but before they had a chance to tell him to leave.

This Court should conclude, as the Court of Appeals did, that the search here was not unreasonable and did not violate the Fourth Amendment. The trial court did not abuse its discretion in denying Buford's Motion to Suppress.

II. The Court of Appeals Correctly Concluded that the Search did not Exceed the Scope of Buford's Consent.

On appeal, Buford argued that the search of the snus can found on his person exceeded the scope of his consent. He compares the facts of his case to those of *May*, 222 So. 3d at 1079. But as the trial court and the Court of Appeals found, the facts here are distinguishable.

In *May*, the defendant voluntarily consented when an officer asked him to remove his shoes so that he might search them. *May*, 222 So. 3d at 1079. When he did, a zippo lighter fell from one of his shoes, and the officer picked it up to examine it. When the officer pulled the center of the lighter out, he discovered a plastic bag containing a small amount of marijuana and a small amount of crack cocaine. *Id.* at 1077. May was arrested, charged, and convicted of possession of a controlled substance. *Id.* at 1078. On appeal, May argued that his conviction and sentence should be reversed because the search of the lighter was unreasonable. *Id.* The Court of Appeals granted relief, finding that May's consent and voluntary removal of his shoes was not an extension of consent to search all items in his shoe. *Id.* at 1080-81.

Buford specifically consented to the search of his person "and anything on him." (Tr. 18). Because Buford gave Officer Winningham express consent to search

the snus can recovered from his pocket, the holding in *May* is inapplicable to the facts here.

CONCLUSION

The State of Mississippi respectfully requests that this Court either adopt the Court of Appeals' majority opinion and find that no reversible error was committed at Buford's trial, or that it enter an order dismissing the writ of certiorari as authorized by Mississippi Rule of Appellate Procedure 17(f).

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CERTIFICATE OF SERVICE

I, BARBARA BYRD, do hereby certify that I have electronically filed the foregoing document with the Clerk of the Court using the MEC system, which sent notification to the following:

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This the 19th day of April, 2021.

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