

SUPREME COURT OF MISSISSIPPI

State of Mississippi, ex rel. Mississippi Bureau of Narcotics v. Bobby Ray Canada and Beverly Turman

164 So. 3d 1003 (Miss. 2015) · No. 2014-CA-00592-SCT · Decided June 4, 2015

SUMMARY

The Supreme Court of Mississippi affirmed summary judgment for Bobby Ray Canada and Beverly Turman in a civil forfeiture action involving money and other property seized during a search. The court held that the search warrant was facially void because the section identifying the place to be searched was completely blank, and incorporation by reference did not cure the defect. The court also held that the good-faith exception to the exclusionary rule did not apply.

CASE DETAILS

COURT	Supreme Court of Mississippi
WRITING FOR THE COURT	Justice Coleman; Chief Justice Waller; Presiding Justice Dickinson; Justice Lamar; Justice Kitchens; Justice Chandler; Justice Pierce; Justice King
JURISDICTION	Mississippi
DECIDED	June 4, 2015
DOCKET	2014-CA-00592-SCT
DISPOSITION	affirmed
PROCEDURAL POSTURE	The Mississippi Bureau of Narcotics appealed from a circuit-court order granting Canada and Turman summary judgment in a civil forfeiture action arising from a search and seizure.
STANDARD OF REVIEW	Summary judgment is reviewed de novo. The evidence is viewed in the light most favorable to the nonmoving party, and summary judgment is proper when no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	State of Mississippi, ex rel. Mississippi Bureau of Narcotics v. Bobby Ray Canada, Beverly Turman

TOPICS

search and seizure

fourth amendment

summary judgment

appellate procedure

civil procedure

PRACTICE AREAS

constitutional law

criminal procedure

civil forfeiture

appellate procedure

civil procedure

QUESTIONS PRESENTED

1. Whether the State failed to provide a sufficient appellate record to support its challenge to summary judgment.
2. Whether a search warrant with a completely blank section identifying the place to be searched was valid and enforceable through incorporation by reference of a sealed affidavit or underlying facts-and-circumstances sheet.
3. Whether the Leon good-faith exception to the exclusionary rule applied to the facially defective warrant.

HOLDINGS

1. The State failed to meet its duty to provide a sufficient appellate record because the affidavit and underlying facts-and-circumstances sheet on which its warrant-validity argument depended were absent from the record; the Court therefore could not consider that assignment of error on the incomplete record.
2. A search warrant whose section identifying the place to be searched is completely blank is invalid and unenforceable on its face. Incorporation by reference cannot cure the defect where the supporting documents were not attached to the warrant at execution and the warrant did not clearly incorporate them by reference.
3. The good-faith exception does not apply when the search warrant has a completely blank section identifying the place to be searched because the warrant is so facially defective that executing officers cannot reasonably presume it to be valid.

KEY QUOTATIONS

“Based on a plain reading of both the Mississippi and United States Constitutions, the State’s case fails; the warrant is void and unenforceable on its face.” (§ 10)

“A warrant with a blank section cannot even rise to the level of “failing to particularize” a place. It is clearly, facially defective, and the whole premise of the good faith exception would be negated if we were to find the exception applies.” (§ 19)

FACTUAL BACKGROUND

A justice-court judge signed a search warrant during the night of August 15, 2013, but section one, identifying the location to be searched, was completely blank. The warrant was executed at Beverly Turman’s home, where agents seized \$293,720, a revolver, ammunition, documents, and storage bags. The State later filed a civil forfeiture action, while Canada and Turman challenged the warrant’s validity. The affidavit and underlying facts-

and-circumstances sheet that the State claimed supplied the location were sealed and were not attached to the warrant when it was executed.

PROCEDURAL HISTORY

The State filed a civil forfeiture action after seizing \$293,720 and other property during execution of a search warrant whose location section was blank. Canada and Turman moved for summary judgment, arguing that the warrant was void and the search violated the Fourth Amendment. The Quitman County Circuit Court granted summary judgment, denied the State's motion for reconsideration, and the State appealed. The Supreme Court of Mississippi affirmed.

DISPOSITION

affirmed

CASES CITED

- Mississippi Department of Transportation v. Nosef ex rel. Cowart, 110 So. 3d 317, 318 (Miss. 2013)
- City of Jackson v. Gardner, 108 So. 3d 927, 928 (Miss. 2013)
- Hamilton v. State, 556 So. 2d 685, 686, 688-90 (Miss. 1990)
- Oakwood Homes Corp. v. Randall, 824 So. 2d 1292, 1293-94 (Miss. 2002)
- Shelton v. Kindred, 279 So. 2d 642, 644 (Miss. 1973)
- Branch v. State, 347 So. 2d 957, 958-59 (Miss. 1977)
- Miller v. State, 93 So. 2 (Miss. 1922)
- Buxton v. State, 39 So. 2d 310, 311 (Miss. 1949)
- United States v. Leon, 468 U.S. 897, 918, 922-23 (1984)
- Brinegar v. United States, 338 U.S. 160, 176 (1949)