

No. 19-5868

IN THE
Supreme Court of the United States

WILLIAM CHARLES BURGESS,

Petitioner

v.

CHUCK BOWERS JR., WESLEY G.
NORRIS, DEBBIE JENKINS, STEPHEN
A. BALLARD, GREGORY H. STANLEY,
and DAVID THOMPSON,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

REPLY BRIEF FOR PETITIONER

William Charles Burgess
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Knoxville, TN 37931
865-230-5638

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- A. William Burgess Testimony**

- B. Officer Gregory Stanley Testimony**

ARGUMENT

1. Respondent claims William Burgess never pled an unreasonable search claim under the Fourth Amendment. The Fourth Amendment of the United States Constitution states the right of people to be secure “against searches and seizures”. [U.S. Const. amend IV] William Burgess made an unreasonable seizure claim which was recognized and addressed by the District Court. [Case 3:14-cv-00502-TAV-DCP, Doc. 70, Pg.24-31,Page ID#1142-1149] If Mr. Burgess has a reasonable expectation of privacy shouldn’t he have an expectation from unreasonable seizure in that area of privacy?

2. Respondent repeatedly misrepresents the record.

a. We have the police dash cam video/audio where Officer Ballard is telling his companions that he told his dog to “bite his ass”. This video was played during trial and Officer Stanley confirmed “that’s what he said” [Officer Stanley Testimony Case 3:14-cv-00502-TAV-DCP, Doc 61-10,61-11, Pg. 25-26, Page ID#782-783]

b. Respondent continually cites that Mr. Burgess kicked or stomped K-9 Marco's head before he was tased. However, according to Mr. Burgess's testimony of the dog attack and tasing, the dog was at Mr. Burgess's head, biting his fingers and forearms while Mr. Burgess was holding Marco's head. Then the tasing begins giving Marco the opportunity to fully attack Mr. Burgess. Mr. Burgess states that "not until after they are done tasing me. And when he (Officer Ballard) pulled him (Marco) back, he stayed down at my feet and ripped my shoe off and my sock off." [William Burgess Testimony, Case 3:14-cv-00502-TAV-DCP, Doc 61-18, Page 12-15, ID#939-942]

This is in contrast to respondents claim that Mr. Burgess attacked the dog with his foot before the use of tasers. Since there are disputed facts, shouldn't the Court view the evidence in a light most favorable to the non-moving party, William Burgess, and that all reasonable inferences should be construed in favor of William Burgess?

CONCLUSION

For the reasons stated above and in the Petition, this Court should grant certiorari.

1 through the whole rest of the ordeal. I don't
2 remember any instructions coming from my feet the
3 whole rest of the ordeal. I did hear instructions
4 from my right side. I did hear conversation from my
5 right side.

6 Q. To you or to the dog?

7 A. Both.

8 Q. Okay. And what was the dog doing when those
9 instructions were being given?

10 A. I was holding the dog just like this
11 (indicating) with my hands. I've got scars on my
12 fingers, scars on my arm, scars on the arm, scars on
13 these fingers.

14 MR. OGLE: Objection, Your Honor. May we
15 approach?

16 THE COURT: Certainly.

17 (Bench conference:)

18 MR. OGLE: These are the exact details of the
19 different injuries that the Court has already ruled
20 are inappropriate. It's inappropriate for him to
21 testify to these things. That goes to the civil
22 lawsuit. It's not relevant.

23 THE COURT: Well, I kept the pictures out,
24 but, now, if he wants to testify about what wounds
25 were inflicted, I can't keep him from doing that.

1 But bear in mind, this is not a damage lawsuit.
2 Let's just get that out, get it done and get it over
3 with.

4 MR. LOMONACO: But he's entitled to talk
5 about what happened to him.

6 THE COURT: That's what my ruling --

7 MR. LOMONACO: (Overlapping speech.)

8 THE COURT: That's what my ruling is.

9 (Open court:)

10 BY MR. LOMONACO:

11 Q. And those marks were from where? From the
12 dog?

13 A. Yeah, from the dog. The dog -- while I'm
14 holding him, he's -- he's jerking and twisting. So
15 he twists this arm off (indicating), this arm off
16 (indicating), and he bites this thumb (indicating) --
17 these -- most of my fingers have bite marks on them.
18 And my close part of my forearms have bite marks
19 because he twists his head and bites this side
20 (indicating), twists his head and bites this side
21 (indicating). I'm holding him like this
22 (indicating).

23 And then all of the sudden, I get tased. I
24 get tased multiple times. I get tased in the leg. I
25 get tased in the chest. I get tased in the arm. At

1 this time, I drop the dog this way (indicating) as
2 much as I can. Because I -- I have never been tased
3 in my li- -- I've never been arrested. I've never
4 even got a speeding ticket. I dropped the dog. I
5 laid there.

6 Q. Could you move -- I mean, could you -- could
7 you defend yourself?

8 A. I could not breathe, sir.

9 Q. And then what'd the dog do?

10 A. He latched onto this arm (indicating), which
11 I turned my head -- as I fell this way, he latched
12 onto this arm (indicating). And then -- have you
13 ever seen -- played tug-of-war with a dog before?
14 Has anybody ever done that? You give them a --

15 MS. COX: Objection, Your Honor.

16 THE COURT: Sustained. Please direct him to
17 answer.

18 **BY MR. LOMONACO:**

19 Q. The dog?

20 A. The dog grabbed my arm and jerked me through
21 the crawl space about three feet.

22 Q. Okay. Now, during any of this tasing going
23 on and during the time you were holding the dog, did
24 Officer Ballard ever pull his dog back away from you?

25 A. Not till after they were done -- not till

1 after they were done tasing me. And when he pulled
2 him back, he stayed down at my feet and ripped me
3 shoe off and my socks off, the dog did. Ripped my
4 shoe off and the socks off. You saw the shoe in the
5 picture.

6 MR. LOMONACO: May I approach, Your Honor?

7 THE COURT: Certainly.

8 BY MR. LOMONACO:

9 Q. May I show you this photograph? What's that
10 a picture of?

11 A. That's my left ankle, where the dog --

12 Q. You still have scars?

13 A. Yes.

14 MR. LOMONACO: May we make that the next
15 Exhibit, Your Honor, please?

16 THE COURT: Very well.

17 (Exhibit No. 15 marked and filed.)

18 MR. LOMONACO: I'll pass the witness.

19 THE COURT: Cross-examination.

20 MR. LOMONACO: May I publish this to the
21 jury, Your Honor, please?

22 THE COURT: Certainly.

23 (Exhibit No. 15 was published to the jury.)

24 MS. COX: If we can have just a moment, Your
25 Honor?

APP. B

1 objection?

2 THE COURT: I sustain the objection.

3 MR. LOMONACO: Okay.

4 **BY MR. LOMONACO:**

5 Q. What's the dog handler's name?

6 A. Officer Ballard.

7 Q. And isn't it a fact that Officer Ballard told
8 you, and once I got over there and he kept -- he was,
9 like, there was another hole that goes over there. I
10 keep watching and he keeps digging in the plastic,
11 and I can see the bottom of his shoe and that's when
12 I told him to bite his ass? That's what Officer
13 Ballard told to you, right?

14 A. Sir, as I said, that may very well be on the
15 tape, I don't know. I don't remember him saying that
16 to me.

17 MR. LOMONACO: Well, Your Honor, may I play
18 the tape to refresh his recollection?

19 THE COURT: Yes. We'll allow that.

20 MR. LOMONACO: Thank you, Your Honor.

21 (Video played:)

22 (Video stopped.)

23 **BY MR. LOMONACO:**

24 Q. "That's when I told him, bite his ass,"
25 right?

1 A. That's what he said. But that still doesn't
2 -- he never said that he bit his foot.

3 Q. So before you even got to see Mr. Burgess,
4 the dog handler was already telling his dog to bite
5 him, wasn't he?

6 MS. COX: Objection, I think that's a little
7 confusing and misleading. I'm not even sure I
8 understood that question.

9 THE COURT: You have the dog handler relating
10 to someone that he told the dog to bite the man.

11 MR. LOMONACO: Yes.

12 THE COURT: All right.

13 **BY MR. LOMONACO:**

14 Q. You indicated just a few minutes ago that
15 there was some commotion going on, but you didn't see
16 at first?

17 A. Yes. That is correct.

18 Q. Then you came around and you saw the dog
19 biting at his pant leg?

20 A. Yes, sir.

21 Q. Okay. But the dog handler told you that as
22 soon as he saw Mr. Burgess and the dog -- he saw
23 Mr. Burgess' foot, he told the dog, "I told him to
24 bite his ass." He told you that, didn't he?

25 A. Yes, sir.