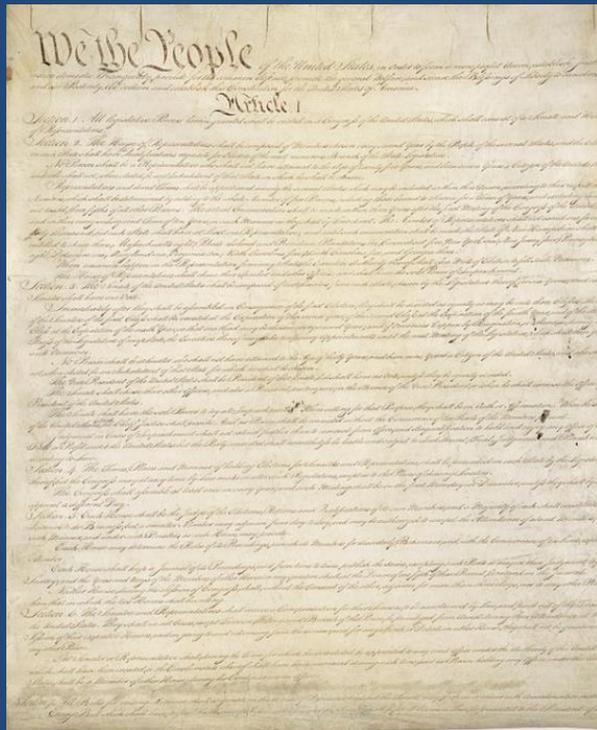


# Constitutional Provisions Applicable to Municipal and Justice Courts

Fall 2015 Mississippi Prosecutors  
Conference  
October 22, 2015



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# POWER OF JUDICIAL REVIEW

- The Supreme Court may review the constitutionality of acts of other branches of the federal government. It may also review state acts pursuant to the Supremacy Clause.
- *Marbury v. Madison*, 5 U.S. 137 (1803).
- The *Marbury* Court held that judicial review was implicit in the Constitution. The Constitution was a “supreme paramount law” not “alterable when the legislature shall please to alter it.” The Court saw judicial review as implicit in the judicial role, which was to “apply the rule to particular cases” by deciding which of the two or more conflicting law sources governs.

# Judicial Review

“It is emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule to particular cases, must of necessity expound and interpret that rule. If two laws conflict with each other, the courts must decide on the operation of each.”

*Marbury v. Madison*

# FEDERAL COURTS



# Federalism

- Exclusive Federal Powers
  - Some powers are exclusively federal because the Constitution limits or prohibits the use of the power by the States (*e.g.*, treaty power, coining money)
  - Other powers are exclusively federal because of the nature of the power itself is such that it can be exercised only by the federal government (*e.g.*, declaration of war, federal citizenship).

- Exclusive State Powers
  - All powers not delegated to the federal government are reserved to the States.
- Concurrent Power
  - Because of the Supremacy Clause, a federal law may supersede or preempt local laws.
  - If a state law conflicts with federal law, the state law will be invalidated.
  - If a state law prevents achievement of a federal objective, it will be invalidated.
  - Even if the state regulation is nonconflicting, a valid federal law may expressly or impliedly “occupy” the entire field and preclude any state regulation.

# Due Process (14<sup>th</sup> Amendment)

- State may not deny their citizens the privileges or immunities of national citizenship (e.g., the right to petition Congress for redress of grievances, the right to vote for federal officials, and the right to interstate commerce).
- Corporations are not protected by this clause.

- The 14<sup>th</sup> Amendment prevents States from depriving any person of life, liberty, or property without due process and equal protection of law.
- The 15<sup>th</sup> Amendment prevents both the federal and state governments from denying a citizen the right to vote on account of race or color.
- Generally, private conduct is not prohibited by these amendments, only where some state action is involved.
  - However, purely private conduct may be prohibited on a separate constitutional basis, such as the Commerce Clause.

# Criminal Procedure

- The 14<sup>th</sup> Amendment has incorporated the rights found in the first eight amendments are binding on the states.
- The only rights not binding on the states is the right to indictment by a grand jury, and the prohibition against excessive bail.
- However, most state constitutions, including Mississippi, create a right to bail and prohibit excessive bail. (Mississippi Constitution Article 3, Section 29).

# 4<sup>th</sup> Amendment

- Arrests and other detentions
  - A seizure occurs when a reasonable person would believe that he is not free to leave or terminate an encounter with the government.
  - An arrest occurs when the police take a person into custody against his will for purposes of criminal prosecution or interrogation.
    - An arrest must be based on probable cause or trustworthy facts sufficient for a reasonable person to believe that the suspect has committed a crime.
  - Warrant generally not required except for nonemergency home arrests.

# Investigatory Detentions

- Stop and Frisk (a/k/a “*Terry* stop”)
  - If police have a reasonable suspicion of criminal activity or involvement in a completed crime, supported by articulable facts (more than a hunch), they may detain a person for investigative purposes. If the police have reasonable suspicion that the detainee is armed, they may frisk him for their own protection.

# Automobile Stops

- Police may not stop a car unless they have at least reasonable suspicion to believe that a law has been violated.
- Roadblocks are allowed if they meet the following:
  - Cars stopped on the basis of some neutral, articulable standard (every car, every 3<sup>rd</sup> car)
  - Be designed to serve purposes closely related to a particular problem related to cars and their mobility (drunk driving).

# Searches

- Like arrests, searches and seizures must be reasonable to be valid. Reasonableness requires a warrant unless an exception applies. When determining if a search is valid ask:
  - Does the defendant have a reasonable expectation of privacy in the place or thing searched.
  - Did the police have a valid warrant
  - If the police did not have a warrant, does an exception apply?

# Reasonable Expectation of Privacy

- Standing
  - A person must have a legitimate expectation of privacy. The determination is based on a totality of the circumstances.
    - Did he own or have a right to possession of the place searched?
- Things held out to the public
  - No expectation of privacy in such things as the sound of your voice, your handwriting, land visible from a public place (including an airplane), the smell of your luggage, garbage, or account records held by a bank.

# Search Warrants

- Showing Probable Cause
  - A warrant will be issued only if there is probable cause to believe that seizable evidence will be found on the person or premises to be searched.
  - Officers must submit an affidavit to a neutral and detached magistrate setting forth circumstances enabling the magistrate to make a determination of probable cause independent of the officer's conclusion.

# Exception to the Warrant Requirement

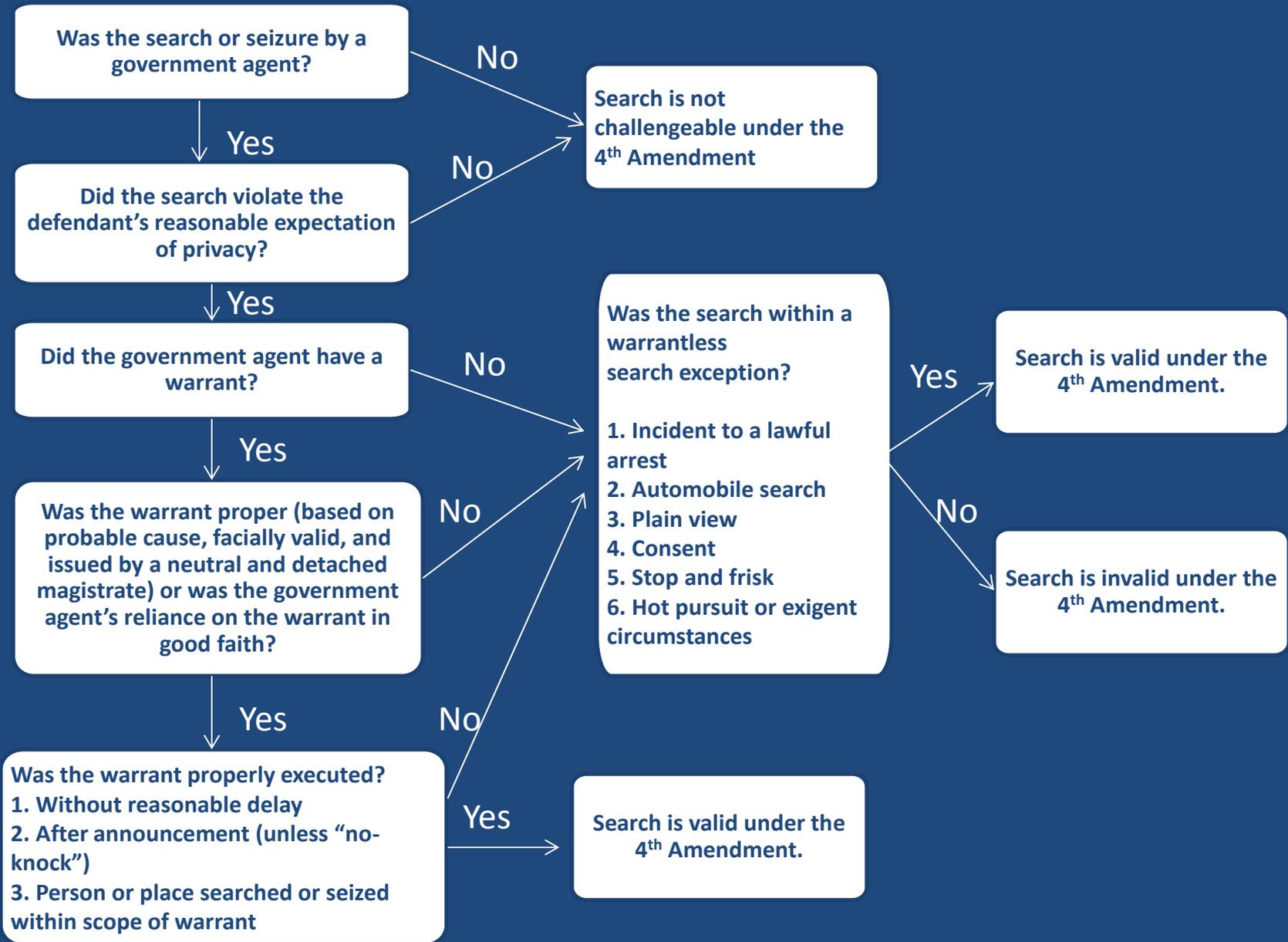
- Search Incident to a lawful arrest
  - Police may search the person and areas into which he might reach to obtain weapons or destroy evidence (wingspan).
- Automobile Exception
  - If probable cause exists, police may search the whole vehicle and any container that might reasonably contain the item for which they had probable cause to search.

- Plain view
  - Police may make a warrantless seizure when they:
    - Are legitimately on the premises
    - Discover evidence of a crime or contraband
    - See the evidence in plain view
    - Have probable cause to believe the evidence is contraband
- Consent
  - A warrantless search is valid if police have a voluntary and intelligent consent. The person giving consent must have authority to allow the search.

- Stop and Frisk
  - Must have an articulable and reasonable suspicion of criminal activity
  - The frisk is generally limited to a patdown of outer clothing
  - Can seize any item that the officer reasonably believes, based on his “plain feel,” is a weapon or contraband
- Hot pursuit, Exigent Circumstances
  - Police in hot pursuit of a fleeing felon can make a warrantless search and seizure and may even pursue the suspect into a private dwelling
  - Police may seize without a warrant evidence likely to disappear before a warrant can be obtained
  - Contaminated food or drugs, children in trouble, and burning fires may justify warrantless searches and seizures.

- **Administrative Inspections**
  - Inspectors must have a warrant for searches of private residences and commercial buildings, but the probable cause required is more lenient. A showing of a general and neutral enforcement plan will justify the warrant.
- **Border Searches**
  - Neither citizens or noncitizens have any 4<sup>th</sup> Amendment rights at the border.
- Types of valid warrantless searches include, inventory searches of arrestees, airline passengers, probationers' home, government employees' desks and offices, and drug tests for railroad employees in an accident and public school students who participate in extracurricular activities.

# Search and Seizure Chart



# Exclusionary Rule

- This is a judge-made doctrine that prohibits introduction of evidence obtained in violation of a defendant's 4<sup>th</sup>, 5<sup>th</sup>, or 6<sup>th</sup> Amendment rights.
- Illegally obtained evidence, and all “fruit of the poisonous tree” evidence (or evidence derived from the illegal evidence), must be excluded.

# Exceptions

- Exception to the “fruit of the poisonous tree” evidence:
  - Evidence obtained from an independent source
  - An intervening act of free will by the defendant
  - Inevitable discovery
- Tainted evidence can still be used if the police acted in good faith
- Excluded evidence can also be used for impeachment purposes

# Recent 4<sup>th</sup> Amendment Cases

- ***Rodriguez v. United States***, 135 S.Ct. 1609 (2015) (once a traffic stop is completed, a dog sniff is unreasonable without additional reasonable suspicion).
- ***Heien v North Carolina***, 135 S.Ct. 530 (2014) (a stop initiated by an Officer's reasonable mistake of law is not a violation of the 4th Amendment).
- ***Navarette v. California***, 134 S.Ct. 1683 (2014) (an anonymous call can provide officers with reasonable suspicion to make an investigatory stop of a person driving under the influence when the caller has a sufficient eyewitness basis of knowledge).
- ***Cook v. State***, 159 So.3d 534 (Miss. 2015).

# Recent 4<sup>th</sup> Amendment Cases

- ***Riley v. California***, 134 S.Ct. 2473 (2014) (police may not search an arrested individual's cell phone data without a warrant).
- ***Fernandez v. California***, 134 S.Ct. 1126 (2014) (An objecting occupant does not have a 4th Amendment right to suspend all searches of a residence when another occupant consents to the search. The objecting occupant must be present at the residence to assert a 4th Amendment right).

# 5<sup>th</sup> Amendment

- Confessions
  - For a self-incriminating statement to be admissible under the Due Process Clause, it must be voluntary, as determined by the totality of the circumstances. A statement will be involuntary only if there is some official compulsion.
  - For a confession to be admissible, a person in custody must, prior to interrogation, be read *Miranda* rights warnings.

# *Miranda* Requirement

- Government conduct
  - Warnings are only necessary when interrogation is by a government agent
- Custody Requirement
  - Defendant must be in custody. A traffic stop does not constitute custody.
- Interrogation
  - The questions or conduct by police would likely elicit a response from the defendant. Routine booking questions are not interrogation.

# Right to Terminate Questioning

- The defendant may terminate police interrogation any time prior to or during the interrogation by invoking either the right to remain silent or the right to counsel.
- If the accused unambiguously indicates that he wants to speak to an attorney, all questioning must cease until counsel is provided.
- A defendant can voluntarily reinitiate questioning.

# Public Safety Exception

- The Supreme Court has allowed interrogation without *Miranda* warnings where it was reasonably prompted by a concern for public safety (e.g., to locate a hidden gun that could have caused injury to innocent persons).

# Privilege Against Compelled Self-Incrimination

- Only natural persons may assert the privilege, not corporations or partnerships. The privilege is personal and so may be asserted by a defendant, witness, or party only if the answer might tend to incriminate him.
- Merely being required to furnish one's name generally does not violate the 5<sup>th</sup> Amendment because disclosure of one's name generally poses no danger of incrimination.

- The privilege only applies to testimonial evidence.
- He can be compelled to produce non-testimonial evidence, such as blood, even if it does incriminate him.
- A prosecutor can not comment on a defendant's silence after being arrested and read his *Miranda* rights, nor can he comment on the defendant's failure to take the stand.

# Double Jeopardy

- The 5<sup>th</sup> Amendment also protects against Double Jeopardy. A person may not be retried for the same offense once jeopardy has attached.
- Jeopardy attaches in a jury trial at the empaneling and swearing of the jury.
- In bench trials, jeopardy attaches when the first witness is sworn.

# Separate Sovereigns

- Double jeopardy does not apply to trials by separate sovereigns. A person may be tried for the same conduct by both the state and the federal government or by two states, but not by a state and its municipalities.
- Municipalities are considered part of the state.

# 6<sup>th</sup> Amendment

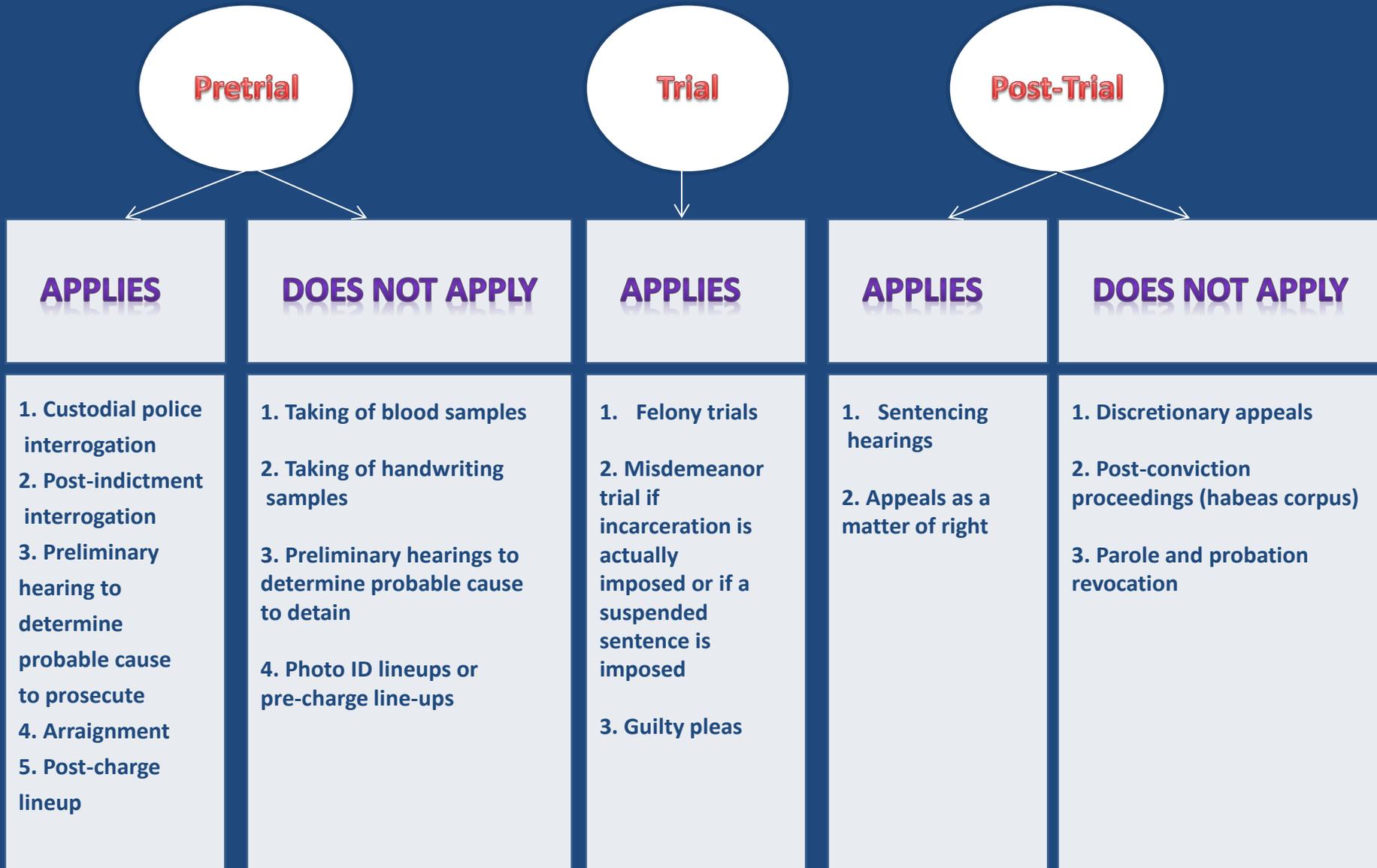
- The 6<sup>th</sup> Amendment right to counsel differs from the 5<sup>th</sup> Amendment right.
- Under the 6<sup>th</sup> Amendment, there is a right to counsel at every critical stage of trial. These include, custodial police interrogation, post-indictment interrogation, preliminary hearings, arraignment, post-charge line-ups, guilty pleas and sentencing, felony trials, misdemeanor trials when imprisonment or a suspended sentence is imposed, and appeals that are a matter of right.

- Pro Se representation
  - A defendant has a right to waive counsel and represent himself at trial. The judge must find the waiver is knowing and voluntary. The defendant does not need to be found capable of representing himself effectively.
  - There is no federal constitution right to self-representation on appeal. In fact, there is no federal constitutional right to appeal.
  - The right to appeal in Mississippi is a statutory right: § 99-35-101 from circuit court, § 11-51-79 from county court, and § 99-35-1 from justice and municipal courts.

# Effective Assistance of Counsel

- The 6<sup>th</sup> Amendment right to counsel includes the right to *effective* assistance.
- Any ineffective assistance claim must show:
  - Deficient performance by counsel, and
  - But for the deficiency, the result of the proceeding would have been different

# Right to Counsel chart



# Confrontation Clause

- The 6<sup>th</sup> Amendment grants the defendant the right to confront the witnesses against him.
- The right to confront trumps hearsay exceptions.
- The right is not absolute, as a judge can protect a child witness and can also remove a disruptive defendant. A defendant can also voluntarily waive his presence.

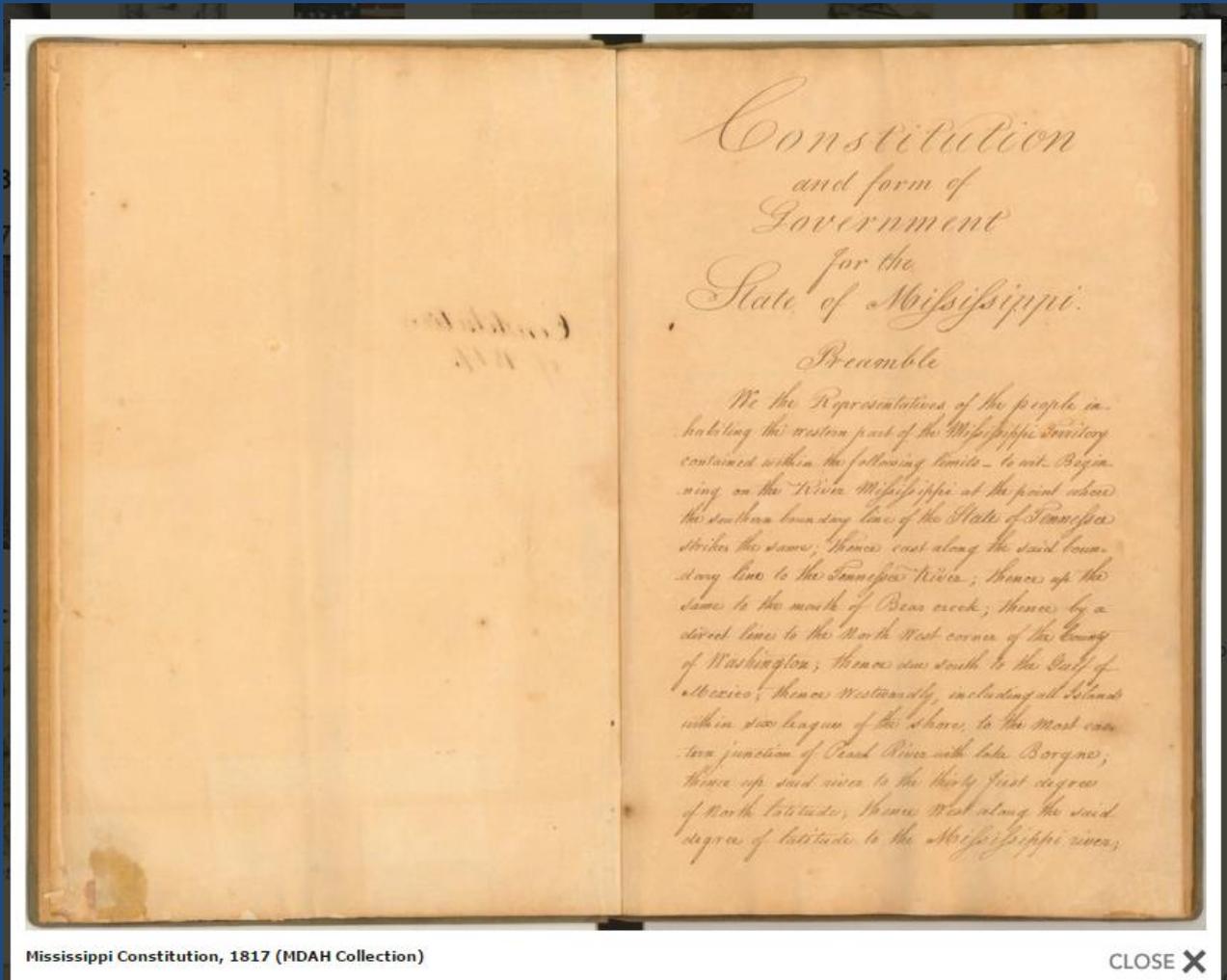
# 5<sup>th</sup> and 6<sup>th</sup> Amendment Right to Counsel

- 5<sup>th</sup> Amendment
  - Request must be unambiguous
  - When a defendant invokes the right to counsel, this is a *per se* bar to further police-initiated interrogation.
  - Re-interrogation is only permissible once defendant's counsel has been made available to him, or he himself initiates further communication, exchanges, or conversations with the police.
- The 6<sup>th</sup> Amendment
  - Right to counsel is “offense specific.” In other words, if a defendant makes a 6<sup>th</sup> Amendment request for counsel for one charge, he must make another request if he is subsequently charged with separate, unrelated charge. He can also be questioned without counsel concerning the unrelated charge.

# Sentencing

- The 8<sup>th</sup> Amendment prohibits cruel or unusual punishment. A penalty that is grossly disproportionate to the seriousness of the offense committed is cruel and unusual.
- Habitual offender sentence for minor offense not cruel and unusual.
- Rules of evidence do not apply during sentencing. Defendant has no right of confrontation and hearsay can be used.
- Generally, if the sentence is within the statutory maximum, the sentence will be upheld.

# MISSISSIPPI CONSTITUTIONAL HISTORY



# Constitution of 1817

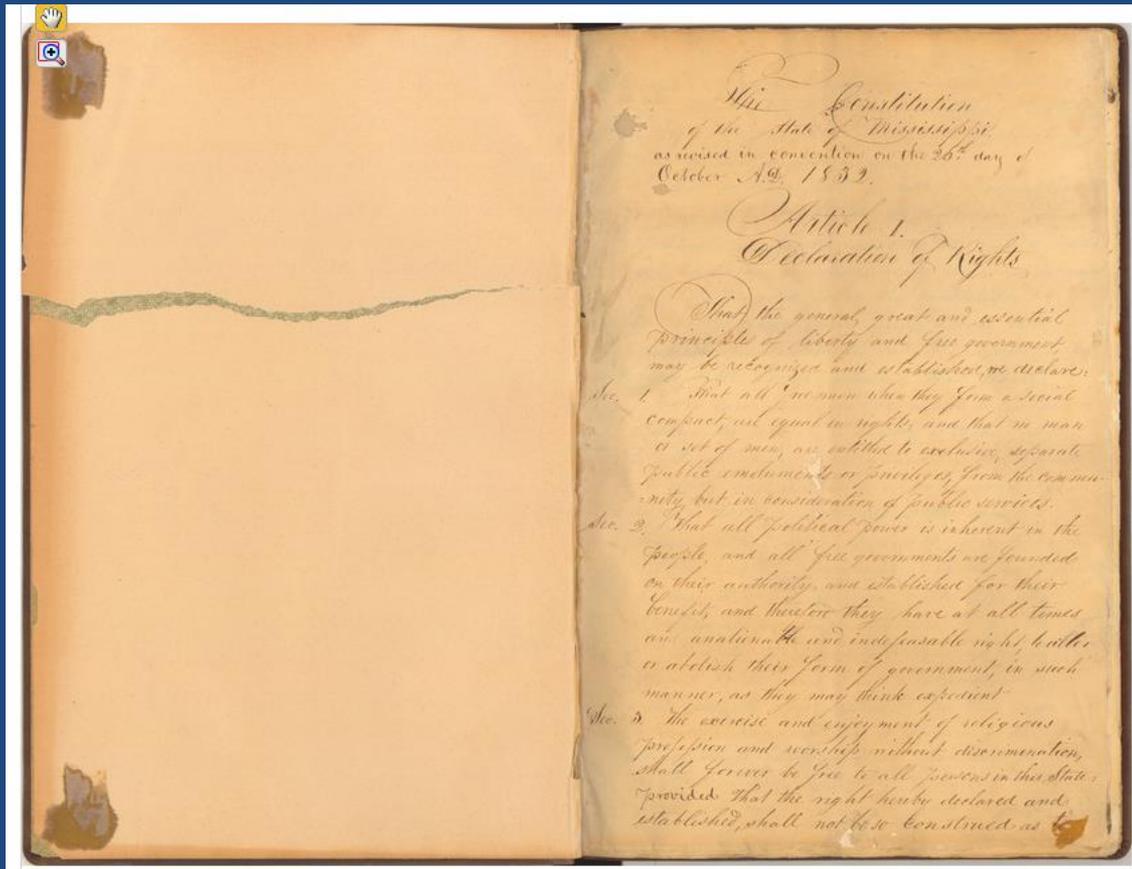


# Constitution of 1817

- Mississippi's first Constitution was adopted in 1817.
- It created three branches of government similar to the national government.
- Judges were elected by the legislature to serve on good behavior until age 65.

# Constitution of 1832

## Jeffersonian Democracy

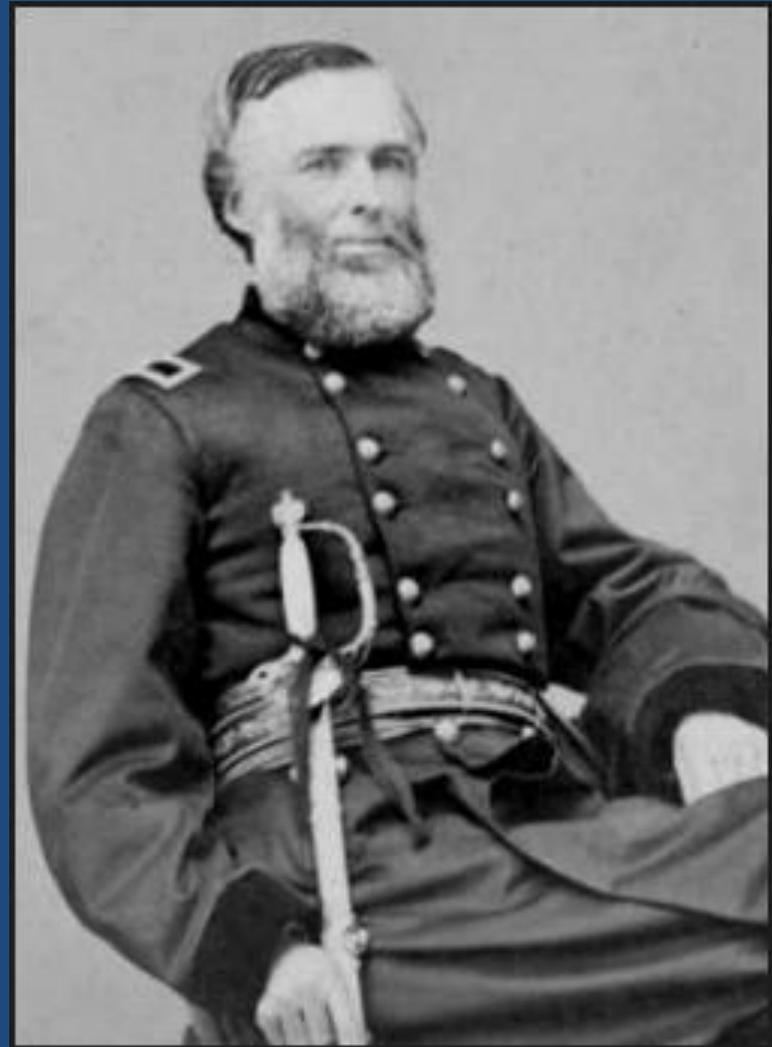
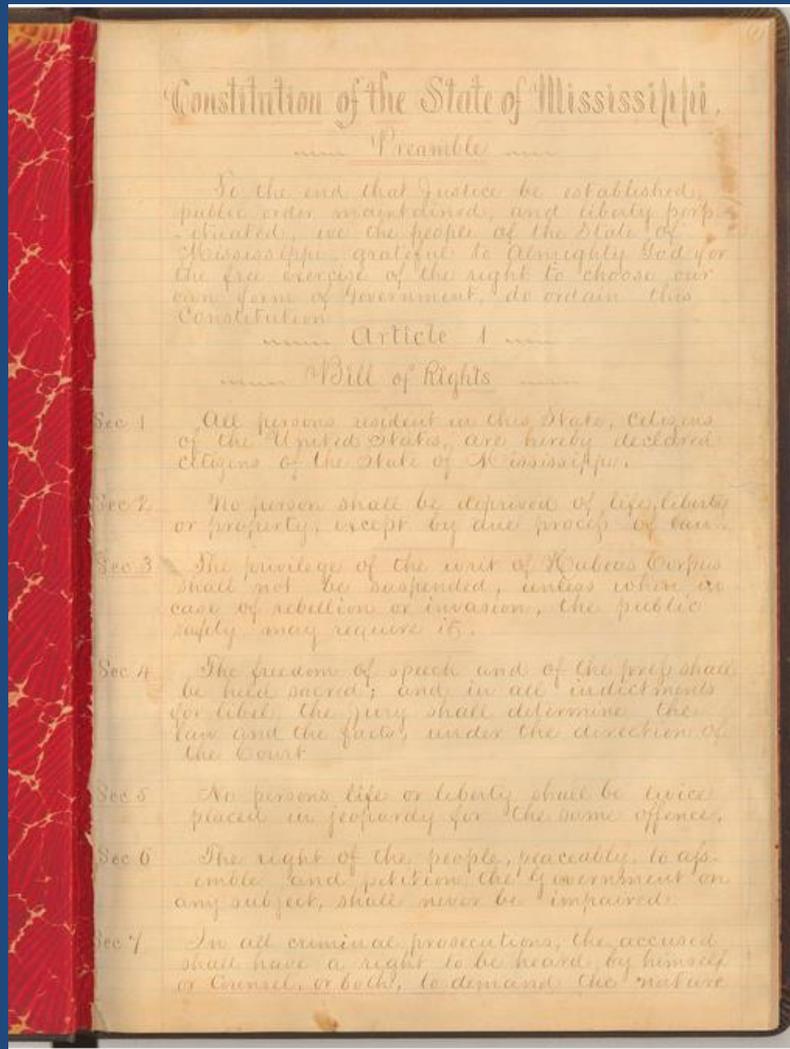


# Constitution of 1832

- In 1832 a more democratic constitution was adopted.
- All major public officials were to be elected.
- Property qualifications to vote and hold office were abolished.
- People could not longer be jailed for failure to pay a debt.
- Any white male resident of the state over age 21 could vote.

# Constitution of 1868

## The Black and Tan Convention



# Constitution of 1868

- After the Civil War, the state adopted a new constitution, which was ratified by voters on December 1, 1869.
- Formally abolished slavery, and was similar to state constitutions of northern states.
- All citizens were given equal civil and political rights.
- Citizens were given the rights of trial by jury and freedom of speech, press, assembly, and petition.
- There was no property qualifications for jury service, holding office, or voting.
- It even established a system of free public education.

# Constitution of 1890

We, the people of Mississippi, in Convention assembled, grateful to Almighty God, and invoking His blessing on our work, do ordain and establish this Constitution.

## Article 1

### Distribution of powers

Sec. 1. The powers of the government of the State of Mississippi shall be divided into three distinct departments, and each of them confided to a separate magistracy, to wit: those which are legislative to one; those which are judicial to another; and those which are executive to another.

Sec. 2. No person or collection of persons, being one, or belonging to one, of these departments, shall exercise any power properly belonging to either of the others. The acceptance of an office in either of said departments shall, of itself, and at once, vacate any and all offices held by the person so accepting in either of the other departments.

## Article 2

### Boundaries of the State

Sec. 3. The limits and boundaries of the State of Mississippi are as follows, to wit: Beginning on the Mississippi river (meaning thereby the center of said river or thread of the stream) where the southern

# Constitution of 1890

- Many state leaders viewed the 1868 constitution as a document forced on the state during Reconstruction.
- During a new constitutional convention, key provisions of the 1868 constitution were removed, such as the allowing blacks to sit on juries and the right of all citizens to travel on public conveyances.
- Although the new constitution allowed all adult males to vote (except idiots, the insane, and Indians), several restrictions were imposed. A voter had to register 4 months before an election and must not have committed a major crime. A poll tax was also imposed, which had to be paid two years in advance.
- The Constitution of 1890 was never placed before the voters for ratification.

# Constitution of 1890

- The Mississippi Constitution 1890 remains the current constitution.
- It has a preamble and 15 Articles. Article 3 has the State's version of a Bill of Rights.
- The Mississippi Constitution has been interpreted to provide greater protections than the U.S. Constitution in a few key areas.
- Judicial review is similar to federal judicial review. The Supreme Court has the final determination of what is constitutional under state law.

# Constitution of 1890

- A federal court may not interpret the State Constitution. We reserve the “sole and absolute right” to interpret the Mississippi Constitution. *Penick v. State*, 440 So.2d 547, 551 (Miss.1983)..... [T]he State reserves the right to determine state constitutionality.

*Pro-Choice Mississippi v. Fordice*, 716 So. 2d 645, 665-66 (Miss. 1998).



# Federal law v. State Law

# Presumption is that Protections are similar

- ...[W]e believe it wise to begin with the presumption that similar sections of the United States Constitution and the Mississippi Constitution ought to be construed similarly. As a general rule, the imposition of two different standards would introduce unnecessary confusion among lawyers, judges, and law enforcement officers throughout the state. [citation omitted] We must determine whether there is anything in the history or language of our Constitution which overcomes this initial presumption.

***McCrary v. State***, 342 So. 2d 897, 900 (Miss. 1977).

The Mississippi Constitution “is to be liberally construed in favor of the citizen.” ***State v. Bates***, 192 So. 832, 836 (1940).

# Right to Counsel



# Right to Counsel During Interrogations

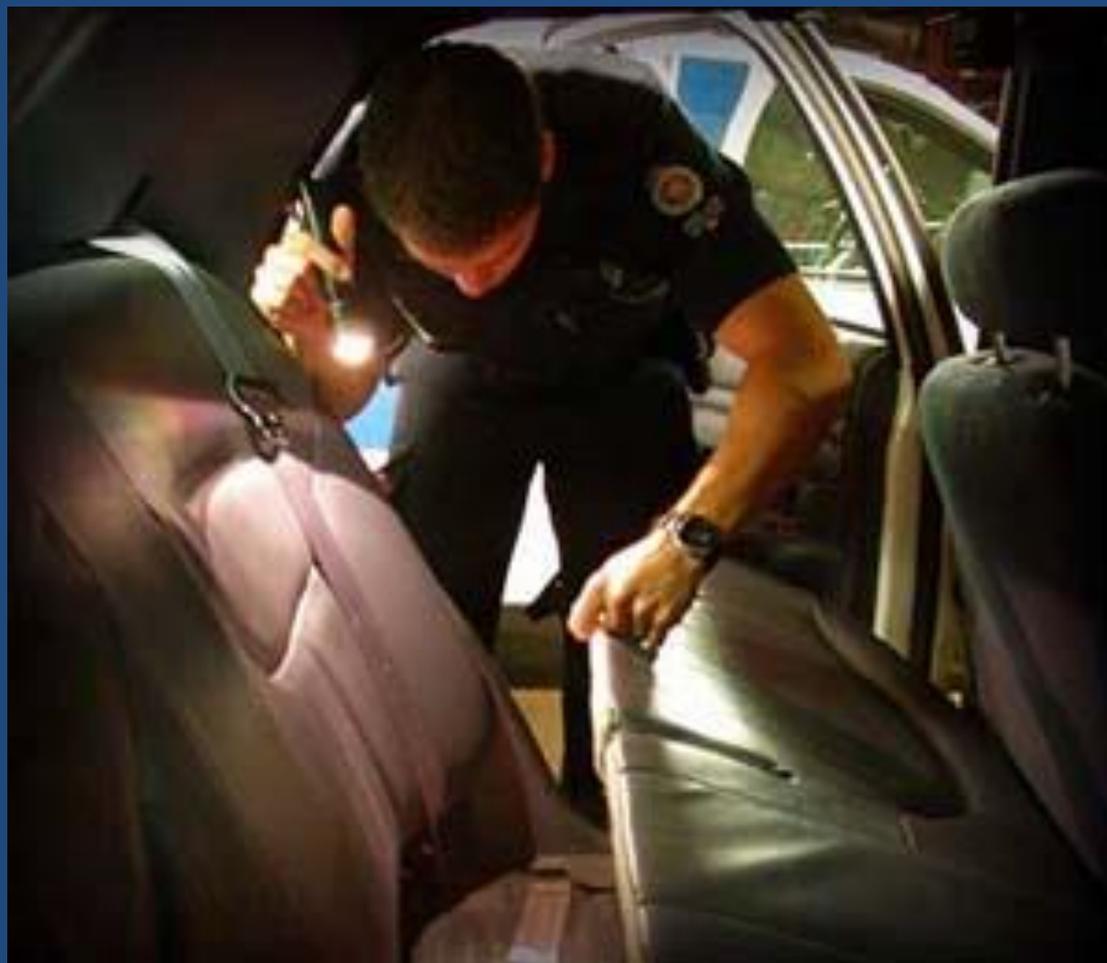
- Under the 5<sup>th</sup> Amendment, if a defendant unambiguously invokes the right to counsel, all questioning must cease. *Davis v. US*, 512 US. 452 (1994).
- However, under the Mississippi Constitution, when a defendant makes an ambiguous request for counsel, police must cease the interrogation and only ask questions to clarify the request for counsel. See *Downey v. State*, 144 So.3d 146, (¶ 13) (Miss.2014) (defendant stated she had an attorney and “could use him” required clarification).
- See also *Collins v. State*, No. 2013-CT-00761-SCT (Miss. August 20, 2015) (error in determining Collins reinitiated contact with police after invoking his rights).

# Right to Counsel

- The right to counsel attaches at the “accusatory stage.”
- The only difference between the state and 6<sup>th</sup> Amendment federal right is the time of attachment.
- Under §99–1–7, prosecution commences with “the issuance of a warrant, or by binding over or recognizing the offender to compel his appearance to answer the offense, as well as by indictment or affidavit.”
- An accused has the right to counsel at all “critical stages” after he is in custody.

***Howell v. State***, No. 2013-CA-01027-SCT (¶35-36) (Miss. Oct. 9, 2014).

# Search and Seizure



# Search and Seizure

- As stated in *Scott v. State*, 266 So.2d 567, 569–70 (Miss.1972), “the protection afforded by Section 23 of our Constitution should be liberally construed in favor of our citizens and strictly construed against the state.”
- Section 23 of the Mississippi Constitution provides greater protections to our citizens than those found within the United States Constitution.

*Graves v. State*, 708 So. 2d 858 (¶17-18) (Miss. 1997).

# Search and Seizure

- In Mississippi, the Court uses a two-part inquiry to determine the reasonableness of a search and seizure: (1) whether the officer's action was justified at its inception, and (2) whether it was reasonably related in scope to the circumstances which justified the interference in the first place.

*Eaddy v. State*, 63 So. 3d 1209, 1212-13 (Miss. 2011), citing *Gonzales v. State*, 963 So.2d 1138, 1141 (Miss.2007).

# Good Faith Exception

- Further, the Good Faith Exception under *Leon v. United States*, 468 U.S. 897, 922–23 (1984), should apply only in unique circumstances, such as where the officer's reliance on an invalidated search warrant was “objectively reasonable.”
- The good-faith exception does not preclude the exclusionary rule.

*Eaddy v. State*, 63 So. 3d 1209, 1214-15 (Miss. 2011)

# *Eaddy v. State*

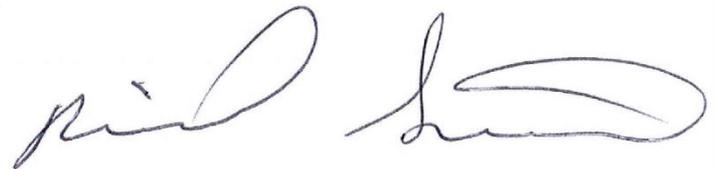
- Because Wendell Barnes's arrest warrants and the caller's uninvestigated information failed to create reasonable suspicion to justify an investigatory stop of Eaddy or the vehicle, the trial court's determination cannot withstand the substantial-evidence standard. [citation omitted] Even if we find that the stop was justified at its inception, the officers exceeded the scope required to resolve the driver's identity. *Eaddy*, at 1216 (¶ 25).

# *Chesney v. State*, 165 So.3d 498 (Miss.Ct.App. May 19, 2015)

## UNDERLYING FACTS AND CIRCUMSTANCES

ON 8-23-11 MRS. STEWART CAME TO THE PD TO FILE A COMPLAINT ON IDENTITY THEFT. MRS. STEWART STATED THAT SOMEONE HAD STOLE A PICTURE OFF OF HER FACEBOOK PAGE AND CREATED ANOTHER FACEBOOK ON HER. THIS PERSON HAS SINCE DEFRAUDED, SLANDER, USED HER IDENTITY IN SUCH A WAY WHICH BECAME HARMFULL TO THE JOB IN WHICH MRS. STEWART HELD. I SENT FACEBOOK A SUBPOENA AND RECEIVED BACK INFORMATION ON A AMANDA WARREN. I HAVE SINCE RECEIVED INFORMATION FROM JOHN PAUL DOVE FROM MERIDIAN MS. STATING THAT IT WAS IN FACT A STAN CHESNEY WHO WAS USING THE NAME OF SHERRI STEWART. MR. DOVE STATED IT STARTED BACK IN 2010 WITH DIFFERENT USERS AND THEN SHERRI STEWARTS NAME WITH THE SAME MESSAGES AND PATTERN AS BEFORE.

*Steve Cumberland*  
*Municipal Judge*  
*12-19-11*



***Chesney v. State*, 165 So.3d 498  
(Miss.Ct.App. May 19, 2015)**

RECEIVED BACK INFORMATION ON A AMANDA WARREN. I HAVE SINCE RECEIVED INFORMATION FROM JOHN PAUL DOVE FROM MERIDIAN MS. STATING THAT IT WAS IN FACT A STAN CHESNEY WHO WAS USING THE NAME OF SHERRI STEWART. MR. DOVE STATED IT STARTED BACK IN 2010 WITH DIFFERENT USERS AND THEN SHERRI STEWARTS NAME WITH THE SAME MESSAGES AND PATTERN AS BEFORE.

*Chesney v. State*, 165 So.3d 498  
(Miss.Ct.App. May 19, 2015)

- The affidavit for the original search warrant never described the information from informant as being reliable or credible.
- Any reliance by the police on the underlying facts to support probable cause for the warrant was "entirely unreasonable," so the good faith exception can not apply.

# Pro Se Representation

- Although *Faretta v. California*, 422 U.S. 806 (1975), found a federal constitutional right to self-representation, the Mississippi Constitution goes further.
- Under Article 3, Section 26, if a defendant is mentally competent, he has a right to discharge his attorneys and represent himself at trial and on appeal. *Grim v. State*, 102 So. 3d 1073, 1076-77 (¶4-5) (Miss. 2012).
- He also has the right to file supplemental briefing on issues his attorney did not raise. *Barber v. State*, 143 So. 3d 586, 589 n.1 (Miss. Ct. App. 2013).

# Problem Areas

- Right to Counsel. A defendant has the right to counsel in misdemeanors if he could be sentenced to jail, including a suspended jail term. *Shelton v. Alabama*, 535 U.S. 654 (2002).
- Guilty plea colloquy must include informing defendants of this right and warning them of the dangers of self-representation.
- In the Manual for Mississippi Municipal Court Judges, Chapter 24, there is a checklist which goes over the requirements to inform defendants of the right to counsel, and to insure a voluntary, knowing and intelligent waiver of counsel.
- JC Rule 3.08 also requires that the court inform a defendant that he has a right to an attorney at every stage of the proceedings and that one will be appointed to represent him if he is indigent.

# RULE 3.8 SPECIAL RESPONSIBILITIES OF A PROSECUTOR

- (b) make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel;
- (c) not seek to obtain from an unrepresented accused a waiver of important pretrial rights, such as the right to a preliminary hearing;

# Rule 3.8 Comment

- A prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations to see that the defendant is accorded procedural justice and that guilt is decided upon the basis of sufficient evidence.

# Trials in Absentia

- Trial in absentia is allowed under Mississippi law, but they still have to be trials. Evidence must be presented to show the defendant's guilt beyond a reasonable doubt.
- It is insufficient to call a defendant's name three times and when he fails to answer, find him guilty and sentence him.
- The defendant's absence must be wilful, voluntary, and deliberate. *Jay v. State*, 25 So. 3d 257, 264 (¶38) (Miss. 2009).
- Even traffic tickets require the officer who wrote the ticket to be present. Op. Atty. Gen. No. 2001-0778, Arnold, Jan. 11, 2002.

# Bail Issues

- The Mississippi Constitution prohibits municipal and justice courts from no bonding defendants. Only circuit and county courts can deny bail.
- Excessive bail is considered tantamount to a denial of bail. *Brown v. State*, 217 So.2d 521, 523 (Miss.1969).
- Much litigation around the country now on cash bonds and bond schedules. Bail should be determined on the facts and the circumstances of the individual defendants in each case.

# State Law

- “A consideration of the equal protection and due process rights of indigent pretrial detainees leads us to the inescapable conclusion that a bail system based on monetary bail alone would be unconstitutional.”
- *Lee v. Lawson*, 375 So. 2d 1019, 1023 (Miss. 1979).

# Municipal Courts

- ...[the municipal judge] may sit as a committing court in all felonies committed within the municipality, and he shall have the power to bind over the accused to the grand jury or to appear before the proper court having jurisdiction to try the same, and to set the amount of bail *or refuse bail and commit the accused to jail in cases not bailable.*
- Miss. Code. Ann. § 21-23-7 [emphasis added].

# Bail Guidelines

- 1) Defendant's length of residence in the community;
- 2) His employment status and history and his financial condition;
- 3) His family ties and relationships;
- 4) His reputation, character and mental condition;
- 5) His prior criminal record, including any record of prior release on recognizance or on bail;
- 6) The identity of responsible members of the community who would vouch for defendant's reliability;
- 7) The nature of the offense charge and the apparent probability of conviction and the likely sentence, insofar as these factors are relevant to the risk of non-appearance; and
- 8) Any other factors indicating the defendant's ties to the community or bearing on the risk of willful failure to appear.

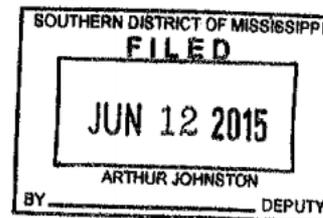
# Two Main Considerations...

- (1) The severity of the offense – (is defendant a danger to the community), and
- (2) The probability that the accused will appear for trial.

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI, SOUTHERN DIVISION

\_\_\_\_\_  
CHEVON ELIZABETH THOMPSON, et al.)  
Plaintiffs, )  
v. )  
MOSS POINT, MISSISSIPPI, )  
Defendant. )  
\_\_\_\_\_

Case No.  
(Class Action)



1:15cv102LG-RTW  
3:22pm

CLASS ACTION COMPLAINT

Introduction

This case is about the City of Moss Point jailing some of its poorest people because they cannot pay a small amount of money. Chevon Elizabeth Thompson was arrested within the past 24 hours and is currently detained by the City because she cannot afford to pay the amount of money generically set by the secured "bail schedule" used by Moss Point.

In Moss Point, most people arrested for traffic or misdemeanor offenses are released immediately upon payment of a small amount of money. The amount of the bond ranges from

U.S.

# Lawsuit: Court Illegally Jails People Who Can't Pay Fines

By THE ASSOCIATED PRESS OCT. 13, 2015, 8:33 P.M. E.D.T.

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JACKSON, Miss. — Seven people have sued Mississippi's capital city, saying its municipal court illegally jailed them because they couldn't pay court fines.

The federal lawsuit against Jackson, spearheaded by two nonprofit legal groups, is a prong in a nationwide fight over how poor people should be treated by the criminal justice system.

Similar suits have been filed in Alabama,

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# Imprisonment for Debt

- Article 3, Section 30 simply says “There shall be no imprisonment for debt.”
- The U. S. Supreme Court expressly held (9-0), that a court cannot imprison a defendant for inability to pay a court-ordered fine. *Bearden v. Georgia*, 461 U.S. 660 (1983). This is a 14<sup>th</sup> Amendment violation.
- If a State determines a fine or restitution to be the appropriate and adequate penalty for the crime, it may not thereafter imprison a person solely because he lacked the resources to pay it.
- The court must find the defendant has willfully refused to pay the fine or restitution when he has the resources to pay or has failed to make sufficient bona fide efforts to seek employment or borrow money to pay, before using imprisonment as a sanction to enforce collection.

# Federal Law

- We conclude that the trial court erred in automatically revoking probation because petitioner could not pay his fine, without determining that petitioner had not made sufficient bona fide efforts to pay or that adequate alternative forms of punishment did not exist.
- ***Bearden v. Georgia***, 461 U.S. 660, 661-62 (1983).

# State Law

- § 99-19-20 (2) only allows imprisonment for a fine if a defendant is found to be able, but unwilling to pay. However, he can be required to under (1) “to work on public property for public benefit under the direction of the sheriff for a specific number of hours,…”
- See also *Berdin v. State*, 648 So. 2d 73, 78 (Miss. 1994), which held the court must determine a defendant is delinquent with court ordered payments. “This inquiry is mandated by the United States Constitution. The failure to conduct this type of inquiry is a due process violation.”
- The Mississippi Supreme Court has also recognized an equal protection problem in these type of situations.

***Payne v. State,***  
462 So. 2d 902 (Miss. 1984)

- “We have previously held that a court may not first fine a defendant and then, because of his indigency, convert the fine into a jail sentence for failure of the defendant to make immediate payment of the fine. ***Nelson v. Tullos***, 323 So.2d 539 (Miss.1975). The discrimination based upon indigency which we condemned in ***Nelson*** is present as well in a sentence which expressly conditions the length of imprisonment upon the ability to make immediate payment of a fine. ***Tate v. Short***, 401 U.S. 395, 91 S.Ct. 668, 28 L.Ed.2d 130 (1971); ***Frazier v. Jordan***, 457 F.2d 726 (5th Cir.1972).”



**KEEP  
CALM  
AND  
ASK  
QUESTIONS**