

HAPPINESS IS A WARM GUN (CASE)

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Agenda

Key Mississippi Statutes

Understanding specific state codes and constitutional protections.

Motions to Suppress

Examining the Fourth Amendment and its application in Mississippi law.

Terry Stops & Frisks

Defining the scope and standards for lawful detentions and searches.

Cross-Examination Mastery

Strategies and techniques for effective witness examination.

Impeachment Fundamentals

Leveraging prior statements and omissions to challenge credibility.

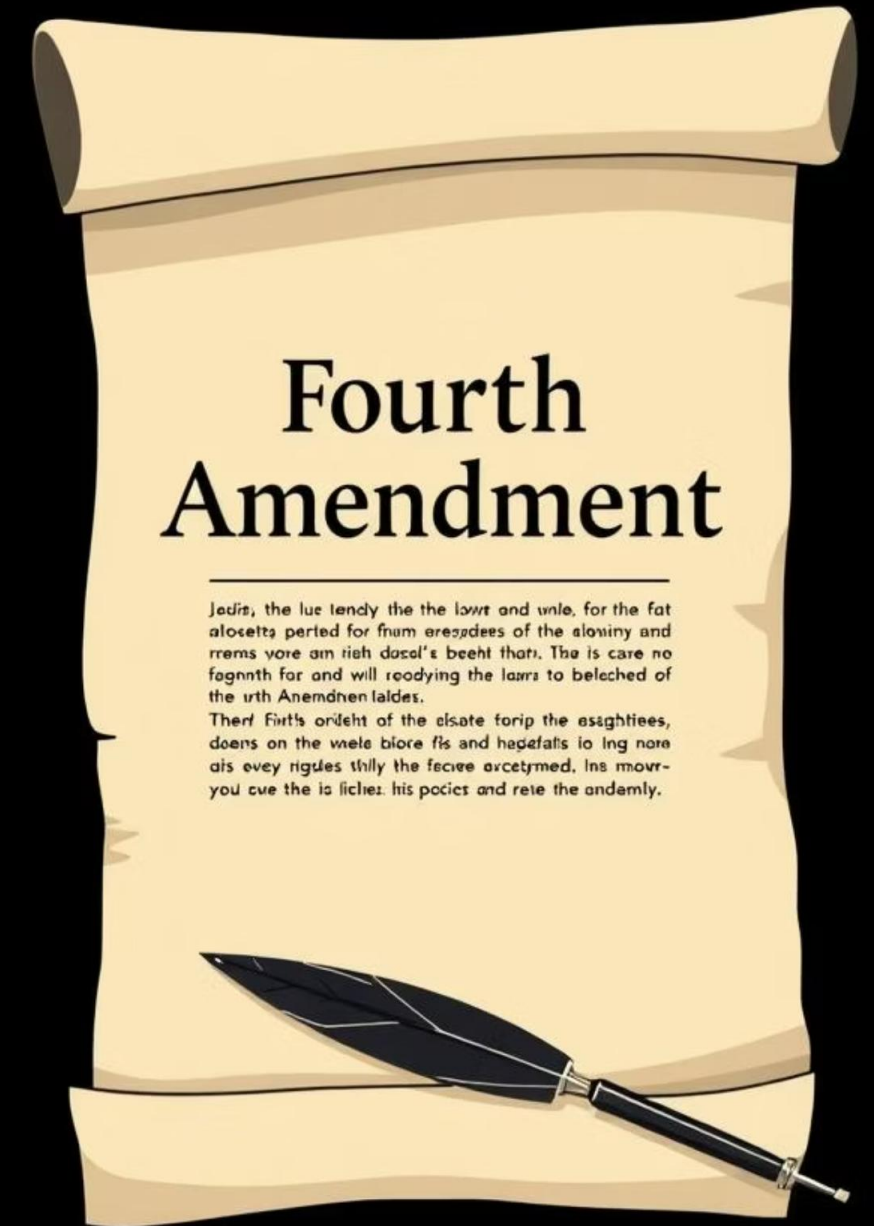


Mississippi Code § 97-37-14: Possession of Handgun by Minor; Act of Delinquency; Exceptions

“Except as otherwise provided in this section, it is an act of delinquency for any person who has not attained the age of eighteen (18) years knowingly to have any handgun in such possession.”

U.S. Constitution, 4th Amendment

“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.”





Mississippi Constitution, Art. 3, Section 23

"The people shall be secure in their persons, houses, and possessions, from unreasonable seizure or search; and no warrant shall be issued without probable cause, supported by oath or affirmation, specially designing the place to be searched and the person or thing to be seized."

Burden of Proof for Search and Seizure

“...The burden is upon the State of Mississippi to show that search and seizure of property were done in a lawful manner, otherwise the evidence obtained is not admissible against those who have “standing” to object to the search...”

Canning v. State, 226 So. 2d 747 (Miss.1969)

4th Amendment: Defining Seizure

A "seizure" under the Fourth Amendment occurs *when the officer, by means of physical force, or show of authority, has in some way restrained the liberty of a citizen.*

Physical force, however slight, or submission to authority.

California v. Hodari D., 499 U.S. 621 (1991)

The key question: whether police behavior "would have communicated to a reasonable person that he was not at liberty to ignore the police presence and go about his business.

Michigan v. Chesternut, 486 U.S. 567, 569 (1988)

Dunaway v. New York, 442 U.S. 200, 203, 207 n.6 (1979) (command, gesture, or expression)



Terry Stop: Brief On-the-Street Detention

A brief on-the-street detention for the purpose of an inquiry and observation under certain circumstances.

Terry v. Ohio, 392 U.S. 1 (1968)

Should be temporary, last no longer than necessary and be the least intrusive means.... to dispel the officer's suspicion.

Florida v. Royer, 460 U.S. at 500



Standards for a Terry Stop

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Terry Stop = Reasonable Articulable Suspicion

- Suspicion that a person has committed or is about to commit a crime.
- Limited exception to the general requirement of probable cause for arrest.
- More limited for investigating past criminal activity.
- *Florida v. Royer, 460 U.S. at 498*

Factors Supporting Reasonable Articulable Suspicion

- High crime neighborhood
- Failure to respond to police
- Flight from police
- Furtive gestures
- Tips from informants
- Casing (observing) a location
- Description match (of a suspect)
- Exchanges between individuals
- Nervousness
- Departure upon seeing the police
- Temporal/spatial proximity to crime
- Probable cause of a traffic violation

Terry Frisk

"Authorizes a "frisk"- a pat-down for weapon or a similar "self-protective" search."

Terry v. Ohio, 329 U.S. 1, 21, 27 (1968)

What is the difference between a frisk and a full search?

Pat-down of outer clothing, cannot manipulate or if exceeds scope of Terry Frisk.

Minn. v. Dickerson, 508 U.S. 366 (1993)

Standards for Terry Frisk

Terry Frisk = Reasonable Articulable Suspicion that the person is armed and dangerous

The officer must be able to "point to specific and articulable facts," which, taken together with rational inferences from those facts, "reasonably warrant" the conclusion that the officer "is dealing with an armed and dangerous individual."

Terry v. Ohio, 392 U.S. at 21, 27

Even after a lawful investigatory stop, a frisk is justified only when "a reasonably prudent man would be warranted in the belief that his safety or that of others was in danger." Officer must be able "to point to particular facts from which he reasonably inferred" subject was armed and dangerous... [I]t is sufficient that he establish a substantial possibility of danger.

State v. Hunter, 375 So. 2d 99 (Miss. 1979)

Factors Supporting 'Armed and Dangerous'?

- Manifestation of crime suggesting that a weapon might be involved
- Observation of weapon
- Weapon-possessing body language, i.e. holding one's waistband as if concealing a gun
- Gun shots
- Bulge in clothing
- Furtive gesture as if searching for a weapon



What do we do now?



Top 10 Rules for Cross Examination

- 1** Ask Leading Questions
- 2** One Fact Per Question
- 3** Simple Language – No Wiggle Words
- 4** Never Ask the Ultimate Question
- 5** Listen to What the Witness Says
- 6** Don't Ask If You Don't Know the Answer
- 7** Don't Quarrel With the Witness
- 8** Don't Allow Witness to Repeat Direct Exam
- 9** Don't Allow Witness to Explain Answers
- 10** Save Argument for Closing

The Chapter Method of Cross Examination

List Main Points (Chapters)

Define the core objectives you aim to establish with this witness. These are your "chapters" or lines of cross-examination.

Each point should support an essential aspect of your theory or detract from the state's theory of prosecution.

Can be subdivided into sub-chapters or lines to support a larger point.

Identify Supporting Facts

Determine the specific facts required to prove each of your main points. Consider what information the judge needs to accept as foundational for your legal conclusions.

What facts does the judge need to accept as building blocks to reach the legal conclusion that is the point of each chapter?

Draft Questions Strategically

Formulate questions for each fact, strictly adhering to the "10 Commandments of Cross Examination" to introduce the necessary facts effectively.

Organize Chapters Persuasively

Arrange your chapters in a compelling, cohesive, and strategic order. Prioritize impact (primacy and recency) over strict chronological order.

Focus on primacy and recency, not necessarily chronology. Use headlines to transition between chapters (sparingly).

Remember to Impeach!

What are the primary types of impeachment?

Impeachment with a Prior Inconsistent Statement

- **Written witness statements:** Official documents or transcripts.
- **Oral statements:** Made to investigators, other witnesses, or in previous proceedings.

Impeachment by Omission



Remember to Impeach!

Crediting the Out-of-Court Statement

When impeaching, don't focus solely on the in-court testimony. Instead, highlight and emphasize all reasons why the witness's earlier, out-of-court statement is more reliable and credible than what they are currently testifying to.

Highlighting the Inconsistency

Ensure the witness is fully committed to their direct testimony before confronting them. Then, meticulously confront them with the specific differences and contradictions found in their prior out-of-court statement, making the inconsistency undeniable.

Impeachment by Omission (Officer)

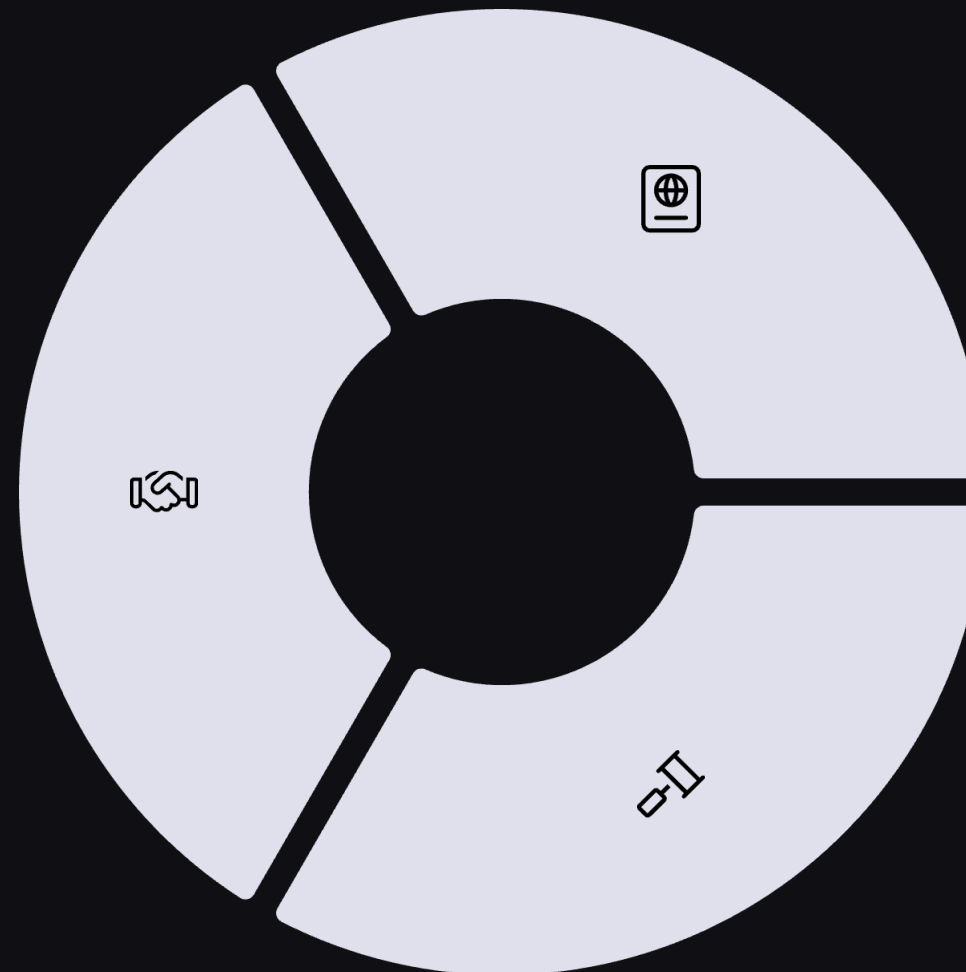
When dealing with an officer, establish their reputation as a thorough and meticulous report writer. Then, use this to your advantage by highlighting crucial facts or details that were conspicuously absent from their otherwise comprehensive police report, implying they are a recent fabrication.

The Three Cs of Impeachment

Mastering these three critical steps ensures a powerful and effective impeachment of a witness, challenging their credibility and highlighting inconsistencies.

Commit the Witness

Before confronting an inconsistency, lock the witness into their current direct testimony. This makes any subsequent contradiction more impactful and undeniable.



Credit the Prior Statement

Establish the reliability and truthfulness of the witness's prior statement. Emphasize why it was more accurate or credible than their current testimony.

Complete the Impeachment

Clearly present the discrepancy between the direct testimony and the prior statement. Ensure the jury understands the inconsistency and its implications for the witness's credibility.

State v. M.T.

Happiness is a Warm Gun (Case)

Thank you for your attention!

It has been a pleasure to share these insights. We hope this training has been valuable for your practice and will assist you in navigating complex legal scenarios effectively.

Special thanks to Roshna Dumre



Session Two: Happiness is a Warm Gun (case):A Suppression Primer



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