

APPENDIX A-10

ANNOTATION REFERENCES

Plea of guilty as waiver of claim of unlawful search and seizure. 20 ALR 3d 724.

Plea of guilty or conviction as resulting in loss of privilege against self-incrimination as to crime in question. 9 ALR3d 990.

Court's duty to advise or admonish accused as to consequences of plea of guilty, or to determine that he is advised thereof. 97 ALR2d 549.

Plea of guilty without advice of counsel. 149 ALR 1403.

Withdrawal of plea of guilty and substitution of plea of not guilty after conviction. 146 ALR 1430.

Right to withdraw a plea of guilty. 20 ALR 1445, 66 ALR 628.

HEADNOTES

Classified to U.S. Supreme Court Digest, Lawyers' Edition

Appeal and Error § 442, 1319 - from state court - federal question - plain error - showing of record

1. The question of the voluntary character of the defendant's guilty plea to a robbery charge in a state court, upon which plea he was convicted and sentenced to die, or of whether the process by which the trial judge accepted such plea violated the defendant's rights under the Federal Constitution, is properly before the United States Supreme Court on review notwithstanding the defendant failed to raise such federal question below and the state court failed to pass upon it, where (1) the question was raised on oral argument in the Supreme Court, (2) the error of the trial judge in accepting the guilty plea without an affirmative showing that it was intelligent and voluntary was a plain error on the face of the record, and (3) such error, under the state procedure contained in the statute providing for automatic appeal in capital cases and requiring the state reviewing court to comb the record for any error prejudicial to the appellant even though not called to its attention in the brief of counsel, was properly before such reviewing court and was considered explicitly by the majority of the justices thereof.

Criminal Law § 59 - guilty plea

2. A plea of guilty is more than a confession which admits that the accused did various acts; it is itself a conviction, and nothing remains but to give judgment and determine punishment. <*pg. 276>

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Constitutional Law § 840.5; Evidence § 682 - confession - admissibility - determination of voluntariness

3. Admissibility of a confession in evidence at a criminal trial must be based on a reliable determination on the voluntariness issue which satisfies the constitutional rights of the defendant.

Criminal Law § 46.7; Evidence § 419 - assistance of counsel - presumption - waiver

4. Presuming a waiver of counsel from a silent record is impermissible; the record must show, or there must be an allegation and evidence which show, that the accused was offered counsel, but intelligently and understandingly rejected the offer.

Criminal Law § 46.7, 59 - guilty plea - voluntariness

5. Since a plea of guilty is more than an admission of conduct and is a conviction, and since ignorance, incomprehension, coercion, terror, inducements, and subtle or blatant threats might be a perfect cover-up of unconstitutionality, the standard to be applied in determining whether a guilty plea is voluntarily made is the same standard applied in determining whether an accused has made a valid waiver of the right to counsel, by which standard a presuming of waiver from a silent record is impermissible, and the record must show, or there must be an allegation and evidence which show, that the accused was offered counsel, but intelligently and understandingly rejected the offer.

Courts § 781 - waiver of constitutional rights - federal law as controlling

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6. The question of an effective waiver of a federal constitutional right in a state criminal proceeding is governed by federal standards.

Constitutional Law § 835; Criminal Law § 50, 63; Jury § 20; Witnesses § 94.5 - guilty plea - waiver of constitutional rights

7. Several federal constitutional rights are involved in a waiver that takes place when a plea of guilty is entered in a state criminal trial: (1) the privilege against compulsory self-incrimination guaranteed by the Fifth Amendment and applicable to the states by reason of the Fourteenth; (2) the right to trial by jury; and (3) the right to confront one's accusers.

Appeal and Error § 1289 - guilty plea - waiver of constitutional rights - presumption

8. For purposes of determining the voluntary character of the defendant's guilty plea in a state court or whether the process by which the trial judge accepted such plea violated the defendant's rights under the Federal Constitution, the United States Supreme Court cannot presume from a silent record a waiver of the three important federal constitutional rights-(1) the privilege against compulsory self-incrimination guaranteed by the Fifth Amendment and applicable to the states by reason of the Fourteenth; (2) the right to trial by jury; and (3) the right to confront one's accusers-which are involved in a waiver that takes place when a plea of guilty is entered in a state criminal trial.

Constitutional Law § 835; Criminal Law § 50, 63; Jury § 20; Witnesses § 94.5 - guilty plea - waiver of constitutional rights

9. A defendant who enters a guilty plea simultaneously waives several constitutional rights, including his privilege against compulsory self-incrimination, his right to trial by jury, and his right to confront his accusers; for such a waiver to be valid under the due process clause, it must be an intentional relinquishment or abandonment of a known right or privilege.

Constitutional Law § 835 - due process - guilty plea

10. If a defendant's guilty plea is not voluntary and knowing, it has been obtained in violation of due process and is therefore void.<*pg. 277>

Criminal Law § 59 - guilty plea - voluntariness

11. Because a guilty plea is an admission of all the elements of a formal criminal charge, it cannot be truly voluntary unless the defendant possesses an understanding of the law in relation to the facts.

Appeal and Error § 1010; Criminal Law § 59 - guilty plea - connotation - court's function -

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record for review

12. What is at stake for an accused facing death or imprisonment as a result of a plea of guilty demands the utmost solicitude of which the courts are capable in canvassing the matter with the accused to make sure he has a full understanding of what the plea connotes and of its consequence; when the judge discharges that function, he leaves a record adequate for any review that may be later sought, and forestalls the spin-off of collateral proceedings that seek to probe murky memories.

Appeal and Error § 1550; Constitutional Law § 835 - guilty plea - due process - lack of voluntariness and understanding - reversible error

13. With respect to a state conviction on a plea of guilty to common-law robbery and a resulting death sentence, there is reversible error under the due process clause of the Fourteenth Amendment where the record does not disclose that the defendant voluntarily and understandingly entered such plea.

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FELIX D. GIBSON, PLAINTIFF VS. FLEET MORTGAGE GROUP, INC., FLEET MORTGAGE CORP.,
AMERICAN SECURITY INSURANCE CORPORATION, MID-SOUTH INVESTMENT CORPORATION,
ROBERT R. PATTERSON, JR., DEFENDANTS

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

2001 U.S. Dist. LEXIS 24932
CIVIL ACTION NO. 3:01CV489LN

October 9, 2001, Decided
October 9, 2001, Filed

Furthermore, just as the complaint contains no allegation that Mid-South or Patterson had any involvement in the force placement of insurance, there is nothing in the complaint to suggest that any person or entity other than Fleet and/ or American Security had any involvement in the foreclosure on Gipson's home or the eviction of Gipson and his family from the home. On the contrary, the record evidence, and in particular Patterson's unrefuted affidavit, establishes that neither he nor Mid-South "ever engaged in any activity or otherwise caused Gipson to execute any documents which were used to take his home from him," or "engaged in, instituted or otherwise engaged in any eviction proceedings with respect to Gipson," or "initiated or participated in any foreclosure proceedings against Gipson's property." These facts stand uncontroverted in the record.

The probable cause requirements under the Fourth Amendment, as they pertain to the issuance of search warrants, are also applicable to the issuance of arrest warrants. A judicial officer issuing an warrant for arrest or search must be supplied with sufficient information to support an independent judgment that probable cause exists for the warrant.

Court of Criminal Appeals of Alabama
1979
398 So. 2d 730; Morrison v. STATE
JULY 17th, 1979

WAIVER

SUPREME COURT OF THE UNITED STATES

APPENDIX

A-12

No. 22-6589

Moses Jackson

Presiding Judge Bud Turner, et al.

(Petitioner)

V.

(Respondent)

I DO NOT INTEND TO FILE A RESPONSE to the petition for a writ of certiorari unless one is requested by the Court.

Please check the appropriate box:

- I am filing this waiver on behalf of all respondents.
- I only represent some respondents. I am filing this waiver on behalf of the following respondent(s):

Please check the appropriate box:

- I am a member of the Bar of the Supreme Court of the United States. (Filing Instructions: File a signed Waiver in the Supreme Court Electronic Filing System. The system will prompt you to enter your appearance first.)
- I am not presently a member of the Bar of this Court. Should a response be requested, the response will be filed by a Bar member. (Filing Instructions: Mail the original signed form to: Supreme Court, Attn: Clerk's Office, 1 First Street, NE, Washington, D.C. 20543).

Signature:



Date:

2/6/23

(Type or print) Name **Edmund G. LaCour Jr.**

Mr.

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A copy of this form must be sent to petitioner's counsel or to petitioner if *pro se*. Please indicate below the name(s) of the recipient(s) of a copy of this form. No additional certificate of service or cover letter is required.

cc:
Moses Jackson
PO Box 1030
Loxley, AL 36551

"This Court has held that affidavits for arrest **warrants** may not be based on mere conclusions that the offense has been committed, but, rather, **must** contain the factual basis for such a conclusion. Crittenden v. State, 476 So. 2d 632 (Ala. 1985). Under § 15-7-2, Code of Alabama 1975, a judge or magistrate is authorized to question a complainant who testifies that 'in his opinion' an offense has been committed. This section further provides that the **depositions** taken by the judge or magistrate '**must set forth** the **facts** ... tending to establish the commission of the offense and the guilt of the defendant.'" Professional Check Serv. Inc. v. Dutton, 560 So. 2d 755, 757 (Ala. 1990).

APPENDIX

A-14

Authority of grand jury.

If a grand jury has any legal evidence before it to authorize the finding of an indictment, all inquiry as to the nature, character and sufficiency thereof is cut off, and therefore, a motion to quash the indictment on the grounds of insufficient evidence will be denied; however, if a grand jury does not have before it any witnesses or legal documentary evidence upon which it may issue an indictment, it is without authority to issue an indictment. *Walker v. State*, 17 Ala. App. 555, 86 So. 257, 1920 Ala. App. LEXIS 186 (Ala. Ct. App. 1920).

Burden of proof.