

NO. 38407-8-ii

COURT OF APPEALS OF THE STATE OF WASHINGTON,

DIVISION II

STATE OF WASHINGTON,

Respondent,

vs.

LYNN BELCHER,

Appellant.

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FILED
COURT OF APPEALS
DIVISION II
STATE OF WASHINGTON
BY DEREK

BRIEF OF APPELLANT

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ASSIGNMENT OF ERROR

Assignment of Error

1. The prosecutor committed misconduct and denied the defendant a fair trial under Washington Constitution, Article 1, § 3 and United States Constitution, Sixth Amendment when he elicited false testimony from a police officer and when he failed to produce a key piece of physical evidence.

2. Trial counsel's failure to object when the state elicited evidence that a witness believed the defendant guilty fell below the standard of a reasonably prudent attorney under Washington Constitution, Article 1, § 22, and United States Constitution, Sixth Amendment.

Issues Pertaining to Assignment of Error

1. Does a prosecutor commit misconduct and deny a defendant a fair trial under Washington Constitution, Article 1, § 3 and United States Constitution, Sixth Amendment if he or she elicits false testimony from a police officer and then fails to produce a key piece of physical evidence?

2. Does a trial counsel's failure to object when the state elicits evidence that a witness believed the defendant guilty fall below the standard of a reasonably prudent attorney under Washington Constitution, Article 1, § 22, and United States Constitution, Sixth Amendment when that improper evidence was sufficient to turn a verdict of acquittal to a verdict of conviction?

STATEMENT OF THE CASE

Factual History

On April 2, 2008, Defendant Lynn Belcher, her adult daughter Vicky Paskas, and Vicky's three-year-old child drove from the defendants' home in Centralia to the local branch of the Bank of America. RP 28-29, 58-59, 68-70. Once at the bank, the defendant presented teller Raylene Day with what looked like a Bank of America cashier's check payable to "Lynn Belcher" in the amount of \$4,800.00. RP 28-29, 58. The "purchaser" named on the check was "Robert Fernan," a person unknown to the defendant or the bank. RP 23-24, 56. According to the defendant, she told the teller that UPS had delivered this check to her in a UPS delivery envelope, and she wanted to know if it was good. RP 58. Ms Day claimed that the defendant merely presented the check for payment. RP 32. In either event, the check was over Ms Day's authorization limit so she took the defendant's identification and the check to her supervisor, and returned to ask the defendant to have a seat for a few minutes, which she did. RP 27-30.

After an inspection of the check, Ms Day's supervisor determined that it was fraudulent, and she called the police. RP 33. According to the defendant, after sitting for about 20 minutes, she approached the teller a second time, told her that she had the UPS envelope that had contained the check, and would the teller like to see it. RP 58-59. When the teller replied

that she would, the defendant went to the door of the bank, and called out to her daughter, who was sitting in the defendant's van, and asked her to bring the envelope to her. *Id.*

A short time after the defendant's second conversation with Ms Day, Centralia Police Officers David Clary and Rich Hughes arrived at the bank. RP 38, 49, 58-59. Officer Clary spoke with the defendant and Officer Hughes spoke with the bank manager and then with the defendant. RP 38, 49. According to the defendant, when her daughter returned to the bank with the UPS envelope, the younger of the two officers grabbed the envelope from her and kept it. RP 58-59. In short, the defendant told the officers that she had received the check a few days previous by UPS delivery in a UPS shipping envelope, that she did not know the purchaser of the check, and that she did not know why someone made out the check and sent it to her. RP 39-41, 50-52. After a brief conversation, the police arrested the defendant on a charge of forgery. *Id.*

On a later date Natalie Coit, the Operations Manager for the Centralia Bank of America inspected the check and determined that it was a forgery made to look like a Bank of America cashier's check. RP 22. She based her opinion on the following: (1) the check used a format for cashier's checks that Bank of America had not used for over 10 years, (2) the logo on the check was one that Bank of America had only been using for about six years,

(3) the check had the amount entered with a typewriter, while all Bank of America cashier's checks had the amount imprinted, and (4) the check did not contain a Bank of America water mark that fluoresced under black light as do Bank of America cashier's checks. RP 15-21.

Procedural History

By information filed April 3, 2008, the Lewis County Prosecutor charged the defendant with one count of forgery. CP 1-2. The case later came on for trial before a jury, with the state calling four witnesses: Natalie Coit, Raylene Day, Officer Clary, and Officer Hughes. RP 18, 27, 36, 47. The defense called two witnesses: Defendant Lynn Belcher, and Vicky Paskas. RP 55, 67. These witnesses testified to the facts contained in the preceding Factual History. *See Factual History*. In addition, during his direct testimony, the state inquired about Officer Hughes conversation with the bank manager when he was called to the scene. RP 49-50. Without objection by the defense, Officer Hughes testified that "she told us why she felt there was Forgery in progress and why she suspected this check was fraudulent." RP 50.

In addition, during cross-examination, the defendant's attorney asked both Officer Clary and Officer Hughes whether or not they had ever seen the UPS envelope that the defendant claimed UPS delivered to her with the check in it. RP 45, 52. Both officers denied ever seeing such an object. *Id.* In fact,

Officer Hughes had taken the envelope, and did have it at the police station from the day he arrested the defendant to the day of the trial. CP 50-54. However, he did not reveal this fact to the prosecutor until after the trial. *Id.*

Following the presentation of evidence, the court instructed the jury with neither party making any objections or taking any exceptions to the instructions given. 74-82. The parties then presented closing argument. RP 82-93. Following deliberation, the jury returned a verdict of guilty. CP 49. However, prior to sentencing, the prosecutor told the defense that Officer Hughes did have the UPS envelope that, at trial, he and the other officer denied ever seeing. CP 50-54. Based upon the disclosure, the defense moved for a new trial. *Id.* Following a hearing on the matter, the trial court denied the motion and entered the following findings of fact and conclusions of law.

FINDINGS OF FACT

1.1 For sake of argument, without formally addressing the issue, the court finds that the envelope constitutes newly discovered evidence as it was under the control of State and not provided to defense counsel un[til] after the trial.

1.2 The defendant did not fail to exercise due diligence in discovering the actual, physical envelope.

1.3 The burden is on the defendant to show that the results would have probably been different had the envelope been admitted as evidence at trial.

1.4 The defendant and her daughter testified that the check was delivered by United Parcel Service (UPS).

1.5 The arrival of the check was unanticipated and apparently sent from an unknown source.

1.6 At no point during the trial did the State argue or suggest that the defendant generated the fraudulent check.

1.7 The envelope at issue, however, bears no date or other indication, save for a possible identification by the defendant and her daughter, it was actually the envelope in which the fraudulent check was delivered.

CONCLUSIONS OF LAW

2.1 Then deciding whether to grant a motion for a new trial the Court must consider five factors.

2.2 If the defendant fails to satisfy anyone of the five factors, the motion must be denied.

2.3 The envelope is cumulative evidence.

2.4 The envelope is not evidence which is material to the issue of whether the defendant knew she was defrauding another person.

2.5 The defendant's motion for a new trial is denied.

CP 65-66.

Following denial of the motion for a new trial, the court sentenced the defendant to 30 days in jail, which constituted a mid-range sentence on an offender score of zero points, as the defendant had no prior felony convictions. CP 68-77. The defendant thereafter filed timely notice of appeal. CP 78-88.

ARGUMENT

I. THE PROSECUTOR COMMITTED MISCONDUCT AND DENIED THE DEFENDANT A FAIR TRIAL UNDER WASHINGTON CONSTITUTION, ARTICLE 1, § 3 AND UNITED STATES CONSTITUTION, SIXTH AMENDMENT WHEN HE ELICITED FALSE TESTIMONY FROM A POLICE OFFICER AND WHEN HE FAILED TO PRODUCE A KEY PIECE OF PHYSICAL EVIDENCE.

While due process does not guarantee every person a perfect trial, both Washington Constitution, Article 1, § 3, and United States Constitution, Fourteenth Amendment do guarantee all defendants a fair trial. *State v. Swenson*, 62 Wn.2d 259, 382 P.2d 614 (1963); *Bruton v. United States*, 391 U.S. 123, 20 L.Ed.2d 476, 88 S.Ct. 1620 (1968). The due process right to a fair trial is violated when the prosecutor commits misconduct. *State v. Charlton*, 90 Wn.2d 657, 585 P.2d 142 (1978). To prove prosecutorial misconduct, the defendant bears the burden of proving that the state's conduct was both improper and prejudicial. *State v. Brown*, 132 Wn.2d 529, 940 P.2d 546 (1997). In order to prove prejudice the defendant has the burden of proving a substantial likelihood that the misconduct affected the jury's verdict. *State v. Evans*, 96 Wn.2d 1, 633 P.2d 83 (1981).

For example in *State v. Gregory*, 158 Wn.2d 759, 147 P.3d 1201 (2006), the defendant appealed his death sentence arguing in part that the prosecutor had committed misconduct by (1) obtaining an order in limine precluding the admission of any evidence concerning evidence of the

conditions in prison of a person serving a sentence of life without release, and (2) then arguing that the jury should consider such conditions in determining whether or not to impose the death penalty. The defendant appealed his sentence, arguing that this argument by the state constituted misconduct. The Supreme Court agreed with this argument and reversed the death sentence.

The court held:

Three factors weigh in favor of a finding of prosecutorial misconduct here. First, the violation of the trial court's order is blatant and the original motion in limine was targeted at preventing the defense from effectively responding to the prosecutor's argument. Second, although defense counsel attempted to paint a contrary picture of prison life, he was unable to introduce evidence to support his argument and his argument simply was not as compelling as the prosecutor's (perhaps because he did not expect to be allowed to make such an argument). Third, the images of Gregory watching television and lifting weights, when juxtaposed against the images of the crime scene, would be very difficult to overcome with an instruction. Again, these images would be central to the question of whether life without parole or death was the more appropriate sentence. Although this presents a close question, we conclude that the prosecutor's argument characterizing prison life amounted to prosecutorial misconduct that could not have been cured by an instruction. The prosecutor's misconduct independently requires reversal of the death sentence.

State v. Gregory, 158 Wn.2d at 866-867.

Under Washington Constitution, Article 1, § 3 and United States Constitution, Fourteenth Amendment, a prosecutor's elicitation or use of perjured or false testimony or evidence constitutes misconduct. *Giglio v. United States*, 405 U.S. 150, 92 S.Ct. 763, 31 L.Ed.2d 104 (1972). In addition, under RPC 3.3(a)(4), if evidence has been presented to the jury or

court, and the prosecutor later “comes to know of its falsity, [he] shall promptly disclose this fact to the [court.]” RPC 3.3(c). Similarly, under the Fourteenth Amendment it is also misconduct “when the state, although not soliciting false evidence, allows it to go uncorrected when it appears.” *Napue v. Illinois*, 360 U.S. 264, 79 S.Ct. 1173, 31 L.Ed.2d 1217 (1959). A conviction based on false testimony must be set aside if there is any reasonable likelihood that the false testimony affected the decision of the jury. *United States v. Bagley*, 473 U.S. 667, 105 S.Ct. 3375, 87 L.Ed.2d 481 (1976).

In *Brady v. Maryland*, 373 U.S. 83, 87, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963), the United States Supreme Court held that under the due process clause of the Fourteenth Amendment, the prosecution has a duty to disclose all evidence in its possession that might be favorable to the defense at either the guilty or punishment phases of the case. *See i.e., State v. Coe*, 101 Wn.2d 772, 783, 684 P.2d 668 (1984). For the purposes of the *Brady* rule, the prosecutor’s office and investigators in a case are treated as a “prosecution team.” *See United States v. Antone*, 603 F.2d 566, 569 (5th Cir.1979). Knowledge by any member of that team is imputed to the prosecutor. *See, e.g., United States ex rel. Smith v. Fairman*, 769 F.2d 386, 391-92 (7th Cir.1985) (finding that the prosecutor’s ignorance of a police worksheet did not justify the State’s failure to provide information). In his dissent in *State*

v. Campbell, 118 Wn.2d 876, 828 P.2d 1086 (1992), Justice Utter put the matter as follows:

I would sum up these legal principles in one test: a prosecutor has an obligation to disclose exculpatory and mitigating evidence that he or she either knows or should have known about.

State v. Campbell, 118 Wn.2d at 901 (Justice Utter dissenting).

The decision in *State v. Copeland*, 89 Wn.App. 492, 949 P.2d 458 (1998), illustrates this principle under related facts. In this case, the defendant had been convicted of second degree rape. Prior to sentencing, he learned for the first time that the complaining witness had a two year old conviction for second degree theft that the state had failed to disclose. Upon receipt of this information, the defendant move for a new trial, which the trial court denied. He then appealed, arguing that the trial court had erred when it denied the motion for a new trial because the prosecutor's failure to disclose the fact that the complaining witness had the theft conviction constituted prosecutorial misconduct that deprived him of his right to due process under Washington Constitution, Article 1, § 3 and United States Constitution, Fourteenth Amendment.

At a subsequent fact-finding hearing ordered by the court of appeals, the trial court determined that the same prosecutor's office had prosecuted the complaining witness in the theft case, although that fact was apparently not within the actual knowledge of the prosecutor in the defendant's case. On

appeal, the court found this latter fact irrelevant to its determination on misconduct because the knowledge of the conviction was imputed to the prosecutor. As a result, the failure to disclose the fact of the conviction was misconduct. Further, since the state's case was far from overwhelming on the issue of lack of consent, the court found the misconduct material and granted the defendant's request for a new trial.

Similarly, in the case at bar, the record reveals that Officer Clary gave false testimony before the jury when he claimed that he had never seen the UPS envelope. The prosecutor's failure to correct the record when the officer gave this false testimony constitutes misconduct. In addition, the failure to inform the court and the defense that the evidence the defense claimed existed actually did exist also constituted misconduct. In the same manner that the prosecutor committed misconduct in *Copeland*, so the prosecutor committed misconduct in the case at bar. In addition, as the following explains, in this case the misconduct caused prejudice to the defendant's ability to present a fair trial.

In the case at bar, the only element of the crime at issue was the defendant's knowledge that the check was fraudulent. Her explanation as to why she presented the check turned partially upon the fact that she had actually received the item by UPS delivery without any indicators that it was fraudulent. She attempted to support this claim by stating that at the time she

went to the bank, she had the UPS envelope with her, but the police took it from her. By failing to produce this envelope, and by letting the police officer's testimony stand that strongly implied that the story about the UPS envelope was a lie, the state grossly undercut the defendant's claim that she actually believed the check to be good. Had this evidence been timely discovered, and had the officer correctly testified that he took the envelope from the defendant's daughter, the jury more likely than not would have returned a verdict of acquittal. Thus, in the same manner that the court of appeals vacated the defendant's conviction and remanded for a new trial in *Copeland* based upon prosecutorial misconduct, so this court should vacate the defendant's conviction and remand for a new trial based upon prosecutorial misconduct.

II. TRIAL COUNSEL'S FAILURE TO OBJECT WHEN THE STATE ELICITED EVIDENCE THAT A WITNESS BELIEVED THE DEFENDANT GUILTY FELL BELOW THE STANDARD OF A REASONABLY PRUDENT ATTORNEY UNDER WASHINGTON CONSTITUTION, ARTICLE 1, § 22, AND UNITED STATES CONSTITUTION, SIXTH AMENDMENT.

Under both United States Constitution, Sixth Amendment, and Washington Constitution, Article 1, § 22, the defendant in any criminal prosecution is entitled to effective assistance of counsel. The standard for judging claims of ineffective assistance of counsel under the Sixth Amendment is "whether counsel's conduct so undermined the proper

functioning of the adversary process that the trial cannot be relied on as having produced a just result.” *Strickland v. Washington*, 466 U.S. 668, 686, 80 L.Ed.2d 674, 104 S.Ct. 2052 (1984). In determining whether counsel’s assistance has met this standard, the Supreme Court has set a two part test.

First, a convicted defendant must show that trial counsel’s performance fell below that required of a reasonably competent defense attorney. Second, the convicted defendant must then go on to show that counsel’s conduct caused prejudice. *Strickland*, 466 U.S. at 687, 80 L.Ed.2d at 693, 104 S.Ct. at 2064-65. The test for prejudice is “whether there is a reasonable probability that, but for counsel’s professional errors, the result in the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Church v. Kinchelse*, 767 F.2d 639, 643 (9th Cir. 1985) (citing *Strickland*, 466 U.S. at 694, 80 L.Ed.2d at 698, 104 S.Ct. at 2068)). In essence, the standard under the Washington Constitution is identical. *State v. Cobb*, 22 Wn.App. 221, 589 P.2d 297 (1978) (counsel must have failed to act as a reasonably prudent attorney); *State v. Johnson*, 29 Wn.App. 807, 631 P.2d 413 (1981) (counsel’s ineffective assistance must have caused prejudice to client).

In the case at bar, the defendant claims ineffective assistance based upon trial counsel’s failure to object when the state elicited evidence through a police officer that the bank operations manager believed that the defendant

was guilty. The following presents these arguments:

Under Washington Constitution, Article 1, § 21 and under United States Constitution, Sixth Amendment every criminal defendant has the right to a fair trial in which an impartial jury is the sole judge of the facts. *State v. Garrison*, 71 Wn.2d 312, 427 P.2d 1012 (1967). As a result no witness whether a lay person or expert may give an opinion as to the defendant's guilt either directly or inferentially "because the determination of the defendant's guilt or innocence is solely a question for the trier of fact." *State v. Carlin*, 40 Wn.App. 698, 701, 700 P.2d 323 (1985). In *State v. Carlin*, the court put the principle as follows:

"[T]estimony, lay or expert, is objectionable if it expresses an opinion on a matter of law or ... 'merely tells the jury what result to reach.'" (Citations omitted.) 5A K.B. Tegland, Wash.Prac., Evidence Sec. 309, at 84 (2d ed. 1982); see *Ball v. Smith*, 87 Wash.2d 717, 722-23, 556 P.2d 936 (1976); Comment, ER 704. "Personal opinions on the guilt ... of a party are obvious examples" of such improper opinions. 5A K.B. Tegland, *supra*, Sec. 298, at 58. An opinion as to the defendant's guilt is an improper lay or expert opinion because the determination of the defendant's guilt or innocence is solely a question for the trier of fact. *State v. Garrison*, 71 Wash.2d 312, 315, 427 P.2d 1012 (1967); *State v. Oughton*, 26 Wash.App. 74, 77, 612 P.2d 812, *rev. denied*, 94 Wn.2d 1005 (1980).

The expression of an opinion as to a criminal defendant's guilt violates his constitutional right to a jury trial, including the independent determination of the facts by the jury. See *Stepney v. Lopes*, 592 F.Supp. 1538, 1547-49 (D.Conn.1984).

State v. Carlin, 40 Wn.App. 701; See also *State v. Black*, 109 Wn.2d 336, 745 P.2d 12 (1987) (trial court denied the defendant his right to an impartial

jury when it allowed a state's expert to testify in a rape case that the alleged victim suffered from "rape trauma syndrome" or "post-traumatic stress disorder" because it inferentially constituted a statement of opinion as to the defendant's guilt or innocence).

For example, in *State v. Carlin, supra*, the defendant was charged with second degree burglary for stealing beer out of a boxcar after a tracking dog located the defendant near the scene of the crime. During trial the dog handler testified that his dog found the defendant after following a "fresh guilt scent." On appeal the defendant argued that this testimony constituted an impermissible opinion concerning his guilt, thereby violating his right to have his case decided by an impartial fact-finder (the case was tried to the bench). The Court of Appeals agreed noting that "[p]articularly where such an opinion is expressed by a government official such as a sheriff or a police officer the opinion may influence the fact finder and thereby deny the defendant a fair and impartial trial." *State v. Carlin*, 40 Wn.App. at 703.

Under this rule the fact of an arrest is not evidence because it constitutes the arresting officer's opinion that the defendant is guilty. For example in *Warren v. Hart*, 71 Wn.2d 512, 429 P.2d 873 (1967) the plaintiff sued the defendant for injuries that occurred when the defendant's vehicle hit the plaintiff's vehicle. Following a defense verdict the plaintiff appealed arguing that defendant's argument in closing that the attending officers'

failure to issue the defendant a traffic citation was strong evidence that the defendant was not negligent. They agreed and granted a new trial.

While an arrest or citation might be said to evidence the on-the-spot opinion of the traffic officer as to respondent's negligence, this would not render the testimony admissible. It is not proper to permit a witness to give his opinion on questions of fact requiring no expert knowledge, when the opinion involves the very matter to be determined by the jury, and the facts on which the witness founds his opinion are capable of being presented to the jury. The question of whether respondent was negligent in driving in too close proximity to appellant's vehicle falls into this category. Therefore, the witness' opinion on such matter, whether it be offered from the witness stand or implied from the traffic citation which he issued, would not be acceptable as opinion evidence.

Warren v. Hart, 71 Wn.2d at 514.

Although *Warren* was a civil case the same principle applies in criminal cases: the fact of an arrest is not admissible evidence because it constitutes the opinion of the arresting officer on guilt which is the very fact the jury and only the jury must decide.

In this case the state elicited the fact that the bank operations manager thought that the defendant had actually committed the crime of forgery. This occurred through the testimony of Officer Hughes, wherein the prosecutor asked him concerning his conversation with the bank operations manager when he was called to the bank. Officer Hughes response to this was that "she told us why she felt there was Forgery in progress and why she suspected this check was fraudulent." RP 50.

In looking at this testimony the first question that arises is this: What was the relevance of the bank operations manager's statements to one of the officers when they arrived at the bank? The answer is that it was not relevant. It was unimportant to any fact at issue before the court. It certainly was not necessary as a preliminary to having the officer testify to any other issues. It's only relevance comes from the fact that it constitutes the introduction of the bank operations manager's opinion at the time of the evidence that the defendant was attempting to commit a crime, which crime required that she know that the check was a fake. Thus, the introduction of this evidence was improper as an opinion of guilt.

No tactical reason exists for the failure to object to a police officer's statement that a bank operations manager believed that a defendant is guilty whether stated directly or impliedly. Indeed, what tactical advantage could be gained from allowing the state to elicit improper evidence that prejudices the defendant? Thus, trial counsel's failure to object when the state elicited opinion evidence in this case fell below the standard of a reasonably prudent attorney. In addition, given both the fact of the defendant's actions consistent with innocence such as sitting around the bank waiting for the police to arrive, it is more probable than not that but for trial counsel's error in failing to object to the state's improper opinion evidence of guilt the trial would have resulted in an acquittal. Thus, trial counsel's failures denied the defendant

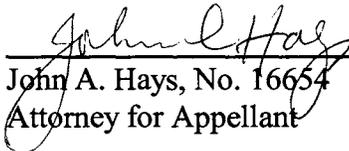
her right to effective assistance of counsel under Washington Constitution, Article 1, § 22 and United States Constitution, Sixth Amendment and the defendant is entitled to a new trial.

CONCLUSION

The defendant in this case is entitled to a new trial based upon (1) the denial of her right to due process through prosecutorial misconduct, and (2) the denial of her right to effective assistance of counsel through her trial attorney's failure to object when the state elicited improper opinion evidence of guilt.

DATED this 1st day of April, 2009.

Respectfully submitted,



John A. Hays, No. 16654
Attorney for Appellant

APPENDIX

**WASHINGTON CONSTITUTION
ARTICLE 1, § 3**

No person shall be deprived of life, liberty, or property, without due process of law.

**WASHINGTON CONSTITUTION
ARTICLE 1, § 21**

The right to trial by jury shall remain inviolate, but the legislature may provide for a jury of any number less than twelve in courts not of record, and for a verdict by nine or more jurors in civil cases where the consent of the parties interested is given thereto.

**WASHINGTON CONSTITUTION
ARTICLE 1, § 22**

In criminal prosecutions the accused shall have the right to appear and defend in person, or by counsel, to demand the nature and cause of the accusation against him, to have a copy thereof, to testify in his own behalf, to meet the the witnesses against him face to face, to have compulsory process to compel the attendance of witnesses in his own behalf, to have a speedy public trial by an impartial jury of the county in which the offense is charged to have been committed and the right to appeal in all cases: Provided, The route traversed by any railway coach, train or public conveyance, and the water traversed by any boat shall be criminal districts; and the jurisdiction of all public offenses committed on any such railway car, coach, train, boat or other public conveyance, or at any station of depot upon such route, shall be in any county through which the said car, coach, train, boat or other public conveyance may pass during the trip or voyage, or in which the trip or voyage may begin or terminate. In no instance shall any accused person before final judgment be compelled to advance money or fees to secure the rights herein guaranteed.

**UNITED STATES CONSTITUTION,
SIXTH AMENDMENT**

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

**UNITED STATES CONSTITUTION,
FOURTEENTH AMENDMENT**

All persons born or naturalized in the United State, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

