

6th Amendment Pitfalls

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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.

- I. Speedy Trial
 - a. Rule 25 Utah Rule of Criminal Procedure
 - i. Unconstitutional delay bars prosecution
 1. *State v. Hawkins*, 2016 UT App 9; *State v. Pelton*, 2015 UT App 150; and *State v. Younge*, 2013 UT 71
 - a. length of delay
 - i. 7 months not presumptively prejudicial
 - ii. 30 months presumptively prejudicial
 - b. reason for delay
 - i. Invalid reasons, weighed against the government
 - ii. Neutral reasons, weighed against the government: overcrowded court dockets or understaffed prosecutors
 - iii. valid reasons weighed in favor of the government: missing witness; waiting for another sovereign to finish prosecuting the defendant; defendant's absencing himself
 - c. defendant's assertion of the right
 - d. prejudice to the defendant
 - i. prevent oppressive pretrial incarceration
 - ii. minimize anxiety and concern of the accused
 - iii. possibility that the defense will be impaired
 2. Affirmative waiver
 - ii. Unreasonable delay, jurisdiction, lack of probable cause "further prosecution for the offense shall NOT be barred"
 - iii. In misdemeanor cases, upon motion of the prosecutor, the court may dismiss the case if it is compromised by the defendant and the injured party.

- II. Public Trial
 - a. Waller v. Georgia, 467 U.S. 39 (1984)
 - i. the party seeking to close the hearing must advance an overriding interest that is likely to be prejudiced;
 - ii. the closure must be no broader than necessary to protect that interest;
 - iii. the trial court must consider reasonable alternatives to closing the hearing; and
 - iv. it must make findings adequate to support the closure.
 - b. Public and press, also have 1st Amendment right to attend trial
 - c. Victim has constitutional right to be present Article I, Section 28 (1)(b) & (c)
 - i. “be present at, and to be heard at important criminal justice hearings related to the victim”
 - ii. At sentencing, provide to the judge “without evidentiary limitation, reliable information concerning the background, character, and conduct of a person convicted of an offense.”
 - d. Applies to voir dire, suppression hearings, trials
- III. Impartial jury
 - i. Batson Challenges
 - 1. Either party may challenge
 - 2. Must be raised and resolved prior to seating a jury
 - 3. Objecting party carries the burden
 - 4. Steps:
 - a. Prima Facie Showing, numbers alone usually insufficient
 - b. Facially neutral explanation
 - c. Court’s determination of intent – was strike solely for discriminatory purpose
- IV. Venue/Jurisdiction
 - a. 76-1-201 Jurisdiction (State of Utah)
 - i. Pleadings sufficient to establish jurisdiction
 - ii. Defense challenge must be by “filing a motion before trial”
 - 1. State initial burden to establish by preponderance
 - 2. Burden then shifts to defense to prove by preponderance
 - a. Diplomatic immunity; tribal authority; exclusive federal jurisdiction
 - b. 76-1-202 Venue (which court in Utah)
 - i. All objections of improper place of trial are waived by a defendant unless made before trial
 - ii. Multiple counties – either county
 - iii. Undetermined – where defendant resides

- V. Right to Confrontation
 - a. Crawford v. Hearsay
- VI. Compulsory process for witnesses
 - a. Subpoena for prelim
 - i. State v. Aleh, 2015 UT App 195
 1. Finding secondary “discovery” purpose of a prelim recognized in *State v. Anderson*, 612 P.2d 778, 783 (Utah 1980) was eliminated by constitutional amendment
 2. Recognized “the preliminary hearing’s erstwhile primary purpose has become its sole purpose: determining whether probable cause exists.”
- VII. Assistance of counsel for his defense
 - a. Sixth Amendment right to counsel is a right that extends to plea bargain process
 - i. Missouri v. Frye, 132 S.Ct. 1399 (2012)
 1. Defense counsel has a duty to communicate offers to their clients, and failure to do so is ineffective assistance of counsel
 2. Defense has burden to show they would have accepted the favorable offer, and prosecution would not have canceled it and the court would have accepted it
 3. Solutions proffered by SCOTUS: Offer and terms can be documented in writing or on the record
 - ii. Lafler v. Cooper, 132 S.Ct. 1376 (2012)
 1. Defense counsel cannot give ineffective advice that leads to the defendant rejecting the plea
 2. Defendant has burden to show that with effective assistance, he would have accepted the plea bargain
 3. Solutions proffered by SCOTUS: Offer and terms can be documented in writing or on the record
 - b. Immigration consequences
 - i. Padilla v. Kentucky, 130 S.Ct. 1473 (2010)
 1. requires an attorney for a criminal defendant to provide advice about the risk of deportation arising from a guilty plea.
 2. Chaidez v. United States, 133 S. Ct. 1103 (2013) Not retroactive
 - c. Jury Instructions
 - i. State v. Barela, 2015 UT 22 criminal code requires proof of mens rea for each element of a non-strict liability crime
 - ii. Held failure to object was ineffective assistance
 - iii. MUJI format
 - iv. Objections on the record – waiver