

APPENDIX A (DECISION OF THE STATE COURT OF APPEALS)

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-18-00246-CR¹

Roberto Nieto Cruz, Appellant

v.

The State of Texas, Appellee

**FROM THE DISTRICT COURT OF TRAVIS COUNTY, 147TH JUDICIAL DISTRICT
NO. D-1-DC-15-300933, HONORABLE CLIFFORD A. BROWN, JUDGE PRESIDING**

MEMORANDUM OPINION

Appellant Roberto Cruz appeals from his conviction of aggravated assault with a deadly weapon, a second-degree felony. *See Tex. Penal Code § 22.02(a)(2).* The jury assessed a sentence of nine years in the Texas Department of Criminal Justice, Criminal Institution Division. Appellant challenges the conviction in five issues. We affirm.

¹ Notice of appeal for this case was originally filed in this Court in July 2016, and the case was transferred to the El Paso Court of Appeals in compliance with a docket-equalization order issued by the Texas Supreme Court. On April 12, 2018, the Texas Supreme Court ordered that certain cases be transferred back to this Court from the El Paso Court, and we consider this appeal pursuant to that order. *See* Misc. Docket No. 18-9054 (Tex. Apr. 12, 2018) (per curiam).

Background²

Appellant was charged by indictment with aggravated assault with a deadly weapon committed against Daniel Fong.³ The jury heard evidence that, on the night of the offense, Appellant and appellant's brother Rudy assaulted Fong at an apartment complex on Middle Fiskville Road where both Fong and the Appellant lived. Fong testified that Appellant punched him with brass knuckles and that appellant's brother hit him with a beer bottle. Fong's wife Yolanda Cruz also testified that she witnessed Appellant punch Fong several times and that she believed that Appellant was wearing brass knuckles at the time. Further testimony showed that Fong was injured in the assault and went the hospital for his injuries, which included a broken nose and lacerations on his head that required stitches.

Austin Police officers who responded to the scene of the incident—Officers Huy Nguyen, Jared Hidalgo, and Nicholas Smith—also testified at trial. Of relevance to this appeal, Officer Nguyen testified as to what witnesses at the scene had told him about the incident, that other officers told him that certain witnesses were not cooperating with the police, and that statements by various witnesses were consistent with Fong's and his wife's testimony. Officer Nguyen also testified that he had received differing accounts regarding the existence of a weapon during the assault, with one witness telling him that it was Fong who had a weapon, and other witnesses contradicting that statement. Finally, Fong testified that he learned from other officers that the Appellant and his brother were not at the apartment complex when the police looked for them.

² The facts are summarized from the testimony and exhibits admitted into evidence at trial.

³ Daniel Fong is also referred to as "Ernesto Cruz" throughout the record, but we will refer to him only as "Fong" to avoid confusion.

Officer Hidalgo testified, relevant here, that Fong's stepson told him that Appellant and appellant's brother, with one other suspect, assaulted Fong and that Fong did not have a weapon during the incident. Officer Hidalgo testified that appellant's mother identified herself as the manager of the apartment complex where the incident occurred. According to Officer Hidalgo, appellant's mother told him that she had not witnessed the assault, but that Fong had a knife during the assault. Finally, Officer Hidalgo testified that the witness statements that he received were consistent with statements made by Fong's stepson and appellant's mother and that the information he had received from witnesses was consistent with information received by the other police officers.

Yolanda Cruz, Fong's wife, testified about appellant's previous conduct. Specifically, she testified that she had observed Appellant bullying teenagers, including her own children, around the apartment complex. She also testified about a confrontation on December 31, 2014, where Appellant attempted to kick down the door to Fong's apartment.

After the close of testimony, the jury returned a verdict of guilty against Appellant on the count of aggravated assault with a deadly weapon. The jury assessed punishment at nine years in the Texas Department of Criminal Justice, Institutional Division. This appeal followed.

Discussion

Appellant challenges his conviction in five issues, arguing that (1) he received ineffective assistance of counsel because his trial counsel failed to object to fifteen instances of hearsay; (2) he received ineffective assistance of counsel because his trial counsel failed to object to portions of Officer Hidalgo's testimony; (3) the trial court erred in allowing Yolanda Cruz's testimony on appellant's "bullying" to be admitted; and (4) he received ineffective assistance of

counsel by failing to object to Yolanda Cruz's testimony under Texas Rule of Evidence 404; and (5) the trial court erred in allowing the prosecutor to improperly argue to the jury that appellant's mother had intimidated witnesses.

Extraneous Misconduct Evidence

We begin by addressing appellant's third issue, asserting that the trial court erred in admitting, over objection, Yolanda Cruz's testimony that she had witnessed Appellant bullying teenagers at the apartment complex. According to Appellant, the trial court's decision to admit this testimony violated Rule 404(b) of the Texas Rules of Evidence, which prohibits the admission of “[e]vidence of a crime, wrong, or other act . . . to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character.” Tex. R. Evid. 404(b)(1).

To preserve a claim of error in the admission of extraneous offenses, a defendant must make a timely, specific objection and obtain a ruling on the objection. *See Tex. R. App. P. 33.1(a); Resendez v. State*, 306 S.W.3d 308, 312 (Tex. Crim. App. 2009). In addition, the argument on appeal must correspond to the objection made at trial. *See Broxton v. State*, 909 S.W.2d 912, 918 (Tex. Crim. App. 1995). Here, Appellant's counsel allowed the line of questioning to continue and did not object when Yolanda Cruz testified that Appellant and his brothers would “bully the teenagers around.” Appellant's counsel made no objection regarding the bullying testimony until Yolanda began to describe the bullying in more detail, and his objection at that time was that the testimony was “outside the scope of this portion of the trial.” At no point did Appellant's counsel object that the testimony was inadmissible under Texas Rule of Evidence 404. On this record, Appellant has failed to preserve his complaint of error, and we overrule Appellant's third issue.

Ineffective Assistance of Counsel

In his first, second, and fourth issues, Appellant asserts various shortcomings to argue that he received ineffective assistance of counsel. Specifically, Appellant claims that because his attorney failed to (1) object to multiple hearsay statements, (2) object to Officer Hidalgo and Officer Smith testifying as to their opinions that Appellant had perpetrated the assault against Fong, and (3) object to the testimony by Yolanda Cruz regarding his extraneous misconduct under Texas Rule of Evidence 404.

We review claims of ineffective assistance of counsel under the two-prong test established in *Strickland v. Washington*, 466 U.S. 668, 687 (1984) and *Hernandez v. State*, 726 S.W.2d 53, 57 (Tex. Crim. App. 1986). In order to reverse a conviction on an ineffective assistance of counsel claim, an Appellant must establish that (1) counsel made errors so serious that counsel no longer functioned as “counsel” guaranteed by the Sixth Amendment, and (2) the errors prejudiced the defense so as to deprive the Appellant of a fair trial whose result is reliable. *Strickland*, 466 U.S. at 687. The proper standard for deficiency is whether the challenged conduct fell below an objective standard of reasonableness. *Id.* at 688. To establish prejudice, an Appellant must show that there is a reasonable probability that, but for the challenged conduct, the result of the proceeding would have been different. *Id.* at 694. Any allegation of ineffective assistance must be firmly founded in the record, and the record must affirmatively demonstrate the alleged ineffectiveness. *McFarland v. State*, 928 S.W.2d 482, 500 (Tex. Crim. App. 1996), *overruled on other grounds*, *Mosely v. State*, 983 S.W.2d 249 (Tex. Crim. App. 1998). Judicial review is highly deferential to trial counsel and subject to a strong presumption of reasonable assistance. *Thompson*

v. State, 9 S.W.3d 808, 813 (Tex. Crim. App. 1999). To overcome the presumption of reasonable assistance on a record silent on the motivations behind counsel's decisions, the record must demonstrate that counsel's performance fell below an objective standard of reasonableness as a matter of law and that no reasonable trial strategy could justify counsel's acts or omissions regardless of subjective reasoning. *Lopez v. State*, 343 S.W.3d 137, 143 (Tex. Crim. App. 2011). In such cases when the record is silent, an appellant usually cannot overcome the presumption of reasonable assistance. *Mallett v. State*, 65 S.W.3d 59, 63 (Tex. Crim. App. 2001).

Failure to lodge hearsay objections

Appellant contends that his trial counsel's failure to object to the following fifteen instances of hearsay testimony was ineffective assistance of counsel.

1. Officer Nguyen testified that statements by Yolanda on the night of the incident were "consistent with" statements by Fong;
2. Officer Nguyen testified that while one witness at the scene claimed that Fong had a weapon, three other witnesses at the scene contradicted this;
3. Officer Nguyen testified that information in his recorded interviews with witnesses was "consistent with" statements given by Fong and Yolanda;
4. Officer Nguyen testified that he had learned that Appellant and his brother Rudy had fled the apartment complex after the fight;
5. Officer Nguyen testified that he had heard from other officers that witnesses at the scene were not cooperative;
6. Officer Hidalgo testified that he had heard from Fong's stepson, Jose Davila, that Fong had been assaulted by Appellant and his brothers;
7. Officer Hidalgo testified that Davila told him that Fong had been "jumped" by his upstairs neighbors;

8. Officer Hidalgo testified that Davila told him that Fong did not have a knife during the fight;
9. Officer Hidalgo testified that statements from an unidentified witness were “consistent with” statements by Davila and Appellant’s mother;
10. Officer Hidalgo testified that information he had received was “consistent with” information received by other officers;
11. Officer Hidalgo testified that Appellant’s mother, Mary, informed him that Appellant had not been injured in the fight and was not going to the hospital;
12. Officer Smith testified that Fong’s stepson, Andrew Davila, had told him that four people assaulted Fong;
13. Smith testified that Davila told him that one of the assailants had used a bottle in the fight;
14. Smith testified that, after reviewing notes with other officers, Davila’s claims were “consistent” with statements from other witnesses while another witness’s were not; and,
15. Fong testified that his wife had warned him that Appellant was going to beat him up.

Initially, we note that with regard to statement numbers 1, 3, 9, 10, and 14, the Texas Court of Criminal Appeals has held that testimony stating whether out-of-court statements are consistent with one another is not hearsay because it does not reveal the contents of the out-of-court statement. *See Head v. State*, 4 S.W.3d 258, 262 (Tex. Crim. App. 1999) (en banc). To that extent, trial counsel’s failure to object to these statements as hearsay was not deficient representation.

Regarding the remainder of the challenged testimony, we note that the record in this case does not provide any explanation for why appellant’s trial counsel did not object to the foregoing testimony at trial, but a complete review of the record suggests that trial counsel may have allowed the testimony to help develop appellant’s self-defense strategy or to question witness

credibility by highlighting inconsistencies in the testimony. For example, his counsel referenced hearsay statements by the officers in his closing argument and noted that the officers “come back and testify about consistency even though they didn’t see anything personally.” He used the statements made by the officers in an attempt to question their credibility and, by extension, to test prosecution theories such as the claim that the fight was not mutual combat. In sum, this record does not support the contention that no reasonable trial strategy could support the failure to object to this testimony. We overrule appellant’s first appellate issue.

Failure to object to officers’ opinion testimony

In his second issue, Appellant argues that his counsel’s failure to object to opinion testimony given by Officer Hidalgo and Officer Smith’s testimony constitutes ineffective assistance. Specifically, Appellant asserts that his trial counsel should have objected to the following testimony by Officer Hidalgo:

Q: And is that—are those differences in demeanor consistent with the determination you made as to who was a victim and who was a perpetrator?

A: Yes, sir. Well, even Mary herself had said that Daniel was the one that was going to the hospital. And we kept asking her if any of her sons were hurt or injured or needed medical attention, and she said no.

He also asserts that his trial counsel should have objected to the following testimony from Officer Smith:

Q: Did you hear any facts that were provided to you that would indicate that this was mutual combat between Daniel Fong and the perpetrators?

A: Not on that night, no, sir.

.....

Q: So back, kind of, to the initial question that brought all this about. From all of the individuals that you had spoken to and the evidence that was collected, did you form an opinion that this was mutual combat back on January 3rd of 2015?

.....

A: I'm sorry. No, I did not—based on the fact that I had only seen one victim at the time and the other subjects had left the scene, to me, at that time, I would have leaned more towards it not being mutual combat because I did not see the other people that were involved.

Appellant's trial counsel used the testimony of the officers to criticize the investigation and to undermine their credibility. As the State argues on appeal, this could have been a deliberate choice to impeach the officers' credibility, especially regarding the argument that the fight had not been mutual combat. On this record, Appellant has failed to demonstrate that failure to object to these statements by Officer Hidalgo and Officer Smith was deficient.

Failure to object to extraneous-offenses testimony

In his fourth issue, Appellant contends that his trial counsel should have objected on Rule 404(b) grounds to Yolanda Cruz's testimony regarding appellant's past instances of bullying, and that his failure to do so constitutes ineffective assistance of counsel. We disagree.

If the challenged evidence was likely admissible, the failure to object does not rise to the level of deficient performance. *See West*, 474 S.W.3d at 792. When self-defense is raised as an affirmative defense, the State may introduce evidence of prior aggressive acts to establish intent and rebut the defense. *Vidal v. State*, No. 11-04-00194-CR, 2006 WL 571894 at *1 (Tex.

App.—Eastland Mar. 9, 2006, pet. ref'd) (mem. op.) (not designated for publication). Yolanda Cruz's testimony could have been admissible under Rule 404(b)(2) as evidence of intent. *See Tex. R. 404(b)* (allowing evidence of prior acts for another purpose, including "proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident"). Appellant's counsel had already raised the issue in questioning Fong about whether he initiated the fight. Appellant raised this defense, and admitting Yolanda's testimony to rebut this defense would have been appropriate. Accordingly, Appellant has failed to demonstrate that failure to object to Yolanda's statements under Rule 404 was so deficient as to amount to ineffective assistance of counsel.

Having determined that Appellant has failed to satisfy the first (deficiency) prong of the *Strickland* test, we need not consider the remaining prong. *See Williams v. State*, 301 S.W.3d 675, 687 (Tex. Crim. App. 2009). Accordingly, we overrule Appellant's first, second, and fourth issues.

Improper Jury Argument

As his fifth issue, Appellant contends that the court erred in overruling his objection to the prosecutor's statement in closing argument that witnesses were afraid to testify because "[appellant's mother] is the one [sic] decides whether or not to sign up and take you application, give you a house to live in, or whether or not you get evicted." Specifically, Appellant asserts this was improper jury argument because the statement is unsupported by the evidence. *See Brown v. State*, 270 S.W.3d 564, 570 (Tex. Crim. App. 2008) ("proper jury argument generally falls within one of

four general areas: (1) summation of the evidence; (2) reasonable deduction from the evidence; (3) answer to argument of opposing counsel; and (4) plea for law enforcement.”).

To preserve a claim of error regarding improper jury argument, a defendant must object each time that the argument is made, or else the complaint is waived. *See Tex. R. App. P. 33.1(a); Temple v. State*, 342 S.W.3d 572, 603 (Tex. App.—Houston [14th Dist.] 2010, *aff’d* 390 S.W.3d 341 (Tex. Crim. App. 2013)). Here, the prosecutor raised the intimidation issue on at least two occasions, but Appellant only objected to the latter instance. Earlier in his closing argument, the prosecutor referenced the intimidation issue when he argued:

“Unfortunately, many of you probably have not had the experience of living in an apartment and living in an apartment complex like Mr. Fong did, where every day he’s got to go to that apartment knowing that this defendant and each and every one of his family members are there to make the decision on whether or not he has a place to lay his head, along with his wife and all of the other kids that live in the home with him. Think about that. Mary, his mother, runs that place with the help of who? You. They run that place. Bullies.”

Appellant’s failure to object on each occasion constitutes a waiver of error. *See id.* (“A defendant must object each time an improper argument is made, or he waives his complaint, regardless of how egregious the argument.”). Accordingly, we overrule Appellant’s fifth issue.

Conclusion

Having overruled all of Appellant’s issues, we affirm the district court’s judgment.

Jeff Rose, Chief Justice

Before Chief Justice Rose, Justices Goodwin and Field

Affirmed

Filed: August 28, 2018

Do not publish

APPENDIX B (DECISION OF THE STATE TRIAL COURT)



CASE NO. D-1-DC-15-300933 COUNT 1
INCIDENT NO./TRN: 9236710115

THE STATE OF TEXAS

v.

ROBERTO NIETO CRUZ

STATE ID No.: TX06765463

§ IN THE 147TH DISTRICT

§ COURT

§ TRAVIS COUNTY, TEXAS

Filed in The District Court
of Travis County, Texas
on [Signature] M.
Velva L. Price, District Clerk
at [Signature]

JUDGMENT OF CONVICTION BY JURY

Judge Presiding:	HON. CLIFFORD BROWN	Date Judgment Entered:	JUNE 23, 2016
Attorney for State:	JOSH RENO RICHARD COFER	Attorney for Defendant:	PRUST GARY EMIL
Offense for which Defendant Convicted:			
AGG ASSAULT W/DEADLY WEAPON			
Charging Instrument:	Statute for Offense:		
INDICTMENT	PC 22.02(a)(2)		
Date of Offense:			
1/3/2015			
Degree of Offense:	Plea to Offense:		
2ND DEGREE FELONY	NOT GUILTY		
Verdict of Jury:	Findings on Deadly Weapon:		
GUILTY	YES, NOT A FIREARM		
Plea to 1 st Enhancement Paragraph:	N/A	Plea to 2 nd Enhancement/Habitual Paragraph:	N/A
Findings on 1 st Enhancement Paragraph:	N/A	Findings on 2 nd Enhancement/Habitual Paragraph:	N/A
Punished Assessed by:	Date Sentence Imposed:	Date Sentence to Commence:	
JURY	JUNE 23, 2016	JUNE 23, 2016	
Punishment and Place of Confinement:	NINE (9) YEARS INSTITUTIONAL DIVISION, TDCJ		

THIS SENTENCE SHALL RUN CONCURRENTLY.

SENTENCE OF CONFINEMENT SUSPENDED, DEFENDANT PLACED ON COMMUNITY SUPERVISION FOR N/A .

Fine: \$ N/A	Court Costs: \$ 319.00	Restitution: \$ N/A	Restitution Payable to: <input type="checkbox"/> VICTIM (see below) <input type="checkbox"/> AGENCY/AGENT (see below)
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Attachment A, Order to Withdraw Funds, is incorporated into this judgment and made a part hereof.

Sex Offender Registration Requirements do not apply to the Defendant. TEX. CODE CRIM. PROC. chapter 62.

The age of the victim at the time of the offense was N/A .

If Defendant is to serve sentence in TDCJ, enter incarceration periods in chronological order.

From JUNE 11, 2015 to JUNE 11, 2015 From JUNE 23, 2016 to JUNE 23, 2016

From to

Time Credited: From to From to From to

If Defendant is to serve sentence in county jail or is given credit toward fine and costs, enter days credited below.

N/A DAYS NOTES: N/A

All pertinent information, names and assessments indicated above are incorporated into the language of the judgment below by reference.

This cause was called for trial in County, Texas. The State appeared by her District Attorney.

Counsel / Waiver of Counsel (select one)

Defendant appeared in person with Counsel.

Defendant knowingly, intelligently, and voluntarily waived the right to representation by counsel in writing in open court.

It appeared to the Court that Defendant was mentally competent and had pleaded as shown above to the charging instrument. Both parties announced ready for trial. A jury was selected, impaneled, and sworn. The INDICTMENT was read to the jury, and Defendant entered a plea to the charged offense. The Court received the plea and entered it of record.

The jury heard the evidence submitted and argument of counsel. The Court charged the jury as to its duty to determine the guilt or innocence of Defendant, and the jury retired to consider the evidence. Upon returning to open court, the jury delivered its verdict in the presence of Defendant and defense counsel, if any.

The Court received the verdict and ORDERED it entered upon the minutes of the Court.

Punishment Assessed by Jury / Court / No election (select one)

Jury. Defendant entered a plea and filed a written election to have the jury assess punishment. The jury heard evidence relative to the question of punishment. The Court charged the jury and it retired to consider the question of punishment. After due deliberation, the jury was brought into Court, and, in open court, it returned its verdict as indicated above.

Court. Defendant elected to have the Court assess punishment. After hearing evidence relative to the question of punishment, the Court assessed Defendant's punishment as indicated above.

No Election. Defendant did not file a written election as to whether the judge or jury should assess punishment. After hearing evidence relative to the question of punishment, the Court assessed Defendant's punishment as indicated above.

The Court FINDS Defendant committed the above offense and ORDERS, ADJUDGES AND DECREES that Defendant is GUILTY of the above offense. The Court FINDS the Presentence Investigation, if so ordered, was done according to the applicable provisions of TEX. CODE CRIM. PROC. art. 42.12 § 9.

The Court ORDERS Defendant punished as indicated above. The Court ORDERS Defendant to pay all fines, court costs, and restitution as indicated above.

Punishment Options (select one)

Confinement in State Jail or Institutional Division. The Court ORDERS the authorized agent of the State of Texas or the Sheriff of this County to take, safely convey, and deliver Defendant to the Director, Institutional Division, TDCJ. The Court ORDERS Defendant to be confined for the period and in the manner indicated above. The Court ORDERS Defendant remanded to the custody of the Sheriff of this county until the Sheriff can obey the directions of this sentence. The Court ORDERS that upon release from confinement, Defendant proceed immediately to the Travis County District Clerk's Office, 509 West 11th St, Suite 1.400. Once there, the Court ORDERS Defendant to pay, or make arrangements to pay, any remaining unpaid fines, court costs, and restitution as ordered by the Court above.

County Jail—Confinement / Confinement in Lieu of Payment. The Court ORDERS Defendant immediately committed to the custody of the Sheriff of Travis County, Texas on the date the sentence is to commence. Defendant shall be confined in the Travis County Jail for the period indicated above. The Court ORDERS that upon release from confinement, Defendant shall proceed immediately to the Travis County Sheriff's Bonding Office, 509 West 11th St, Suite 1.600. Once there, the Court ORDERS Defendant to pay, or make arrangements to pay, any remaining unpaid fines, court costs, and restitution as ordered by the Court above.

Fine Only Payment. The punishment assessed against Defendant is for a FINE ONLY. The Court ORDERS Defendant to proceed immediately to the Office of the Travis County Sheriff. Once there, the Court ORDERS Defendant to pay or make arrangements to pay all fines and court costs as ordered by the Court in this cause.

Execution / Suspension of Sentence (select one)

The Court ORDERS Defendant's sentence EXECUTED.

The Court ORDERS Defendant's sentence of confinement SUSPENDED. The Court ORDERS Defendant placed on community supervision for the adjudged period (above) so long as Defendant abides by and does not violate the terms and conditions of community supervision. The order setting forth the terms and conditions of community supervision is incorporated into this judgment by reference.

The Court ORDERS that Defendant is given credit noted above on this sentence for the time spent incarcerated.

Furthermore, the following special findings or orders apply:

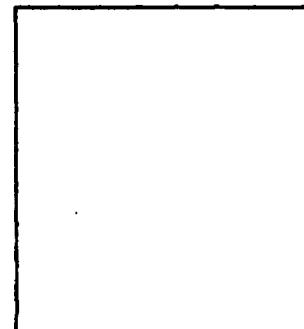
Deadly Weapon.

The Court FINDS Defendant used or exhibited a deadly weapon, namely, A BEER BOTTLE AND BRASS KNUCKLES AND HIS FOOT AND SHOE AND HIS FIST, during the commission of a felony offense or during immediate flight therefrom or was a party to the offense and knew that a deadly weapon would be used or exhibited. TEX. CODE CRIM. PROC. art. 42.12 §3g.

Signed and entered on JUNE 27, 2016

X 
147TH DISTRICT COURT
JUDGE PRESIDING

Clerk: KKB



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APPENDIX C
(DECISION OF THE TEXAS COURT OF CRIMINAL APPEALS DENYING REVIEW)

OFFICIAL NOTICE FROM COURT OF CRIMINAL APPEALS OF TEXAS
P.O. BOX 12308, CAPITOL STATION, AUSTIN, TEXAS 78711

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2/6/2019

COA No. 03-18-00246-CR

CRUZ, ROBERTO NIETO Tr. Ct. No. D-1-DC-15-300933 PD-1381-18

On this day, the Appellant's petition for discretionary review has been refused.

Deana Williamson, Clerk

DREW B. PHIPPS
DREW PHIPPS, P.C.
7421 BURNET RD STE 288
AUSTIN, TX 78757-2250
* DELIVERED VIA E-MAIL *

APPENDIX D (TEXT OF CITATIONS)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Amendment VI:

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, Amendment XIV:

All persons born or naturalized in the United States 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 laws.