No. _____

In The Supreme Court of the United States

JAMES WESLEY AMONETT, JR.,
Petitioner,

V.

COMMONWEALTH OF VIRGINIA,
Respondent.

On Petition for Writ of Certiorari to the Supreme Court of Virginia

PETITION FOR WRIT OF CERTIORARI

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Questions Presented

Issue 1. There is an important, recurring issue on which the Federal circuits and the states' highest courts are split, i.e. whether the police can promise someone who they have arrested a specific benefit in exchange for the arrestee's cooperation and whether that contract (offer and acceptance) is enforceable.

a. Can the government escape responsibility for the promises made by the police and accepted by the arrestee by claiming that the police lacked the authority to make such promises?

b. Does this Court's ruling in *Frazier v. Cupp*, 394 U.S. 731, 89 S.Ct. 1420, 22 L.Ed.2d 684 (1969) that police may misrepresent the facts they know mean that the police can misrepresent their authority to make agreements with someone they have arrested?

c. Should *Santobello v. New York*, 404 U.S. 257 (1971) apply to promises made by the police, accepted by the arrestee and upon which the arrestee relies to his detriment?

Issue 2. Whether, under the Right to Trial by Jury Clause of the Sixth Amendment to the Constitution of the United States, a defendant is entitled to have a jury determine the factual issue of whether the police and the defendant entered into a binding contract,and whether the contract has been breached.

Parties

The parties to this case are petitioner James Wesley Amonett, Jr. and the Commonwealth of Virginia.

Corporate Disclosure

There are no corporations involved in this case.

List of Proceedings

1. In the Fairfax Circuit Court: *Commonwealth v. Amonett*, No. FE-2016-0001157:

    a. Trial – March 14-15, 2017;

    b. Sentencing – July 7, 2017;

    c. Notice of Appeal filed – July 11, 2017.

2. In the Virginia Court of Appeals: *Amonett v. Commonwealth*, Record No. 1613-17-4:

    a. Petition for writ of Error filed – November 15, 2017; granted in part and denied in part, by judge -May 3, 2018; granted in part an denied in part, by panel, September 18, 2018;

    b. Disposition, affirmed by published opinion, 70 Va.App. 1, 823 S.E.2d 504 (Va. App. 2019) – February 19, 2019;

    c. Notice of Appeal filed – March 21, 2019.

3. In the Supreme Court of Virginia: *Amonett v. Commonwealth*, SCV Record # 190363:

   a. Petition filed – March 21, 2019;

   b. Petition refused – September 13, 2019.

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I. INTRODUCTION

On July 27,2015, James Wesley Amonett, Jr. was arrested by the Herndon, Virginia Police Department. At the arrest scene, the lead detective, J. J. Passmore told Amonett, that if Amonett cooperated with the police he would not be charged. In reliance thereon, Amonett, provided the marijuana with which he was subsequently charged, identified his supplier, all of his customers, gave a complete description of his marijuana business, and worked as a confidential informant. At trial, the court refused to enforce the contract between the

police and the defendant and the court refused to allow the jury to consider whether there had been a binding contract that had been breached.

The Virginia Court of Appeals ruled that police have no authority to enter into agreements or contracts such as the one in issue in this case; that only prosecutors can enter into such agreements; and, as a result Mr. Amonett "… did not have any basis for believing that the officers were acting as the prosecution's agents." There is no prior decision to this effect in Virginia and there is a split in the Federal Circuits and the state appellate courts.

The Virginia Court of Appeals in support of its decision expanded *Frazier v. Cupp*, 394 U.S. 731, 89 S.Ct. 1420, 22 L.Ed.2d 684 (1969), from permitting the police from misrepresenting the facts they know to misrepresenting and deceiving an arrestee about their authority to enter into an agreement.

Under the Sixth Amendment, the defendant had the right to have a jury determine whether the police asserted apparent authority; entered a binding contract; and, breached the contract.

The issues in this case are important and recurring, and because the authorities are split on how to handle these matters, it is appropriate for this Court to provide instruction and guidance.

II. OPINIONS BELOW

The *per curium* opinion of a single judge of the Virginia Court of Appeals granting the petition for writ of error in part and denying said petition in part is attached hereto as Exhibit A (A1). The opinion of a panel of the Virginia Court of Appeals granting an additional point of appeal on the petition for writ of error is attached hereto as Exhibit B (A2). The

published opinion of the Court of Appeals of Virginia, in *Amonett v. Commonwealth*, 70 Va.App. 1, 823 S.E.2d 504 (2019) is attached hereto as Exhibit C (A15). the denial of the petition for writ of error by the Supreme Court of Virginia, attached hereto as Exhibit D (A17).

III. STATUTORY JURISDICTION

This Court has jurisdiction to review this matter on a writ of certiorari pursuant to 28 U.S.C. § 1257, which provides in pertinent part:

> (a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari … where any title, right, privilege or immunity is specifically set up or claimed under the Constitution or the treaties or the statutes of, or any commission held or authority exercised under, the United States.

IV. CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Constitutional Provisions
United States Constitution –

5th Amendment

… nor shall any person … be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; …

6th 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 …

14th Amendment

nor shall any State deprive any person of life, liberty, or property, without due process of law …

IV. STATEMENT

A. Facts

On July 27, 2015, Detective J. J. Passmore had a confidential informant arrange a marijuana deal with Amonett and then arranged for the Herndon Police to stop Amonett and to search his vehicle (T-93).

The police removed Amonett from the vehicle, placed him in handcuffs and locked him in the back of a cruiser (T-94-95). The police found a locked box in the vehicle. (T-95-96). Around that time, Passmore arrived and discussed cooperation with Amonett (T-97). The other officers encouraged Amonett to listen to Passmore about cooperation (T-97-98). Passmore offered Amonett a deal whereby if Amonett cooperated, Amonett would not be arrested and would not be charged (T-97, 99-100, 143).

In reliance on the Detective's offer, Amonett accepted the deal and consented to the search of the locked box, told where there was marijuana at his

home, answered questions about his supplier, his customers and all his marijuana dealings and agreed to be a pro-active informant, which he did for approximately two months.[1]

Almost 3 months after the stop of his vehicle, Amonett was arrested and charged *inter alia*, with the marijuana that was in the safe and the marijuana that was in the house, which Amonett had provided pursuant to his cooperation.

During trial, Amonett moved to dismiss the case based on the promises made Passmore and Amonett's compliance and cooperation. The trial judge who heard all the evidence related to the agreement between Passmore and Amonett denied the motion. Additionally, because the agreement was a factual question, Amonett asked for "Jury Instruction T", which would have allowed the jury to determine if an agreement had been reached and if the parties complied with the agreement. The trial court refused to let the jury determine that issue or to consider the facts related to that issue.

Amonett was convicted and the jury recommended 7 days in jail on each charge. The Court imposed that sentence on July 7, 2017. Notice of Appeal was timely filed 4 days later, on July 11, 2017.

On May 3, 2017, a single judge of the Virginia Court of Appeals, in a *per curium* opinion granted

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[1] The Detective had been after an LSD seller, who knew Amonett. Amonett tried to buy LSD from the seller for the police, but because the LSD seller knew that Amonett only used marijuana and nothing else, he would not sell LSD to Amonett.

the petition in part and denied it in part. On September 18, 2017, a panel of that court granted more of the petition. In a published opinion dated February 19, 2019, the Virginia Court of Appeals affirmed the judgment of the trial court, 70 Va.App. 1, 823 S.E.2d 504 (Va. App. 2019).

On March 21, 2019, Amonett timely filed his notice of appeal in the Virginia Court of Appeals and his petition for writ of error in the Supreme Court of Virginia. That petition was refused on September 13, 2019.

V. REASONS FOR GRANTING THE WRIT

A. THERE IS AN IMPORTANT, RECURRING ISSUE ON WHICH THE FEDERAL CIRCUITS AND THE STATES' SUPREME COURTS ARE SPLIT, I.E. WHETHER THE POLICE CAN PROMISE SOMEONE WHO THEY HAVE ARRESTED A SPECIFIC BENEFIT IN EXCHANGE FOR THE ARRESTEE'S COOPERATION AND WHETHER THAT CONTRACT (OFFER AND ACCEPTANCE) IS ENFORCEABLE.

The question presented in this case, is whether promises made by the police and relied upon by the defendant should be enforced? In this case, Amonett did everything he agreed to do. As a result of Amonett's cooperation, the police and the prosecution were able to investigate and prosecute drug crimes in Fairfax County.

The Virginia Court of Appeals ruled that the agreement could not be enforced because: the police are not agents of the Commonwealth. The Virginia Court of Appeals also expanded *Frazier v. Cupp*, 394 U.S. 731, 89 S.Ct. 1420, 22 L.Ed.2d 684 (1969), to allow deliberate misrepresentations by the police as to their power and authority to enter into agreements. The Supreme Court of Virginia would not review that decision.

These findings violate the Constitution and are addressed below.

1. Can the Government Escape Responsibility for the Promises Made by Its Police Officers by Claiming That the Police Officers Did Not Have the Authority to Make Such Promises;

In *Miranda v. Arizona*, 384 U.S. 436, 442, 86 S.Ct. 1602, 16 L.Ed.2d 694, (1966), this Court begins its discussion of the right of the accused to remain silent with the maxim "nemo tenetur seipsum accusare," that "no man is bound to accuse himself." The Court then explained, “that the modern practice of in-custody interrogation is psychologically rather than physically oriented.” *Miranda*, 384 U.S. at 442. This Court then established that the police had to be fair with the defendant and had to instruct him as to his rights. To that end this Court established what is now known as *Miranda* warnings.

This case presents the related issue of the use of police promises, which the defendant does not

know will not be enforced. Clearly, the Circuit Courts of Appeal and the state courts are split as to how such promises should be handled. *United States v. Baldwin*, 60 F.3d 363, (7th Cir. 1995); *United States v. Haak*, 884 F.3d 400, (2nd Cir. 2018); *State v. Riley*, 242 N.J.Super. 113, 576 A.2d 39 (App.Div.1990); *State v. Marsh*, 290 N.J.Super.663, 676 A.2d 603 (App.Div.1996); *State v. Sturgill*, 121 N.C.App 629, 469 S.E. 2d 557 (1996); *United States v. McGovern*, 822 F.2d 739 (8th Cir.), cert. denied 484 U.S. 956, 108 S.Ct. 352, 98 L.Ed.2d 377 (1987); *United States v. Goodrich*, 493 F,2d 390 (9th Cir.. 1974).

In many cases the courts have enforced police promises of immunity, including: *Riley*, *Sturgill*, *McGovern*, and *Goodrich*, which have held that defendants are generally entitled to rely on the police. However, many other courts have held, as the Virginia Court of Appeals did in this case, that police officers have no authority to make those representation and that somehow a defendant, who must be counselled as to his right to remain silent and his right to have an attorney, should know without any notice whatsoever that when a police officer promises immunity and/or no prosecution in exchange for cooperation, that police officer is without authority to do so. *State v. Caswell*, 121 Idaho 801, 828 P.2d 830, 833 (1992); *People v. Gallego*, 430 Mich. 443, 424 N.W.2d 470, 473-74 (1988); *State v. Fulton*, 66 Ohio App.3d 215, 583 N.E.2d 1088, 1090 , appeal dismissed, 52 Ohio St.3d 706, 557 N.E.2d 1212 (1990); *State v. Reed*, 75 Wash.App. 742, 879 P.2d 1000, 1002 (1994), rev. denied, 125 Wash.2d 1016, 890 P.2d 20 (1995).

Allowing the police to misrepresentation their authority to make agreements for the specific purpose of getting the accused to forgo his *Miranda* rights comports with neither the letter nor spirit of this Courts decision in *Miranda*, or with Due Process of Law. As Judge Posner noted in *Baldwin*, "A false promise of lenience would be an example of forbidden tactics." 60 F.3d at 365. As a practical matter, the defendant is with the following choice: assert his/her rights, pay what will undoubtedly be a great deal of money for attorneys, face potential jail time, and endure the stress that a trial will have on his/her life, employment and family, or accept the agreement, cooperate and save himself/herself from those concerns. To later find out that the police had misrepresented their authority to make the promise is not only an affront to the maxim "nemo tenetur seipsum accusare," but also, it undermines the safeguards this Court attempted to create when it pronounced *Miranda*.

As Petitioner will demonstrate *infra*, the government is responsible for its police officers.

2. This Court's Ruling in *Frazier v. Cupp*, 394 U.S. 731, 89 S.Ct. 1420, 22 L.Ed.2d 684 (1969) Should Not Be Expanded to Deny Enforcement of Promises Made by Police to the Defendant and Relied on by the Defendant to His Detriment.

The Virginia Court of Appeals not only justified the promise of no charges by claiming that the police had no authority to make such promises

and the defendant was required to know that fact, it also justified its ruling on what is an improper reading of this Court's decision in *Frazier v. Cupp*, 394 U.S. 731, 89 S.Ct. 1420, 22 L.Ed.2d 684 (1969). The Virginia Court of Appeals stated:

> United States] Supreme Court [has] made clear that even an outright falsehood by a police interrogator is but another factor to be considered in evaluating the totality of the circumstances.
>
> *Amonett*, 70 Va.App. at 7, 823 S.E.2d at 507, citing *Frazier*.

In *Frazier*, this Court did rule that the police could misrepresent the facts within their possession when questioning a defendant. However, this Court has never ruled, as did the Virginia Court of Appeals, that the police could make a false promise not to prosecute in order to obtain the cooperation of an accused, who waives his *Miranda* rights based on the police promises.

Courts have misread *Frazier* to avoid address ing police promises. For example, in *Miller v. Fenton*, 796 F.2d 598, 610 (3rd Cir. 1986), the officer offered psychiatric care if he would waive his rights. The Court acknowledged:

> With regard to the psychiatric help, on the other hand, Boyce did make some outright promises. For example, he said, "[W]e're going to see to it that you get the proper help. This is our

> job, Frank." Such a promise could be quite compelling in itself and could also strengthen the implications that Miller might not be prosecuted at all.

Despite finding serious misrepresentations and false promises, the Court, relying on *Frazier* found that the police officer had acted properly in inducing Boyce to waive his rights. See also: *Quadrini v. Clusen*, 864 F.2d 577 (7th Cir. 1989) (a promise involving alcohol treatment.) *Wesley v. State*, 498 So.2d 1276, 11 Fla. L. Weekly 2220 (Fla. App. 1986); *Moser v. State*, 763 So.2d 1165 (Fla. App. 2000).

Other courts have followed this Court's decision in *Frazier*. In *U.S. v. Rodgers*, 186 F.Supp.2d 971, 978 (E.D. Wis. 2002):

> It is important to note in this regard that *Frazier* involved a false statement that the defendant's associate had confessed, not a lie about scientific or physical evidence. Frazier is not a license for police officers to lie on any subject they choose.

See also, *Green v. Scully*, 675 F.Supp. 67 (E.D. N.Y. 1987)

It is clear from the foregoing cases, and the opinion of the Virginia Court of Appeals in this case, that false promises are being used by police to induce defendants to waive their rights and these promises are being excused by the Courts improperly relying on *Frazier*.

3. Contracts Between the Police and an Accused Are Enforceable.

Detective Passmore offered and Amonett accepted a contract. The terms were: Amonett cooperates, which he did, and no charges will be brought against him, which they were. In plain language, that is a contract and a breach of contract. When the government puts its law enforcement officers in a position of apparent authority to make deals, which they do, the deals should be enforced. Interestingly, the Virginia Court of Appeals recognized this principal in this case. "Determining whether such immunity agreements exist is 'generally governed by the law of contracts.' 70 Va.App. at 8, 823 S.E.2d at 508 quoting *Hood v. Commonwealth*, 269 Va. 176, 181, 608 S.E.2d 913 (2005).

Consideration has been defined as that which is presently bargained for and given in exchange for the promise, which creates a benefit to the promisor and/or a detriment to the promisee. Certainly, the trade-off between Passmore and Amonett meets the elements of this definition.

Consideration is the *sine qua non* of a contract.

Unfortunately, although the Virginia Court recognized contract law, it did not follow the contract law and did not enforce the deal. Instead it claimed , as noted *supra*, that Passmore did not have authority to make such a deal.

Additionally, the Court of Appeals claimed that Passmore was not an apparent agent of the prosecution. 70 Va.App. at 8, 823 S.E.2d at 508 Passmore is an agent of the Commonwealth. Rule 3A:12(b) of the Rules of the Supreme Court of Virginia permits the issuance of a subpoena *duces tecum* for writings and objects in the "possession of a person not a party to the action". Because the police are considered part of the Commonwealth and a party, Virginia Courts have consistently refused to issue subpoenas *duces tecum* to the police. *Ramirez v. Commonwealth*, 20 Va.App. 292, 296, 456 S.E.2d 531, 533 (1995).

In this case, and in the other cases cited, the police asserted forcefully and convincingly that they had the authority to make deals with the accused. Whether the police, in this context have actual authority to bind the government or apparent authority, agency and/or apparent agency principals require that the defendant be allowed to rely on and be entitled to enforce the agreement. In *American Society of Mechanical Engineers v. Hydrolevel*, 456 U. S. 330, 555-556, 102 S.Ct 1935, 72 L.Ed.2d 330 (1982), this Court upheld apparent authority as a legitimate doctrine under agency law, stating, "Under general rules of agency law, principals are liable when their agents act with apparent authority". Citing: Restatement (Second) of Agency §§ 249, 262 (1957)

In *Illinois v. Rodriguez*, 497 U.S. 177, 187-188, 110 S.Ct. 2793, 111 L.Ed.2d 148 (1990) this Court applied apparent authority principles to a criminal case, wherein the person who gave the police consent to search had apparent authority to do so.

Also, the concept of estoppel to deny agency should apply. This doctrine applies when 1) a party believes that a person is an agent for another through intentional conduct, carelessness or failure to correct a mistaken belief by the principal; 2) the party's reasonable reliance on the belief that an agency relationship exists; and 3) the party suffers a detriment. *Chandler v. Kelley*, 149 Va. 221, 141 S.E. 389 (1928); These elements exist in this case. It should be noted that the difference between apparent agency and estoppel to deny agency is that apparent agency does not require detrimental reliance to bind the principal. *Sanchez v. Medicorp Health System*, 270 Va. 299, 618 S.E.2d 331, 334, (2005); citing: Restatement (Second) of Agency § 267; Restatement (Second) of Torts § 429

As this case and the other cases cited in the previous section demonstrate contracts are being made to convince defendants to forgo their 5th, 6th and, sometimes, as in this case, 4th amendment rights. Then after trading those rights in exchange for the benefit of the police offer, defendants are barred from enforcing the contracts that were promised and for which the defendants provided the bargained for consideration. Court approval of this conduct is inappropriate. The courts should be required to enforce the contracts.

B. AMONETT HAD A CONSTITUTIONAL RIGHT TO HAVE HIS JURY DECIDE THE FACTUAL ISSUE OF WHETHER THE POLICE HAD MADE A DEAL WITH HIM.

The right to trial by jury is guaranteed by the 6th Amendment to the Constitution of the United States and by Article I, Section 8 of the Constitution of Virginia. This right essentially provides that the jury will decide factual disputes between the parties. In this case, Amonett asked for instruction, which required the jury to consider whether the police and the defendant entered into an agreement upon which the defendant relied and which the police breached.

The Court of Appeals held: "the question of whether [a valid] contract exists is a pure question of law." 70 Va.App. at 8, 823 S.E.2d at 508. This is incorrect. Every state court and the Federal courts have jury instructions, which allow juries to weigh the evidence, apply the law and determine whether a contract exists. Virginia's jury instructions on this issue can be found in Virginia Model Jury Instructions, Civil, Nos. 45.000 through 45.480, inclusive. If a civil jury can be instructed to determine the existence or nonexistence of a contract, so can a jury in a criminal case. Because of the 6th Amendment right to trial by jury, such a determination is more imperative in a criminal case.

A common-law jury, *ex vi termini*, is a body of twelve competent people, selected in the mode prescribed by law to determine, on oath and in a legal tribunal, the facts in the case. *Michie's Jurisprudence*, Jury, Section 2 (1978). It is well

established that the jury is "the trier of fact". United States Constitution, Amendment VI; Constitution of Virginia, Article I, section 8; *Lane v. Commonwealth*, 184 Va. 603, 611-612, 35 S.E.2d 749 (1945). Consistent with the 6th Amendment, a court "may not usurp the jury's role as a trier of facts and the weigher of testimony." *Commonwealth v. McNeely*, 204 Va. 218, 222, 129 S.E.2d 687, 689 (1963*); Stevens v. Summers*, 207 Va. 320, 324, 150 S.E.2d 83, 86, (1966).

In *Wright v. West*, 505 U.S. 277, 120 L.Ed.2d 225, 112 S.Ct. 2482 (1992), this Court explained the importance of having the jury perform its function as trier of fact.

> As the trier of fact, the jury was entitled to disbelieve West's uncorroborated and confused testimony. In evaluating that testimony, moreover, the jury was entitled to discount West's credibility on account of his prior felony conviction, (cites omitted) and to take into account West's demeanor when testifying, which neither the Court of Appeals nor we may review.

This Court has repeatedly emphasized the importance of trial by jury.

> At stake in this case are constitutional protections of surpassing importance: the proscription of any deprivation of liberty without "due process of law," Amdt. 14, and the guarantee that "in

> all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury," Amdt. 6. Taken together, these rights indisputably entitle a criminal defendant to "a jury determination that [he] is guilty of every element of the crime with which he is charged, beyond a reasonable doubt." *United States v. Gaudin*, 515 U.S. 506, 510, 132 L. Ed. 2d 444, 115 S. Ct. 2310 (1995); see also *Sullivan v. Louisiana*, 508 U.S. 275, 278, 124 L. Ed. 2d 182, 113 S. Ct. 2078 (1993); *[In re] Winship*, [397 U.S. 358, 364, 25 L. Ed. 2d 368, 90 S. Ct. 1068. crime with which he is charged").
>
> *Apprendi v New Jersey*, 530 U.S. 466, 476-477, 120 S.Ct. 2348, 2355-2356, 147 L.Ed.2d 435 (2000)

In *Apprendi*, this Court reiterated its description in *Gaudin* of the historical roots and the Constitutional importance of having juries determine factual issues in criminal cases.

> As we have, unanimously, explained, *Gaudin*, 515 U.S. at 510-511, the historical foundation for our recognition of these principles extends down centuries into the common law. "To guard against a spirit of oppression and tyranny on the part of rulers," and "as the great bulwark of

> [our] civil and political liberties," 2 J. Story, Commentaries on the Constitution of trial by jury the United States 540-541 (4th ed. 1873), trial by jury has been understood to require that "the truth of every accusation, whether preferred in the shape of indictment, information, or appeal, should afterwards be confirmed by the unanimous suffrage of twelve of [the defendant's] equals and neighbours . . . ." 4 W. Blackstone, Commentaries on the Laws of England 343 (1769)

Apprendi, 530 U.S. at 477.

The best explanation for trial by jury is found in this Court's opinion in *Duncan v. State of Louisiana*, 391 U.S. 145, 150, 88 S.Ct. 1444, 20 L.Ed.2d 491 (1968), which made the Sixth Amendment right to trial by jury applicable to the states through the Fourteenth Amendment.

> Those who wrote our constitutions knew from history and experience that it was necessary to protect against unfounded criminal charges brought to eliminate enemies and against judges too responsive to the voice of higher authority. The framers of the constitutions strove to create an independent judiciary but insisted upon further protection against arbitrary action. Providing an accused with the right to be tried by a jury of

> his peers gave him an inestimable safeguard against the corrupt or overzealous prosecutor and against the compliant, biased, or eccentric judge. If the defendant preferred the common-sense judgment of a jury to the more tutored but perhaps less sympathetic reaction of the single judge, he was to have it. Beyond this, the jury trial provisions in the Federal and State Constitutions reflect a fundamental decision about the exercise of official power—a reluctance to entrust plenary powers over the life and liberty of the citizen to one judge or to a group of judges. Fear of unchecked power, so typical of our State and Federal Governments in other respects, found expression in the criminal law in this insistence upon community participation in the determination of guilt or innocence. The deep commitment of the Nation to the right of jury trial in serious criminal cases as a defense against arbitrary law enforcement qualifies for protection under the Due Process Clause of the Fourteenth Amendment, and must therefore be respected by the States.

It is exactly these concerns which make the Virginia Court of Appeals position that a jury cannot review the evidence and determine whether a contact was made between the police and the accused inconsistent with the Sixth Amendment.

Similarly, that court's position that only a judge can determine whether a contract has been made deprives a defendant of the "inestimable safeguard against the corrupt or overzealous prosecutor and against the compliant, biased, or eccentric judge." *Id.*

Amonett was entitled to have his jury evaluate the testimony of the witnesses and decide if there was a contract between him and the police that Amonett was entitled to have enforced.

Having a jury's decision as to whether a defense has been substantiated is common in other defenses. In *Gaudin*, this Court made it clear that it is a jury that decides materiality in a fraud case. Similarly, defenses on the criminal side such as self-defense, defense of others, insanity, statute of limitations, duress, and necessity, when raised, are given to the jury to decide. Even voluntariness of a confession is originally determined by the judge, but if the judge allows the confession to be admitted, the jury is instructed that it can weigh the evidence to determine voluntariness. O'Malley, Grenig, Lee, "Federal Jury Practice and Instructions", Fifth Edition, No. 14.03.

In cases such as this, it is appropriate for the jury to determine offer, acceptance, and consideration, In those cases, the jury would decide agency, apparent authority and promissory estoppel.

VI. CONCLUSION

For the foregoing reasons, this Court should grant certiorari in this case and resolve conflicts

between various state and Federal appellate courts on the authority of the police to make binding contracts with defendants. On this important issue, defendants should not be subject to one set of rules in one court and a different set of rules in another. What promises the police can make to induce an unwitting defendant to relinquish his rights is important. The right to a jury trial encompasses its determination of whether the police have made a binding agreement on which the defendant can rely.

This court is asked to grant certiorari, hear this case and address these important issues.

Respectfully Submitted,

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