

CONST. AMEND. VI, and his right to due process as guaranteed by U.S. CONST. AMEND. V & XIV. Also, by the same reasoning set forth in previous issues it meets both prongs of **Strickland, supra.**

CLAIM FOR RELIEF NUMBER TWELVE

APPLICANT WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL AS GUARANTEED BY U.S. CONST. AMEND VI, AND DUE PROCESS OF LAW AS GUARANTEED BY U.S. CONST. AMEND. V & XIV BY COUNSEL'S FAILURE TO OBJECT TO THE FOLLOWING INADMISSIBLE TESTIMONY.

When Jacqueline Barrett was on the stand the State asked the following:

By the State: "And tell the jury what you told the cold case squad guys that made you give them the name of William Darin Irvan?"

By Ms. Barrett: That he was, you know, around my kids as they were growing up, and that I knew that he had been in trouble before.

By the defense: Judge, I am going to object, may we approach." (RR19, 110,111)

The defense never stated a reason for the objection, never obtained a ruling on the objection, and never asked that the jury be instructed to disregard the statement.

This statement left it to the jury's imagination what trouble Applicant had been in that would cause her to suspect him as the murderer.

Then, while up at the bench, the defense objects to what they heard in opening statement that

this witness would testify to something that happened when Applicant was 13 years old. The State made a proffer which was:

By the State: "She's going to say what I said in opening statement, Judge, that there was a night when she was getting ready to go to bed and she heard Michelle scream and she went into the bedroom and Michelle was there with the covers clutched, the defendant was on the floor next to the bed and she ordered him out of the bedroom.

By the Court: Okay, I will overrule your objection to that.

By the defense: If I could just further state my objection, not only that it's an extraneous offense, but that the prejudicial effect would outweigh the probative value.

By the Court: Okay. So noted." (RR19, 111,112)

Then when in front of the jury this benign proffer expanded to the following.

First the witness established that Michelle Shadbolt was 16 years old at the time, and Applicant was 13. She then testified:

By Ms. Barrett: "We were in bed and it had been a while and I heard her scream and say, stop it. Leave me alone., and I got up and I went to her room. And he was sitting on the floor by her bed.

By the State: Who is he?

By Ms. Barrett: Darin

By the State: Keep going.

By Ms. Barrett: And I said, What's going on? He said, well, marna, he touched me. And she

acted - - she was real scared. And I told him, I said, Darin, now look, you came to spend the night with Mike. So, you either go in the room and go to bed or you go home, and I put her in bed with me." (RR19, 113)

From the original proffer it grew to the above, and at argument it grew even more. By the State: "How about that night so long ago, that night in the bedroom in Michelle's bedroom so long ago? Very important. What's important about that night?

Well, you got to think about the defendant back when he was only 13 or 14 years old., spending the night with his best friend Michael, made a decision to sneak into that bedroom knowing what he was going to do if he managed to get in there in the dark when the house was asleep.

And when he went in that bedroom he went in there with the lights off. Michelle was asleep in her bed thinking she was safe for the night. And he reached up and he touched her, inappropriately, sexually, whatever you want to call it. And she screamed. Does that sound like a woman who wanted to have a relationship with this?" (RR25, 78)

The State very shrewdly made a proffer which said nothing about any touching, said nothing about the hearsay that Michelle might have said other than just that she screamed. Based on the belief that the proffer was truly what was going to happen in front of the jury, the Court overruled the objection. It was then incumbent upon the defense to further object to the new and more damaging testimony that actually occurred in front of the jury. It developed from the proffer of a scream only, to the he touched me statement of Michelle, to

the argument that he touched her inappropriately, sexually.

After this the witness was allowed to state, without objection, that her husband befriended Applicant and got him a job. All of this irrelevant and prejudicial testimony came in without objection.

By Ms. Barrett: " My husband is a tugboat captain and he got Darin a job on the boats with him.

By the State: How about on the day he didn't show up for work? Did Homer do anything for him then?

By Ms. Barrett: There were times he showed up in pretty bad shape and Homer would send him to bed to sleep it off so he wouldn't get fired." (RR19, 118)

How is that testimony relevant as to whether Applicant killed Michelle Shadbolt? It is very relevant as to why the jury should hate Applicant, and why they should believe that he is scum that had to sleep off alcohol or drugs or both when he should have been appreciating what Michelle's father was doing for him.

This witness has, at this point, informed the jury that Applicant had been in trouble before. That trouble was such that she gave his name as a suspect to this murder. Further, that he touched Michelle when she was in bed way back when he was 13 years old, and the State will stretch that into an inappropriate sexual touching. Further, that the father befriended him and he repaid that friendship by coming to work drunk or stoned. None of this was objected to. All of this should have been objected to, and the defense should have asked that the jury