

be instructed not to consider any of this for any reason whatsoever. No such objections or requests for instructions to disregard were made. Therefore, the jury was left to consider it for all purposes. Again this failure on the part of Applicant's attorneys denied him the effective assistance of counsel that is guaranteed by U. S. CONST. AMEND. VI, and denied him due process of law as guaranteed by U.S. CONST. AMEND. V & XIV.

As if the above wasn't bad enough when taking this witness on cross-examination the defense piled on more of this same evidence.

By the defense attorney Bob Loper: "Okay, You were certainly not aware of any event that had occurred between your son Michael and William Irvan at that --during that time period of 1987 that would prevent them from not being -- from not associating with each other or being around each other; are you? .

By Ms. Barrett: The only thing that I would say on that is that just my son telling me that Darin had gotten into a lot of trouble and that he didn't hang with him that much anymore because he didn't want to get in trouble." (RR19, 127)

CLAIM FOR RELIEF NUMBER THIRTEEN

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.

The State wanted to do all it could to clear Jackie Shadbolt from this crime. They

realized that they needed to clear him, and they wanted to do this without ever having to put him on the stand and subject him to cross-examination. They were very slick in their way of doing this. For example:

By the State: "Who is Jack Shadbolt to Michelle?"

By Detective Rossi: Was the estranged husband of Michelle Shadbolt.

By the State: When you asked those people, Sam and Brenda Farquhar, and Rhonda White, and Pauline Shadbolt, where Jack Shadbolt had been that night and into the early morning hours, was what they told you consistent or inconsistent with what Jack Shadbolt himself had told you he had been?

By Detective Rossi: Consistent." (RR20, 55)

After establishing that all of these witnesses, and Jack Shadbolt, told him where Jack Shadbolt was at the time of the killing, and that they all gave the same stories. The State then once again establishes the time line of the murder through hearsay testimony. All without objection.

By the State: "Did you also talk to a lady named Mary Sinkbush?"

By Detective Rossi: Yes, ma'am.

By the State: And who is she?

By Detective Rossi: She was Michelle's co-worker at Shell Oil Company?

By the State: And they had done what together?

By Detective Rossi: They had gone out the night before.

By the State: To do what?

By Detective Rossi: To play bingo.

By the State: And why were you interested in talking to her?

By Detective Rossi: To get a time line when Michelle came home.

By the State: Because you needed to know what as a detective, to establish what?

By Detective Rossi: A time of occurrence of the crime.

By the State: And who would have been the last people that Michelle knew who had seen her alive?

By Detective Rossi: Her friends that she went to play bingo with.

By the State: And you knew -- you knew you were dealing with the window of from what to what?

By Detective Rossi: About 2:50, 3:00 -- about 3:00 O'Clock 3:30, until about 8:00 a.m., I believe." (RR20, 56)

Through hearsay testimony that Applicant could never subject to cross-examination the State was able to prove that Jack Shadbolt had an alibi, and that was corroborated by several other people. That they had a time line to check the alibi to, and that time line came from the now deceased Mary Sinkbush.

Even later the State went right back to this issue and asked:

By the State: " Up until this time that we are talking about so far, did you have any hard physical evidence linking Jack Shadbolt to the murder of Michelle?

By Detective Rossi: No, ma'am did not.

By the State: Had you found any inconsistencies in his story of his whereabouts during the time, the crucial time that you were worried about him?

By Detective Rossi: No, ma'am.

By the State: Other than the fact that they were separated, did he tell you anything that lead you to believe there was some other motive he would have had for killing Michelle?

By Detective Rossi: No, ma'am." (RR20, 67,68)

All of this hearsay testimony should have been objected to. The denial of the right to confront and cross-examine his accusers should also have been the subject of a timely objection on the part of Applicant's trial attorneys. Failure to do so denied Applicant of the effective assistance of counsel guaranteed to him by U.S. CONST. AMEND VI and due process of law as guaranteed by U.S. CONST. AMEND. V & XIV. For the same reasoning employed in earlier issues this also meets both prongs of **Strickland, supra.**

Just to show how far the State would go if allowed to see:

By the State: " Do you really think you can separate out the sexual assault from the killing in all this?

By Detective Rossi: No, ma'am.

By the State: It is impossible; isn't it?

By Detective Rossi: That's correct.

By the State: I mean, she was killed during the course of being raped?