

This duty to investigate is even more imperative when the client has been forced to sit in jail for almost three years awaiting trial. There is no excuse for failing to secure any of the witnesses who were available to testify to either Applicant and Michelle Shadbolt's consensual relationship or to specific lies told by Tamara Llamas when she testified.

This failure to investigate, and failure to combat the testimony of Tamara Llamas deprived Applicant of his right to effective assistance of counsel as guaranteed by U.S. CONST. AMEND. VI and due process as guaranteed by U.S. CONST. AMEND. V & XIV

CLAIM FOR RELIEF NUMBER SIXTEEN

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..

In an effort to just make the Applicant look bad and inflame the jury with prejudice the State asked the following questions of Tamara Llamas:

By the State: " At the time that you were dating the defendant and living together did the defendant ever have a job?"¹² (RR24, 32)

What possible relevance could there have been as to whether Applicant had a job when he was dating Tamara Llamas back in 1983 or 1984? Obviously, the State already

¹² The year of these events would have been 1983 or 1984. (RR24, 36)

knew Applicant did not have a job and that is what they were wanting to get her answer in front of the jury. The more deadbeat they can make Applicant, the more likely the jury will hate him enough to convict him and give him the death penalty. This was guilt/innocence questioning. Since the defense chose not to object the following occurred:

By Tamara Llamas: (continued from the last quote) "No.

By the State: What did he do? (and once again no objection was made to this question)

By Tamara Llamas: They used to steal cars and just - - -

By the State.: Hang out?

By Tamara Llamas: Yes, Ma'am.

By the defense: I object to that. (without giving a reason)

By the Court: Sustain your objection. It's sustained." (RR24, 33)

Then, even though the defense gave no reason for the objection in the first place, the defense stated the following:

By the defense: "Ask that it be stricken from the record.

The Court then, sensing that no specific objection had been made, and that all that was asked was that the record be stricken, the Court responded:

By the Court: I won't do that.

By the State: so, just hang out?

By Tamara Llamas: Yes, ma'am.

By the State: No steady job?

By Tamara Llamas: Yes, ma'am." (RR24, 33)

Counsel should have been objecting from the beginning when they were going into the relationship Applicant had with this individual some four years before the death of Michelle Shadbolt. What possible relevance could it have had for the State wanting to show that Applicant was a deadbeat that just lived off of Tamara Llamas back in 1983 or 1984? The State got an even bigger boost when Tamara Llamas testified that he not only was a deadbeat he was a thief who stole cars. Counsel's belated objection needed to have stated a reason to preserve any error when the Judge overruled his request that it be stricken from the record. Also, note that counsel did not ask that the jurors be instructed to disregard the remark that Applicant used to steal cars in 1983 or 84, he only asked that the record be cleaned of the statement.

Later the following occurred after the State brought out the alleged confession of the murder of Michelle Shadbolt. The State inquired as to whether Tamara Llamas had told anyone of the confession. She stated that she had told her friend Rhonda Reiner. Then the State asked the following:

By the State: "Okay. Did Rhonda seem surprised?" (RR24, 48) This question itself was an attempt by the State to show that Rhonda Reiner was not surprised when she heard that Applicant confessed to the killing. That would have been a slick way to show that Rhonda Reiner believed that Applicant killed Michelle, without having to have her take the stand and be cross-examined. Even so, the defense seemingly had no idea what was going on, and no

objection was lodged. But then the witness responded with?

By Tamara Llamas: "No. A lot of people in the neighborhood had already said that they believe he did it.

By the defense: Your Honor, I object to hearsay.

By the Court: Sustained, listen to the question, please, and answer the question that's asked.

By Tamara Llamas: Okay.

By the Court: Did Rhonda seem surprised? Yes or No.

By the defense: I'm sorry, Judge, I'd ask the jury be instructed to disregard.

By the Court: Jury disregard the last remark of the witness.

By the defense: And we would ask for a mistrial.

By the Court: That's denied.

By the State: Yes or no, did Rhonda seem surprised when you told her?

By Tamara Llamas: Yes." (RR24, 48)

All of this extremely damaging testimony could have been avoided with a relevance objection in the first place as to whether Rhonda Reiner was surprised to hear that Applicant confessed to the murder. Now the jury knows that the neighborhood believed that Applicant was the killer. Why would they believe that, obviously because it was meant to show that Applicant is that kind of person that would do the killing.

The defense allowing this extremely damaging and inadmissible testimony to be in front of the jury was error that meets the first prong of **Strickland, supra**. The prejudice in