

(RR25, 25). The jury found Applicant guilty of the offense of capital murder, as charged in the indictment. (CR 1., 167; 191-192; RR 25, 89).

Applicant complains of constitutional error subject to harmless error review. TEX. R. APP. P. ANN.. 44.2(a). As this Court cannot determine beyond a reasonable doubt that the repetition of Applicant's privileged marital communications, either singularly or collectively, did not contribute to the jury's verdict, in light of the factual insufficiency of the evidence in this case against him, (see Points of Error One, Two and Three, above) and the State's argument emphasizing the importance of this evidence, this Court must reverse Applicant's judgment of conviction. TEX. R. APP. P. ANN.. 44.2(a); *Chapman v. California*, 386 U.S. 18, 87 S.Ct. 824, 17 L.Ed.2d 705 (1967).

**CLAIM FOR RELIEF NUMBER THIRTY-FIVE**

**THE TRIAL COURT COMMITTED CONSTITUTIONAL ERROR BY NOT ALLOWING APPLICANT'S COUNSEL TO CONFRONT AND CROSS-EXAMINE TAMARA LLAMAS, A KEY WITNESS AGAINST APPLICANT, REGARDING HER FULL CRIMINAL HISTORY, AS IT AFFECTED HER CREDIBILITY AS A WITNESS. U.S. CONST. AMEND. VI, XIV.**

**CLAIM FOR RELIEF NUMBER THIRTY-SIX**

**THE TRIAL COURT COMMITTED CONSTITUTIONAL ERROR BY NOT ALLOWING APPLICANT'S COUNSEL TO CONFRONT AND CROSS-**

EXAMINE TAMARA LLAMAS, A KEY WITNESS AGAINST APPLICANT, REGARDING HER CUSTOMARY PRACTICES AND HABITS OF EMPLOYING JUVENILES IN INTERSTATE TRAFFICKING AND DISTRIBUTION OF MARIJUANA AS IT AFFECTED HER CREDIBILITY AS A WITNESS. U.S. CONST. AMEND. VI, XIV.

**CLAIM FOR RELIEF NUMBER THIRTY-SEVEN**

THE TRIAL COURT COMMITTED CONSTITUTIONAL ERROR BY NOT ALLOWING APPLICANT'S COUNSEL TO CONFRONT AND CROSS-EXAMINE TAMARA LLAMAS, A KEY WITNESS AGAINST APPLICANT, REGARDING HER CUSTOMARY PRACTICES AND HABITS OF EMPLOYING MINORS TO TRANSPORT WEAPONS ACROSS STATE LINES IN FURTHERANCE OF HER CRIMINAL ACTIVITIES, AS IT AFFECTED HER CREDIBILITY AS A WITNESS. U.S. CONST. AMEND. VI, XIV.

**CLAIM FOR RELIEF NUMBER THIRTY-EIGHT**

THE TRIAL COURT COMMITTED CONSTITUTIONAL ERROR BY NOT ALLOWING APPLICANT'S COUNSEL TO CONFRONT AND CROSS-EXAMINE TAMARA LLAMAS, A KEY WITNESS AGAINST APPLICANT, REGARDING HER CUSTOMARY PRACTICES AND HABITS OF MAKING FALSE CRIMINAL ACCUSATIONS AGAINST OTHERS, AS IT AFFECTED HER CREDIBILITY AS A WITNESS. U.S. CONST. AMEND. VI, XIV.

**CLAIM FOR RELIEF NUMBER THIRTY-NINE**

**THE TRIAL COURT COMMITTED CONSTITUTIONAL ERROR BY NOT ALLOWING APPLICANT'S COUNSEL TO CONFRONT AND CROSS-EXAMINE TAMARA LLAMAS, A KEY WITNESS AGAINST APPLICANT, REGARDING HER CUSTOMARY PRACTICES AND HABITS OF HIRING OTHERS TO KILL WITNESSES AGAINST HER IN PENDING CRIMINAL PROSECUTIONS, AS IT AFFECTED HER CREDIBILITY AS A WITNESS. U.S. CONST. AMEND. VI, XIV.**

Applicant filed pretrial motions entitled "Motion to Discover Arrest and Conviction Records of Witnesses" and "Defendant's Pre-Trial Motion for Disclosure of Detailed Exculpatory Evidence." (CR 2, 37-39; 44-49). A hearing of these motions was conducted on Nov. 3, 2003. (RR 5, 137; 141; 145-149). The trial court granted Applicant's Motions, specifically, "as to a anything to be used as impeachment under TRCE [sic]". (CR 2, 37; 44-49; RR. 5., 137; 141; 145-149).

Applicant's counsel attempted to cross-examine and impeach Llamas with her propensity to falsely accuse others of acts they had not committed, to manipulate others and kill others solely when and if it suited her own ends and purposes; to take advantage of the age or naivete of others if it furthered her own silent agendas. Applicant attempted to cross-examine Llamas regarding her habits and routine practices, including her continuous lying

and her manipulation of the criminal justice system to her advantage, Llamas' continuous acts of misconduct and habits, evidenced in part by the events surrounding or leading up to her own plea-bargain agreements with the federal prosecutors and dismissals of several felony indictments. However, Applicant was precluded by the trial court from cross-examining Llamas in these matters and from presenting this evidence to the jury. (RR 24, 188-195; 234-235). Applicant's counsel thereafter presented a Bill of Exception before the trial court. (RR. 24, 237-240).

In the instant case, the State stressed the importance of Tamara Llamas' testimony in closing arguments. (RR 25, 20-23). As stated:

State: "... So, what she has to gain is a little peace of mind, I guess. But they can't touch what she told you. Why? Because she [Tamara Llamas] told you specifics. Things that aren't known to the public. Things that aren't in newspaper articles. Things that we know are corroborated by other witnesses.

He [Applicant] told her he saw her coming home. He told her that he was sitting outside. We know that he does that from Shanna. She corroborates that. That isn't in any newspaper article, that he was sitting outside and that he saw her come home. She told you that he raped her, killed her, stabbed her, that there was blood everywhere. That ain't in any newspaper article. That she fought hard. That ain't in any newspaper article. And you know you can corroborate that from these pictures.

...  
They can call her every name in the book, but they can't touch her, folks. Why? Because this guy sitting over here, this killer, told her those details that she told you. He told her that on the beach that night" (RR, 25. 21-23).

Applicant complains of constitutional error subject to harmless error review. This Court must reverse Applicant's judgment of conviction unless the error can be characterized

as harmless beyond a reasonable doubt. TEX. R. APP. P. ANN. 44.2(a) (Vernon Pamph. 2000); **Chapman v. California**, 386 U.S. 18, 87 S.Ct. 824, 17 L.Ed.2d 705 (1967). Accordingly, Applicant prays that the illegal judgment and sentence of death be reversed and the cause remanded. Art. 44.29(a) V.A.C.C.P.

The Sixth Amendment to the United States Constitution, the Confrontation Clause, provides that "[i]n all criminal prosecutions, the accused shall enjoy the right ... to be confronted with the witnesses against him." **Delaware v. Van Arsdall**, 475 U.S. 673, 678, 106 S.Ct. 1431, 1434, 89 L.Ed.2d 674 (1986); **Davis v. Alaska**, 415 U.S. 308, 315, 94 S.Ct. 1105, 1109, 39 L.Ed.2d 347 (1974). The Fourteenth Amendment to the United States Constitution makes the right to confrontation applicable to the states. **Pointer v. Texas**, 380 U.S. 400, 403, 85 S.Ct. 1065, 1067, 13 L.Ed.2d 923 (1965). The primary interest secured by the Confrontation Clause is the right of cross-examination. **Douglas v. Alabama**, 380 U.S. 415, 418, 85 S.Ct. 1074, 1076, 13 L.Ed.2d 934 (1965); **Davis**, 415 U.S. at 315-316. 94 S.Ct. at 1110.

The United States Supreme Court has held that this bedrock procedural guarantee applies to both federal and state prosecutions. **Pointer v. Texas**, *supra*. See also **Crawford v. Washington**, \_\_\_ U.S. \_\_\_, 124 S.Ct. 1354, 1359, 158 L.Ed.2d 177, March 8, 2004 (detailed U.S. history of the evolution of the Confrontation Clause).

Cross-examination of a witness is a tool used to flesh out the truth, not an empty procedure. **Kentucky v. Stincer**, 482 U.S. 730, 737, 107 S.Ct. 2658, 96 L.Ed.2d 631 (1987)

("The right to cross-examination, protected by the Confrontation Clause, thus is essentially a 'functional' right designed to promote reliability in the truth-finding functions of a criminal trial"); see also **Maryland v. Craig**, 497 U.S. 836, 845, 110 S.Ct. 3157, 111 L.Ed.2d 666 (1990) ("The central concern of the Confrontation Clause is to ensure the reliability of the evidence against a criminal defendant by subjecting it to rigorous testing in the context of an adversary proceeding before the trier of fact").

Applicant submits that the Confrontation Clause required that the trial court permit Applicant to present to the jury via cross-examination of Llamas the evidence of Llamas' continued habits and conduct: her propensity to falsely accuse others of acts they had not committed (kidnaping and assault), to manipulate others to commit criminal offenses including the murder of those she had determined to kill, solely to further her own ends or to protect herself from prosecution, her propensity to fabricate and lie with impunity, to take advantage of the age and naivete of others, to protect herself "at all costs." (See Bill of Exception, RR, 24, 238-241).<sup>22</sup>

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<sup>22</sup> Defense Counsel made the following presentation to the trial court as his bill of exceptions:

MR. ARNOLD: Your Honor, it is our belief that had we been able to go into the plea bargain arrangement that Tamara Llamas had when she entered a plea of guilty for four life sentences, we believe that she would have testified that in addition to the offenses that she admitted on the stand that she plead [sic] guilty to, she would have also had to admit that she had several cases or counts actually dismissed, including employing a minor [sic] trafficking marijuana, employing a minor to transport weapons across the state line -- and I am not sure that is the title of that offense, but it is employing a minor to transport weapons for the purpose of causing death during a drug-related transaction, using and carrying a firearm and causing death.

We believe that when the State asked Tamara Llamas if she plead [sic] guilty to these sentences [sic] for a life sentence, plea bargained to avoid the death penalty, that they opened the

door to her entire plea bargain agreement, which those cases were dismissed.

We also believe that it would have been beneficial to the jury to know that Tamara Llamas, the killing that she hired done occurred on March 18, 1996 in Burgaw, B-U-R-G-A-W, North Carolina, that the complaining witness in that case was a lady named Christi Edwards. That Christi Edwards had been a member of her marijuana smuggling ring. That Christi Edwards became an informant for the government. That the government, in a fit of stupidity, included Christi Edwards' name as a witness on an arrest warrant for a co-defendant.

That Tamara Llamas found out that her friend and co-drug dealer was informing for the government. She tried to hire a man to kill Christi Edwards and her husband Joe Edwards. That man refused to do it. That she then hired her own nephew Jimmy Wakefield to drive to Burgaw, North Carolina from Houston, Texas and to shoot and kill Cynthia [sic] Edwards in her front yard in front of her 8-year-old son and 11-year-old daughter. And that she paid Jimmy Wakefield \$260 to do that. And she supplied him with the weapon to do that.

We also believe that if Tamara Llamas had been allowed to testify further, that Tamara Llamas would have admitted that while she was incarcerated for the killing of Christi Edwards in North Carolina, that she became aware that a man named Alfred Sharp who was now a witness to the fact that she had set up the first killing, as Mr. Sharp was present during a conversation between Tamara Llamas and Mr. Wakefield. And while incarcerated in North Carolina awaiting trial she attempted to hire a hitman to kill Alfred Sharp so that he could [sic] come and testify against her.

That Tamara, I think it would be beneficial for the jury to know that Tamara Llamas has involved her family in all of her drug dealings; that she is the ring leader; that she would testify that one of the people charged in the possession with intent to distribute marijuana case is a lady known as Grandma Handley who is 64 years old, who is Tamara Llamas' grandmother. Further, that Jimmy Wakefield, the person she hired and paid \$260 to kill the lady in front of her children is, in fact, her cousin or possibly even her nephew, but he is related to her.

That she has further tried to hire a hitman to kill her own sister, the lady who testified in this case, Miss Darlene "Dede" Hughes.

Further, that she has for no reason attempted to file kidnaping charges on Marylou Brady, a witness who testified in this trial. That she charged a man named Keith Davis with assault when, in fact -- and there were many witnesses -- Keith Davis had not touched her and Keith Davis did, in fact, go to jail for that.

That Dede Hughes would testify that she has personal knowledge that her sister hired a hitman to try to kill her.

And we believe that all this information should have been allowed in front of the jury. (RR 24, 238-241).

This Court in *Carroll v. State*, 916 S.W.2d at 501 has clearly opined that the Confrontation Clause will prevail if there is a conflict between it and the Rules of Evidence.

As noted, Applicant attempted to cross-examine Llamas regarding her motives to testify as to his alleged statements, inculcating himself in the rape and murder of the complainant approximately thirteen years before alerting officers in this case. Applicant attempted to cross-examine Llamas regarding the terms of her plea-bargain agreement, specifically, the felony charges which had been dismissed against her in the course of her own plea-bargain negotiations with federal prosecutors, to avoid the death penalty for capital murder and conspiracy to murder a government informant in the presence of her children. In the instant case, Llamas' credibility and motives to testify against Applicant as well as her veracity were central and material to the prosecution's case. Llamas was the only witness who could connect Applicant with both the alleged rape and murder of the complainant in this case.

Without the ability to properly and fully cross-examine Llamas with her prior offenses, felony indictments which had been dismissed as part of her plea bargain agreement with prosecutors, her history of making false criminal allegations against others, of endangering and manipulating others, old and young alike, of her criminal habits of

protecting herself at any risks, arranging and planning the murder of government witnesses against her, including her own sister, the jury was denied the ability to assess Llamas' veracity and motives in this case to testify for the State against Applicant. The jury was denied the ability to judge Llamas' credibility and draw reasonable inferences of her reliability as a witness. **Davis, supra.** Applicant argues that in the instant case, a reasonable jury would have received a significantly different impression of Llamas' credibility if defense counsel had been permitted to pursue his proposed lines of cross-examination.

As previously noted, Llamas explained her "motives" to testify as follows:

"At first, no, I didn't want to testify. And I had a real hard time with it. But then I thought of -- Michelle's [complainant's] daughter kept coming to my mind and I kept thinking that for a long time I knew that she had blamed her father and I didn't want her to grow up thinking that her father had done it. ... It is the right thing to do". (RR 24, 59)

Without the ability to present Llamas' propensity to disregard and abandon her children, to use minors to further her own criminal activities, to sanction the killing of a mother (Christi Edwards), and arrange the killing of her husband (a father), the trial court denied Applicant the ability and the right to confront Llamas and denied the jury the ability to assess the veracity of her testimony. This was especially important when one considers the affidavit of Darlene Hughes exhibit "O".

In this case, the State stressed the importance of Tamara Llamas' testimony in closing arguments. (RR, 25, 20-23). The State emphasized Applicant's inability to attack and impeach Llamas' testimony or motives to testify against Applicant, as follows: "... They can

call her every name in the book, but they can't touch her, folks." (RR 25, 21-23).

In **Delaware v. Van Arsdall**, 106 S.Ct. at 1434, the defendant was denied the right to cross-examine a witness on the issue of possible bias after the State had dismissed a criminal charge against the witness in exchange for his promise to discuss the State's case against the defendant. The Supreme Court of Delaware held that a blanket prohibition against exploring potential bias through cross-examination was per se reversible error so that the actual impact of such error need not be subject to a harmless error analysis. *Id.*

The United States Supreme Court in **Van Arsdall**, reviewed the decision of the Delaware Supreme Court and addressed the threshold question of how to determine when the Confrontation Clause has been violated. In **Van Arsdall**, the State argued for an "outcome determinative" analysis that "unless the particular limitation on cross-examination created a reasonable possibility that the jury returned an inaccurate guilty verdict, the limitation would not violate the Confrontation Clause." *Id.* The Court expressly rejected the State's argument and held:

"... While some constitutional claims by their nature require a showing of prejudice with respect to the trial as a whole, see, e.g., **Strickland v. Washington**, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984) (ineffective assistance of counsel), the focus of the Confrontation Clause is on individual witnesses. Accordingly, the focus of the prejudice inquiry in determining whether the confrontation right has been violated must be on the particular witness, not on the outcome of the entire trial. It would be a contradiction in terms to conclude that a defendant denied any opportunity to cross-examine the witnesses against him nonetheless had been afforded his right to 'confront[ation]' because use of that right would not have affected the jury's verdict. We think that a criminal defendant states a violation of the Confrontation Clause by showing that he was prohibited from engaging in

otherwise appropriate cross-examination designed to show a prototypical form of bias on the part of the witness and thereby 'to expose to the jury the facts from which jurors ... could appropriately draw inferences relating to the reliability of the witness.' **Davis v. Alaska**, 415 U.S. 308, 94 S.Ct. 1105, 39 L.Ed.2d 347 (1974), [citations omitted]."

**Van Arsdall**, 106 S.Ct. at 1435-1436 (emphasis added).

After finding a violation of the Confrontation Clause, the Court in **Van Arsdall** turned to whether the violation was per se reversible error or was subject to a harmless error analysis. The Court determined that, like other federal constitutional errors, a violation of the Confrontation Clause is subject to a harmless error analysis. **Id.**, at 1438. Additionally, the Court developed a three-prong analysis for the excluded evidence to be used by reviewing courts.

First, the Court assumes that the damaging potential of the cross-examination was fully realized. **Id.** Second, with that assumption in mind, the Court reviews the error in connection with the following factors:

1. The importance of the witness' testimony in the prosecution's case;
2. Whether the testimony was cumulative;
3. The presence or absence of evidence corroborating or contradicting the testimony of the witness on material points;
4. The extent of cross-examination otherwise permitted; and
5. The overall strength of the prosecution's case.

**Id.** Finally, in light of the first two prongs, the Court must determine if the error was harmless

beyond a reasonable doubt. **Chapman v. California, supra**, 386 U.S. at 24, **Van Arsdall**, 106 S.Ct. at 1438. In **Van Arsdall**, the Court then remanded then case to the Delaware Supreme Court for a harmless error analysis.

In the instant case, this Court must first assume that the damaging potential of the Llamas' cross-examination was fully realized and that Llamas' testimony was crucial to the prosecutor's case. **Van Arsdall, Id.**

As emphasized by the State in this case, Llamas revealed to the jury those facts and circumstances of the offense which were not known to the public; "facts that did not appear in newspaper articles." Llamas' testimony was pivotal and central to the prosecution in order to establish that complainant had been sexually assaulted by Applicant, to establish that Applicant stabbed and killed complainant when she fought against his sexual advances, to establish that Applicant had sexually assaulted her, to establish his presence at the scene of the offense, and to establish his personal knowledge of the facts and circumstances of complainant's death in minute detail, only known by her killer. (Factor 1 of the analysis).

Moreover, based upon the factual insufficiency of the evidence to support Applicant's conviction, without Llamas' testimony there was scant, if any, corroboration for the charges against Applicant; (no fingerprints belonging to Applicant on any alleged weapon, no pubic hairs from Applicant at the scene or autopsy, no fingernail scrapings attributable to Applicant at autopsy, no scratches evidenced on Applicant's body; no evidence that Applicant had been present in complainant's home).