

In the instant case, the exclusion of Hughes' testimony regarding complainant's instructions to her not to tell anyone that she was seen together with Applicant, was relevant evidence which should have been admitted before the jury for its consideration. The "harmless error" question is settled when it has been decided that the exclusion of the evidence "plainly interfered with" Applicant's right to present his complete and vigorous defense" to the charges against him.

In this case, it was for the jury to weigh the probative value of Hughes' testimony and to determine the facts of Applicant's guilt, if any, of capital murder. Because it cannot be determined beyond a reasonable doubt that the error did not contribute to Applicant's conviction, this Court must reverse Applicant's conviction and remand the cause to the trial court for further proceedings. TEX. R. APP. P. ANN., 44.2(a).

CLAIM FOR RELIEF NUMBER FORTY-ONE

THE TRIAL COURT COMMITTED CONSTITUTIONAL ERROR BY ENFORCING THE STATE'S EVIDENTIARY HEARSAY OBJECTION TO PRECLUDE APPLICANT'S COUNSEL FROM PRESENTING EVIDENCE THAT DETECTIVE ROSSI HAD LEARNED IN HIS INVESTIGATION THAT COMPLAINANT HAD TOLD JACK SHADBOLT, HER ESTRANGED HUSBAND, TWO DAYS BEFORE HER DEATH THAT THEY WOULD NEVER GET BACK TOGETHER, IN VIOLATION OF APPLICANT'S DUE PROCESS RIGHTS TO PRESENT A DEFENSE.

CLAIM FOR RELIEF NUMBER FORTY-TWO

THE TRIAL COURT COMMITTED CONSTITUTIONAL ERROR BY ENFORCING THE STATE'S EVIDENTIARY HEARSAY OBJECTION TO PRECLUDE APPLICANT'S COUNSEL FROM PRESENTING EVIDENCE OF THE BASIS UPON WHICH DETECTIVE ROSSI CONTINUED HIS INVESTIGATION OF JACK SHADBOLT AS A PRIME SUSPECT IN THIS CASE, THEREBY VIOLATING APPLICANT'S CONSTITUTIONAL RIGHTS TO PRESENT A DEFENSE. U.S. CONST. AMEND XIV.

on cross-examination of Rossi as to what he had discovered in the course of his investigation to support his belief that Jack Shadbolt was a prime suspect in complainant's death, Applicant's counsel asked:

Counsel: "Did you learn anything else while at the scene about complainant's relationship with Jack [Shadbolt]?"

Rossi: He was an alcoholic.

Counsel: Okay, anything else about their relationship? Did you learn that they weren't even going to get back together again?"(RR.20 121-122).

Additionally, Rossi was asked by defense counsel what he had learned in the course of his investigation that made him believe that Shadbolt was the murderer in this case. The State's hearsay objections were sustained by the trial court and precluded Applicant's counsel from presenting this information

to the jury.

Notably, over Applicant's objections, the State presented SX 2, Applicant's statement to the jury in which he had denied any romantic relationship with the complainant and admitted that they were "just friends." (RR.21, 134, 138-139). Thus, the trial court's actions deprived Applicant of the ability to present a defense, specifically, the desire to keep his relationship with complainant secret by denying a "relationship" with the complainant during the period shortly after she had separated from her husband, Jack Shadbolt.

Applicant believes the trial court's actions violated his due process rights to present a complete and vigorous defense. Notably, Applicant submits that the trial court erred in excluding this evidence as "hearsay" as it was not presented for the truth of its contents but for the fact that it explained the basis of Rossi's belief that Jack Shadbolt was a murderer, previously elicited by the State on direct examination and Applicant's state of mind regarding his need to protect and keep his relationship with complainant, a married woman, secret. This evidence would also have refuted the State's argument that there was no relationship between Applicant and complainant as no family members testified thereto.

Because it cannot be determined beyond a reasonable doubt that these errors did not contribute to Applicant's conviction, this Court must reverse Applicant's conviction and remand the cause to the trial court for further proceedings. TEX. R. APP. P. ANN.. 44.2(a).

CLAIM FOR RELIEF NUMBER FORTY-THREE

THE TRIAL COURT COMMITTED CONSTITUTIONAL DUE