

State trying to punish me for going pro-se? U.S. v. Sanders, 211 F. 3d 711 (2nd Cir. 2000), A defendant shall not be punished for something that the law clearly says he can do. This is a due process violation of the most basic sort.

In my opinion this is clearly happening in your court room.” (CR, 120)

Even though this was brought out as another possible defense by Applicant through this letter to the Court. Everyone just disregarded it, as they did everything else Applicant was telling them. Either the Court was informed that death was not being sought and that is why she failed to follow the dictates of Art. 26.052(e) V.A.C.C.P. for two years, or the Court was actively supporting the process of trying to coerce Applicant to enter a plea in this case. In either event counsel should have raised this issue pre-trial when given notice of the issue by Applicant, and obtained a ruling by the Trial Court to preserve this issue on appeal. See Neal v. State, 150 S.W.3d 169 (Tex. Crim. App. 2004).

CLAIM FOR RELIEF NUMBER SIX

thought about the fact that you are faced with charges of capital murder and the State is seeking the death penalty in your case?

By Mr. Irvan: They are not. They haven't appointed two - - two attorneys.

By the Court: Did you hear my question?

Yes, ma'am.

By the Court: So, you thought about that?

By Mr. Irvan: M-h'm

By the Court: Okay. So, you realize that the State intends to seek the death penalty and so you are facing possible life in prison or death if you are convicted?

By Mr. Irvan: Yes, ma'am.

By the Court: You still want to represent yourself?

By Mr. Irvan: Well, unless I can get some different adequate representation.” (RR2, 4,5)

APPLICANT'S U.S. CONST. AMEND. VI RIGHT TO A SPEEDY TRIAL WAS VIOLATED WHEN ALMOST THREE YEARS PASSED BETWEEN HIS BEING CHARGED IN THIS CASE AND ACTUALLY PUT TO TRIAL, EVEN THOUGH HE MADE REPEATED REQUESTS FOR A SPEEDY TRIAL.

The right to a speedy trial is guaranteed by U.S.CONST. Amend. VI. **Barker v. Wingo**, 407 U.S. 514, 92 S.Ct. 2182, 33 L.Ed.2d 101 (1972) That right is a fundamental right and is imposed by the Due Process Clause of the Fourteenth Amendment on the States. See **Smith v. Hoocy**, 393 U.S. 374, 89 S.Ct. 575, 21 L.Ed.2d 607 (1969).

There are four factors to independently weigh and balance in deciding a speedy trial claim. They are: (1) the length of the delay; (2) the reason for the delay; (3) the defendant's assertion of his speedy trial rights; and (4) any prejudice against the defendant. This is the same under Federal and State law. **Barker v. Wingo, supra.** and **Dragoo v. State**, 96 S.W.3d 308 (Tex. Crim. App. 2003).

Length of the delay:

The length of the delay is considered a "triggering mechanism" because absent a presumptively prejudicial delay the other **Barker, supra.** factors are immaterial. Delays of eight months or longer are usually considered presumptively unreasonable. **Kelly v. State**, 122 S.W.2d 227 (Tex. App.-Corpus Christi 2003, no pct.) see also **Doggett v. United States**, 505 U.S. 647, 112 S.Ct. 2686, 120 L.Ed. 2d 520 (1992) holding a delay approaching one year is presumptively unreasonable. This was a case where the case itself was a cold case. The

penalty. How could more harm be occasioned.

**THE ELIMINATION OF JACKIE SHADBOLT, THE ESTRANGED HUSBAND, AS
A POSSIBLE MURDERER IN THIS CASE.**

THE PRE-TRIAL HEARINGS:

In addition to what has already been brought up in the preceding issues, it was made clear at the pre-trial hearings that the State and it's investigators were taking the position that the husband of the deceased Jackie Shadbolt was totally eliminated as the murderer in this case solely because the DNA found in the cavities of Michelle Shadbolt did not match the DNA of Jackie Shadbolt.

By the Attorney: "Okay. And at that point in time had you already received the results of the analysis of Jackie Shadbolt's DNA?"

By Roger Wedgeworth: I believe we received a telephone call. That's how we knew at the beginning.

By the Attorney: But you didn't receive the information?

By Roger Wedgeworth: We had received that information, I am pretty sure on that.

By the Attorney: Was it by telephone or in writing? You had received the information that his DNA did not match: correct?

By Roger Wedgeworth: I am pretty sure that's correct, yes, sir.

By the Attorney: Okay. Does that mean that at that point in time you and other detectives that

State made its case according to the affidavit filed to secure the arrest warrant (CR, 2) by matching the DNA found inside the cavities of the decedent during the autopsy conducted in 1987, with DNA obtained from the defendant. That match was communicated to the State by Bill Watson a forensic scientist in May of 2000. That same affidavit also shows that the other incriminating evidence obtained by the State was prior to May of 2000. Therefore, a delay until November of 2003, was inherently unreasonable and prejudicial.

Reasons for the delay.

The State gave as a reason for the delay that the courthouse suffered some damage from Tropical Storm Allison during this period. The court acknowledged that trials still occurred even during that period. The State never gave any justification for the delay, and never attempted to give any justification for not seeking the death penalty until after Mr. Hill was removed.

Assertion of rights:

Obviously, Applicant's attorney never asserted his rights, but Applicant asserted his rights over and over again as demonstrated in the letters cited above.

Prejudice:

Please see and consider Applicant's affidavit, Exhibit "B" attached hereto, to show what was lost by Applicant because of this delay. Nothing was gained by Applicant, because of this delay. None of the witnesses that could have documented his relationship with the deceased were contacted or produced for trial. His father died, and the State sought the death

you are working on, I guess Detective Fikaris, anyone else in the sheriff's office you were communicating with about his case had determined that Jackie Shadbolt was eliminated as a suspect in this case?

By Roger Wedgeworth: Yes.

By the Attorney: Completely and entirely he was eliminated?

By Roger Wedgeworth: As far as we were concerned?

By the Attorney: Okay. At that point in time had the prints from the crime scene been checked against Jackie Shadbolt's prints?

By Roger Wedgeworth: I think at the beginning of the initial investigation Detective Dionn had his and defendant's checked, I believe.

By the Attorney: Do you know what the result of those comparisons were?

By Roger Wedgeworth: Their fingerprints were not at the scene or did -- were not -- didn't match any recovered latent prints.

By the Attorney: When you say they, you mean both William Irvan and Jackie Shadbolt?

By Roger Wedgeworth: That's correct." (RR5, 34,35)

It is important to note the above when considering the rest of the trial. Applicant's trial team was put on notice from this point on that the person who had always been the prime suspect, Jackie Shadbolt, the estranged husband was, in the mind of the State, totally eliminated as a suspect when the DNA found in the cavities of Michelle Shadbolt did not match his DNA. This is important because just as Applicant's position is that his DNA could

be there without his having taken the life of Michelle Shadbolt, Jackie Shadbolt could have taken the life of Michelle Shadbolt and deposited no DNA at the time of the murder. This was the essence of his entire defense. Even though his attorneys never openly presented this issue at the trial, this was always the position of Applicant. This is shown by the notes of Wayne Hill which are attached hereto as Exhibit "E".

For the defense to allow the State to take the position, and for the defense to adopt the position that if the DNA is not Jackie Shadbolt's, then he is not the murderer. That is a tacit admission that if the DNA matches Applicant, then he is the murderer. For Applicant to receive effective assistance of counsel. The position that Jackie Shadbolt could not be the murderer simply because the DNA did not match him, had to be attacked at every instance.

THE TRIAL ON GUILT/INNOCENSE:

During opening statement the prosecutor informed the jury that they would find from the evidence amongst other things that Michelle Shadbolt's "head was bashed in with a trophy that was used form her living room. The trophy was used to smash her around the head. It was a trophy that she had won in a fishing tournament with her husband Jack." (RR19, 22) The prosecutor also took the position that the rape occurred during the rest of the attacks. "And she was beat and she was bashed and she was stabbed and she was cut and she was raped.." (RR19, 23) "And you can tell how hard she fought the person who killed her and who raped her." (RR19, 23) One thing you are gong to know is that the last human - - or I guess I should say inhuman contact she ever had alive was with this defendant William

Darin Irvan. How do you know that? Because of the miracles of modern technology. Because of the miracles of modern science. Because we now have in law enforcement a tool, a wonderful tool called DNA evidence.” (RR19, 23) “and the DNA technology will tell you that found inside the vagina of Michelle Denise Shadbolt was the semen of William Darin Irvan. And also found inside her anus was the semen of William Darin Irvan. Just like somebody would have taken a picture of him when he did the crime and left it there propped up next to the body.” (RR19, 24) “And you are going to hear that that night Michelle had gone out to play Bingo with some friends and got home about 3:00 in the morning. And she was found by her stepmom at 8:00 o’clock.” (RR19, 25)

Then she went over the fact that for 16 years the focus was on her husband Jack. (RR19, 25) She admitted that the fingerprints at the scene did not match Irvan, or Jack Shadbolt. (RR19, 25)

Then she stated: “ And they sent that evidence off fully expecting that it would come back to Jack Shadbolt, because that’s who everybody thought the suspect was. But you know what? Thank goodness for DNA, because not only can it pinpoint who commits a crime, it can also exonerate and make innocent those who have always been suspects. And that DNA came back clearing, once and for all, Jack Shadbolt.” (RR19, 26)

Then she went over the fact that the deceased mom, Jackie Barrett, would tell them about a time when the complainant was about 13 years old that Applicant snuck into her room, and she had to run him out. And that in 1989, Applicant gave a statement to the police

deposit and the killing are different events that happened at different times, the DNA evidence alone could not possibly clear Jackie Shadbolt of this crime.

Without there being any way to attack the DNA evidence itself, the only possible defense was the defense that Applicant had been urging ever since his earliest conversations with Wayne Hill. See exhibit "B" & "E". That the DNA is his, and that he did have a consensual sexual relationship with Michelle Shadbolt, and that his DNA was deposited there earlier than when the killing took place.

WERE APPLICANT'S ATTORNEY'S AWARE OF THIS DEFENSE:

When Applicant's lawyers were cross-examining Dr. Wolf the medical examiner in this case they established through Mr. Wolf that the sperm in the vaginal area could stay in there for as much as 72 hours. (RR22, 68,69)

He did not believe that the sperm in the rectum would last as long as sperm in the vagina, but he did not place a time restraint on the sperm in the rectum. (RR22, 69)

He also testified, under cross-examination, that it was possible that there was vaginal intercourse and then because of the position of the body the sperm in the anus could have been from run off into the anorectal area. (RR22, 25)

If the body was found on February 14, 1987 at 8:00 A.M. then sexual intercourse could have conceivably occurred as early as February 11, 1987, at 8:00 A.M. If the time frame for the killing was between 3:00 A.M. and 8:00 A.M. on February 14, 1987, then it is clear that the time frame for the sexual intercourse was potentially much greater. When the

saying that he never had any type of relationship with Michelle Shadbolt. (RR19, 28)

She also stated: "The same defendant whose DNA is in her vagina and in her anus, when her shirt is raked up above her shoulders, when she's brutally stabbed and beaten to death on her own living room floor, is the same defendant . . ." (RR19, 29)

So, if it wasn't clear since the original filing of charges in this case, (CR, 2) it should have been clear now what the State's position would be. Summed up, the State's position would be: (1) The DNA completely cleared Jackie Shadbolt, the husband, of this crime. If his DNA was not there, then he did not commit this capital murder.

(2) The time frame for this crime was between 3:00 A.M. and 8:00 A.M. on February 14, 1987.

(3) The finding of Applicant's DNA in Michelle Shadbolt's anus and vagina was tantamount to a finding that Applicant killed her while in the course of raping her.

(4) That Applicant never had any type of relationship with Michelle Shadbolt.

It should also have been clear to the defense at this point, if it wasn't clear from all the letters and protestations of Applicant over the past 2 ½ years, that the defense had to take the position that the depositing of the DNA and the murder of Michelle Shadbolt were different events. Different acts committed at different times. That Applicant did in fact have a relationship with Michelle Shadbolt. That relationship was a consensual sexual relationship, and that is why there is no sign of forced sexual intercourse to the body of Michelle Shadbolt, and that is why his DNA was found within her body. That since the DNA

defense questioned the doctor about the 72 hour time frame it occurred as follows:

By the defense: "Okay. Now, as far as sperm is concerned, it can stay in - - you say it will stay longer in the vagina than in the rectum simply because of some bacterial agents in the rectum; correct?"

By Dr. Wolf: Correct.

By the defense: Who how long can it stay in the vagina?

By Dr. Wolf: I don't know.

By the defense: Isn't it true it can stay up to 72 hours?

By Dr. Wolf: It can stay there for awhile. How long, I don't know.

By the defense: Isn't it true that it can stay as much as 72 hours?

By Dr. Wolf: That's probably true." (RR22, 69)

Then the defense put it all together by asking the following:

By the defense: "Okay, Is it possible then, possible hypothetical, that may have occurred in this case - - and I know you are just reading what someone else has done years ago - - that it is possible that consensual sex may have taken place here and then the death, which was obvious, may have taken place later?"

By Dr. Wolf: Sure.

By the Defense: You cannot rule that out based upon everything that you have been allowed to review?

By Dr. Wolf: No on the anatomic findings, no.

By the Defense: Thank you, Dr. Wolf." (RR22, 69,.70)⁷

By the asking of these questions, and the answers given it is clear that the defense team was aware of this defense that Applicant has proffered to all of his attorneys from the beginning. The sex event, and the killing event, were not necessarily the same event.

The testimony set forth above shows that it is possible that the murder and the sexual act occurred at different times. There was also evidence that the sexual act may have been consensual.

By the defense: "Other than the cause of death, which you told us about Dr. Espinola's opinion, is there any other evidence of sexual assault here in this case?"

By Dr. Wolf: There are no injuries of the vagina or the rectum.

By the defense: And typically, based on your training and experience, when you have examined rape victims, a woman who is not consenting to intercourse, with her vagina or rectum, generally there is going to be injuries to those genitalia; correct?

By Dr. Wolf: Typically, sometimes." (RR22, 69)

Also, on the issue of trauma the following occurred:

By the defense: "Okay, And do you know if Dr. Espinola - - because it appears from his report that he found sperm on the vaginal and rectal slide, whether he tried to further determine whether there was any evidence other than that of sexual assault?"

By Dr. Wolf: Such as?

⁷This testimony also applies to the issue herein concerning the denial of lesser included offenses being in the charge.

By the defense: Such as trauma to the genitalia?

By Dr. Wolf: There was no trauma described.

By the defense: Okay. Anywhere in the report; correct?

By Dr. Wolf: Not to the vagina or the rectum, that's correct.

By the defense: They talk about, in the report, the examination of the anorectal area and that it did not show any evidence of trauma, correct?

By Dr. Wolf: Correct.

By the defense: What exactly is the anorectal area:?

By Dr. Wolf: It is junction between the anus and the rectum.

By the defense: And it also says - - it says the examination of the vagina did not show any evidence of trauma. Obviously, that's the vagina; correct?

According to the standard way that an examination like that would be done, how far would Dr. Espinola have gone in looking to see whether trauma was present or not? If you know?

By Dr. Wolf: Look from the outside all the way to the inside. We examine externally. While we take swabs, we take everything out from the inside. We look at it again.

By the defense: Okay. So, it is a complete view of both the external part of the vagina and also the internal?

By Dr. Wolf: That's correct.

By the defense: So, when a statement is entered that says that it did not show any evidence