

These hearsay statements and speculative statements of Kathy Masters who was testifying to things that were impossible for her to know from her own personal knowledge due to her limited contact with Michelle Shadbolt, should have been objected to by the defense. The State was well aware of what they were doing, and they were pushing her testimony past the limits of what she could admissibly testify to. It was incumbent upon the defense to hold the State to only that testimony that was truly admissible. That is where the defense once again committed ineffective assistance of counsel that violated Applicant's right to effective counsel as guaranteed by U.S. CONST. AMEND. VI and due process as guaranteed by U.S. CONST. AMEND. XIV. Applicant would also adopt by reference all of the argument set forth in issue number seven as it applies to meeting both prongs of *Strickland, supra.* as that same reasoning applies equally herein.

CLAIM FOR RELIEF NUMBER NINE

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.

As previously stated it was imperative that Applicant show this jury that he had a consensual sexual relationship with Michelle Shadbolt during the time of her murder. The notes that were taken by Wayne Hill which are included in Exhibit "a" show that since 2001, Applicant had been informing his attorneys of his sexual contact with Michelle Shadbolt

during the times crucial to this case. It was and is Applicant's position that he and Michelle Shadbolt had been seeing other during the time of her death and they had a consensual sexual relationship during that time, and did have sexual intercourse within 72 hours of her death..

The time frame of when the murder could have occurred was a crucial factor in this case. Applicant's lawyers obviously did not see this as a factor, or were just asleep at the wheel when Deputy William Hilden of the Harris County Sheriff's Office testified to the jury. He was allowed to testify without objection to the following:

By the State: "Okay. Did you have a reason to talk with a witness by phone?"

By Deputy Hilden: Yes, ma'am. I believe the lady passed away now, but there was a woman that had been, according to Miss Masters, been out playing bingo with her.

By the State: Okay. Do you remember what that woman's name was ?

By Deputy Hilden: I'll check back in my report. Mary Sinkbush.

By the State: You spoke with Mary Sinkbush?

By Deputy Hilden: Yes, Ma'am.

By the State: Okay. Did you, after speaking with Mary Sinkbush, determine approximately what time the victim had been last seen?

By Deputy Hilden: She had told me approximately - - about 2:50 a.m.

By the State: And did you make note of the time that she was last seen alive in your report?

By Deputy Hilden: Yes, ma'am. I believe that was - - Miss Sinkbush told me that she last saw her at 2:50 a.m. when she was playing bingo with her and she had left.

By the State: Okay. And that information is important for the homicide detectives to know; right?

By Deputy Hilden: Yes, Ma'am." (RR19, 58,59)

Then just to rub the defense attorney's noses in this hearsay that the State was just allowed to proffer to the jury without objection, the State then asked the following:

By the State: "All right. And you had commented that you now understand that Mary Sinkbush has passed away?

By Deputy Hilden: That's my understanding yes, ma'am." (RR19, 59,60)

Then instead of relying upon what Applicant had told his attorneys, his attorneys solidified this time frame given by Hilden as to what the dead Miss Sinkbush said in 1987 before she died and before she could have been cross-examined.

By defense attorney Dick Bax: "...and you also have the time being 2:50 a.m. to 8:00 a.m.. Now, was that your window that you felt this crime must have been committed during that time frame?

By Deputy Hilden: That - - yes, sir, that's the time when the witness I spoke to on the phone had last seen her, and that time that we figured that the amount of time it took us to get the call and get there.

By defense attorney Dick Bax: And when you talked with Miss - - was it Sinkbush? Is that her name?

By Deputy Hilden: Yes, sir.

By defense attorney Dick Bax: Did she tell you that she had been with the complainant until 2:50 a.m. and then the complainant left to go home or did she tell you that she dropped the complainant off at home? Or do you recall anything concerning that portion of the conversation?

By Deputy Hilden: I - - as I recall - - I - - she told me she had been with her up until that point. Miss Sinkbush was the - - was at first reluctant to give me any information. She thought it was a prank call.

By defense attorney Dick Bax: She didn't trust who you were? This was a telephone conversation?

by Deputy Hilden: It took a little convincing from Miss Masters to convince her that it was for real.

By Deputy Hilden: To the best of my knowledge, yes.

By defense attorney Dick Bax: And if it was, in fact, that they had parted company and then Miss Shadbolt had to drive herself home, it may have been 3:00 or 3:15 by the time she arrived home? Would you agree with me there?

By Deputy Hilden: It could have been." (RR19, 61,62,63)

It should be clear from this testimony that either Dick Bax was not aware of the defense being urged by Applicant for more than two years, or that he knew and had no intention from the beginning of this trial to assert that defense. What possibly could have been the justification for an attorney to allow an adverse witness to testify to what some, now deceased person, told them over the phone some 16 years before? Especially when this testimony that could never be subjected to cross examination or confrontation and was very pointedly adverse to the position of the attorney's client. It would seem that Applicant's attorneys must have had no intention of allowing him to testify, nor did they intend to proffer the consensual sex defense or they would have done something to stop this inadmissible testimony. Tex. R. Evid. 801(d) states:

"Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

This time line was produced by the State through inadmissible hearsay testimony that deprived Applicant of his constitutional right to confront and cross examine his accusers as