

guaranteed by U.S. CONST. AMEND. VI. The fact that it wasn't objected to denied Applicant of effective assistance of counsel as guaranteed by U.S. CONST. AMEND. VI and violated his right to due process and destroyed his right to present a defense as guaranteed by U.S. CONST. AMEND. XIV. The fact that Applicant's own attorney would accept this hearsay as Gospel, and accept this time line shows that he had no intention of ever asserting anything that would conflict with this time line.

The failure to object to the hearsay, the failure to ensure that Applicant had the benefit of his Constitutional Right to confront and cross-examine his accusers was error that meets the first prong of *Strickland, supra*. The prejudice prong is also met because this one slip by Applicant's attorneys destroyed Applicant's ability to present the defense of consensual sex during the time period that he had always told his attorney's about as being the true time period since 2001. See exhibit "B" & "E".

CLAIM FOR RELIEF NUMBER TEN

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 has been previously stated, it was and had to be, Applicant and his attorney's position that the murder and the sex act were two different and distinct acts. Two acts that took place at different times. If not, then the depositor of the sperm is the also the murderer.

The defense had to do everything they could to dispel the myth that the DNA results were the controlling factor in this case. The State wanted the jury to believe that if the DNA was Applicant's then he is guilty of capital murder. It was imperative for the defense, since they had no intention of combating the DNA results, to show that the sex act and the murder were two distinct and separate acts. One of the ways that the State sought to proffer this myth to the jury was through the belief that even though Jackie Shadbolt did many things to make him a suspect in this case, the DNA completely exonerated him and showed that he was not the killer. Applicant's attorneys could never allow this myth to be stated as a fact to the jury without contesting it every step of the way. The first time this myth was brought before the jury was when Michael Eugene Masters, the brother of Michelle Shadbolt, testified. The first time it was testified to it was not even in response to a question calling for the answer. It was a gratuitous statement made by Michael Masters which should have been objected to as non-responsive to the question asked. The statement should then have been stricken from the record, but trial counsel took no action whatsoever. The following is what occurred:

By the State: "We are sitting here today and it is 2003. Michelle was killed in 1987. When was this phone conversation you had with the defendant?"

By Michael Masters: After - - I don't know - - I don't remember the year, but after the DNA come back on Jack and cleared Jack." (RR19, 88)

Then to again proffer this myth, and hurt Applicant some more the following occurred, without objection.

By the State: "Why did you ask William Irvan if he knew anybody who could have done that to Michelle

By Michael Masters: Cause previous trouble he was in.

By the State: Okay. And you knew by then that Jack had been cleared?

By Michael Masters: Right." (RR19, 89,90)

During these short sentences the State was able to proffer before the jury evidence that Applicant had been in trouble before. The kind of trouble that might cause Applicant to know who the murderer was. How could that in any way be beneficial to Applicant? What kind of trouble could the imagination come up with as being what the trouble that Mr. Masters was talking about? That testimony was horribly prejudicial to Applicant, and should have been objected to immediately. Then to immediately follow it up with the myth that the DNA cleared Jack and therefore should convict Applicant was also severely detrimental and should have been objected to. When the State asked this open ended question as to why he would ask Applicant if he knew who killed Michelle, the defense should have immediately been on guard for the possible inadmissible and prejudicial answer that would follow. Did the defense object to either of these errors? Not at all, in fact the following occurred just as soon as the defense began cross-examination.

By defense attorney Mack Arnold: "You indicated in response to the prosecutor's questions that apparently there was some belief on the police's part that Jack Shadbolt was at least a suspect in this?

By Michael Masters: Right.

By defense attorney Mack Arnold: You have indicated that he eventually was cleared; did you not?

By Michael Masters: Right, yes.

By defense attorney Mack Arnold: And did you suspect Jack Shadbolt prior to the time that he was cleared?

By Michael Masters: Yes." (RR19, 96,97)

The defense not only did not object to the myth when it was testified to on direct, they clearly accepted this myth as fact during their cross-examination. The statement out of the mouth of Applicant's lawyer that "did you suspect Jack Shadbolt **prior to the time that he was cleared?**" (emphasis added) Is like stabbing a knife into Applicant's back. If the DNA alone would clear Jack, then the DNA must mean that whomever the depositor of the DNA was the killer. It could only mean that, and that belief ensured a conviction for Applicant.

This witness was not competent to give a legal or factual conclusion that DNA results, **that were not even in evidence at this time**, had the effect of "clearing" Jack Shadbolt as a suspect in this case. There can be no legal strategy as to why counsel would allow this witness to testify to the result of testing that was not in evidence. Nor, could there be no legal strategy that would have prompted the defense to adopt this myth that DNA results alone could "clear" Jack Shadbolt. This was gross ineffective assistance of counsel that violated Applicant's right as guaranteed by U.S. CONST. AMEND. VI and deprived him of due