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⌘ Vol. 15, No. 22 - June 11, 2007

Case Name: [Michael Scott v. The State of Texas](#)

- OFFENSE: Capital Murder - Life Sentence
- COUNTY: Travis
- COURT OF APPEALS: Austin 2005
- C/A CITATION: 165 S.W.3d 27
- C/A RESULT: Conviction Affirmed
- CCA. CASE No. PD-0359-06
- DATE OF OPINION: June 6, 2007
- DISPOSITION: Court of Appeals Reversed / Conviction Reversed
- OPINION: [Judge Price](#) VOTE: 5-4
- TRIAL COURT: 167th D/C; Hon. Mike Lynch
- LAWYERS: [Ariel Payan](#) (Defense); [Bryan Case](#) (State)

⌘ [292 Hearsay - Confrontation / Oral Statements \(Confrontation Clause - Crawford Violations - Admission of Co-Defendant's Statement\)](#): This is the second of the Austin “Yogurt Shop” cases, the other being the unpublished reversal in [Springsteen v. State](#) last year (see ⌘, Vol. 14, No. 20; 05/29/06), reversed because the trial court admitted Appellant’s statement into the trial of Springsteen’s case. Among the issues that Appellant raised on appeal was the claim that the trial court erred to admit evidence of the content of Springsteen's statement to the police over Appellant's objection that this violated his rights under the Confrontation Clause of the Sixth Amendment. In a published opinion, the Court of Appeals acknowledged that the trial court erred, under [Crawford v. Washington](#), to admit the content of the statement into evidence during Appellant's trial, but held the error to be harmless under the constitutional-harm analysis embodied in Rule 44.2(a), Tex.R.App.Pro. (see ⌘, Vol. 13, No. 13; 03/29/05). The Court refused the State's PDR, which challenged the holding of the Court of Appeals that constitutional error occurred, but granted Appellant's PDR, in which he challenges the Court of Appeals's determination that the constitutional error was harmless.

**Ed Note:** This opinion contains a very detailed analysis of the evidence admitted at trial. While such an analysis is necessary for the opinion, it is not necessary for an understanding of the opinion. Nevertheless, given the detailed manner in which the harm analysis is conducted, we suggest a careful reading of this case.

**Holding:** (Harm Analysis) [Although] there was a fair amount of evidence independently corroborating Appellant's account, almost none of it went unchallenged or unimpeached in one respect or another by the defense. We do not think the Court of Appeals was justified in characterizing the corroborating evidence as “overwhelmingly support[ing] a finding that Scott's statements are true.” We do not mean to suggest by this that the jury could not rationally have convicted Appellant even absent Springsteen's statement-quite the contrary. But a constitutional

harm analysis does not turn on whether, discounting the erroneously admitted evidence, the remaining evidence was legally sufficient to convict. Instead the question is whether, given the state of the record as a whole, the reviewing court can say, to a level of confidence beyond a reasonable doubt that the erroneously admitted evidence did not contribute to the jury's verdict. Especially in view of the prosecutors' final arguments ("the State emphasized the importance of Springsteen's statement to its case"), we cannot say beyond a reasonable doubt that Springsteen's statement did not contribute to the jury's verdict.

**Concurring / Dissenting Opinions:** [Presiding Judge Keller](#) delivered a dissenting opinion in which she was joined by Judge Meyers, Judge Keasler and Judge Hervey. She challenged the idea that the use of leading questions would motivate someone "to confess falsely to involvement in such a serious crime." She would hold the error was harmless beyond a reasonable doubt.