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Vol. 20, No. 19, May 14, 2012

Case Name: Vellar Clark III v. The State of Texas

- OFFENSE: Capital Murder - Life Sentence
- COUNTY: Harris
- COURT OF APPEALS: Houston [14th] 2010
- C/A CITATION: 305 S.W.3d 351
- C/A RESULT: Conviction Affirmed
- CCA. CASE No. PD-0218-10 DATE OF OPINION: May 9, 2012
- DISPOSITION: Court of Appeals Affirmed
- OPINION: Meyers, J. VOTE: 7-2-0
- TRIAL COURT: 351st D/C; Hon. Mark Ellis
- LAWYERS: Jani Maselli (Defense); Eric Kugler (State)

Ed Note: (Procedural History) Appellant was convicted of murdering his girlfriend (Sneed) and her unborn child (see Vol. 18, No. 5; 02/08/2010). See that summary for a recitation of the facts.

60 Challenges to Prosecution / Due Process: On direct appeal, Appellant claimed that the trial court erred by denying him the opportunity to present evidence concerning the custody status of Sneed's child as well as various CPS records. Appellant asserted that it amounted to a denial of his right to present a defense that Sneed committed suicide. Specifically, Appellant alleged that the trial court improperly denied evidence regarding (1) CPS's removal of Sneed's daughter, (2) questions on cross examination of Sneed's mother about her knowledge of CPS records or their contents, (3) CPS records concerning Sneed's daughter and the death of her son, and (4) Sneed's motive for being "upbeat" to the CPS worker. The State claimed that the court correctly decided that the abovementioned evidence's prejudicial effect substantially outweighed its probative value and that the evidence was merely tangential to the case, and that any error was harmless. The Court of Appeals found that "Appellant was able to present his suicide defense" and, because he was able to do so, "we do not consider this a constitutional error under Rule 44.2(a); hence, his due-process rights were not violated." The Court of Criminal Appeal granted review "to determine whether Appellant's objections at trial put the court on notice of his due-process, fair-trial complaint." Appellant claims that the court of appeals ignored the holdings of Zillender v. State, 557 S.W.2d 515 (Tex.Cr.App. 1977), and Lankston v. State, 827 S.W.2d 907 (Tex.Cr.App. 1992), which say that "no talismanic words are needed to preserve error as long as the court can understand from the context what the complaint is."

Holding: The Court of Appeals used the correct standard and did not err in failing to consider our holding in Zillender. Contrary to Appellant's argument, our holding in Zillender does not change the outcome of his appeal. There is nothing in the record that indicates the trial court or prosecutor knew that Appellant was making a due-process claim. Therefore, Appellant never put the court on notice of his due-process, fair-trial complaint, and the
issue was forfeited.

Concurring / Dissenting Opinions: Judge Womack and Judge Johnson concurred, each without note.