

March 28, 2018

Advisory Commission on the Administration of Justice

Tonja Brown, Advocate for the Innocent. Advocate for the Inmates. I'm here in support in Agenda VIII and I look forward to hearing Ms. Feldman's presentation from the Innocence Project on Discovery.

Exonerations
I have provided this Commission with my recommendations on Discovery and a Petition for Review along with the supporting documents as to why we need to eliminate the Statute of Limitations rule on Discovery and the strong need for a Petition for Review. I've previously mentioned we also need Public Integrity Unit Commission to look into wrongful convictions.

In the first of Exhibits, Exhibit 1 of the Documents you can see that it is the Defendants November 4, 1988 Motion for Discovery.

In 2009 a Court Order was granted ordering the Washoe County District Attorney to turn over the entire file in this case. I will point you to the bottom right hand corner is the document with the District Attorneys' Bate Number 173-175. You will also see on the documents the handwritten notes of the prosecuting attorney Ronald Rachow, in which, he is declining to turn over the evidence including the exculpatory evidence.

Exhibit 2 Is Mr. Rachow's Memorandum describing what he considers Discovery followed by Exhibit 3, Judge Peter Breen's December 1988 Court Order to turn over the evidence.

In June 2009 when the file was turned over there were over 220 documents in the file. All of the evidence that was favorable to the defendant was withheld. This evidence supported the Defendant's case of mistaken identity. Mr. Zarsky was also suspected in 3 other crimes. Defendant never stood trial nor was he ever convicted of those crimes. In fact, the Defendant had been cleared in those 3 crimes, that were all hidden from the defense because it was not turned over in Discovery despite a court order to do so.

Exhibit 4 Edmond Wade Green's Postconviction Petition Requesting a Genetic Marker Analysis of Evidence within the Possession of Custody of the State of Nevada. It would be years later Mr. Green would receive the info regarding Mr. Middleton to have DNA testing conducted against the evidence found in Middleton's file. The testing was not conducted and Mr. Green is simply asking to have it finally done.

Judge Walker in his footnote states "David Middleton was charged and ultimately convicted of the murder of two women whose bodies were found around the same time as the victim here,

Roberta Bendus. There is no evidence that David Middleton was ever a suspect in Ms. Bendus' murder."

I would like to make a correction on Exhibit 5 the correct date is March 15, 2017 where I presented these exhibits and more to the Assembly Judiciary during the hearing of Assembly Bill 268, Exhibit O, to allow inmates to have DNA testing at their own expense. As a reminder this was my 2016 recommendation to the ACAJ that they passed.

Mr. Green waited until the law went into effect on July 1, 2017 and then on November 9, 2017 submitted a new Petition for DNA testing. I refer you to Mr. Green's ²⁰¹⁶ Petition and more specifically Exhibit 5 marked Exhibit s2, 3, 4. *I assume he just re submitted the same petition in 2017*

This is not unusual for the court to do this. I have seen this many times over the years when a Petitioner is in Pro se the court simply sides with the District Attorney or Attorney General and in most cases I have seen the Court simply ignore the grounds that have merit and are reversible

As you can see Mr. Middleton was a suspect in this murder that Mr. Green was convicted of and who has always maintained his innocence.

Exhibit 6 Mr. John Franklin Smith, received this information years after his conviction. Mr. Smith could not afford to hire an attorney to represent him. The last I heard he was still in prison.

Exhibit 7 These are just a few of the documents found in the Washoe County DA's file of the Defendant Nolan Klein.

You can see what the State and defense presented at trial, what you do not see but can be found in Court records, are statements regarding states witnesses who had reasons and motives to lie because they had a financial gain. Mr. Rachow was corresponding with the victim's attorney in the lawsuit they had against Mr. Klein prior to trial. They had named someone else other than Mr. Klein and it was Mr. Rachow who corrected them.

State's witness was a secret witness and had motive and reason to lie. State had info she had committed a crime that Mr. Klein knew about and did not want to speak the Klein's counsel. Not turned over in Discovery.

The examining Dr. Schenk of the victim's medical report stated there was no penetration and yet Mr. Klein was standing trial for rape. Not turned over in Discovery. Turned over just at trial just prior to the testimony of the examining Dr. The defense attorney totally missed the no penetration on the report.

Sparks PD prime suspect, Mr. Zarsky not turned over in Discovery. In several statements that were not turned over in Discovery Mr. Zarsky was their suspect and resembles the composite sketch by people who actually knew Mr. Zarsky. Mr. Klein did not resemble the composite

sketch. Photos of Mr. Zarsky 23+ years later. Picture of Mr. Klein no resemblance to the suspect. Not shown Klein has bright blue eyes.

A newspaper clipping of a bank robber picture that strongly resembled Mr. Klein, that the main Detective Sherman Boxx and others believed the Robber was Mr. Klein. They so strongly believed Klein was the bank robber they put it in a statement. This statement would have supported Mr. Klein's defense that he looks like other people.

It could supported Klein's 5 alibi witnesses that he was in Carson City, NV at the time of the crime and the witnesses were just mistaken.

Even with all the evidence that was not turned over in Discovery the jury had been deadlocked for hours before reaching a decision. Had the Discovery been turned over, the outcome would have been very different.

This is why our Discovery law needs to change and why we need to have a Petition For ^{Exoneration} Review, and a Public Integrity Unit.

Respectfully,

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