

## HISTORICAL INFORMATION

### 1. From: The Legislative Counsel Bureau

Sent: Thu 8/31/2006 8:46 AM

Subject: Research Request: Post-Conviction DNA Testing

<<NCSL post-conviction DNA testing.pdf>> <<Washington Code 10.73.170.pdf>> <<Tennessee Code 40-30-301 et al..pdf>>

## MEMORANDUM

DATE: August 31, 2006

TO: Legislators

SUBJECT: **Post-Conviction DNA Testing**

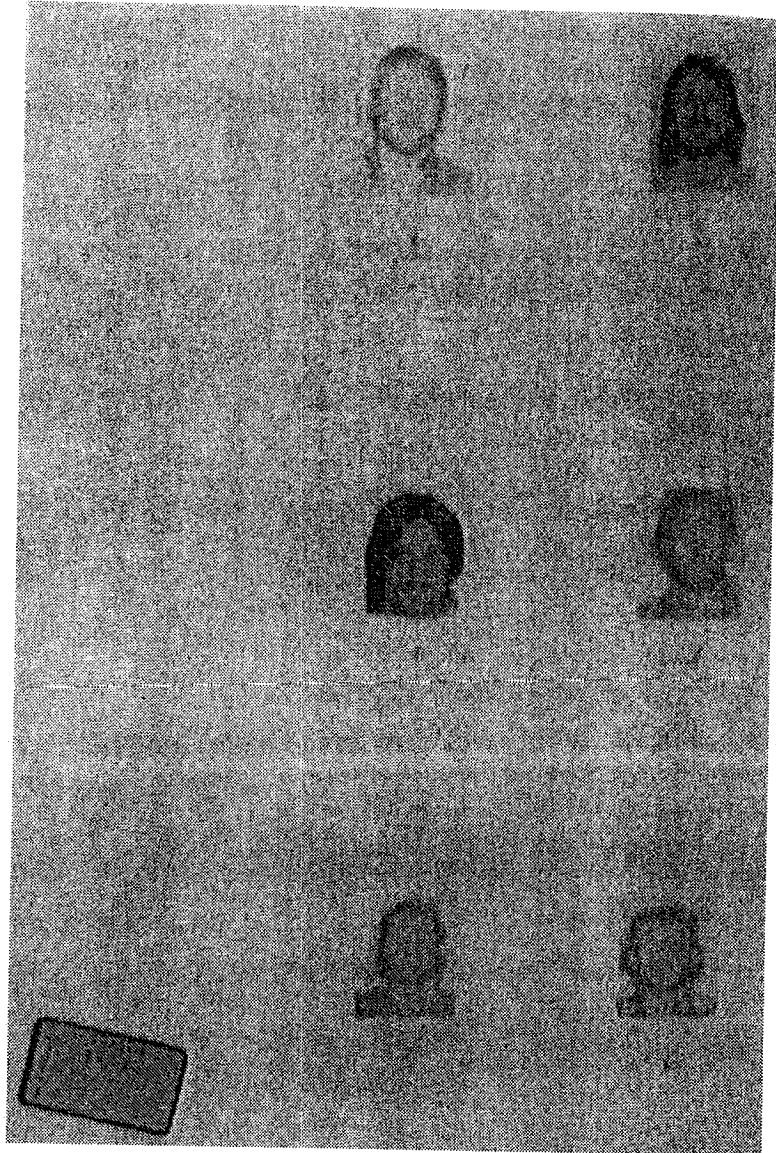
This memorandum is in response to your request for information on whether or not any states allow persons not on death row to request a DNA sample.

According to the National Conference of State Legislatures (NCSL), 35 states currently have a set of procedural rules for post-conviction relief. Since 2000, due to the advancement of DNA technology, many states have updated their post-conviction DNA testing procedures.

Of the 35 states that have rules regarding post-conviction relief, 32 allow persons not on death row to request a DNA sample. Three states currently limit the ability to petition a court for post-conviction DNA testing to individuals who are convicted and sentenced to death. Those states include: Kentucky, Nevada, and Pennsylvania.

In 2001, two states amended their post-conviction DNA testing statutes to include persons other than those sentenced to death. Tennessee's definition now includes any offender convicted of and sentenced for any criminal offense. Similarly, Washington's definition now allows any incarcerated felon to petition the court for post-conviction DNA testing.

Attached is a summary of post-conviction DNA testing procedural rules compiled by NCSL, the Washington statute related to DNA testing requests (*Revised Code of Washington 10.73.170*), and the Tennessee "Post-Conviction DNA Analysis Act of 2001" (*Tennessee Code Annotated 40-30-301 through 40-30-313*).



Suspect line up photos

exhibit 7

Victim #1 Theresa May 9, 1988

Victim #2 Bridgette

Victim #3 case # 88-4238 April 21, 1988

Victim #4 Terri Colgrove

Victim #5 case 87-11777 November 18, 1987

Age: 30-35

Race: White

Sex: Male

Height: 5'5" - 5'10"

Weight: 135-140

Hair: Brown, sandy blonde

Eyes: Brown, dark

Facial Hair: 2-3 day old beard Stubbles, unshaven.

Build: Slender

Clothing: Levi jeans, white T-shirt, levi jean jacket, tennis shoes, brown belt, red/white flannel jacket.

Weapon: Red and Black knife, Exhibit C-2, simulated hand gun Exhibit H

Vehicle: Possible 1965-1967 Bonneville, BENCH seat April 21, 1988, Exhibit A-2 (c)

Location: Prater Way, Sparks, Prater and McCarran, Sparks, Oddie and El Rancho, Sparks.

Similarities: All 5 suspects have brown/dark eyes, hair parted on the side, brown/sandy blonde hair, 2-3 day old beard stubble, unshaven levi's and t-shirt, in his early thirties. crime located in Sparks, NV.  
SUSPECTS from victims 1, 2,&3 have BROWN EYES, CHIPPED FRONT TEETH SOMETHING WRONG WITH HIS MOUTH, RED AND BLACK KNIFE, GAVE A NAME, COMPOSITES MATCH THAT OF SUSPECT RICKY LEE ZARSKY PHOTOGRAPHS.  
Victim's # 1 & 2 stated that the suspect was very dirty.  
Victim #3 was withheld from the defense and jury. Exhibit C-5  
Victims #4 said she saw a picture of him (composite) and it was the same man. Zarsky? This information was withheld from the defense and jury. Exhibit G

Victim #5 composite resembles the same composites done from victims #1-4  
Victim #5 was withheld from the defense and jury. Exhibit H  
All of these cases were combined and placed in one file that came forward at the  
1991 Post-Conviction Hearing.

Identifying marks: CHIPPED FRONT TEETH, SOMETHING WRONG WITH HIS MOUTH.

Eyewitnesses: Victim's #1 Theresa, Victim #2 Bridgette Exhibit 1, 2, 3, 4, & C-1 - C-5

Detective Sherman Boxx identified the Ricky Lee Zarsky photograph's from the Nevada Plasma and Reno Plasma Center resembling that of the Composites from all three victims. Detective Boxx put together 3 separate photo lineups. Two of the three photo line ups were shown to victim #2. (The TAINTED photo line up that Mr. Klein appeared in was shown only to victim #1, wherein, she positively identified Mr. Klein. Just as Commissioner/Public Defender Phil Kohn has along with 132 other people.) Exhibit #2, 3, 5, 7, & Exhibit D

Detective was aware of Victim # 3 that she was never shown any photo line up of Mr. Klein, because, she had seen him in person and his vehicle and had CLEARED MR. KLEIN on May 22, 1988. This eyewitness could not go to the jury, because, this would have supported Mr. Klein's defense on MISTAKEN IDENTITY when all three victims stated that he had something wrong with his mouth and chipped teeth and brandished red and black knife. Exhibit 3, C-2 & D <http://www.leg.state.nv.us/74th/Exhibits/Senate/JUD/SJUD486E.pdf> for April 21, 1988 statement that is on file in the 117 pages of exhibits.

Detective Frank Torres: Compiled the composite sketch from victim's 1&2  
Exhibit 5

This report Exhibit D on Mr. Ricky Lee Zarsky was withheld from the defense and jury. DA's response to the Supreme Court on the prime suspect Zarsky . "For some reason, this issue was not addressed by Judge McGee in his Order Denying Post-Conviction Relief. See Exhibit E

PRIME SUSPECT: RICKY LEE ZARSKY Exhibit D disappeared the day after the crime never to be seen. After the hearing I went to find Zarsky. In 1991 according to the Karl's Silver Club Personal Department Mr. Zarsky's NEVER PICKED UP OR SENT FOR HIS LAST PAYCHECK. By law, they were required to hold it for him.

I have since then ran a check on Mr. Zarsky thru his SSN. I know that since, May 9, 1988. Mr. Zarsky has never gone by the spelling of Ricky Lee Zarsky the name that was on the May 10, 1988 police report, Exhibit D. He is continuing to use different spellings of his name and changing his name around, such as, Lee Zarsky among other spellings, however, he has continued to use his SSN for the different spellings. In the most recent search he is going by the name Rickey Zarsky. Exhibit I

Suspect/Defendant: NOLAN KLEIN

Age: 33

Race: White

Sex: Male

Height: 5'11"

Weight: 150

Hair: Blonde

Eyes: Blue, bright

Facial Hair: 2-3 inch BEARD

Build: slender

Clothing: Levi's and black T-shirt

Weapon: Owned a brown wooden buck knife with brass ends

Vehicle: 1967 Impala with BUCKET seats and a counsel

Location: Jack's Bar, Carson City, NV

Similarities: Within in the age, height, weight group, wore similar type clothing, owned a knife, and drove a car similar to the one victim #3 had gotten into and cleared Mr. Klein and his car on May 22, 1988.

Identifying Marks: Tattoo's, It should be noted that Mr. Klein HAD NOTHING WRONG with his mouth or teeth, However, this was not presented during the trial

Eyewitnesses: Barbara Hillman, Bartender at Jacks Bar Exhibit # 9  
William Richards, playing pool with Mr. Klein. Exhibit # 10  
John Darnell, present at Jack's Bar in Carson City. Exhibit # 11  
Eunice Wilkinson, Mother and was present at Jack's Bar. Exhibit # 12  
Tonja Brown, sister, called Mr. Klein at Jack's Bar Exhibit # 13  
CarlaJo Marsh, eyewitness that was never called to testify at trial, however, testified at Post-Conviction Hearing June 20, 1991. Exhibit J  
Cindy Haas, eyewitness that was never called to testify at Trial, however, evidence was presented at Post-Conviction Exhibit K  
Barbara Hillman gave an affidavit that she was shown a picture (Composite) by Ms. Wilkinson in the Summer of 1988. She said that the reason when she said no when she was asked if the composite looked like Mr. Klein, was because, Mr. Klein had a

full beard on May 9, 1988 and the photo( composite) did not. Other witnesses came forward to testify that Mr. Klein was seen having a full beard weeks before the May 9<sup>th</sup> crime, including the day of to several day's later. Exhibit 7 photo line up shows beard. Composite sketch does not.

Ms. Shelly O'Neill, Public Defender, testified with regard to why She did not present the beard evidence, Prime suspect Ricky Lee Zarsky and inconsistencies in the victims testimonies. Exhibit B

Mr. Don Lutzenberg, saw the suspect and wrote down Vehicle licence plate. Mr. Lutzenberg was never contacted by the defense. Statement can be found on file. <http://www.leg.state.nv.us/74th/Exhibits/Senate/JUD/SJUD486E.pdf> (Tonja Brown exhibit)

Bartender from the Abbey Hotel, identified the composite as one RICKY LEE ZARSKY. This witness was withheld from the defense and jury. Exhibit D

Jeff Petty was the room mate of Mr. Zarsky. Mr. Petty informed the police the Mr. Zarsky was selling his blood that day and had sold his blood back in April. Which would have shown to the jury that Mr. Zarsky was desperate for MONEY. This witness was withheld from the defense and jury. Exhibit D

Because of the known discrepancies in the victims' identification testimony as compared to Mr. Klein's actual physical characteristics which would come to light during trial, the prosecutor told the jury that this case was going to come down to identity, and whether they were going to believe the victims or not, and if they did, everything would flow. For instance, the sexual assault victim ("Victim 1") described the perpetrator to police on the night of the crime as having broken front teeth or something else wrong with them, and that he had brown eyes. She acknowledged that Mr. Klein has blue eyes, even though she could not see that well from the distance in the courtroom, and was actually closer at the time of the crimes.

She went on to state that she was sure the suspect had dark eyes and that Mr. Klein has blue eyes. Victim 1 picked Mr. Klein out of the photo line-up prepared by Detective Boxx, but acknowledged that Boxx had informed her that they had arrested a man for the crime the night before, but had to let him leave. She had worked 12 hours that day, she did not turn around and look at the man, and only saw the man clearly when he came to the bathroom door, but after she came out it was dark in the back room and there wasn't enough light to see. The robbery victim ("Victim 2") said she got a good look at the man that he had brown eyes and the only difference in his appearance in court was that he was clean shaven. She had seen Mr. Klein on May 22, 1988, just two weeks after the crime, but could not identify him as the suspect because he was cleaner, which was no different than his appearance in court, nor was she able to identify Klein from any photo line-ups, because, Mr. Klein was not in the first two photo line ups because Detective Boxx said, " Because she had seen the defendant on the day the picture was taken, and I felt that would taint whether or not she

could objectively pick the subject out.” When asked, “So you were going on victim 1 identity alone?” Detective Boxx, answered, “yes”. If you look at Exhibit 7 the photo line up picture #3 showing Mr. Klein with a full beard, you will see that he is cut off at the chin, he is a the darkest picture compared to the other photo’s making it a very suggestive photo line up. When you compare this Exhibit 7 to Exhibit 3 the composite sketch they are not the same person. If you look at Exhibits N & O, Mr. Klein is seen with no broken teeth or anything wrong with his mouth.

Then you must take into consideration the person who put together the photo line up Detective Frank Torres’ testimony, that he even states that it was SOMEWHAT UNUSUAL that Detective Boxx put a photo line up together with all the men having blue eyes when the suspect had either brown or dark eyes. Exhibit 6 Essentially, Victim #2 was unable to identify Mr. Klein until she saw him at preliminary hearing dressed in jail garb, yet filed and served a civil lawsuit on Mr. Klein prior to ever identifying him in court, from which Mr. Klein was dismissed after the preliminary hearing.

Furthermore, Victim #2 under cross when asked if “Do you believe that your composite looks like my client?” Victim #2 stated, “Somewhat” ABOUT A THOUSAND OTHER GUYS AS WELL? Victim #2 answered, “YEAH” Exhibit 2 This is what Judge Charles McGee classify’s as an IN COURT IDENTIFICATION THAT WAS POWERFUL AND OVERWHELMING. Exhibit P

Because of these discrepancies in the victims’ testimony, the prosecutor was well aware that he needed to support the state’s position that despite these inconsistencies in the descriptions of the suspect as opposed to Mr. Klein’s physical characteristics, the victims were still correct in their identification of Mr. Klein.

This was a close case. There was no physical or forensic evidence that linked Mr. Klein to the crime. The jury seemed concerned about convicting Mr. Klein, whereas it appears that they were giving Mr. Klein’s alibi defense serious consideration, in that, on the first day of deliberations the jury deliberated approximately nine (9) hours before informing the court that they could not reach a verdict until they had the testimony of two defense witnesses read back to them; however, the court, Judge McGee would only allow one witness’s testimony read back to them. The jury chose Bill Richards. The jury reached a verdict on January 27, 1989, after Bill Richards’ testimony was read back.

However, one must wonder what would the outcome have been if all of the evidence from all of the witnesses and victims had testified at trial? Would the jury have convicted Mr. Klein if they had known that he had a full beard at the time of the crime, which was inconsistent with the suspect having a STUBBLE. Would the jury have convicted Mr. Klein if they had known that he had nothing wrong with his teeth or mouth? Would the jury have convicted Mr. Klein if they had been presented with all of the evidence including what they had requested the testimonies of both

defense witnesses Barbara Hillman and Bill Richards? No! because, clearly Mr. Klein did not fit the description. The positive identification came by way of a TAINTEED PHOTO LINE UP. and Mr. Klein had been cleared of other crimes when the main detective, Detective Boxx in the case believed Mr. Klein was responsible for those crimes as well. Otherwise, he would not have placed these other crimes in the same file and made reference to the cases being similar.

Recently I have read the June 3, 2008 story "Conviction Overturned for prosecution and judicial error". When you see the evidence from the case of Mr. Klein and compare it to the most recent Nevada Supreme Court decision of Noe Martinez's that case pales in comparison with the evidence that is being presented to this commission today. The positive identification thru a TAINTEED PHOTO LINE UP was the only evidence that they had against Mr. Klein. The photo line up was SOOOOO SUGGESTIVE, that 133 individuals and some of these people you personally know, Commissioner/Public Defender Phil Kohn, have picked Mr. Klein out of the same photo line up that was shown to victim 1. This photo line up array was not put together to match the composite sketch of the suspect, but, rather to match that of Mr. Nolan Klein in order to get Victim #1 to positively identify him, because, WITHOUT THAT IDENTIFICATION THERE WAS NOT CASE!!!!!!!!!!!!!!!!!!!!!!

You have to question the in court identification of victim #2 who could not identify Mr. Klein until he was already in jail garb at his preliminary hearing, yet, she had filed a civil suit against him before she could identify him in court. These victim's 1 & 2 were awarded \$510,000.00 @ 12% and \$265,000.00 @ 12% respectively until paid in full.

According to the post conviction hearing Order Judge, Charles McGee, stated that the IN COURT identification was powerful and overwhelming. Exhibit P. Over the years the wrongful identification thru eyewitness testimony and photo line ups have been WRONG and it is thru DNA evidence that these individuals are being freed from their wrongful conviction.

**MR. KLEIN IS INNOCENT! I ASK THAT YOU CONSIDER MR. KLEIN'S CASE AS PART OF THE CASE STUDY ON WRONGFUL CONVICTIONS THAT MR. KOHN AND MR. BOSLER HAVE ASKED OF THIS COMMISSION DURING THE OCTOBER 2007 Hearing.**

Respectfully,

Tonja Brown  
2907 Lukens Lane  
Carson City, NV 89706

three inch beard on the date the crimes were committed, as opposed to the victims statements that the perpetrator had stubbles or a couple days growth of facial hair; (2) evidence of another possible suspect, Ricky Zarsky, as well as evidence showing that there were two other crimes committed of the same nature and in the same area not long before the Payless Shoe Store crimes. Additionally, the evidence showed that the police affirmatively believed that Klein was responsible for those two crimes as well, whereas, the descriptions in all three were uncanny, right down to the vehicle. However, the victims in those cases didn't identify Klein as the perpetrator or his vehicle as the same one, although it was very similar. At the evidentiary hearing counsel did state that evidence of other suspects would be something she would have investigated. (Ex. 92, p. 53, l. 23-24, p. 54, l. 1). With respect to the Zarsky evidence, counsel could not give a reason why that was not presented, and said that she had 3 investigators but couldn't recall which one she was using in Klein's case. (Ex. 92, p. 56, l. 7-9). However, it was later discovered that Timothy Ford was her investigator in Klein's case and he had no personal knowledge of any investigation into Jeff Petty regarding the Zarsky suspect. (Ex. 224 at Exhibit "CC"). Although all this evidence was or should have been reasonably available to counsel, none was presented at trial; (3) Don Litzenberg was originally on the State's witness list. Mr. Litzenberg told police that he could identify the perpetrator of the Payless crimes vehicle and wrote down the license number. However, it was not Klein's vehicle and the license number was not even close to Klein's. Nevertheless, counsel never even talked to Mr. Litzenberg, nor did she present any of this evidence at trial; and (4) Terry Cloegrove was an employee in the store located next to the Payless Shoe Store where the crimes were committed. Ms. Cloegrove gave police a statement saying that a man was masterbating in her store. She was shown pictures and identified a man, but it wasn't Klein. Nevertheless, the police

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1 obviously believed this incident to be connected to the same crime Klein is  
2 convicted of, whereas, the statement was located in the prosecutor's case file  
3 pertaining to Klein's criminal prosecution. However, again counsel did not  
4 look into or present this evidence at trial.

5 Counsel also failed to lodge objections to improper prosecutor remarks,  
6 opinions, etc.; failed to conduct evidentiary testing on biological evidence  
7 from the crime scene against blood from Klein; failed to object when the jury  
8 foreman saw Klein in jail garb; failed to object when counsel discovered that  
9 there had been ex-parte communication between the judge and jury the evening  
10 prior, and further request a hearing to determine what took place during those  
11 communications; failed to object to prejudicial jury instructions on flight and  
12 reasonable doubt, among other things; and possibly one of the most telling  
13 thing about counsel's performance is the fact that she refused to adequately  
14 communicate with Klein in order to discuss and prepare his defense, discuss all  
15 areas of investigations and to clearly identify all witnesses necessary to  
16 Klein's defense. During the evidentiary hearing counsel clearly stated that if  
17 Klein wanted to discuss anything with her, he would have to go through a third  
18 party to do it. (Ex. 92, p. 79). There was no waiver of confidentiality in  
19 this case between counsel and Klein, and as such, going through a third party  
20 would not and did not get the job done. In fact, Counsel only saw Klein at the  
21 jail on a couple of occasions during the 5 months between arrest and trial  
22 once early on and once the day before trial. (Ex. 224 at Exhibit "DD").

23 Klein's defense at trial was mistaken identity and alibi. All of the  
24 matters regarding counsel's omissions were both consistent with and support  
25 Klein's theory of defense. The cumulative effect of counsel's shortcomings  
26 set forth in Ground 20 were extremely prejudicial. This is especially true  
27 where, as here, it was a close case where the jury deliberated over two days  
and accepted alibi testimony placing Klein at Jack's Bar in Carson City

evening of the crimes.

**Grounds 21(1), 23, 24(1),(2),(3) and (4), and 26**

In the interest of judicial economy and brevity, Klein hereby relies on his facts and prejudice showing as set forth in Grounds 21(1), 23, 24(1),(2),(3) and (4), and 26 of his federal habeas corpus petition, (keeping in mind of course, that in a close case such as this, where the jury deliberated over two days and accepted alibi testimony placing Klein at Jack's Bar in Carson City the evening of the crime, the court should also look to the cumulative effect of the error in light of all other exhausted claims raised by Klein in his petition. *Mak*, 970 F.2d at 622), and further, hereby incorporates same as if fully set forth and stated herein. (See Doc. #4, Ground 21(1) at p. 8ff-8jj, Ground 23 at p. 8kk-8ll, Ground 24(1)-(4) at p. 8ll-8mm, and Ground 26 at p. 8pp-8tt).

Wherefore, Klein submits that he has demonstrated that the alleged errors so infected his trial that his conviction violated due process resulting in actual prejudice to him.

**B. Grounds 20(1), 20(2), 20(3), 20(14), 20(15) And 26 Are A Result Of A Decision That Was Based On An Unreasonable Determination Of The Facts In Light Of The Evidence Presented In The State Court Proceeding.**

**1. Ground 20(1).**

In Ground 20(1) of Klein's federal petition he claims that he was denied effective assistance of counsel, a fair trial and due process of law due to counsel's failure to conduct adequate and/or any investigations into witnesses Kay Miller, Renee Shoun, Steve Shannon of Clark and Sullivan Constructors, and the owner of G.F. Webb Concrete Cutting that would have provided evidence that would have rebutted and negated the state's theory of flight. (Doc. #4, p. 8o-8q).

With respect to Ground 20(1) the Nevada Supreme Court stated:

Appellant (Klein) contends that his trial counsel was ineffective for

What you see and hear in the next three or four days is going to change my client's life forever."

JUDGE McGEE: "Ladies and gentlemen, we will take our noon recess at this time and I will remind you that you are not to talk about the case amongst yourselves or with anyone else."

The jury filed out of the rooms. One hour later the jury was back in the Courtroom.

JUDGE McGEE welcomed them back.

JUDGE McGEE: "Ladies and gentlemen, by reason of the nature of the allegations in this case, state law permits and I have given permission to the husband of the alleged victim in this case, Steve, to sit beside her as she testifies just as a matter of comfort. You are to draw no inferences from his presence."

THERESA DAWN RODELA

called as a witness having been first duly sworn

took the witness stand and testified as follows:

Mr. Rachow began the questioning on behalf of the State:

"Are you married?"

"Yes."

"Is that your husband, Steve, next to you?"

"Yes."

"How old are you now?"

"Twenty-one."

"Directing your attention back to the 9<sup>th</sup> of May, 1988, were you employed by a particular Payless Shoe Store at that time?"

"Yes, the one in Sparks on Prater Way."

"You said you were working on the 9<sup>th</sup> of May. What hours did you work?"

"I worked all day that day."

"What time does the store normally close?"

"9:00 o'clock."

"What did you do to close up that night?"

"Well, we counted out the register and we straightened the whole store."

"Theresa, you said 'we.' Was there someone else working with you that night?"

"Yes, me and Brigette."

"Directing your attention to approximately 9:15 that evening, the 9<sup>th</sup> of May, where were you in the shoe store?"

"I was outside cleaning the outside of the doors."

"I am handing you what has been marked State's Exhibit 1 (picture of store).

I ask you to take it and take a look at it. Do recognize what it is?"

"Yes. It is the front of the store."

"Would you point please on that so the jury can see where you were standing at this time?"

"I was right there. When I was cleaning the windows, I kind of sensed that there was someone behind me and I kind of glanced over a little it and I seen there was a man standing there."

"When you turned around, did you notice anything about him?"

"He was smoking."

"Did he approach you in any way?"

"Yeah. Well, after I had glanced around and seen him there, he came at me and I turned around and he had a knife and he put it like toward my stomach."

"Can you describe what the knife looked like?"

"It was a folding knife. I don't really remember exactly what it looked like."

"Do you recall approximately how long the blade was?"

"It was about four inches I guess. I don't know."

"After displaying the knife, did the man say anything to you?"

"Yeah. He told me to walk back in the store."

"Did you go back in?"

“Yes.”

Was he holding to you in anyway?

No. He was just walking behind me.

How closely did he follow you?

I don't know. I didn't turn around to look at him.

“Once you got in the store, where did you go?”

“Well, he told me to walk behind the counter and that is where Brigette was standing. And he told me to get in the safe and get all the money, get all the money out of the safe. Well, Brigette was counting out the register. I was scared. I didn't know what to do.”

“I ask you to take a look at State's Exhibit 2 (picture of store interior) and see if you can identify it.”

“Yeah. That's a picture of the counter at the store. Well, when he told me to go back to the safe, I walked – over here. The safe is right here on the floor. I walked over here on the floor and Brigette was standing I guess about right there.”

“Was the safe open at that time?”

“I don't really remember. I just know that I got the money out of the safe and I gave it to him.”

“How much money was in the safe?”

“It was one hundred ninety-eight dollars which is our store base. Suppose to be two hundred dollars, but we have an alarm that is inside the register that keeps two dollar bills in there. So it was one hundred ninety-eight dollars.”

“Did you have any other money in the store?”

“Yes. We had a deposit bag.”

“You said you gave the money to this individual. Did you give him both bags?”

“No, I just gave him the one bag.”

“After he took the money, did he leave?”

“No. He told us to walk to the back room and he asked if there was a bathroom back there. And Brigette said yes, there is. So he told us to get in it.”

“I am going to show you what has been marked as State’s Exhibit 3 (photo of middle of store) and ask you to take a look at this photograph and see if you can identify it.”

“Yeah. That’s the middle of the store.”

“State’s Exhibit 4" (back door)

“Yeah, that’s the back door, right before you get the back door. This is the door into the back room.”

“Where is the bathroom?”

“This is like the end of the storeroom. There is a wall, little hallway where you can walk down and go into the bathroom.”

“Both you and Brigette go into the bathroom?”

“Yes. We turned the light on when we went in.”

“Where did the man go when you went in the bathroom?”

“He stood in the doorway and he told us to be quiet and not to say anything, not to leave the bathroom.”

“Do you know approximately how long he stood there?”

“Oh, a few minutes.”

“Could you see his features clearly?”

“Yeah.”

“Were you scared at the time?”

“Yeah.”

“What was the conversation?”

“He said for us to be quiet and not to leave the bathroom and that he knew we could identify him. And then he shut the door and he locked it.”

“The lock is on the inside? Did you or Brigette lock it?”

“I did.”

“What were—did you do anything while you were in the bathroom?”

“Well, we talked a little bit. I had an alarm that I carried around like on my belt, and we pressed the alarm.”

“Could you hear if there was anything happening outside the bathroom?”

“We heard—it sounded like he was putting things against the door, moving things around and putting them up against the door.”

“How long were you in the bathroom before something occurred?”

“About fifteen or twenty minutes.”

“What happened then?”

“Well, then he came back and he said “open the door.” And Brigette opened it real quick. And he looked in and he said “I want you to come out here.”

“Could you see him clearly at that time?”

“I mean I knew it was him again.”

“When he asked you to come out, did you go out?”

“Yes.”

“Was the bathroom door closed behind you?”

“Yes. (Brigette) stayed in the bathroom. We were in the back room. We just stayed in the back room because the door that goes from the back room to the front of the store was shut.”

“Was there enough light that you could see the individual?”

“No, not in the back room.”

“Did he talk to you at all?”

“Yeah. He told me he has a sick kid and that is why he needed the money.

And I thought that he was mad because I hadn't showed him the deposit bag. He said he didn't want my money.”

“When he said he had a sick kid, what sex?”

“I think he said a son.”

“I kept talking, yes, he could get away if he left now. Everything would be fine.”

“Did he do anything at that point?”

“Well, he told me to get on the floor and I knew what he wanted to do then and I kept saying “no, I can't, I can't.” I kept trying to talk him out of it. And he took his knife. He had gloves on. He was going to hurt me. And he got mad because I kept talking. So he got the knife and he put it by my neck. And so I laid down and I just kept crying, telling him he was hurting me.”

“What did he do?”

“He took off my underwear and my nylons and he raped me.”

“Did you actually feel any penetration?”

“Yes.”

What did he do with your clothes he took off? He just left them on the floor.

“Approximately how long was he on you?”

“Oh, I don’t know. About three to five minutes I guess.”

“Do you know whether he ejaculated in you?”

“No, I don’t think so.”

“Do you know why he stopped?”

“Well, I just kept crying and telling him that he was hurting me, and said he felt bad and that he had a gun and he wanted me to shoot him with it.”

“Did you see a gun?”

“No.”

“I told him no I couldn’t, and he was surprised that I couldn’t after what he did. And so he just said that “I am going to put you back in the bathroom and I am going to call the police and tell them what I did.”

“After you were returned to the bathroom, was Brigitte still in there?”

“Yes.”

“What did the two of you do at that point?”

“We just kind of stood there, and I cried and she was shaking.”

“What happened when the police came?”

“Well, they knocked on the door said “is anybody in there?” Brigitte opened

the door again real quick so she ran out.

“Did the police take you anywhere after you told them what happened?”

“They took me to the hospital. I had to be examined and do all that test and all that stuff.”

“I am going to hand you some photographs marked State’s Exhibit 5 through 8 (more pictures of the store) . I would like you to take a look at number 5.”

“It is the back room and the little hallway that you go to enter the bathroom.”

“Would you look at 6 please?”

“That is the other side of the back room.”

“Number 7?”

“That is the counter.”

“Number 8?”

“That is the back door.”

“Would you indicate in that picture where the bathroom is located?”

“It is right here.”

“The next photograph please?”

“That is the desk.”

“Photograph 8 please?”

“This is the door where you enter the back room and that’s the back door.”

“Do any of the photographs show where the assault took place?”

“It was right on the floor in front of the desk.”

“After you were finished at the hospital, did you see the police again?”

“After we left the hospital, we went back with him to—back to the police station.”

“Did you talk with any police officers back at the station?”

“Yes. I had to make a tape. I had to talk into a tape and tell him what happened and the description and we made a, I think they call it a composite thing, what he looks like.”

“Did you describe the individual?”

“Yes.”

“How did you describe him?”

“He is about 5'8", real skinny, blond hair, was kind of long and he was dressed real dirty and grungy. Had all jeans on, jean jacket and jean pants and he was unshaven.”

“Did you indicate what color his eyes were?”

“I don't think I told them a color. He gave me a little thing to look through of a whole bunch of different faces, size faces and hair and eyes and stuff like that. Soon as I picked out the ones I thought were right, I showed it to him and he fixed

it on some little thing.”

“What type of shoes he was wearing?”

“I have no idea.”

“Could you tell he had anything in his hands?”

“He was wearing gloves.”

“Was he wearing gloves the whole time?”

“The whole time until when we were in the back room.”

(Rachow shows her Exhibit 9 which is composite she made on May 9.)

“Is the description that is on there the one you gave the police that night?”

“Yeah, that’s it.”

“Did you make this composite when you still had a fresh picture of the individual in your mind?”

“Yes.”

“I would ask you if you see anyone in the courtroom that you recognize from that night.”

“That’s him.”

“The man right there.”

“The one sitting at the table next to Ms. O’Neill? Are you sure?”

“Yes, I am positive.”

“Had you ever seen him before this night?”

“I had seen him one other night when he was in the store and he was there at closing time. And I had told him that we were closing and you have to make your final purchase. And he was just kind of walking through the store. And then he walked up to leave the store and he stopped right next to me and he asked me “Are you the manager?” And it kind of scared me because he was holding a little knife that was right here, and he was playing with it. And that’s why I remember this. And I said “Yes, I am the manager.” And he just kind of stood there for a few seconds then he walked out.”

“Did you ever have occasion to attempt to identify the perpetrator through any type of photos?”

“Yes. I was given I think three photo lineups and on the third one I picked him out of it.”

“How do you remember when the third photo lineup was given to you?”

“It was given to me about two weeks after.”

“Would you describe what it looked like?”

“A piece of paper that was inside of a folder and it had six little pictures of six different people.”

“Did they all look basically the same?”

“Yeah. They were all blond and white, that kind of thing.”

“When you saw that third photo lineup, did you make an identification?”

“Yes, I did.”

“Were you positive at the time?”

“Yes.”

“Is that the photo lineup you were referring to?”

(State Exhibit 10 which shows one guy with long hair and moustache.)

“Yes.”

“Which individual did you pick out?”

“Number 3, this one.”

“Were you positive at that time?”

“Yes.”

“Are you positive now?”

“Yes.”

“As the defendant sits here today, is his appearance in any way different than when you saw him on the 9<sup>th</sup> of May?”

“Yeah. Shorter hair and he is shaven.”

Mr. Rachow concluded his direct questioning and Ms. O’Neill began her cross examination of the woman who identified her client as a rapist. At first

"Okay. Would six hundred dollars ring a bell?"

"I don't remember."

"Okay. You gave the bag with the two hundred dollars to the perpetrator, right?"

"Yes."

"Based on this alarm system, you have a civil suit pending don't you?"

"Yes."

"Your lawyers are present in court, correct?"

"Yes."

"Did you ever get a good clear picture of the knife that was used?"

"I don't remember exactly what it looks like. But I remember it was a folding knife."

"You can't positively identify the knife?"  
"Correct."

*victim told - possibly  
police report  
indicated that handle  
knife.*

"And the door to the bathroom has a lock on the inside; correct?"

"Right."

"Did the person ever threaten to break down the door?"

"No."

"Brigette just opened it right away?"

*knife was used  
into evidence was  
found at scene w/ brass ends*

*2/28/81  
pedal bike  
victim #3*

“Yeah.”

“You didn’t think it was the police did you?”

“No.”

“In your physical descriptions, you indicated that he had red eyes. Do you recall that?”

“Yes.”

“You also indicated that you smelled some level of intoxication, some alcohol; correct?”

“Yes.”

“And you described him as kind of dirty and unshaven?”

“Yes.”

“With longer hair?”

“Yes.”

“And denim clothes that were kind of dirty?”

“Right.”

“Also in your description you said that something was wrong with his teeth. You thought his teeth were broken or something, correct?”

“Didn’t say what exactly because I don’t remember.”

“Now most of your descriptions of this person came on either the 9<sup>th</sup> or the

10<sup>th</sup>, correct?"

"Yes."

"Was your memory pretty clear then?"

"Yes."

"And if you gave in your taped statement that the front teeth may have been broken, would that be incorrect?"

"I don't remember."

"Okay. And if you said to the police officer that the person was thirty, thirty to thirty-five years of age approximately 5'10", one thirty-five to one-forty, thin, slender build, stop me when I am wrong, blond hair, brown eyes wearing a blue denim jacket, blue jeans and dirty brown shoes; is that your description?"

"I don't remember saying brown eyes, but I didn't hear the last part, the last words, wearing a blue denim jacket, blue jeans, dirty brown shoes, I don't remember anything about the shoes either."

"Look at Mr. Klein and tell me what color his eyes are?"

"Blue."

"Okay. Clearly you were closer to the culprit on the night of May the 9<sup>th</sup> right?"

"Yes."

“When the person talked to you in the back room, he said that he had a sick son right?”

“Yes.”

“You also recall testifying and putting in your police report that the child was living in another state?”

“Yes.”

“In fact, that is consistent in all your police reports right?”

“Yes”

“When he took off his gloves to get his knife back out, did you ever see him put his gloves back on?”

“No, I didn’t.”

“Did you find the gloves in the store after the person left?”

“I didn’t, no.”

“Do you know whether or not any other items of property were missing from the store?”

“Not that I know of.”

“When you were in that back room with him and the door was closed, did you see whether or not he had any other property of Payless stacked up anywhere?”

“I didn’t see anything like that. I just kept looking at the alarm. When the

alarm has activated, it blinks. I was looking at that blinking light. I just kept thinking the police would be there any minute.”

“Were you ever touched with the knife.”

“He put it up to my neck.”

“And you are positive that you never saw a gun?”

“Positive, yes.”

“Tell us please when you saw the other two photo lineups.”

“I don’t remember exactly, but they were like—one was about a week later.

Another one, maybe another week.”

“And did the same detective show you each lineup?”

“Yes.”

“Did you notice that in Exhibit 10 all of the men in here have blue eyes?”

“No.”

“How long did it take before identified a certain subject?”

“Well, he opened the photo and I looked at it and I seen him.”

“Isn’t it a fact that detective Boxx told you that person had been arrested?”

“Yes.”

“That they talked to him, then they let him go, right?”

“Yes.”

“Did that cause some upset?”

“Yeah.”

“The lighting in the front of the store is pretty good wouldn't you say?”

“Yeah.”

“And your store was still well lit right?”

“Yes.”

“You hadn't turned off the lights?”

“Yes.”

“The lighting in the bathroom is pretty bright?”

“Yes.”

“The only lighting that would be dim is the back room lighting?”

“Right.”

“What was the lighting condition at the time you were taken to the back room?”

“It was dark back there.”

“No lights on at all?”

“No.”

“Why was that?”

“He shut them off, I guess.”

“But yet you could tell he removed his gloves and things of that nature?”

“It was dark back there, but once, you know, your eyes adjust to the light, you can see things. You know what is going on.”

“Was there any artificial light source?”

“No.”

“What about under the door since the store is so well lit? Was light coming in from under the door?”

“Probably.”

At that O’Neill finished her cross examination of the eye witness.

THE COURT: Mr. Rachow, redirect?

BY MR. RACHOW:

“Other than today here in court, have you ever seen the defendant live since the 9<sup>th</sup> of May?”

“Live, no.”

“What about preliminary examination?”

“Oh, yeah, I seen him at preliminary examination.”

“We are talking about in October you saw him?”

“Right.”

“Do you recall what his hair looked like at that time?”

"It was longer."

"What about his mustache?"

"I think he still had it then."

"Did you identify him at that time?"

"Yes."

"Was there any doubt in your mind at that time?"

"No."

"Were you positive on the details of the height?"

"I think I guessed fairly well."

"Were you positive on hair color?"

"Yes."

"Were you positive on the eyes?"

"He had dark eyes I guess."

"You have seen here today that the defendant has blue eyes?"

"Yes."

"Is it still your testimony that he is the guy?"

"Yes, definitely."

"There is no doubt in your mind?"

"None at all."

“You mentioned that you had a civil suit going. Who is that against?”

“The alarm company.”

“And the shoe store?”

“Yeah, and Payless.”

“Because you have this civil suit going, is it important that you win in a sense in this case?”

“I don’t think this has anything to do with it one way or the other.”

“Finally, you stated the detective told you the man had been arrested and released. Was this before or after you made the identification?”

“It was after.”

Thank you I have no further questions.

Re-cross by O’Neill

“Ms. Rodella, isn’t it a fact that Mr. Klein has been named in your civil suit as well?”

“I don’t know. I have no idea.”

“Are you all right? Need a break?”

Yes, I am fine.

“Ms. Rodela, I am showing you what has been marked as Defendant’s A (the civil lawsuit) and ask you to look over the caption. Does that refresh your

recollection?”

“I have never seen that. I don’t know.”

“So you are aware Mr. Klein is at least a defendant in some civil suits in this case?”

“I just don’t know too much about that kind of stuff.”

“Did you give any statement at the hospital?”

“I didn’t give a statement.”

“In a rape kit, they take several items of physical evidence from you right?”

“Yes.”

“I don’t want to be too specific here. They take hair and a blood sample, things of that nature, right?”

“Right.”

“They collected the physical things you were wearing?”

“Yes.”

“Was the doctor who examined you Dr. Schenk?”

“I don’t remember his name.”

“Okay. I am not trying to pry or be too personal, but this is evidence in a lawsuit. Isn’t it a fact you told the doctors you had a sexual relationship with your husband the morning of the incident?”

Ten minutes.

Why did you happen to come out at that time?

The police knocked on the door.

Did you make a report to them?

Yes.

Did you describe what this individual looked like?

Yes.

Had you had an opportunity to observe him closely?

Yes.

Did you get a good look at him?

I think so, yes.

For about how long?

Just the time he was talking to us in the front of the store when we were in the back.

How did you describe this individual to the police?

About 5'9", slim, dirty, sandy brown hair.

Any description of any facial hair?

Stubbles.

Did he (Detective Torres) ask you to help in any way making up a picture or composite?

*[Handwritten signature]*

Yes.

What was that?

It was a composite of him.

Show you what you has been marked State's Exhibit 11 (composite made by Bridget) on the back. Like you to take a look at that and see if you recognize it?

Yes.

That is the composite I did.

Had you, thinking back, had you ever seen that individual before the 9<sup>th</sup> of May?

Now that I think about it, I think he had come in one time a couple weeks or so before acting really suspicious after we were supposed to close. Nobody was in the store.

Since the 9<sup>th</sup> of May, have you ever seen that individual?

Yes.

When was that?

At the preliminary trial.

What did he look like?

Close to the same. Clean. Cleaner.

Did you recognize him?

Yes.

Was there any doubt in your mind?

No.

Do you see that individual here today?

Yes. That's him. Right there.

Does he look the same today as he did when you previously saw him?

Yes.

Are there any changes?

Clean shaven.

Are you sure that this is the right man?

Yes.

Have you given this a lot of thought?

No.

Did you describe him to the police as having brown eyes?

I think so.

Were you sure he had brown eyes?

No.

Why did you do it?

His eyes were glossy and red and I wasn't too sure.

THE COURT: Cross-examination? "You understand, Ms. Sloan, don't you, you have to be questioned also by Mr. Klein's lawyer?"

Cross exam by Ms. O'Neill

Do you remember ever going down to the police department or the Washoe County Jail to identify anyone?

Yes. I just went down there and he showed me a folder and I looked at a bunch of guys.

And so you didn't look at a live person did you?

No.

Even when you looked at a bunch of photos, did you identify anybody?

No.

How many of those folders full of pictures did you look at?

Two altogether.

Okay. And you didn't find my client, Mr. Klein's photograph in either one of those, did you?

No.

And you believed he had been drinking. Is that still correct?

Yes.

What other indication did you have that the person who was the perpetrator that night on May the 9<sup>th</sup> had been drinking?

The way he talked.

Did he slur his words?

Yeah. He kind of mumbled them together.

How long would you say that he was at the counter area with you two ladies before you were taken to the back room?

Probably five, ten minutes.

You were able to get a pretty good view of the person?

Yes.

How close did he ever come to you?

Probably three feet.

You saw him grab Terry then outside?

Yes.

Did you push or pull any kind of alarm system at the register when you saw that happen?

No.

Did you ever try to activate any alarm?

Terry had one on her belt.

You didn't wear one?

No.

Did you ever see Terry actually push that button?

Yes.

How long were you in the bathroom total?

Total, about an hour.

Do you know whether or not—did you try to activate any alarm in the back end of the store?

Just the buttons.

Okay. What did you do with the telephone when the man first came in with Terry? How far did you get?

I pushed zero and was nervous and that's it. You didn't try to push 911?

No.

Did you hang the phone back up when the person said "hang the phone back up?"

I set it down. I didn't hang it up.

Describe for me please the knife. Do you own a buck knife?

No.

Does anyone in your family own a buck knife?

No.

What is a buck knife to you?

I am not too sure. I just—I have been describing it to different people. They said it sounds like a buck knife.

Do you know the difference between a buck knife and Swiss Army knife?

Probably not.

Are you positive then today that it was a buck knife that you saw on May 9<sup>th</sup>?

I know what it looked like.

Has anyone asked you to identify the knife that was found in my client's car on May the 22<sup>nd</sup> or 23<sup>rd</sup>?

No.

Could you positively identify the knife that was used in the store against you and Theresa Rodela?

I think so.

Isn't it a fact that on the 22<sup>nd</sup> when you saw the suspicious person and the sub shop guy next door called the police, you told the police you could not make a positive identification?

Yes.

Why is that?

He was wearing glasses. He was clean. He had clean clothes and he walked by.

How was that time different than now?

I didn't get a close look. He just walked by and I didn't want to say for sure if I didn't know. And now I can tell.

Yet in your physical description when you gave your description right after the incident?

Your description was a white male adult?

Yes.

Correct? In his thirties?

Somewhat.

About a thousand other people as well?

Yeah.

Why are you so sure today that it is my client that came into your on May the 9<sup>th</sup>?

I can just tell. I know.

You too have filed a civil suit in this case, correct?

Yes.

You are suing Payless and the alarm company?

Yes.

And my client?

No.

He was originally a defendant in your suit, correct?

Yes. That's all the questions I have.

Mr. Rachow –

You said you looked at two photo lineups but you weren't really sure of the date? Was it—do you recall whether it was before or after you left work at Payless Shoes for the last time?

One was before for sure. I think the other one was really close, right around the time. Do you recall whether it was before or after you seen the individual that triggered the memory of walking by that date?

One was before.

The other one you are just not sure?

Yes.

5'9" to 5'10"? Tan complexion?

Yes.

Mustache and several days growth of beard, correct?

Yes.

Weight one hundred forty pound?

Yes.

Slender build?

Uh-huh.

Blond hair.

Yes.

Brown eyes?

Yes.

Denim jacket and denim jeans?

Yes.

Do you recall approximately what time you made this composite?

It could have been around midnight. It was late.

It was that night though?

Yes.

Do you believe that your composite looks like my client?

Uh-huh.

That is fine.

Brigette, I am going to hand you an item and ask you to take a look at it. How would describe that knife?

Folding knife.

Would you consider that type of knife a buck knife?

I am not sure.

Is that knife similar to the one you saw the night of May 9<sup>th</sup>?

I don't know.

Victim #2  
Police report  
in drawing red & black handle knife

Take a look at it with the blade open and see if it makes any difference in any way.

It is similar.

It looks a little bit similar. I am not asking you if it is the exact knife. If it doesn't look similar, tell us. We are not trying to put words in your mouth.

Fine. -

Mr. Klein's brown wavy hair / w brass  
eyes was admitted into evidence.

Thank you. What was your emotional state, Brigette, at the time you were describing this man to the police?

Pretty bad, I guess.

Are you still scared?

Yeah, shaky.

I have no further questions.

# Nevada

## Man robs shoe store, sexually assaults clerk

Sparks police are looking for a knife-wielding man who robbed a shoe store, sexually assaulted a clerk and then notified police.

A detective said he unidentified suspect's description was very similar to a man who kidnapped, robbed and attempted to sexually assault a woman on El Ancho Drive April 21.



The suspect

The latest case occurred at a shoestore on Prater way. As two female employees, 18 and 20, were closing shortly before 9 p.m. Monday, a thin, dirty-looking young man brandished a knife and stabbed one of them. He ordered her to put down a telephone and forced both victims to lie on the floor in a restroom. Claiming he had a gun, he ordered them not to move, police said. Then, he went to the front of the store, rifled a cash drawer, locked the front door and returned to the restroom. He took one of the women to another room and sexually assaulted her.

At 10:19 p.m., a man telephoned Sparks police, saying, "There are two girls tied up in the back room" of the store. "I robbed them." On Tuesday, police released a composite drawing of the man. They described him as Caucasian, 30 to 35 years old, about 5 feet 10 inches tall, weighing about 145 pounds and having brown eyes, sandy-blond hair.

Zasky report 88-4238

This composite sketch of the suspect was shown to the defense witnesses by Ms. Wilkins. Hillman.

exhibit # 3

EXAMINAT. FOR SUSPECTED RAPE AND OTHER SEX CRIMES

Name of person examined: Theresa Lopez

Kit No. R02090

Female  Male  Age 20

History

Since alleged assault has patient: douched no bathed no defecated no  
urinated no

Prior to alleged assault - last coitus: date 5-9-88 time \_\_\_\_\_

last coitus: date 5 time \_\_\_\_\_

Assault: date 5-9-88 time 2200

alleged penetration: yes \_\_\_\_\_ no

alleged ejaculation: yes \_\_\_\_\_ no

alleged sodomy: yes \_\_\_\_\_ no  oral copulation: yes \_\_\_\_\_ no

Examination

General

A. Note location on body of any observable debris such as weeds, soil, etc.  
(Place in envelope marked "Other Trace Evidence.")

B. Note any physical injuries (such as bites, bruises, abrasions, etc.), complaints of discomfort or pain.

Pelvic or anal examination

Redness none

Discharge none

Lacerations none

Bleeding LOWER ENDOPE - BLOOD NOTED IN VAGIT SEC

Hymen intact

Other two small bruises of medial thigh

Motile sperm: Present \_\_\_\_\_ Absent \_\_\_\_\_ Not checked no - motile sperm seen

Signature of Examining Physician Paul Robert MD

Date 5-10-88 Hospital Wash Med Center

Kit delivered to Officer DEBILZAIN

of the SPARKS Police DEPT Department.

Original - Doctor's Copy  
2nd Page - Return to Kit

exhibit #4 Victim #1

There was no indication by Bridget Sloane that the person was intoxicated?

I don't know.

And how long is someone typically held on a CPC arrest?

Minimum of four hours.

And was Mr. Klien held at minimum of four hours?

Why?

Until they can at least sober up to where they can at least take care of themselves and not be a danger to their selves.

And was Mr. Klien held at the Washoe County Jail a minimum of four hours?

I don't recall.

(RACHOW called his next witness)

We'd call Detective Sherman Boxx. Sir, would you state your full name and spell your last name for the record.

Sherman Boxx. I'm a police officer with the City of Sparks. A little over 11 years. Assigned to the detective division.

Did you work a case involving the Payless Shoe Store robbery and rape out at 543 Prater?

Yes, sir.

Did you develop a suspect?

Yes.

exhibit # 5

Detective  
Sherman Boxx

Correct.

After you spoke with him that night, told him to come back the next day, was he ordered to do so?

No.

Was he under any compulsion to return the next day?

Only that he said he would.

And in your investigation and trying to look for him, you finally realized that he had been working out of state; correct?

I don't know that I ever confirmed employment. I did confirm that he was out of state.

And you also discovered other family members that he had in the community?

Yes, ma'am.

And arrested him at his girlfriend's home; correct?

Yes, ma'am.

What about this case changed other than the fact that he left the area that made you want to arrest Mr. Klein?

The victim had identified him in a photo line-up?

That's Theresa Rodelo?

Correct.

Why didn't you ever show Bridget Sloane the photo line-up, this number three?

Because she had seen the defendant on the day the picture was taken, and I felt that would taint whether or not she could objectively pick the subject out.

So you were going on Theresa Rodelo's identity alone?

Correct.

You were aware that Bridget Sloane said she couldn't positively identify the person she saw on the 22<sup>nd</sup> as being the person that committed the crime?

At the time of this interview, I was not aware.

All right. Later on you were made aware of that fact; correct?

Yes.

So had she seen Mr. Klein that day, she still couldn't be positive of her identification. Before she saw him at preliminary hearing when he was in his jail clothes and that sort of thing is when she first made her positive identification; is that correct?

I don't know.

REDIRECT BY MR. RACHOW

Prior to Theresa Rodelo making an identification in the photo line-up, was the defendant any more than a suspect at the that time?

No, sir.

Are you required to give warnings to individuals if they're not placed under arrest or under custodial interrogation?

No, sir.

When you talked to the defendant on that night, what name did he use to identify himself?

I'll show you what purports to be the third photo line-up prepared by Detective Boxx. Do you find anything unusual based upon the statements you took from the two victims? After taking the two victims' statements wherein they state either brown or dark eyes, do you find it unusual that a detective would put together a photo line-up of a suspect in this case with every photo having blue eyes, or purported to have blue eyes?

It's somewhat unusual.

Were you ever contacted by either Bridget Sloane or Theresa Rodelo later wherein they would change their identification?

I don't recall any. The only thing, a call directly after I spoke with Bridget.

Did she change anything?

No.

Did you put that capsulization together for the Sparks Police Department?

I don't believe so.

Is there any information that's inconsistent?

I believe it's all pretty consistent.

On your testimony on Direct, Detective Torres, if you said that the reason that you put together an Ident-a-Kit or a composite was to get kind of a general idea of what person looked like for your officers on the street; and then the State asked you: "Is it close," and you said: "No." What's the point?

Well, the point is it's not a photograph. That's used as a tool, that the officers on the street can relate to.

And do you believe that composite looks like my client, Mr. Klein?

At this time? Hair aside, and I will give you that people have testified that

his hair was longer when he was arrested; facial features.

To me, right now at this time I would say I don't think so.

That's all the questions I have. Thank you very much Detective.

BY MR. RACHOW:

Sir, if you had a suspect in custody that you wanted to put in a photo line-up and he had blue eyes, would you put the other five pictures in brown eyes so he'd stand out or would you try to use all blue-eyes people in the line-up?

In the past witnesses have not been exact on the colors, but if some evidence would come up that it's so and so and this picture was different, inconsistent with the rest them, I would use them, yes.

Use all blue eyes?

No. I'm sorry. I thought you meant only one blue-eyed picture.

On the color of eyes, if you had a blue-eyed suspect, would you not also look for blue-eyed other similar photographs to put in the line-up?

Yes.

You might mix and match, but you wouldn't just leave the suspect alone with blue eyes and everyone else with brown, would you?

No, I wouldn't.

(Rachow: Call Officer Steve Asher.)

Were you working on the 22<sup>nd</sup> day of May, 1988?

Yes, I did.

How?

I did what you call a composite. A likeness of the suspect. I put together a look-alike photograph.

Did you do that for both Bridget and Theresa?

Yes, I did.

Did you do them at separate times?

Yes, I did.

Did you also interview them for physical characteristics of the individual: height, weight, that sort of thing.

Yes.

Identi-a-Kit procedure?

An Identi-a-Kit is not a picture or photograph; it's strictly a likeness of an individual based on facial features: hair, this is used basically for the officer on the street, to look at somebody that matches that sort of description in order to possibly talk to that person or bring them to the attention of investigators.

These were taken from the girls at the time?

Yes, they were.

I'll try to make this quick, Detective Torres. I know you want to get out of here. How much time would you say that you spent in total talking with each victim about their identification?

With the younger one, Bridget, I believe I might have talked to her about 45 minutes total time.

NOLAN KLEIN

7

exhibit # 6

Detective Frank Torres

And Theresa Rodelo?

A little bit longer.

Why is it so important to talk to a victim, who is nervous and upset immediately after the incident?

To provide information, right now for the officers on the street.

And based on your 15 years' training and experience as a police officer and as a detective, you realize that people's memories are fresher closer to the incident, correct?

That's very possible, yes.

You compared them after they each left; right?

Yes.

And they were similar?

Yes.

Very similar?

Yes.

And in your interviews of them you were confident that they had ample time to see the person, correct?

That's correct.

Yes.

And the lighting was good?

Yes.

And particularly with Theresa Rodelo, she spend considerable time not only being assaulted by him but she had some conversation, some interaction with him as well. Were you aware of that?

Yes.

Is the handwriting on these Ident-a-Kits yours?

Yes.

And have you had occasion to look them over since you took them?

Just briefly.

Take a few minutes and look them over and see if there are any inconsistencies in those Ident-a-Kit composites.

There are two little inconsistencies. One would be the age group factor. One of them indicated 35 years; the other indicated 30. In the eyes, one indicates that they were dark; the other indicates they were brown.

Did you put together the photo line-ups?

No, ma'am.

Had you put together a photo line-up, would you have included pictures of people with blue eyes based on your identifications you received from the victims?

It would be hard for me to say. Based on what I had available for me to use at that time, I would have mixed. I can't give you an answer that, yes, I would or couldn't have. It would be whatever I would have available at that time to make a photo line-up.

Have you seen any of the photo line-ups prepared in this case?

I don't believe so.

I'll show you what purports to be the third photo line-up prepared by Detective Boxx. Do you find anything unusual based upon the statements you took from the two victims? After taking the two victims' statements wherein they state either brown or dark eyes, do you find it unusual that a detective would put together a photo line-up of a suspect in this case with every photo having blue eyes, or purported to have blue eyes?

It's somewhat unusual.

Were you ever contacted by either Bridget Sloane or Theresa Rodelo later wherein they would change their identification?

I don't recall any. The only thing, a call directly after I spoke with Bridget.

Did she change anything?

No.

Did you put that capsulization together for the Sparks Police Department?

I don't believe so.

Is there any information that's inconsistent?

I believe it's all pretty consistent.

On your testimony on Direct, Detective Torres, if you said that the reason that you put together an Ident-a-Kit or a composite was to get kind of a general idea of what person looked like for your officers on the street; and then the State asked you: "Is it close," and you said: "No." What's the point?

Well, the point is it's not a photograph. That's used as a tool, that the officers on the street can relate to.

And do you believe that composite looks like my client, Mr. Klein?

At this time? Hair aside, and I will give you that people have testified that

his hair was longer when he was arrested; facial features.

To me, right now at this time I would say I don't think so.

That's all the questions I have. Thank you very much Detective.

BY MR. RACHOW:

Sir, if you had a suspect in custody that you wanted to put in a photo line-up and he had blue eyes, would you put the other five pictures in brown eyes so he'd stand out or would you try to use all blue-eyes people in the line-up?

In the past witnesses have not been exact on the colors, but if some evidence would come up that it's so and so and this picture was different, inconsistent with the rest them, I would use them, yes.

Use all blue eyes?

No. I'm sorry. I thought you meant only one blue-eyed picture.

On the color of eyes, if you had a blue-eyed suspect, would you not also look for blue-eyed other similar photographs to put in the line-up?

Yes.

You might mix and match, but you wouldn't just leave the suspect alone with blue eyes and everyone else with brown, would you?

No, I wouldn't.

(Rachow: Call Officer Steve Asher.)

Were you working on the 22<sup>nd</sup> day of May, 1988?



Picture of Nolan's DNA. His DNA evidence consisted of his blood, hair samples, pubic hair samples, and saliva. However, on the chain of custody sheet indicated all but the blood samples.



This picture was taken by Tonja while in the presence of Mr. Duer. This brown wooden buck knife was admitted into evidence during the testimony given by Bridgette S. Later, Tonja would discover that in Bridgette's statement she made to police on May 9, 1988, she had described the knife as being red and black.

exhibit 8

And do you know what particular event would have made him return to

Reno?

Well, it was our son's birthday.

When was that?

September 12<sup>th</sup>.

Do you recall the date that he might have been arrested?

The 13<sup>th</sup> or the 14<sup>th</sup>. I left town the day after our son's birthday.

Nolan was in town for your son's birthday?

Yes.

Isn't it a fact he was arrested at your home?

Yes.

That's all the questions I have.

BARBARA HILLMAN called as a witness herein

What do you do for a living?

I'm a bartender.

In May of 1988, where were you employed?

At Jack's Bar, Carson City.

Approximately a year?

Yeah.

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Eye witness Barbara Hillman

Do you have a regular crowd in a bar like Jack's Bar?

Yes.

Do you know the gentleman seated to my left?

Yes.

And who is he?

Nolan.

Do you know other members of his family, as well?

Yes.

Who do you know?

I know his mother and his brother.

Are they regular customers?

Well, his mother is; and the two of them come and go.

Do you recall them all being present in your bar on a Monday night?

Yes.

Was something unusual discussed that particular Monday night?

Well, we were all talking about California was supposed to drop off the next day, so we talked about that all –

California was supposed to drop off where?

Into the ocean.

And who was talking about that?

Nolan; his brother; his mother; myself; J.D.; and Bill.

What was the time of your shift?

I came on at 6:00.

Do you recall if Nolan Klien was present when you had arrived at work?

I believe he was.

How long does your shift usually go?

Till 2:00.

What happened during the course of the evening.

We just sat there and talked. Then Pinkie—Nolan's mother—and J.D. got up to go to dinner; and Nolan and Bill and his brother were still there. We just talked and, like I said, it wasn't busy and they drank.

And that was approximately 9:00 o'clock?

Yeah. In fact, it was after that. I would say probably maybe 10:00, 10:30.

And you would have recalled if Nolan left earlier than 9:00 o'clock?

Yeah, yeah, because we were all there. Nobody left.

And you've let this fact be known from the onset of this case; correct?

Right.

Are you related to Nolan Klein in any way?

No.

Is there anyway that you'd take the stand and testify falsely for him?

No.

And you believe it was May 9<sup>th</sup> that you were all together?

Yes.

(Rachow cross examined)

Ma'am, obviously California didn't fall into the ocean. Did you discuss this Tuesday in the bar?

Probably, yeah.

Isn't it true, ma'am, that the first time you brought this forward was when Nolan's mother's Pinkie came forward to refresh your memory on the 4<sup>th</sup> of July?

She asked me if I remembered that night. And like I say, that's the only reason I remember that night.

Didn't she help you with the details?

No.

You're sure about that?

Yes.

It would be a true statement that people come in time after time, right?

Usually.

And yet it was only one night that this crowd ever talked about Nostradamus?

Yes, because that's—we were all waiting for California to drop off.

Hadn't talked about it Sunday?

I don't remember. Maybe we did.

Did you see Pinkie on Sunday?

I don't know.

See Nolan on Sunday?

No.

See any of those people on Sunday?

I didn't see anybody on Sunday, because I don't work Sunday.

Okay. So—And you don't know whether you saw them on Tuesday?

I didn't see Nolan on Tuesday. I don't know, Pinkie might have been in Tuesday. I don't pay attention, you know. They're just everyday people that come in.

What time did Nolan leave that night?

I couldn't swear for sure, but I know it couldn't have been before ten o'clock.

Who did he leave with?

I don't know that either.

What was he wearing?

I have no idea.

What was he driving?

I have no idea. I didn't see his car.

No further questions.

( O'Neill on re-direct)

Is the lady that you spoke to in court today from the DA's office? The lady in purple seated behind me?

I spoke to people over the phone. I talked to a man in the bar that came in a gave me the subpoena.

Would that have been my investigator, Tim Ford, in the gray jacket?

Yes.

Had you provided a written document saying that you would be happy to testify and you provided that back in the summer, correct?

Right.

Have you ever changed your position?

No.

And has anyone promised you or given you anything in exchange for your testimony?

No.

(Cross by Rachow)

Miss Hillman, you're telling the truth as best you remember it; right?

That's right.

It is not possible you might be mistaken on a date?

No, none.

You're absolutely sure?

Absolutely

There could be no doubt in your mind whatsoever?

No.

Thank you.

WILLIAM RICHARDS, called as a witness herein.

What do you do for a living, sir?

I'm a bartender.

Do you know the gentleman seated to my left?

Yes, I do.

What is his name?

Nolan Klien.

And how long have you known him?

Approximately three and a half, four years.

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witness William Richards

And how do you know him?

I worked with him at Reno Flying Service.

Do you recall being with him on a night wherein a particular event was supposed to happen the next day?

Yes.

And would you describe that?

We were discussing the possibility of Los Angeles falling in the ocean the next day, May 10<sup>th</sup>. It was in all the newspapers, and Nolan and myself and several other people in the bar were discussing that fact.

What bar was this?

Jack's Bar.

Who else was present?

There was Nolan, his brother Marty, his mother Pinkie, J.D. and Barbara, the bartender.

And do you recall approximately what time you got there, Mr. Richards?

Five.

And who was there when you got there?

Nolan, myself and his brother Marty.

Did anyone leave during the course of the evening?

We were all there, and Pinkie and J.D. left around 9:00 o'clock that night.

Why were you so sure about that time?

Because it was just starting to get dark.

Do you recall what time Nolan left?

The best of my knowledge, we were there until ten, eleven o'clock that evening.

Did you leave together?

No.

Who left first?

Nolan left first.

And could that have been any earlier than 10:00 o'clock at night?

No.

Why do believe that?

Because I looked at the clock, gauging what time to go home.

And why are you so sure that this was May 9<sup>th</sup>, 1988?

Because we were discussing the possibility of May 10<sup>th</sup> the following day, of Nostradamus' prediction coming true.

Are you sure it's May 9<sup>th</sup>?

It was during the course of that weekend or on Monday I read it in the paper and heard it on Eyewitness News, as well.

(Cross Examination by Rachow)

Do you know Nolan Klien by any other name?

No, sir.

Ever heard him called "Ed"?

No, not to my recollection.

What kind of contact have you had with Nolan in the past?

We worked together at Reno Flying Service. And then we met on several occasions at Jack's Bar, went out to the river a few times.

Do you patronize Jack's Bar on a frequent basis.

Yeah.

Nolan do that, too?

At the time.

When did he stop?

During the summer. I started to work and so I kind of lost contact with a lot of people.

Were you still seeing him there in June?

In June? I believe so.

Now, after May 9<sup>th</sup>, did you ever talk about Nostradamus again?

Not to my knowledge.

And you never talked with anybody about it, just on this one occasion?

Just on this occasion, because it had been publicized. We were joking about having ocean-side property.

Did you go back on Tuesday to the bar?

Possibly. Like I said, I frequented it quite often at that time because I lived right near.

How did you happen to recall this particular date. Wasn't it because Pinkie came to you in July and asked you about it?

She asked me if I remembered discussing Nostradamus; and I said, yes. And had it been any other time, I wouldn't have remembered, but I remember Barbara worked on Mondays and Tuesdays, and I remember the date of the prediction, which is Tuesday, May 10<sup>th</sup>, and we were there discussing it the evening before.

All right. But it was Pinkie that approached you in July?

She asked me if I remembered that evening and who was there.

(O'Neill on redirect)

Mr. Richards, were you aware that at some during the summer Mr. Klien left to work in another area?

I believe he had mentioned something about going to California to work.

Have you given similar statements to the statement you made today to other investigators?

I talked to Miss Ford back there, or Miss Cook.

And have you been consistent in your testimony all the way along?

I believe so.

Is there any question about the date in your mind?

No, none whatsoever.

O'Neill called Mr. John Darnell.

JOHN DARNELL, called as a witness herein

Where do you live?

I live at the Carson Motel in Carson City.

What do you do for a living?

I work for Garden America.

NOLAN KLEIN

*Exhibit 11*

*Exhibit 11*

Do you know the young man seated to my left here?

Yes, I do.

And who is he?

Nolan Klien.

And how do you know him?

I know him through acquaintance with his mother.

How long have you known him?

About four years.

Do you know if you were together with him on a particular or an unusual night in May of 1988 at Jack's Bar?

Yes, I do.

Why do you remember that particular night?

Well, there was a whole bunch of us sitting there talking about the prediction that California was going to fall in the ocean the next day, on the 10<sup>th</sup>.

What month was that?

May.

And what were you doing in regards to California falling in the ocean besides talking?

We were—we were kidding back and forth amongst ourselves about Nostradamus' prediction and Barbara Hillman's property would become ocean front property if it had fell into the sea.

Do you recall what time you arrived at the bar that evening?

Around 7:15, 7:30.

And who were you with?

I walked in by myself and then I saw Pinkie.

And I sat down beside her; Nolan was sitting on the other side of her.

Who else was present?

His brother, Martin. Barbara Hillman was tending bar. And Bill—I think his name is Williams or Williamson.

And do you know long you stayed that evening?

I stayed there until approximately twenty minutes to nine, when Pinkie and I left to go up to Cactus Jack's. Were going to get the special dinner.

And did you get there in time for dinner?

Yes.

And had anyone left before you?

No.

Mr. Darnell, what did you notice on the way back?

We noticed Nolan's car was still parked on Fourth Street when we walked back over to Fifth Street where I live.

Okay. And approximately what time did you walk back from dinner?

It was close to ten o'clock.

Did you provide a written statement to the police and to the investigators about your testimony here today?

Yes, I did.

And has anything changed from when you originally provided your written statement?

I don't believe so, no.

That's all the questions I have.

(Rachow cross examined Mr. Darnell)

That's all the questions I have.

Rachow

Your initial statement was made about the 6<sup>th</sup> of July, was it not?

I believe it was somewhere around there.

And that's a statement that you wrote out for Pinkie?

Yeah.

Did you write it out or did you she write it out for you?

No, I wrote the statement myself.

And this was at Pinkie's request?

She asked if I was willing to testify to the fact that I had been there; and I told her, yes, I would.

What reason was she looking for—Why did she tell you she wanted a statement?

To prove that I was there to Jack's Bar at the time.

Did she tell you why that was important?

Only to the fact that there was a trial coming up—

Did she tell you there was a trial coming up?

Possibly.

Did she say for what?

Not at that time

She didn't tell you anything?

No.

Did she tell you who the defendant was?

Yes.

Who.

Nolan Klien.

And you just said, "Sure, that's okay, I remember May 9<sup>th</sup>"; is that right?

That's what I told her. I said I definitely remember it because we were all sitting there talking about the supposed earthquake coming up and California falling into the sea.

Did you see Pinkie on the 10<sup>th</sup> of May?

Yes, I did.

Did you talk to her about California falling into the ocean that day?

Yeah, we said we couldn't have missed out on that.

Was Nolan there?

Not at that present time.

Did you see him later that day?

I saw him that evening; we had dinner.

And were you commenting about Nostradamus when you saw Nolan that evening?

We were still kidding around about it, because the thing hadn't happened.

And were you in Jack's Bar on that evening?

Not on the 10<sup>th</sup>.

Were you on the 11<sup>th</sup>?

We were in the—Jim's Jungle Bar, which is on Fifth Street,—I mean on Third Street.

And who all was in that bar with you on the 10<sup>th</sup>?

Nolan came in on the 10<sup>th</sup>.

Where was Nolan?

He came in later, and then we went up to Cactus Jack's, the three of us.

Did you go into Jack's Bar a lot?

I live right behind it.

Do you go into it a lot?

I go in there probably everyday. I go in and have coffee before I go to work.

My ride picks me up there.

Do you go in there with Pinkie a lot?

I see her there occasionally, but not an awful lot.

Do you go to dinner a lot?

On occasion; probably five or six times last year.

Two of them happen to be the 9<sup>th</sup> and 10<sup>th</sup> of May of last year?

Yes.

Do you recall what Nolan was wearing on the night of the 9<sup>th</sup>?

I don't recall exactly what he was wearing. I believe it was work clothes or street clothes.

Levis?

Pardon.

Levis?

I think so.

Levi jacket?

I don't think he had a jacket on, because they were shooting pool. He may have had one on a chair.

(O'Neill redirect.)

Mr. Darnell, when Pinkie originally approached you and asked you to write out a statement, do you know what she did with those statements?

I believe she gave them to the District Attorney or you. I don't know which.

But you did, in fact, give her a statement when she asked for one?

Yes, I did.

And have you testified in any way that's different from your statement?

I don't believe so.

Okay. Would you lie or perjure yourself for Nolan Klein?

No, I wouldn't.

EUNICE WILKINSON, called as a witness herein, being first duly sworn, was examined and testified as follows:

And do you know the young man seated to my left?

Yes, I do.

Who is he, please?

My son.

What is his name?

Nolan Edward Klien.

How many sons have you?

Three.

Do you have occasion to meet with your children on a regular basis?

Yes.

Do you socialize with them?

NOLAN KLEIN

*Eyewitness testimony*

*12*

Yes.

Do you recall socializing at Jack's Bar wherein your son was involved?

Yes.

Is that a regular occurrence?

Yeah; not there all the time, though.

Okay. Do you recall a particular night in May when your son joined you or you joined your son at Jack's Bar in Carson City?

Yes.

What is so noteworthy about that particular night?

Because we were having such a good time, joking waterfront property and all that stuff.

What was the basis of your joke?

Because it was on the next day California was supposed to fall into the ocean. That was predicted by—and I can't pronounce the name.

Who all was present in the bar?

There were a lot of people there.

All right.

But there was me, Marty, Bill, Nolan, J.D.

Do you recall who the bartender was?

Barbara.

All right. And how long would you say you were all there?

Well, I don't know how long the two boys were there. They were there later than I was. I left about twenty minutes to nine to go get something to eat.

Do you recall what time you got there?

Got there I'd say 5:30.

And were the other people you've described there throughout the course of the evening?

Yes.

Did anyone leave, anyone in your group?

J.D. and I both left.

And why do recall that you left at twenty minutes to nine?

Well, because they have a special at Cactus Jack's, you get the money back, two dollars back for your meal.

All right. And did you, in fact, make it in time for the special?

Yeah.

Okay. And how long would you say it took you to eat that evening?

I don't know, 45 minutes, an hour. I'm not really sure.

Did you drive or walk to the restaurant?

Walked.

Did you notice anything in particular involving your sons when you were walking back?

Yeah. Nolan's car was still parked there. Parked on Fourth Street. And I made the comment that Marty was still there, so I didn't want to go back in.

Okay. And why would that have been?

Because when Marty's drinking, I do not like to be around him that much.

Is there anything unusual about your son Marty that causes you some concern?

Yes. Very unusual. I think truthfully he's a little bit--needs mental help; not a little bit, but a whole bunch.

So you think he has some mental problems?

Yes, I do.

Do you think the same thing of your son Nolan?

No, I don't.

Were you ever contacted initially by any police officers?

Did there come a time when you got them other people together or went and explained to them that Nolan was accused of a crime that occurred May 9<sup>th</sup>.

Yes, I did that by recommendation from an attorney.

Okay. From me?

No.

You went to private counsel?

I had to, to keep from being put in prison by Detective Boxx. I had to go hire an attorney for me.

Because he was threatening you?

Yes. He had me so scared that I moved out of my own home for three days, hid in a motel room, wouldn't even go out and get something to eat. I was scared, because he told me he had a warrant out for me by Carson City Police, and a warrant out for Nolan. I was scared to go out of the motel room. I didn't know what for, but I was scared. If he'd have been halfway decent—Every time he talked to me, he threatened me with prison. So I finally, this last time he called me at work, he had me so upset that I started crying. That's when my boss asked me what was going on. He sat down and talked to me. I told him all the stuff. He said, "Has that been all the calls that you've been getting here and getting so upset

about?" And I said, "Yeah, it's been the same man." He advised me that night—And he has met Nolan, been around there, brought the baby in and stuff. And he advised me first thing in the morning to go get an attorney, go to a legal clinic where it's not going to cost you an arm and a leg, and take their advice on what to do. Well, the last phone call, Boxx—that night talking about—told me he was coming—He said, "I want you to be in office at 2:00 o'clock tomorrow. If you're not there by 2:00 o'clock, I am issuing the warrants and I am having you put in jail." So I got the attorney and told the attorney what was going on. I told the attorney—I even took this clipping, because I had got these clippings.

Clippings about the Payless Shoe Store?

Yeah, that Boxx told me about, that I wouldn't have known about if Boxx hadn't told me.

And had you determined at that point that Nolan had an alibi for the evening in question?

I knew where he was. And I knew he was there at twenty minutes to nine, and I didn't know how he could get from there to Sparks in twenty minutes, so I knew where he was.

And did there come a time when you gave the written statements that you got

from Barbara Hillman, William Richards, John Darnell and yourself to Sherman Boxx?

Yes, I also gave them to the District Attorney's Office.

And when you gave them to the District Attorney's Office, did you tell that you were Nolan Klien's mother or his aunt?

I told her—it was a girl. I don't know who it was, female, I hold her I was his mother. I didn't give them directly to Detective Boxx. He wasn't there the day I went in. But his higher-up or somebody that works with him was there.

And what month did you provide those documents to Detective Boxx?

It was either the end of June or the first part of July. I'm not too sure of that, either.

Okay. And you did that on your own?

Yes, I did. I really—I did that hoping that they would listen and try to find the right person.

Did you talk any of those people into remembering that particular date?

No, no.

Did you promise them anything?

No. That's one thing that Detective Boxx did good for me; that's one thing,

is have me get an attorney. Because when I told this attorney what was going on and what Detective Boxx was accusing me of, and what he was threatening me with, and all of this—And I showed him pictures. He made it plain to me then. And I told him, I said, “There was people there.” And he said, “Do you know who?” I said, “I can’t remember everybody that was there because there was a lot of people.” And I said, “But I will look for them and I’ll find them.” And he says, “Now”—And this attorney told me this, he said, “Well, I want to tell you one thing; If you go ask them”, he said, “you should try to get letters from them or some kind of something, knowing that he was there.” And he said, “I want to tell you”, he says, “when you ask these people for any kind of statement of any kind”, he says, “remember, if it goes to court, the defense”—I guess, or the DA’s office—Is that the defense? —“prosecution, the prosecutor will try to make it look like you put words in their mouth.” He says, “So make sure you don’t say anything about anything.”

And so I got, like I said—I had the newspaper clipping, and I had it in my purse, I went in and I asked Barbara, I said, “I need to talk to you when you’re not busy. I’d just like to talk to you.” So she was busy, and she said, “You can talk to me while I’m working”, and I said “No”, I said, “what I have to ask you is something that can’t be interrupted with people needing something. So whenever you’ve got time.”

And so the next day she was just—She worked the day I was in there, she was working days. So the next day was days, too, and she got off at 6:00 or 5:30 or something like that. So I went in at the time she was getting off and she sat down with me. And I asked her, I said, “Do you remember the night before California was supposed to fall into the ocean?” She says, “Yeah”, she says, “It was supposed to fall in May 10<sup>th</sup>.” And I says, “Fine. Do you remember the night before?” And she says, “Yeah”, she says, “we were talking about Walter”--

Yeah. --“and having ocean-front property and all that”, she said, “having a good time.” And I said, “do you remember who was here?” She said, “There were a lot of people in the bar, but you, Marty, Nolan, J.D., Bill”, she started. And I said, “Good”, I said, “Since you remember the night before and the day it was supposed to happen and who was here, now I will tell you why I’m asking.” And I pulled out the picture of him that was in the paper, that doesn’t even resemble him at all, and I said, “Does this look like my son?” She says, “No, that didn’t look like your son.” You’re referring to composites that were in the paper. That was in the paper she says, “No, that doesn’t look like your son. That isn’t your son.” And I said, “Well, that’s why I asked you what I asked you, because they say that is my son and he was supposed to have done this.” And that’s the way I worded it to all

of them. I didn't give no dates, no nothing. They didn't tell me he was being looked for, nothing.

Were the pictures in the paper either one of these composites?

Yes. The same paper, the same statement. I asked him—I never told them anything, and I still didn't. I just put out that paper and said, "Does this look like my son?" And they said, "No. Why?"

Your testimony, then, is that you never promised them any money or encouraged them or put words in their mouth?

No.

All right. And you've done this solely out of love and belief for your son?

That's right. I know where he was.

(The trial was continued to the following day.)

JANUARY 26, 1989; 9:40 A.M.

(Rachow cross-examination)

Mrs. Wilkinson, you testified yesterday that when Sherman Boxx called you it was on the morning of May 23<sup>rd</sup>, 1988; is that correct?

Around that date, 23<sup>rd</sup>, twenty something.

Did I understand you correctly that your son was not home at that time?

Okay. When you talked to Tonja, was it before or after Nolan had been arrested?

Not too long before.

If you believe that your son did this crime, would you lie for him.

No.

TONJA BROWN, called as a witness herein, being first duly sworn, was examined and testified as follows:

What do you do for a living?

I'm a housekeeper.

Do you know this gentleman seated to my left?

Yes.

And who is he?

He's my brother.

What's his name?

Nolan Edward Klien.

All right. And is he older or younger than you?

Older.

And in May of 1988, where were you living?

Carson City.

And in May of 1988 where was Nolan living?

He was staying with me.

And was there a time when he stayed with your mother, as well?

Yes.

And was he doing anything in particular for you in May of 1988?

Yes, I hired him to repair my daughter's roof from the month before. There was bad wind, damaged--tore the roof off.

And approximately how long did he work for you?

He started the 9<sup>th</sup> of May, he started that morning. He finished--got most of it completed that afternoon, later on that afternoon, and so--and a couple of days later he finished the rest of it up.

All right. And did you pay him for this work?

Yes, I did.

And do you recall about how much you paid him?

I asked if he would do the roof, I would give him \$700 to pay for all materials and whatever was left over was his.

Okay.

And so it was roughly about \$400 is what he got.

And how did you pay him?

I gave him a check and I also had given him cash.

And was there a time when a large sum of money was left with you or at your home?

Yes.

And would you describe those circumstances.

He had \$350 on him at that time, and he kept \$50 on him, and he put \$300 on the top shelf of my husband's gun cabinet.

And why did he leave the money at your house?

He just wanted to leave it there, because, well, if he doesn't have any, he's less likely to spend it, probably like most people.

Do you recall giving any of those checks that Nolan had earned to any other person?

I gave Rene \$200 out of the money.

And do you recall when that might have been?

It was right around that time. I believe it was about the same time I wrote the

check out for him, but I'm not positive of that.

(Showing paper) This is an itemized statement on what the insurance examiner quoted as how much damage was done to my daughter's bedroom. And he sent me a check for—I didn't receive that until after Nolan had completed the roof—for 1600, because the hundred dollars less, and—

So this essentially substantiates there was damage to your roof?

Um-hum.

Exhibit I is a picture of the roof, is what Nolan did—

Don't show it to the jury yet, because it's not in evidence.

As you can see, it's a slant. He built the slant on it. It was a flat roof at the time, so he reinforced it and built it up.

And—

And he also put in the window that is here. I asked him to put in a window in my daughter's room, because there was no light except the back door, so he put that in, also.

Which one is Exhibit J?

This is a check I gave Nolan for \$200. Gave it to him, I wrote it down for the 4<sup>th</sup>. And he didn't cash it, I believe, until the 9<sup>th</sup>.

Yes, I think he does. I'm sure he does.

Do you know whether or not he was using ID in the name of Edward Wilkinson?

Yes, he said he had a driver's license.

And you say that you believe that he replaced the roof on or about May the 9<sup>th</sup>?

He started it May 9<sup>th</sup>, that morning, roughly about 9:30, ten o'clock.

And how long did he work at your home?

He worked on it all day, and then I had some errands

Okay. And about what time would that have been?

That was roughly—Gee, I don't know, I left probably about twelve or one.

But a few minutes after I had gotten home, he did show back up.

Do you know what time you got home that evening on May 9<sup>th</sup>?

It was probably about 2:30.

And then how long did Nolan stay at your home?

I'd say—Robert gets off after five.

Robert is your husband?

Yeah, Robert is my husband. And he came right home from work, and

Nolan took him out and showed him what he had done on the roof. And so I guess probably about twenty after five, maybe.

Do you know where he was headed when he left, did he say?

No. I had cooked dinner for everybody, and him and my mom said, “No, we’re going out”, but I’d talk to him later on that—

And where were they?

I called Jack’s Bar.

And why did you call Jack’s Bar out of all the places in Carson City?

Well, actually I called Jim’s Jungle, and they said, no, they weren’t there, they were over at Jack’s.

So you called Jack’s Bar?

Yes.

Approximately what time of day or night was that?

I called twice. The first time was about 6:30, and the second time was about quarter to nine, maybe twenty to nine.

Who did you talk to at each time?

The first time I talked to my mom.

Okay.

He just packed up his things and left

Well, see the reason—Yes.

Why was he staying with you?

Well, the main reason was I asked him to do the roof, because it was—it would save us some money.

Right.

Okay. And another thing, too, is he was having car trouble with his car, so he was doing that before he started the roof.

So he fixed his car, as well?

He kind of fixed it.

When he left, did he tell you where he was headed?

No. All I knew is he was—because he had mentioned he was going to go out of state and look for a job.

Did he tell you what state he was going to or any of that sort of thing?

No.

Had he ever left before for long periods of time?

Yes.

Do you know what business he's in, professionally?

the end of May?

Yes.

And you were very angry because they hadn't even looked for anyone else?

From what I gather, yes.

How did you know that?

Because they—My mom had told me—I had no idea what was going on until—At that time I also worked the graveyard shift at Denny's, and she worked more or less the swing shift. And before I started work, she had given me a clipping, a newspaper clipping. She asked me to read it, and she says, "I'll be back in a few minutes." So I read it and this is how I found out they were accusing Nolan of this.

So you had a long conversation with your mother about this?

No, not really a long conversation.

More than a minute, more than just a passing aside?

Yeah.

This was before the police came to your house?

Yes.

No further questions.

(O'Neill with re-direct)

Yes, your honor.

Tonja was this clipping that your mother showed you the one that is in evidence as Defendant's G?

Yes, this is it.

And did you believe that the composite looked like your brother?

No. In fact, she asked me to read it, and she says, "I'll be back in a few minutes; tell me what you think about it."

Um-hum.

And my exact words were to her, I says, "Well, I hope they catch him and I hope they nail his butt to the wall."

The person who did this?

Yes.

I'd ask you to look at the bottom paragraph and just read to yourself what the physical description is.

Um-hum.

Did you read that?

Um-hum. That's why I –

All right. Is there anyone in your family who has brown eyes?

No, nobody.

That's all the questions I have. Thank you.

THE COURT: All right, Mrs. Brown, I want you not discuss your testimony with any other member of your family until after the jury has reached its decision. All right? Do you understand?

In response, Tonja asked the Court if she could say something? The Court told her she could not. Tonja wanted to make certain that the evidence of her brother's full beard in the time frame of the Payless robbery had been given to the jury. She wanted the jury to know why her brother was innocent. She also wanted to know why she didn't get to listen to the tapes with Nolan's voice so she could state whether they sounded like her brother.

You're excused was all he would say.

O'NEILL: Your Honor, that's defense case. We would rest at this time.

Court will be in recess.

RENO, NEVADA, THURSDAY, JANUARY 26, 1989

COURT: Mr. Rachow, you are invited to offer your final comments to this jury at this time.

Mr. Rachow began to summarize the short trial. He reminded the jury that its charge was to determine the facts and then decide if the defendant was guilty. He stated

NOLAN KLEIN

*Klein v. Helling*  
Habeas Corpus Petition

**19. Petitioner Was Denied Effective Assistance Of Counsel When Trial Counsel Failed To Conduct Adequate Pretrial Investigations And Present Valuable Impeachment Evidence.**

(a) Trial counsel failed to investigate into the fact that Petitioner had been named in Theresa Rodela's lawsuit on November 4, 1988, approximately ten weeks prior to Petitioner's trial, which ultimately resulted in counsel's failure to present valuable impeachment evidence when Ms. Rodela testified that Petitioner was not named as a defendant in her pending lawsuit, and actually went on to name all the defendants in the lawsuit, with the exception of the Petitioner. Trial Transcript, January 24, 1989, pg. 71.

(b) Trial counsel failed to investigate and present valuable impeachment evidence regarding the testimony of Brigitte Sloan, whereas Ms. Sloan testified at preliminary hearing that she could not identify the Petitioner as the perpetrator of the crimes at the time she had seen Petitioner in person approximately two weeks after the crime. Preliminary Hearing Transcript, October 3, 1988, pg. 57-61. However, Ms. Sloan still managed to name Petitioner by his true and correct name in a civil suit during the time that she stated she could not positively say that Petitioner was the same person that committed the crimes. The civil complaint was filed several months prior to Petitioner even being arrested and a preliminary hearing was held, but still alleged in her civil complaint that Petitioner had committed the offense as alleged in the criminal complaint against him.

Trial counsel should have presented this evidence to the jury to assist in determining whether Ms. Sloan's identification was based independently upon her personal knowledge or was induced by other means of suggestiveness.

**EXHAUSTION:** This issue was presented in Petition for Post-Conviction Relief proceedings, filed May 17, 1990. See, Supplemental Issues in Support Of Petition For Post-Conviction Relief, filed April 5, 1991, pg. 3 and 5, (Appeal No. 22597); Petition for Writ of Habeas Corpus, filed December 21, 1994, Second Judicial District Court, Case No. CR88P1692, (Appeal No. 27514).

**20. Petitioner Was Denied Effective Assistance Of Counsel When Trial Counsel Failed To Investigate And Present Exculpatory Evidence That Corroborated The Defense Theory Of The Case.**

(a) That under Petitioner's district court criminal case #CR88-1692, there were reports and composite drawings of suspects from three separate robberies, sexual assaults and attempted sexual assaults, of which Petitioner was suspected of committing because of the uncanny resemblance of the suspects in all three cases, *i.e.*, that all three crimes took place in the same general area of Sparks, Nevada; that the victims in all three cases gave virtually the same general description of the perpetrator; and that in two of the cases, the victims said that the perpetrator gave them his name and that he had something wrong with his mouth and/or teeth.

exhibit # A-1

*Klein v. Helling*  
Habeas Corpus Petition

(b) In the case in which Petitioner was convicted, the victims gave the same general description of 5'9" tall, tan complexion, sandy/blond hair, dark/brown eyes, and dirty clothing. *See*, Exhibits "1" and "2" attached to State Petition for Writ of Habeas Corpus. During preliminary hearing, Brigitte Sloan testified that the perpetrator had broken teeth. *See*, Preliminary Hearing Transcript, October 3, 1988, pg. 60. At trial Ms. Sloan stated that he had brown eyes. *See*, Trial Transcript, January 24, 1989, pg. 99. Further, at trial the other victim, Theresa Rodela testified that the perpetrator had something wrong with his teeth or mouth, but couldn't remember what, and the he had dark eyes and that the Petitioner's eyes are blue. *See*, Trial Transcript, January 24, 1989, pg. 62-64. These factors pertaining to the description of the perpetrator are of special importance when viewed in light of the two other similar crimes of which Petitioner was suspected of committing.

(c) That the second crime Petitioner was suspected of committing is listed under Sparks Police Department Case No. 88-4238, which was a robbery/Attempted Sexual Assault committed on April 21, 1988. The general description given by that victim and the composite drawing of the perpetrator are virtually identical in most all respects. As in the case Petitioner is convicted of, the victim in the April 21, 1988 case also identified the perpetrator as having teeth chipped/missing and a speech impairment or cleft pallet. The victim was also able to describe the perpetrator's vehicle as a possible 1965-67 Pontiac Bonneville - Dirty White. *See*, Exhibits "3" and "3A" attached to State Petition for Writ of Habeas Corpus. Also, the April 21, 1988 attacker gave the victim a name. All of the above characteristics of the crime and description were also found in the case for which Petitioner was charged and convicted. Furthermore, Petitioner's vehicle closely matched the vehicle description given in the April 21, 1988 attack. *See*, Exhibit "4" attached to State Petition for Writ of Habeas Corpus at page 3, Case No. HC-0140892.

(d) That because the descriptions by the victims in SPD Case No. 88-4892 (the case Petitioner was actually charged with), and SPD Case No. 88-4238 (the April 21, 1988 case), were so similar to one another, the police contacted the victim of the April 21, 1988 crime and asked her to come down and try to identify the Petitioner's vehicle as the same vehicle driven by the April 21, 1988 perpetrator, at which time she was driven by Petitioner's vehicle for attempted identification, however, she did not identify the Petitioner's vehicle as the vehicle driven by her attacker on April 21, 1988. *See*, Exhibit "4" attached to State Petition for Writ of Habeas Corpus at page 2, Case No. HC-0140892.

(e) That the third case Petitioner was a suspect in was logged under SPD Case No. 87-11777 that was committed on November 18, 1987. And like the other two cases, the description of the perpetrator bore a remarkable resemblance to one another. *See* Exhibit "5" attached to State Petition for Writ of Habeas Corpus, Case No. HC-0140892.

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(f) That due to the striking and remarkable resemblance and similarities in the characteristics of the crimes and the descriptions of the suspect, it was the affirmative theory of the investigating detectives that all three crimes were committed by the same person, and that the Petitioner was the prime suspect in all three cases. *See*, Exhibit "4" attached to State Petition for Writ of Habeas Corpus at page 2, Case No. HC-0140892.

(g) That the only reason Petitioner was not charged with the crimes committed in SPD Case Numbers 88-4238 and 87-11777 is that Petitioner was identified by those victims as not being the same person that committed the crimes against them.

(h) That trial counsel failed to investigate or interview the victims of SPD Case Numbers 88-4238 or 87-11777 in order to ascertain all of the facts and particulars of their attacks, nor did she call them as defense witnesses in order to show the jury that all three crimes were so closely related that there is a substantial probability that all three crimes were committed by the same person, however, that Petitioner was not that person.

(in) That trial counsel failed to cross-examine the investigating detectives in order to establish that they affirmatively believed that all three crimes were committed by the same person, and that they thought that person was in fact the Petitioner, but the victims of SPD Case Numbers 88-4238 and 87-11777 had identified Petitioner as not being the same person that attacked them during the particular crimes against them.

(j) That Petitioner's defense pursued at trial was mistaken identity and alibi, and evidence of another person committing the crimes alleged to have been committed by Petitioner, would have been consistent with the theory of defense pursued at trial, and was corroborated by the victims' own testimony at trial that the perpetrator had broken teeth or something wrong with him mouth and brown or dark eyes, whereas, Petitioner does not have broken teeth or a mouth deformity, and his eyes are blue, and counsel's failure to investigate and present this exculpatory evidence was prejudicial to Petitioner's trial defense.

**EXHAUSTION:** This issue was presented in Post-Conviction proceedings. *See*, Petition for Writ of Habeas Corpus, Case No. HC-0140892, Seventh Judicial District Court, filed August 19, 1992, pg. 7a-7c; *Also see*, Supplemental Issues In Support Of Petition For Post-Conviction Relief, filed April 5, 1991, pg. 4; (Appeal No. 22597); Petition for Writ of Habeas Corpus, filed December 21, 1994, Second Judicial District Court, Case No. CR88P1692, (Appeal No. 25714).

**21. Petitioner Was Denied Effective Assistance Of Counsel When Trial Counsel Failed To Present Exculpatory Evidence That Corroborated The Defense Theory Of The Case.**

1 occasions to cross-examine them both at preliminary hearing  
2 and then at trial, and people's perception change after they  
3 get a chance to think about it. And I did not believe beating  
4 up on the victims was appropriate to our case.

5 Q Dr. Schenk had reported in his report that no  
6 penetration had occurred. Did you feel that would have been  
7 important to bring out at trial?

8 A Well, I don't think that that -- I think that's  
9 answered by my other statement. I think penetration-  
10 ejaculation were used interchangeably by that victim. She is  
11 clear that she had sex with the person and that the person did  
12 not ejaculate. I believe that that was the confusion there.

13 What I was trying to convince the jury is that  
14 Mr. Kline was not the person who was there at the scene. That  
15 he had an alibi and that they were essentially hysterical in  
16 their identification, and that's where I put all the emphasis  
17 of my defense.

18 Q If you had had evidence that there was another person  
19 who matched the description of Mr. Kline, another possible  
20 suspect, and you had information of his name and case number  
21 relating to him, wouldn't that have been important to present  
22 to the jury regarding your mistaken identity defense?

23 A Depending -- I would like to have seen it first. Yes,  
24 I think it would have been something I would have

exhibit # B

6-20-91  
post-conviction  
testimony by ms. O'Neil  
pertaining to the Mr.  
ZARSKY - beard evidence  
in 2001

1 investigated.

2 Q You are reading a police report identifying a  
3 Mr. Zarsky as a person who matched the composite of Mr. Kline  
4 that was worked up by detectives.

5 A I think I saw a photo printout -- in fact, I am fairly  
6 sure I saw that in discovery of Mr. Zarsky in that he did not  
7 look like Mr. Kline or there was some significant difference.  
8 There was a reason to rule him out, and I am not sure if that  
9 had a connection with the sandwich shop people --

10 I went out and talked with the sandwich shop people  
11 because they were also witnesses to one of the -- the theory  
12 of the prosecution was that someone was hanging around kind of  
13 checking out the businesses and that they thought that was  
14 Mr. Kline and that that person had been seen by one of the  
15 operators of the sandwich shop. I don't recall that person's  
16 name. But I did go out to the sandwich shop to check out what  
17 kind of view they had and things of that nature. And I did  
18 talk to some of the people at the sandwich shop and they could  
19 not positively identify either of the suspects.

20 Q Do you remember reading a report by Officer Asher in  
21 this case where he said he showed the composite of Mr. Kline  
22 to a person who worked at the Abby Hotel and that person  
23 identified the composite of Mr. Kline to a person who was  
24 residing in the hotel by the name of Ricky Zarsky?

1           A     I don't remember that, but I probably looked at it.

2           Q     Did you make a strategic decision not to present that  
3 evidence?

4           A     There were some other problems with that evidence, and  
5 I don't recall what they were right now. Obviously, if there  
6 was, the some-other-dude defense is something we often used,  
7 particularly if there is strong likelihood somebody else did  
8 it. And if there was a reason for me to believe that that  
9 person could have been the culprit, I would have looked into  
10 it very deeply.

11                   I did a lot of investigation on this case and I  
12 certainly would not have ruled out somebody else if they were  
13 possibly a suspect. As I mentioned, I put hundreds of hours  
14 into this case and went to great lengths to provide  
15 Mr. Kline a good defense in this matter because there was so  
16 much at stake, and if there was another person who matched his  
17 description, then that person would have been checked out.

18                   I believe that that person was out of state -- I have  
19 a very vague recollection that that person may have been in  
20 custody somewhere else at the time of this offense.

21           Q     Do you remember doing an investigation -- Do you  
22 remember talking to a person named Jeff Petty?

23           A     Not specifically. If you could tell me what he did.

24           Q     He was the bartender at Abby Hotel who, when shown the

1 composite of Mr. Kline said, "I recognize that person. He is  
2 Mr. Zarsky who's staying in room 104 in our hotel here."

3 A I believe that I had an investigator check that out.  
4 I didn't go to the Abby Hotel, someone else did on my behalf.

5 Q Do you know which investigator talked to Mr. Petty?

6 A No.

7 Q Who was your investigator?

8 A I have three investigators, and I don't recall who did  
9 the investigation on this case. I did a lot of it myself  
10 because our investigation falls short most of the time.

11 Q You don't remember talking to a Mr. Petty yourself?

12 A I don't recall talking to him specifically.

13 Q You don't remember one of your investigators coming  
14 back to you and telling you, "I talked with Mr. Petty and here  
15 is what he says."

16 A I don't specifically recall. There was a reason we  
17 ruled out Mr. Zarsky, and it may have been that he could not  
18 have been at the crime scene at the time for one reason or  
19 another.

20 Q Okay. Do you remember anything else why you ruled him  
21 out?

22 A No, I don't.

23 Q Ms. O'Neill, the victims in this case testified that  
24 the perpetrator of the offense had two or three day's growth

1 of beard on his face; do you remember that?

2 A Yes.

3 Q It would have been important, wouldn't it, to have  
4 witnesses say that on May 9th, 1988, the day this offense  
5 occurred, that Mr. Kline had a two- or three-inch beard as  
6 opposed to a two- or three-day growth?

7 A The reason I didn't put that evidence on is Mr. Kline  
8 is one of those types of people who has kind of a thin beard,  
9 and I think that it could have been mistaken for two- or  
10 three-day's growth of beard.

11 I saw him in the jail a couple of times with two- or  
12 three-day's growth of beard and he's not one of those -- it  
13 wasn't a Santa Claus type beard any time, and in light of the  
14 victims' perceptions of what was happening, I did not believe  
15 that to be a significant point. Because I believe that they  
16 were hesitant about -- one said he was disheveled and may have  
17 had a beard and one didn't, and they weren't really clear on  
18 that fact. And I did not believe that that was a significant  
19 fact.

20 The items they were clear on, eye color, height,  
21 weight, things of that nature, are the things that I tried to  
22 hone in on that they were absolutely positive of because,  
23 frankly, I think when a person specifically recalls a color in  
24 someone, it's very speculative.

1 Q So if I understand your testimony, the reason you  
2 didn't put this evidence on that he had a two- or three-inch  
3 beard, you didn't think that the victims were quite so sure  
4 about what his beard looked like on the day?

5 A Some of the things the victims were consistent on and  
6 some of the things they were inconsistent, and I don't recall  
7 whether they were consistent about that fact, and I didn't  
8 think that a two- or three-inch beard or two- to three-day  
9 growth of beard was that significant because Mr. Kline had  
10 changed.

11 He often, in my conversations with family members and  
12 people that he knew, he would grow a beard, have it for a  
13 short period of time, shave it off. And he had some facial  
14 hair in the jail. I know he had some sideburns. The booking  
15 photos were different, so I don't --

16 One of the things that I try to avoid the most is  
17 letting the jury think I am trying to trick them in some way.

18 Q Now, you saw Mr. Kline with what appeared to be a two-  
19 or three-day growth beard while he was in the jail?

20 A I think he had a beard while he was in jail, but I  
21 don't recall -- to tell you the truth, I know that his facial  
22 appearance changed. He was in jail a significant amount of  
23 time.

24 Q So you didn't put on that testimony about having a

1 two- or three-inch beard because the victims were real  
2 consistent in that regard. They weren't really adamant about  
3 it, you didn't feel like it would be good impeachment?

4 A Right.

5 Q But some witnesses did come forth and say that we got  
6 evidence that he had a two- or three-inch beard on May 9th,  
7 1988; is that correct?

8 A His mother, toward the end of the trial.

9 Q Do you remember his mother or Tonja Brown giving you  
10 the names of any other people that could say that he had a  
11 two- or three-inch beard?

12 A Every person that they gave me to -- This is one of  
13 the things I find infuriating. Every name they gave to me I  
14 checked out, tried to contact. And between the trial and the  
15 sentencing they came forward with additional evidence, which  
16 is also extremely frustrating. And I believe those three  
17 names you're mentioning now may have even come up after the  
18 trial or toward the last day of the trial when we had months  
19 to prepare.

20 Q Do you remember having been given the name of Carla  
21 Marsh?

22 A No, I don't recall that specifically.

23 Q Do you remember -- So you don't remember talking to  
24 any Carla Marsh?

1 A I don't. I talked to a lot of people in this case.

2 Q Carla Marsh has testified today that Mr. Kline had a  
3 two- or three-inch beard from April 23rd until the middle of  
4 May?

5 A One of the things, Mr. Plater, that I found unusual is  
6 that this beard thing came up toward the end of the trial, and  
7 there were certainly other people who could have testified to  
8 it at the same time; his mother, his live-in girlfriend, his  
9 sister, people that I had already presented, and that's what  
10 you might call duplicitous.

11 Q Well, his family members never did testify during  
12 trial that he had a two- or three-inch beard, did they?

13 A Right, because the issue hadn't really arisen.

14 Q So it was, in your mind, arisen late in trial?

15 A Late or after the trial, and I can't specifically  
16 recall, but I did not believe that it was that significant of  
17 a fact.

18 Q Because of what the victims had been saying regarding  
19 the appearance?

20 A Right. Right. And we had a lot of other evidence  
21 that was positive that we presented. The fact that he didn't  
22 need money. His sister testified that he had gotten paid. We  
23 have a lot of evidence that we put forward.

24 Q Well, let's assume that the victims had consistently

1 said that he appeared to have a two- or three-day growth.  
2 Now, if they had been consistent in that regard, wouldn't you  
3 have felt it was important to show that he actually had a two-  
4 or three-inch beard?

5 A I don't know. I can't say for sure. It depends on  
6 how it came out. As we know -- I mean, if you've read the  
7 transcripts, and I have cross-examined the witnesses, I tried  
8 to -- like I said, I tried not to beat them up, I tried to let  
9 them be the victims that they were with the common  
10 misperceptions and misconceptions that a victim has.

11 In light of all the other evidence that I had and that  
12 I presented, the beard thing at the time did not seem to be  
13 that significant.

14 Q Would you agree in your own mind a two- or three-inch  
15 or two- or three-day growth of beard usually, under human  
16 experience, does not equate to a two- or three-day beard?

17 A Usually.

18 Q Mr. Edwards pointed you to some testimony that was  
19 offered by Det. Boxx in this case, and Mr. Rachow asked  
20 Mr. Boxx if Mr. Kline had explained how he had come to Reno.

21 And do you remember that Mr. Boxx testified that  
22 Mr. Kline said he'd come down with his brother in a car? And  
23 then Mr. Boxx -- then Mr. Rachow asked Mr. Boxx: Did you  
24 check that out?

1 this way: Were you ever contacted by Mr. Kline or anyone in  
2 his family regarding procuring certain testimony from -- I  
3 will give you three names: Karla Marsh, Florence Kimball, or  
4 Kay Miller?

5 A During the trial and during the closing days of the  
6 trial the family came forward with some witnesses -- and I  
7 don't believe that there were three, I believe there were  
8 either one or two -- regarding whether or not Mr. Kline had a  
9 beard at the time of his arrest.

10 In light of the fact that we had made opening  
11 arguments, that we had essentially conducted the essence of  
12 our defense, I believed that these late witnesses that I had  
13 not had the opportunity to investigate since I received their  
14 names -- I recall during the last day or two of the trial,  
15 Mr. Kline's mother handing me a piece of paper and saying that  
16 these people know that Mr. Kline had or did not have a beard  
17 at the time. I believed that I could get that information, if  
18 necessary, from the family members and that those witnesses  
19 were unnecessary.

20 And, frankly, in looking at the booking pictures,  
21 Mr. Kline had what we would term as a three-day growth of  
22 beard, or it was one of those situations that fell into it.

23 And I thought it was kind of knit-picky in spite of  
24 all the other identification and alibi evidence that we had

(September, 1988)

This was presented  
not at trial  
photo-line up  
MAY 1988  
shows - full beard  
40 Associates & testimony  
confirmed made a 2-3 inch  
near the  
line

SPARKS POLICE DEPARTMENT

DEBILZAN

SUPPLEMENTAL OR CONTINUATION REPORT		
Type of original report SEXUAL ASSAULT & ARMED ROBBERY	Date of original report 5/9/88	Case number 88-4892
Victim of complainant 1. RODELA, Theresa; 2. SLOAN, Bridget	Location of original occurrence 543 E. Prater, Sparks	Date and time of supplement 5/10/88 0350 hrs 1.

Additional details of offense, progress of investigation, etc.

VICTIM:

- VICTIM OF SEXUAL ASSAULT & ARMED ROBBERY:  
RODELO, Theresa Dawn; home address: 650 Jamaica, Apt. #2, in Reno; home phone: 826-2957; Employed as manager of Payless Shoe Source, 543 E. Prater in Sparks; work phone: 358-4495; of Sundays, shift varies; SS
- VICTIM OF ARMED ROBBERY ONLY:  
SLOAN, Bridget Colleen; home address: 5340 Wildwood in Reno; home phone: 849-1653; a student at Wooster High School and works part time at Payless Shoe Source, 543 E. Prater in Sparks; work phone: 358-4495; Works as a Sales Clerk, days off vary; usually works 1:30 p.m. to 9:30 p.m.; SS

SUSPECT(S):

Described as a WMA approximately 30-35 YOA, 5'10", 135-140 lbs., thin slender build, blonde hair, and brown eyes; wearing a blue Denim jacket, blue jeans, dirty brown shoes.

SUSPECT(S) STATEMENT:

Not applicable in this case.

OFFICERS INVOLVED AND ASSIGNMENT:

Officer DEBILZAN, Sparks PD, assigned to take Crime Report, obtain statements from victims, and to perform Crime Scene investigation, take photographs of the crime scene, to transport Victim #1 to Washoe Medical Center for Sexual Assault Kit examination to be done by a physician, and to transport Victim #1 back to the Station to talk with Detective TORRES.

Sgt. Ken LIGHTFOOT, Sparks PD, responded to the initial call, took control of the crime scene, and Directed other Officers on the scene.

Detective Frank TORRES, Sparks PD, responded to the crime scene, assisted in the crime scene investigation, had verbal discussions with the victims, took Victim #2 to Sparks PD for interview, took evidence from the crime scene and placed it into safekeeping, and spoke with Victim #1 when she returned from Washoe Med, had an interview and worked on a composite drawing of the suspect.

Officer Roy BURSON, Sparks PD, assigned to search the immediate area around the Iron Horse Shopping Center to look for a suspect and was unable

THIS INFORMATION PROVIDED BY \_\_\_\_\_ ON \_\_\_\_\_ IS RESTRICTED AS TO USE AND DISSEMINATION

Unfounded

Cleared by Arrest

Cleared Otherwise

This Offense is now

OFFICER V. DEBILZAN #8329 Patrol

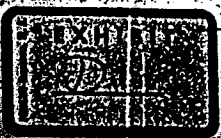
Date 5/10/88

Investigating Officer

*F. Burson* 6822

Date 5/10/88

Supervisor Approving



PROSECUTOR

262

SPARKS POLICE DEPARTMENT

DEBILIZAN

SUPPLEMENTAL OR CONTINUATION REPORT		
Type of original report <b>SEXUAL ASSAULT &amp; ARMED ROBBERY</b>	Date of original report 5/9/88	Case number 88-4892
Victim of complaint 1. <b>RODELA, Theresa</b> 2. <b>SLOAN, Bridget</b>	Location of original occurrence 543 E. Prater, Sparks	Date and time of supplement 5/10/88 0350 hrs 2

Additional details of offense, progress of investigation, etc.

to locate any.

WITNESSES:

- Victim #1, **RODELA, Theresa D.**, can testify to being outside of the business washing the windows and having the suspect come up behind her and grab her and force her into the business. She can testify that the suspect ordered Victim #2 to put the phone down and to go with them into the back room. **RODELA** can also testify that the suspect placed them in the bathroom in the back room, left for a short period of time, returned, ordered them to open the door, and the door was opened by **SLOAN**. The suspect ordered **RODELA** out of the bathroom and **SLOAN** to stay inside and close the door. She can testify that the suspect made her kneel on her hands and knees in the back room and the suspect removed her panties and nylons and sexually assaulted her. She can also testify that the suspect returned her to the bathroom, told them both to lie down and not try to do anything while the suspect left the area.
- Victim #2, **SLOAN, Bridget C.**, can testify to observing **RODELA** struggle with the suspect in front of the store and **RODELA** being brought in through the front door. **SLOAN** picked up the telephone, attempted to dial the operator, was ordered to put the phone down, and accompany **RODELA** and the suspect to the back of the store. **SLOAN** can testify that she was forced to lie with **RODELA** in the bathroom, the suspect left, returned a short time later, and ordered **RODELA** out of the bathroom. **SLOAN** can testify that the suspect closed the door and advised her to stay in the bathroom and that she could hear the sounds of conversation between **RODELA** and the suspect and could hear **RODELA** crying and understood the sounds to be the fact that **RODELA** was being sexually assaulted. She can testify **RODELA** returned to the bathroom and the suspect told them both to remain quietly on the floor of the bathroom while he left the premises.

WEAPONS-FORCE USED AND/OR LIST OF ITEMS AND LOSS:

The Weapon used in this case was a knife, a folding knife similiar to a Buck knife, possibly with a black & red handle. The suspect carried the weapon in a sheath that was attached to the belt of his trousers on his right hip. The suspect also claimed to have a gun, although it was not seen during the course of the crime. The suspect also used physical force primarily for manhandling Victim #1.  
List Of Items And Loss: \$198.00 cash.

THIS INFORMATION PROVIDED BY \_\_\_\_\_ ON \_\_\_\_\_ IS RESTRICTED AS TO USE AND DISSEMINATION

Unfounded	<input type="checkbox"/>	This Offense is now	
Charge by Arrest	<input type="checkbox"/>		
Charge Dismissed	<input type="checkbox"/>		
Not Charged (Ineffective)	<input type="checkbox"/>		

OFFICER V. DEBILIZAN #8329 Patrol

Date 5/10/88

Investigating Officer

*F. Best 6577*

Supervisor Approving

Date 5/10/88

PROSECUTOR

263

SPARKS POLICE DEPARTMENT

JK DEBILZAN

ADDITIONAL OR CONTINUATION REPORT

Type of original report <b>SEXUAL ASSAULT &amp; ARMED ROBBERY</b>	Date of original report 5/9/88	Case number 88-4892
Victim of complaint 1. <b>RODELA, Theresa</b> 2. <b>SLOAN, Bridget</b>	Location of original occurrence 543 E. Prater, Sparks	Date and time of supplement 5/10/88 0350 hrs. 3.

Additional details of offense, progress of investigation, etc.

MEANS OF ENTRY AND/OR EXIT:

The suspect entered through the front door and also used the front door to exit. The suspect is in possession of the keys to the business.

EXTENT OF INJURIES AND TREATMENT:

Minor injuries as a result of the sexual assault on RODELA. She was transported by this Officer to Washoe Med. We were accompanied by her boyfriend, Steve. While at Washoe Med she was treated by Dr. SCHERK. A Sexual Assault Kit was collected. In addition, all of her clothing was collected as evidence and I placed both items into evidence. Dr. SCHERK also gave the victim an injection with antibiotics and some prescription pills - it is unknown at this time what they are for.

EVIDENCE:

At the scene Det. TORRES seized nylons and panties from the trash basket in the rear of the store. In addition, he collected a cigarette butt that had been stamped out on the floor by the suspect after he had smoked it during the commission of this crime. Officer DEBILZAN collected the Sexual Assault Kit at Washoe Medical Center and also collected all of the victim's, RODELA's, clothing and submitted both items into evidence.

BRIEF SYNOPSIS OF OFFENSE:

Suspect approaches business while manager is preparing to close washing the front windows. Second employee is counting out cash near the cash register. Suspect physically grabs Victim #1, the manager, forces her inside the store, advises Victim #2 to put the phone down as she had picked it up when she saw the struggle at the front of the store, and to accompany them to the rear of the store. Suspect places the 2 victims in a bathroom at the rear of the store, returned to the front, got the keys, locked the door, and took \$198.00 cash from near the register. Suspect returned to the rear of the store, ordered RODELA out of the bathroom, sexually assaulted her in the rear of the store, returned her to the bathroom, and left the business on foot.

ADDITIONAL INFORMATION:

No special units or agencies notified. However, Det. TORRES was called to the scene by Sgt. LIGHTFOOT and while at Washoe Medical Center, 2 members from a Rape Crisis team spoke with victim RODELA.

THIS INFORMATION PROVIDED BY \_\_\_\_\_ ON \_\_\_\_\_ IS RESTRICTED AS TO USE AND DISSEMINATION

This Offense is now

Unfounded

Cleared by Arrest

Cleared Otherwise

Not Cleared (inactive)

OFFICER V. DEBILZAN #8329 Patrol

Date 5/10/88

Investigating Officer

*[Signature]* 6877

Supervisor Approving

Date 5/10/88

PROSECUTOR

PD-016

264

**SPARKS POLICE DEPARTMENT**

SW SUPPLEMENTAL OR CONTINUATION REPORT		
Type of original report <b>SEXUAL ASSAULT &amp; ARMED ROBBERY</b>	Date of original report <b>5/9/88</b>	Case number <b>88-4892</b>
Victim of complaint <b>1. RODELA, THERESA 2. SLOAN, Bridget</b>	Location of original occurrence <b>543 E. Prater, Sparks</b>	Date and time of supplement <b>5/10/88 0350 hrs. 4.</b>

Additional details of offense, progress of investigation, etc.

**DETAILS OF OFFENSE:**

Myself and Sgt. KEN LIGHTFOOT were dispatched to Payless Shoe Source, 543 E. Prater in Sparks in the Iron Horse Shopping Center. Dispatch advised that they had received a phone call at Sparks PD from a man stating that he had just robbed the Payless Shoe Source and that there were 2 women tied up in a back room.

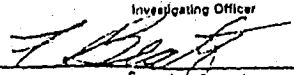
Upon arrival Sgt. LIGHTFOOT and myself found the front door of the business to be open. There was no one at the register area nor anywhere else in the store display area. We walked to the back of the business, entered the rear storage room and there were no sounds nor did we see anyone. When we looked to the left we observed a shelf of some kind, a wooden shelf, that had been leaned against a door in an attempt to keep the door from being opened. We stood the shelf up and tried to open the door but it was locked. Sgt. LIGHTFOOT asked if anyone was in there. A female voice said Yes. We advised that we were Sparks Police Department. They opened the door and came out. Both victims were extremely angry, extremely upset, and crying profusely. The source of their anger was that they were both in possession of small hand held devices that have a button that when the button is pressed it sets off a holdup alarm. Both, Victim RODELA and SLOAN, stated they had been pressing the buttons for close to an hour and they wanted to know why it took an hour for the Sparks Police Department to respond. We advised them that there had been a malfunction of some kind evidently and the alarm company had not advised Sparks PD of any holdup alarm. The first knowledge we had of the incident was receiving the call from the suspect himself.

As we began to talk to RODELA and SLOAN about the Armed Robbery incident they both stated the suspect had a knife and claimed to have a gun but didn't show it. While I was obtaining written statements from both young ladies Sgt. LIGHTFOOT spoke with Bridget SLOAN privately and determined that Theresa RODELA had been sexually assaulted during this crime. We spoke with RODELA and she admitted that yes, she had been raped, was very upset, scared and shaken by the entire incident. RODELA and SLOAN called their supervisors and a couple of family members and a couple of friends to come down. Both victims felt that the suspect was mildly intoxicated. It is unknown whether or not the suspect had a vehicle. It's possible that he arrived and left on foot.

RODELA was transported by myself to Washoe Medical Center for a Sexual Assault Kit test to be performed. it was done by Dr. SCHERK and he was accompanied by a nurse, BEASLEY. Two members from the local Rape Crisis Center came down and provided emotional moral support to the victim.

THIS INFORMATION PROVIDED BY \_\_\_\_\_ ON \_\_\_\_\_ IS RESTRICTED AS TO USE AND DISSEMINATION

- This Offense is now
- Unfounded
  - Cleared by Arrest
  - Cleared Otherwise
  - Not Cleared (inactive)

OFFICER V. DEBILZAN #8329 Patrol Date 5/10/88  
 Investigating Officer  
  
 Supervisor Approving Date 5/10/88

PROSECUTOR

PD-016

265

6-4

SPARKS POLICE DEPARTMENT

SUPPLEMENTAL OR CONTINUATION REPORT

Type of original report <b>SEXUAL ASSAULT &amp; ARMED ROBBERY</b>	Date of original report <b>5/9/88</b>	Case number <b>88-4892</b>
Victim of complaint <b>1. RODELA, Theresa 2. SLOAN, Bridget</b>	Location of original occurrence <b>543 E. Prater, Sparks</b>	Date and time of supplement <b>5/10/88 0350 hrs. 5.</b>

Additional details of offense, progress of investigation, etc.

Dr. SCHERK stated that there was sperm present in RODELA's vagina. Detective TORRES interviewed SLOAN and had gotten information from her on a possible identification of the suspect. When we were through with RODELA at Washoe Medical Center I brought her to Sparks PD station where she was interviewed by Detective TORRES and RODELA assisted in making a composite drawing of the suspect. Both victims went home. I placed evidence from the hospital in the Evidence locker. It should be noted that there are similarities between the suspect in this case and the suspect in Case #88-4238. Nothing further at this time.

*see Zarsky Report  
April 21st of case # 88-4238  
she cleared Nolan's  
car & Nolan when she  
went down to the Sparks  
police dept. This victim  
said the man gave a name  
Bill  
had a red & black knife. Nolan's  
was brown wooden w/ brass ends,  
and had something wrong w/ his  
mouth a broken tooth. Same  
as what many of the victims  
would testify to. Where  
Nolan had nothing wrong  
w/ his mouth or teeth. never  
presented at trial.*

THIS INFORMATION PROVIDED BY \_\_\_\_\_ ON \_\_\_\_\_ IS RESTRICTED AS TO USE AND DISSEMINATION

Unfounded  This Offense is now \_\_\_\_\_

Cleared by Arrest  \_\_\_\_\_ EX-1111  
Investigating Officer **OFFICER V. DEBILZAN #8329 Patrol** Date **5/10/88**

Cleared Otherwise  \_\_\_\_\_  
Investigating Officer \_\_\_\_\_

Not Cleared (inactive)  \_\_\_\_\_  
Supervisor Approving *[Signature]* Date **5/10/88**

PROSECUTOR

PD-116

266

ROBBERY/SEXUAL ASSAULT	5/9/88	00-4072
of complainant PAYLESS SHOES/RODELA. THERESA	Location of original occurrence 543 E. PRATER	Date and time of supplement 5/10/88 1355 HRS.

Additional details of offense, progress of investigation, etc.

DETAILS:

On 5/10/88 I was asked by acting Sgt. BEATY to do some follow-up work per Det. Sgt. ZARUBI, on this case. I was asked to go to the different motels within the area and show them a composite of last night's incident and see if they know anybody that matched that description to be staying there and I was also looking for a vehicle that was involved in a robbery/kidnap/attempt sexual assault where the two composites match closely.

While checking the Abby Hotel located in the 800 blk. of B St., I made contact with a bartender there by the name of Jeff PETTY. I showed Mr. PETTY the three composites that I had and Mr. PETTY advised me that there was an individual matching the description of the composites with the hair from 88-4892 and the facial area of 88-4238. He advised me the individual's name was ZARSKY, Ricky Lee. I asked Mr. PETTY where Mr. ZARSKY lives, he advised me in #104. In further talking with Mr. PETTY, he gave me a brief description of the individual as being a tanned individual with a mustache that came down to 1/4" pass to the openings to the mouth and further advised me that the individual's description closely matched the descriptions given in the composites. Mr. PETTY then advised me that Mr. ZARSKY had left early this morning with two other friends and he had no idea where he was and that he could be back in his room.

I then went to room #104 where I listened and it did not sound like anybody was home. I then returned to the SPD and went to talk to Det. Sgt. ZARUBI and fill him in on what I had found. We then brought Mr. ZARSKY up on SCOPE and ascertained the following:

ZARSKY [REDACTED] TEXAS

I then recontacted Mr. PETTY at the Abby Hotel to ascertain from him if he knew where Mr. ZARSKY was employed. I was advised by Mr. PETTY that he was a dishwasher at Karls Casino. I then contacted Karls Casino and talked with an individual in Personnel who did advise me Mr. ZARSKY was an employee and was a dishwasher.

Det. BOXX also found out that Mr. ZARSKY works dayshift with Tue. & Wed. off. Det. BOXX & I then returned to the Abby Hotel, Rm. #104, to attempt to attempt to make contact with Mr. ZARSKY. While at the room, Det. BOXX & I made contact with a David LITTLE. Mr. ZARSKY's roommate.


ALL INFORMATION PROVIDED BY \_\_\_\_\_ ON \_\_\_\_\_ IS RESTRICTED AS TO USE AND DISSEMINATION

- This Offense is now unfounded
- Cleared by Arrest
- Cleared Other wise
- Not Cleared (inactive)

Officer ASHER \$4534 Patrol  
 Investigating Officer  
 Sgt Lightfoot 3875  
 Supervisor, Approving

Date 5/10/88

PROSECUTOR

EXHIBIT 



**SPARKS POLICE DEPARTMENT**

**SUPPLEMENTAL OR CONTINUATION REPORT**

SEXUAL ASSAULT	Date of original report 5/9/88	Case number 88-4892
ESS SHOES/RODELA, THERESA	Location of original occurrence 543 E. PRATER	Date and time of supplement 5/10/88 1355 HRS.

Additional details of offense, progress of investigation, etc.

2

In talking with Mr. LITTLE, he advised us that Mr. ZARSKY was not home and when he returned home this morning after working graveyard, Mr. ZARSKY had left with two of his friends. Mr. LITTLE advised us that he left for work on 5/9/88 at approx. 2100 hrs. and did not return home until 5/10/88 at approx. 0830 hrs. Mr. LITTLE advised us that Mr. ZARSKY had planed to give plasma today in Reno at the Reno Plasma Center.

Det. BOXX & I then went to Nevada Plasma Center located on 2nd St. in Reno to attempt to locate Mr. ZARSKY. We made contact with a Nursing Supervisor at Nevada Plasma and she pulled the records on Mr. ZARSKY and advised us that Mr. ZARSKY had not been at Nevada Plasma since 1984. Nevada Plasma has a picture of Mr. ZARSKY but it is dated in 1984.

Det. BOXX & I then went to Reno Plasma Center located on 2nd St. in Reno to attempt to locate Mr. ZARSKY at this Plasma Center. We again made contact with a Nursing Supervisor and inquired if Mr. ZARSKY was there. The Nursing Supervisor brought us Mr. ZARSKY's file and told us he had not been there yet today. Reno Plasma also did have a picture of Mr. ZARSKY but it was dated in 1986. The Nursing Supervisor also advised us that the last time Mr. ZARSKY had been in there to give plasma was on 4 of 88.

Both of the photographs that I observed from Nevada Plasma & Reno Plasma did resemble the composites that were done in these cases. I then returned to the Abby Hotel and again made contact with Mr. ZARSKY's roommate, Mr. David LITTLE to inquire how many times, to his knowledge, that Mr. ZARSKY had given plasma. Mr. LITTLE advised me that he only knows of one other time, other than today, that Mr. ZARSKY has given plasma in the last two months. Again Mr. ZARSKY was not at home and Mr. LITTLE had no idea where he was.

I then went to the bartending area where I made contact with an individual who identified himself as being the Manager of the area and asked him if he observed Mr. ZARSKY come back would he please notify this Dept.

This is a supplement to case #88-4892. No further details.

IS INFORMATION PROVIDED BY \_\_\_\_\_ ON \_\_\_\_\_ IS RESTRICTED AS TO USE AND DISSEMINATION

This Offense is now <input type="checkbox"/> Infounded <input type="checkbox"/> Cleared by Arrest <input type="checkbox"/> Cleared Otherwise <input type="checkbox"/> Not Cleared (inactive)	Officer ASHER \$4534 Patrol Investigating Officer Sgt. <i>L. J. [Signature]</i> 3875 Supervisor Approving	Date 5/10/88 Date 5/10/88
--	--	------------------------------

DR. ZITO SAID HE NEVER TOLD SHELLEY THAT SEE SHELLEY'S TEST MONY 480 L  
trying to set a supra for telephoned call placed to DR. POZA from public defenders office to see if shelley ever talked to or present an unavailable defense. POZA after the report come back

In contrast, both victims positively identified Klein, and despite cross examination would not budge. By the same token, Ms. O'Neill investigated the voice identification evidence only to have it confirmed by her own expert to be Klein's voice. (ROA, Vol. II, pp. 48-9).

Since Klein failed to sustain his burden of proof on this ineffectiveness claim, the State respectfully submits that Judge McGee's ruling should be affirmed. We will now turn to the next identified omission.

b. EVIDENCE INDICATING SOMEONE ELSE MAY HAVE COMMITTED THE CRIMES: RICKY ZARSKY.

Next, Klein argues that Ms. O'Neill unreasonably failed to present evidence that a person named Ricky Zarsky was living in Sparks who resembled the man in the composite drawing prepared by the police after the crimes.<sup>7</sup> Klein contends that had this evidence been presented it would bolster both prongs of his alibi/misidentification defense. This contention is repelled by the record, however.

Preliminarily, it should be noted that Mr. Zarsky never came to court and admitted the crimes. At best, Klein's contention would only support an inference that someone else committed these crimes. Obviously, if the inference was sus-

7. For some reason, this issue was not addressed by Judge McGee in his Order Denying Post-Conviction Relief.

Judge McGee never addressed all the other statements from other victims and witnesses

D.A's respondents' brief to the supreme court

4-92.

Exhibit E

Attorney Leonard

1 IN THE SUPREME COURT OF THE STATE OF NEVADA

2 \* \* \*

3 FILED

4 NOLAN EDWARD KLEIN, )  
5 Appellant, )  
6 vs. )  
7 STATE OF NEVADA, )  
8 Appellee. )

SEP 20 1993

Case No. 22597

JANETTE M. BLOOM  
CLERK OF SUPREME COURT

MOTION TO SUPPLEMENT  
RECORD ON APPEAL

9 COMES NOW, appellant, NOLAN EDWARD KLEIN, by and through  
10 counsel, and hereby requests to supplement the record on appeal in  
11 the above-entitled case. This motion is made pursuant to Rule  
12 10(g) and Rule 27 of the Nevada Rules of Appellate Procedure, the  
13 attached points and authorities, and all other papers and pleadings  
14 on file herein.

15 DATED: this 16 day of September, 1993.

16 JOSEPH R. PLATER, ESQ.  
17 313 Flint Street  
18 Reno, Nevada 89501  
19 Attorney for Appellant

20 BY Joseph R. Plater  
21 JOSEPH R. PLATER

22  
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26  
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28  
JOSEPH R. PLATER  
ATTORNEY AT LAW  
313 FLINT STREET  
RENO, NEVADA 89501  
(702) 348-2070

1  
exhibit F



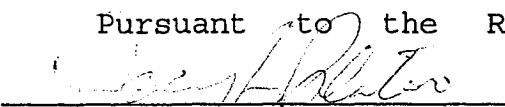
1 reasons, KLEIN respectfully requests that Mr. Ford's letter and  
2 affidavit be submitted as part of the record on appeal in this  
3 case. See attached affidavit and letter.

4 DATED: this \_\_\_\_\_ day of September, 1993.

5 JOSEPH R. PLATER, ESQ.  
6 313 Flint Street  
7 Reno, Nevada 89501  
8 Attorney for Appellant

9 BY   
10 JOSEPH R. PLATER

11 CERTIFICATE OF SERVICE

12 Pursuant to the Rules of the above-entitled Court  
13  duly certifies that (s)he deposited for  
14 mailing with the United States Post Office at Reno, Nevada, a true  
15 and correct copy of the attached and foregoing documents enclosed  
16 in a sealed envelope, postage fully prepaid and addressed to the  
17 following:  
18

19 GARY HATLESTAD, ESQ.  
20 Deputy District Attorney  
21 75 Court Street  
22 P. O. Box 1900  
23 Reno, Nevada 89505

24 DATED: this 14 day of September, 1993.

# WASHOE COUNTY

"To Protect and To Serve"



195 SOUTH SIERRA STREET  
POST OFFICE BOX 11130  
RENO, NEVADA 89520-0027  
PHONE: (702) 328-3464  
FAX: (702) 328-3596

OFFICE OF THE PUBLIC DEFENDER  
MICHAEL R. SPECCHIO, PUBLIC DEFENDER

August 20, 1993

Ms. Tonja Brown  
3310 Surrey Lane  
Carson City, Nevada 89701

Dear Ms. Brown,

Per your request of August 17, 1993, I reviewed the trial file of Nolan Klein. There is nothing in the trial file to indicate that Mr. Petty, an employee of the Abbay Hotel, Sparks, Nevada, was contacted regarding the Nolan Klein Case. Although there was no note in the file, this does not indicate that Mr. Petty was not contacted.

Sincerely,

MICHAEL R. SPECCHIO  
Washoe County Public Defender

By Timothy Ford  
TIMOTHY FORD  
Investigator

TF/mks

1 IN THE SUPREME COURT OF THE STATE OF NEVADA

2 \* \* \*

3  
4 NOLAN EDWARD KLEIN, )  
5 Appellant, )  
6 vs. )  
7 STATE OF NEVADA, )  
8 Appellee. )

Case No. 22597

AFFIDAVIT OF  
TIMOTHY FORD

9 STATE OF NEVADA )  
10 ) ss.  
11 COUNTY OF WASHOE )

12 I, TIMOTHY FORD, being first duly sworn, deposes and says:

13 1. That during the investigation and trial of NOLAN EDWARD  
14 KLEIN, I was the main investigator on the case working with KLEIN's  
15 counsel, Shelly O'Neil;

16 2. That I recently reviewed the trial file of MR. KLEIN, and  
17 did not find anything to indicate that Mr. Petty, an employee of  
18 the Abbey Hotel in Sparks, Nevada, was contacted regarding KLEIN's  
19 case;

20 3. Although there was no evidence in the file that Mr. Petty  
21 had been contacted, this does not necessarily mean that he was not  
22 so contacted;

23 4. That I wrote a letter on August 20, 1993, to Ms. Brown  
24 stating these facts, and incorporate such statements within this  
25 affidavit, and further declare that I wrote the letter attached to  
26 this affidavit.

27 ///

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I, TIMOTHY FORD, do hereby swear under penalty of perjury that the assertions of this affidavit are true.

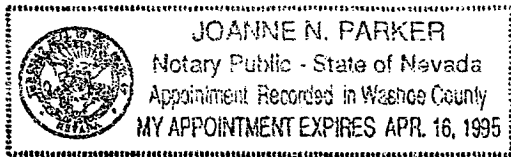
Further affiant sayeth not.

DATED: this 20<sup>th</sup> day of September, 1993.

Timothy F Ford  
TIMOTHY FORD

SUBSCRIBED and SWORN to before me this 20<sup>th</sup> day of September, 1993.

Joanne N. Parker  
NOTARY PUBLIC



POLICE DEPARTMENT  
SPARKS, NEVADA

BY \_\_\_\_\_ ON \_\_\_\_\_

IS RESTRICTED AS TO USE AND  
DISSEMINATION

CASE NO. \_\_\_\_\_

STATEMENT OF:  
(PLEASE PRINT)

Colegrove  
LAST NAME

Terry  
FIRST NAME

A  
MIDDLE INITIAL

5/11/64  
DATE OF BIRTH

ADDRESS

TELEPHONE

BUSINESS NAME

Allison's Place

BUS. ADDRESS

544 E. Prater

BUS. PHONE

356-2166

The man came in to my store. He stood by one of my shirt racks. and I wasn't really paying attention. so I just started my paperwork again. when I looked up again and he was masturbating on the shirts. I turned to my co-worker and I told her that the guy was masturbating and I turned to approach him and he turned and walked out the door. I followed him to the door and he was walking down towards winchells. I saw a picture of him and it was the same man. It was about 1:30 p.m.

WITNESS: \_\_\_\_\_

SIGNATURE Terry Colegrove

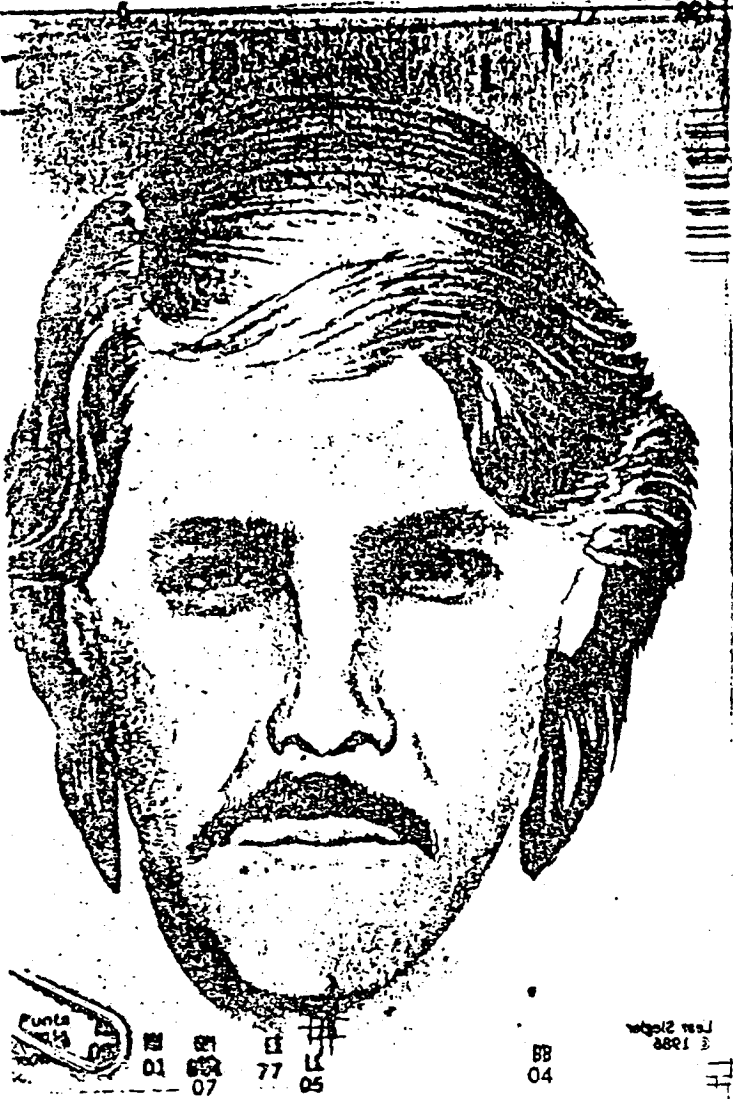
exhibit G

DATE \_\_\_\_\_ TIME \_\_\_\_\_

SPARKS POLICE DEPARTMENT  
 1125 'C' STREET  
 SPARKS, NEVADA 89431  
 PHONE: (702)356-2279

OFFENSE: ARMED ROBBERY

CASE NO: 87-11777



DATE AND TIME OCCURRED:

11-18-87 / 0048

LOCATION OF OCCURRENCE:

SAVE TIME  
 1825 FRATER WAY

DESCRIPTION OF SUSPECT

RACE: SEX: AGE GROUP

W

M

32

HEIGHT:

WEIGHT:

BUILD:

5'5"

150

MEDIUM

COMPLEXION:

HAIR COLOR  
 AND LENGTH:

EYES

LIGHT

BROWN  
 LONG

IDENTIFYING MARKS:

JEWELRY:

SUSPECT CLOTHING DESCRIPTION:

RED - WHITE FLANNEL COAT  
 LEVIS  
 TENNIS SHOES

SUSPECT VEHICLE DESCRIPTION

MAKE:

MODEL:

YEAR:

COLOR:

LICENSE #:

STATE:

FURTHER VEHICLE DESCRIPTION:

IDENTI-KIT CODE FOIL NUMBERS:

07 DOWN / NN01 / LLOS DOWN / EE 77 / AADS

198 TURNED AROUND / B804

ILL IN WORK DONE TO COMPOSITE

hair turned around  
 should be

DETAILS, REMARKS OR OTHER PERTINENT INFORMATION:

PROPERTY TAKEN BY SUSPECT:

CASH, \$75.00, IN \$10s, \$5s, & \$1s.

WEAPON USED BY SUSPECT:

SIMULATED  
 HAND GUN

COMMENTS MADE BY SUSPECT:

DON'T GET EXCITED  
 I WANT YOUR BILLS

COMPOSITE PREPARED BY:

HOHNHOLZ 7506

PATROL OFFICER:

PHONE #:

HOHNHOLZ 7506

DETECTIVE ASSIGNED:

PHONE #:

Exhibit H

Rickey zarsky

7979 MILITARY DR  
SAN ANTONIO  
TX 78227 1878

1.

People Search Background Check Criminal Records Real Estate Reports Reverse Phone Search  
All Products

MAY 2008

Exhibit I







June 3, 2008

# NEVADA APPEAL

- Local News
- Election 2008
- Nevada
- Nation/World
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- Dayton
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- Weekend Feature
- Hotel Info
- e-Edtion
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- Carson Discoveries
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## Murder conviction overturned for prosecution and judicial errors

By Geoff Dornan  
Appeal Capitol Bureau,

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Agreeing the prosecutor and judge committed a laundry list of violations and errors during Noe Martinez's murder trial, the Nevada Supreme Court on Monday threw out his conviction.

Six members of the court signed the order reversing the conviction for seven separate errors, concluding "that the quantity and character of the errors were great." The seventh, Justice Bill Maupin, agreed with the reversal for cumulative error committed in the case, but disagreed with two of the seven findings.

And the high court ruled that the issue of guilt or innocence was close since only one eyewitness identified Martinez while the other said he was not the killer. They said no physical evidence defendant to the scene, no murder weapon was found and his fingerprints were not at the scene.

"In sum, the state did not present overwhelming evidence of Martinez's guilt."

A Clark County jury convicted Martinez of murder, attempted murder and use of a deadly weapon in those crimes.

The errors included admitting an unsigned letter alleging the defendant was guilty of child neglect which had nothing to do with the murder case — and evidence that shotgun materials found in a car. A pistol was the actual murder weapon, not a shotgun.

The court allowed the prosecutor to refer to Martinez being held in jail while awaiting trial, in commenting on his use of the right to remain silent, shifted the burden to Martinez to prove his statements and asked whether two witnesses had agreed to take a polygraph test.

"The district court admitted irrelevant and highly prejudicial evidence, affecting Martinez's right to a fair trial," the court concluded.

It will be up to prosecutors in Clark County to decide whether to retry the case.



Exhibit L

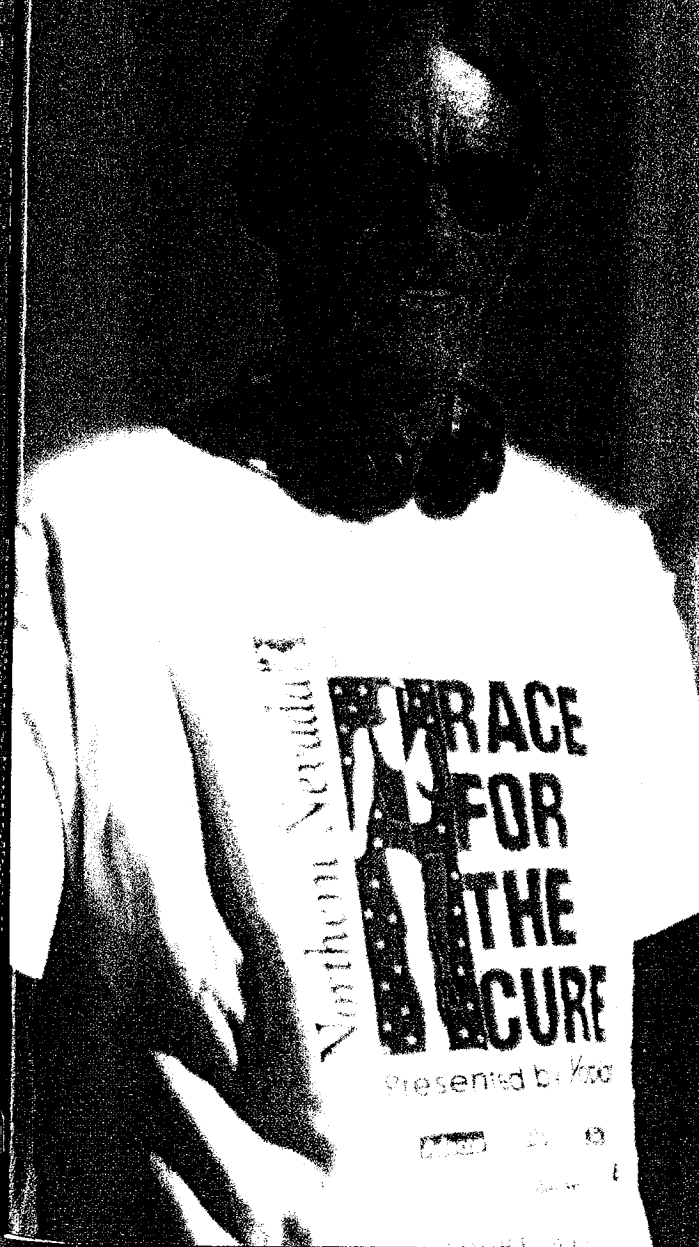


Nolan holding his son for the first time.

Exhibit

A handwritten signature or scribble consisting of several overlapping, dark lines.

# To Prove His Innocence



Nolan Klein &  
Tonja Brown as told to  
Mary Elizabeth Morgan

524  
1/2  
©

of Nevada was represented by Scott Edwards, Esq., Deputy District Attorney.

At the end of the hearing, counsel were placed on a briefing schedule, which is now complete. In addition to those points and authorities, the Court has examined the other pleadings, papers, and transcripts and deems itself fully advised in the premises.

Petitioner claims that his trial counsel, Chief Deputy Public Defender, Shelly O'Neill, was ineffective under standards recognized by state and federal case law.

Klein's claims of ineffective assistance of counsel will be evaluated under the "reasonably effective assistance" standard set out in Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984), and adopted by the Nevada Supreme Court in Warden v. Lyons, 100 Nev. 430, 683 P.2d 504(1984), cert.denied, 471 U.S. 1004, 105 S.Ct. 1865, 85L.Ed.2d159 (1985).

Under Strickland, in order for a defendant to claim he was denied effective assistance of counsel in violation of the Sixth Amendment, he must demonstrate that "[h]is counsel fell below an objective standard of reasonableness. . . Second, a defendant must show that [counsel's] deficient performance prejudiced the defense. This requires a showing that counsel's errors were so serious as to deprive a defendant of a fair trial, a trial whose result is reliable." See, Williams v. State, 737 P.2d 508, 510 (Nev. 1987) citing 466 U.S. at 687, 104 S.Ct. At 2064; also, see, Ybarra v. State, 731 P.2d 353, 354-355 (Nev. 1987). "The defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." Strickland, 466 U.S. at 694.

This Court is also guided by the high court's ruling that in examining whether a defendant was afforded reasonable representation, such performance inquiry must be "whether counsel's assistance was reasonable considering all the circumstances," with the understanding that while there are guides to determine what is reasonable, any particular set of detailed

rules for counsel's conduct regarding how best to represent a criminal defendant "would interfere with the constitutionally protected independence of counsel and restrict the wide latitude counsel must have in making tactical decisions." Id. At 688-689.

From the trial Court's view point, the post-trial petition of Nolan Klein contains one significant issue: whether or not Miss O'NEILL was ineffective by not conducting a so-called Jackson v. Danno, 378 U.S. 368, 12 L.Ed.2d 908, 84 S.Ct. 1774, 1 ALR2d 1205 (1964) hearing before certain statements attributed to Klein were received by the jury.

Before turning to this central issue, the Court will briefly discuss some other issues present in the petition since different grounds have been averred and reasonable men and women might disagree as to their relative importance. They are:

A. Miss O'Neill's claimed failures in not calling certain witness who might have been available at the time of trial and a related issue concerning the alleged misidentification of Nolan Klein because of the length of growth of his beard; and,

B. Her ostensible failure to pursue certain confusion on the part of one of the victims of sexual assault concerning penetration.

A. FAILURE TO LOCATE WITNESSES/THE SCRAGGLY BEARD ISSUE:

At the time of the post-conviction hearing, Mr. Plater called several witnesses who knew Nolan Klein at about the same time the offenses occurred in late April of 1988. Although there was some confusion on the part of Miss Florence Kimball about the identity of a bearded man working in the driveway in the Defendant's sister's residence, two other witnesses, Kate Miller and Carla Jo Marsh, were quite certain that Nolan Klein had a full beard during this period. Mr. Plater argues that this evidence was crucial to a mis-identification defense since the victims testified that their perpetrators appeared unshaven at the time of the offense, not fully bearded.

The problem with this claim is that Shelly O'Neill did consider this kind of exculpatory evidence and

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discounted its value. At trial the victims were not sure exactly how many days' growth of beard their perpetrator had, and it was plain to everyone that Nolan Klein has thin and scraggly facial hair to begin with. The length of Klein's beard was not the central issue to his in-court identification. The victims were both together and separate with their perpetrator for an extended period of time; one of them was forcibly raped. Their identification was not going to hinge on some minor discrepancy over the length of his facial hair. The identification was either going to stand or fall on other identifying features, such as the color of his hair, the color and look of his eyes, and his general appearance. Whatever oversight is represented by not calling Carla Jo Marsh or Kate Miller is harmless beyond a reasonable doubt.

In this same area, Nolan Klein's mother's testimony about her son's full beard appeared almost palpably biased.

**B. THE PENETRATION ISSUE:**

Mr. Plater argues on behalf of Nolan Klein that Ms. O'Neill should have conducted a much more vigorous cross-examination of the victim who was raped because the victim referred in a police report to lack of penetration, which is a material element of the offense of sexual assault.

Once again, however, Ms. O'Neill carefully explored this issue prior to trial. The witness was confused by the meaning of the term "penetration" (she was certain that something went in her vagina) but she also felt certain that the perpetrator had not achieved ejaculation. It is a little bit difficult to describe on paper what happened in the courtroom, but these young ladies (who were repeatedly terrorized by their perpetrator) were not going to be impeached by cross-examination in such areas as whether or not the sexual assault occurred. The witnesses' testimony was so overwhelmingly powerful in this respect that the tactical decision to stay away from that kind of easily explained discrepancy cannot in any way be faulted. Just from this kind of atmosphere, it was clear that reasonable men and women were going to

find great sympathy with what these young ladies went through and Ms. O'Neill's decision to direct the jury's attention to making sure that the victims knew who their perpetrator was (rather than laboring over items of confusion which could inflame a jury's prejudice), was a sound one under all the circumstances.

With those two issues out of the way, the Court is now prepared to turn to the issue which has much more substance.

**C. THE FAILURE TO CALL FOR A JACKSON V. DENNO HEARING:**

It is difficult to say with hindsight exactly how the Court might have ruled had Shelly O'Neill filed motion to hear evidence pertaining to the voluntariness of Klein's statements to Detective Asher and Detective Boxx from the Sparks Police Department. Since there was no evidentiary hearing the Court has only the version which can be gleaned from the trial transcripts. Viewing that evidence in the light most favorable to the Petitioner, it is entirely possible that the Court may have found that Mr. Klein was in the kind and quality of custody as might have required the giving of a Miranda warning prior to questioning. As a consequence, it is also possible that the statement itself and perhaps some of the evidence obtained from the search of the car pursuant to a consent given during the statement, may have been excluded from the jury's attention and consideration.

Ms. O'Neill testified during the post-conviction hearing that she had considered an out of court Jackson v. Denno hearing, but that on balance, she felt that the statements were neither so prejudicial or inculpatory that the risk associated with their admission outweighed the tactical benefit she thought she might gain from showing the filmsness of the government's case based upon the manner of the interrogation and the paucity of incriminating evidence developed from the questioning. Mr. Klein was released following the statement, giving the defense the argument that since they lacked probable cause to hold him, and since they had the same kind of evidence available then as they would at trial, that the

defects in the State's case remained consistent from the investigation until trial.

Critical to a determination of the competence of the tactical decision made in this case is the statements themselves, because Mr. Klein basically refused to incriminate himself in any manner when he was interrogated by the Sparks Detectives. It is true that he made certain statements against his interests concerning the person who had transported him to Reno (he claimed it was his brother). It is also true that a knife was found in the vehicle which was introduced at trial, but counsel's statement that it was identified as the knife used against them in the rape and robberies was not entirely accurate. There was no such positive identification and the knife was of a type so common that its admission alone, without further forensic evidence tying it to the crimes, did not have overwhelming or even pivotal significance.

Added to this is the fact that Ms. O'Neill was able in one sense to "have her cake and eat it too" by reason of the fact that she was at least able to get the second level of the Jackson v. Denno voluntariness issue to go the jury for consideration. At her request, the Court did give a voluntariness instruction and had the jury felt that the statements were obtained in a manner which was coercive, the jury was instructed to disregard the statements if they were obtained in a manner which was coercive, the jury was instructed to disregard the statements altogether.

Nothing about Shelly O'Neill's considered decision to allow the statements to come in for their probative and exculpatory value, at the risk of some inculpatory evidence coming in at the same time - falls below the professional standards expected of a seasoned criminal trial attorney such as she is. Further, there is nothing about the decision which would indicate that her conduct improperly tainted the jury verdict. The in-court identification of Klein was powerful and overwhelming. He received a fair trial.

In handling a case as delicate as this one was to handle Ms. O'Neill's defense theories and her tactical decisions

were and are supportable and are understandable, and do not infect the verdict with prejudicial error. The Petition may be, and hereby is, DISMISSED. DATED this 12<sup>th</sup> day of July, 1991.

Sometimes in life you are surrounded by persons who are supposed to be a lot smarter than you are, well, at least more educated. You presume that they know what they are doing and you trust their judgment. Those days were fast coming to an end for Tonja. She might not have her college degree, but she could tell dogshit when she smelled it and more of it was laying in her path. She reviewed the testimony of O'Neill. There were documents out there that would prove her statements wrong. Tonja was beginning to know what digging was all about. These people left a trail and you just had to follow it.

The passion and fervor for the task pushed her forward. Her back pain increased significantly by the day. The old Ormsby House injury was trying to slow her down, but she lived off Tylenol, aspirin and heating pads to keep going. Many nights she slept only minutes. She worked a full day of house cleaning and sought the documents to prove O'Neill's perjury in whatever time she could wrench out of her day.

Twice Tonja made attempts to locate the man, Ricky Lee Zarsky. She did not know what she would do if she found him, but she couldn't let go to the fact that he was the major contender for this crime. She went to the transient hotel where the police had looked for him, but he had not returned to his room since May 10, 1998. She went to Karl's where he had worked and pretended to be his wife. They did tell her that he had not returned since May 9, 1998 and that he had not even picked up or sent for his last check.<sup>8</sup>

In January 1992 Tonja read that a city judgeship had come open. She knew O'Neill would apply, she just felt it. She checked every day and, finally, on the last day, O'Neill filed. Tonja armed herself with the documents she had gathered. The City Council would meet and select the new appointee. Tonja called ahead and

<sup>8</sup>As late as 2004 Tonja located a residence where Zarsky had stayed in Sun Valley. He had been using the name Lee Zarsky. She found the residence approximately two weeks after he had moved again.