

EXHIBIT F.2

4 Dicky was dejected and inquired the crazy
he had to listen to Bill Richards testimony. Judge McCreed ordered the jury to pick one testimony.
5 they picked Bill's.

~~Heard~~ The Judge would not allow this testimony ^{read} back to the jury as the requested, so, ~~but~~ the jury felt Bill Richards made a mistake as to the chair behind the microphone. time Nolan test the (Witness sworn.) bar, but read Barbara's

Remember the crime took place at approx 9:15pm in SPARKS.

B A R B A R A H I L L M A N

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

DIRECT EXAMINATION

BY MS. O'NEILL:

Q Make yourself comfortable. Then would you state your name and spell your last name for the court reporter, please.

A My name is Barbara Hillman, H-i-l-l-m-a-n.

Q What do you do for living?

A I'm a bartender.

Q Where are you employed?

A Right now I'm in Dayton.

Q In May of 1988, where were you employed?

A At Jack's Bar, Carson City.

Q And where exactly is Jack's Bar located? Do you recall the address?

A It's on 395 and Fifth.

Q Okay. And how long had you been working there in May?

testimony

1 A There were the above-mentioned, and then a few other
2 people. There weren't too many people in there at that time.

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

5 A I believe he was.

6 Q Okay. And how long does your shift usually go?

7 A Till 2:00.

8 Q All right. What happened during the course of the
9 evening with the patrons of the bar?

10 A We just sat there and talked. And like I said, it
11 wasn't a busy night, and we just talked and they drank. And
12 then Pinkie--Nolan's mother--and J.D. got up to go to dinner;
13 and I believe they said they wanted to get to Cactus Jack's
14 before 9:00--I'm not sure--because I think they stopped serving
15 at 9:00. So they went to dinner, and Nolan and Bill and his
16 brother were still there.

17 Q Okay. And that was approximately 9:00 o'clock?

18 A Yeah. In fact, it was after that.

19 Q Okay.

20 A I don't know for sure, but I would say probably maybe
21 10:00, 10:30.

22 Q All right. And you would have recalled if Nolan left
23 earlier than 9:00 o'clock?

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

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

3 A Right.

4 Q And are you related to Nolan Klien in any way?

5 A No.

6 Q Is there any way that you'd take the stand and
7 testify falsely for him?

8 A No.

9 Q And you believe that it was May 9th that you were all
10 together?

11 A Yes.

12 MS. O'NEILL: No further questions.

13 THE COURT: Cross-Examination.

14

15 CROSS-EXAMINATION

16 BY MR. RACHOW:

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

19 A Probably, yeah.

20 Q And who was present on Tuesday?

21 A I don't know, because it was over.

22 Q So there was-- you talked about it all Monday, and
23 when it didn't happen Tuesday, nobody talked about it?

24 A We talked about it, sure.

1 Q Talk to an investigator from the District Attorney's
2 Office about it?

3 A Yes, there was a man come into the--

4 MR. RACHOW: Your Honor, I'd ask the Court to
5 instruct Miss O'Neill to stop nodding her head while the
6 witness is answering.

7 MS. O'NEILL: I'm sorry, your Honor. This was
8 involuntarily. I only know that because I talked to the DA's
9 investigator myself to confirm that fact.

10 THE COURT: Okay, but during this Cross-Examination I
11 think that's a fair request.

12 MS. O'NEILL: That's fine, your Honor. No problem.

13 MR. RACHOW: Thank you, your Honor.

14 BY MR. RACHOW:

15 Q Had you written anything down in your diary about May
16 9th?

17 A No, the only thing I wrote down is a letter that I
18 gave to Pinkie for her to give to somebody.

19 Q And that was dated on the 4th of July, 1988?

20 A Whatever it was.

21 Q What time did Nolan leave that night?

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

24 Q Who did he leave with?

Bill Richards is now a deputy with the Carson City Sheriff's Office.

Ray read the jury
felt Bill made a mistake
as to the time. Instead
of 10:00 it was 8:30 AM

1 lady in green and be sworn.

(Witness sworn.)

2
3
4 WILLIAM RICHARDS,
5 called as a witness herein, being
6 first duly sworn, was examined and
7 testified as follows:

8
9 DIRECT EXAMINATION

10 BY MS. O'NEILL:

11 Q Mr. Richards, take the blue chair behind the
12 microphone, please.

13 Would you state your name and spell your last name
14 for the record.

15 A William Richards, R-i-c-h-a-r-d-s.

16 Q What do you do for a living, sir?

17 A I'm a bartender.

18 Q Do you know the gentleman seated to my left?

19 A Yes, I do.

20 Q What is his name?

21 A Nolan Klien.

22 Q And how long have you known him?

23 A Approximately three and a half, four years.

24 Q And how do you know him?

1 A I worked with him at Reno Flying Service.

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

4 A Yes, I do.

5 Q And would you describe that for the ladies and
6 gentlemen of the jury?

7 A We were discussing the possibility of Los Angeles
8 falling in the ocean the next day, May 10th. It was in all the
9 newspapers, and Nolan and myself and several other people in
10 the bar were discussing that fact.

11 Q All right. And what bar was this?

12 A Jack's Bar in Carson City.

13 Q And do you recall who else was present?

14 A There was Nolan, his brother Marty, his mother
15 Pinkie, J.D. and Barbara, the bartender. I can't really
16 remember who else was in there.

17 Q All right. And do you recall approximately what time
18 you got there, Mr. Richards?

19 A Five, 5:30.

20 Q And who was there when you got there?

21 A Nolan, myself and his brother Marty.

22 Q All right. And who else arrived at a later time?

23 A Barbara got there about a quarter to six, as well
24 as Pinkie and J.D.

1 Q Did anyone leave during the course of the evening?

2 A I'm sure several patrons came and left; but we were
3 all there, and Pinkie and J.D. left around 9:00 o'clock that
4 night.

5 Q Why are you so sure about that time?

6 A Because it was just starting to get dark.

7 Q All right. Do you recall what time Nolan left?

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

10 Q Did you leave together?

11 A No, we didn't.

12 Q Who left first?

13 A Nolan left first.

14 Q Okay. And could that have been any earlier than
15 10:00 o'clock at night?

16 A No.

17 Q And why do you believe that?

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

20 Q And why are you so sure that this was May 9th, 1988?

21 A Because we were discussing the possibility on May
22 10th the following day, of Nostradamus' prediction coming true.

23 Q Did you read anything the following day or May 9th
24 about that fact?

*Response dictated
11-8-88*

FILED

1 No. CR88-1692

'88 NOV -4 P2:44

2 Dept. No. 7/8

JUDICIAL DISTRICT COURT
BY R. J. Gino
DEPUTY

*copy 10-1-88
sent to 15
orderly 1 week
before trial on
date requested by
Δ*

6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7 IN AND FOR THE COUNTY OF WASHOE

8 THE STATE OF NEVADA,
Plaintiff,

9 vs.
10 EDWARD ALLEN WILKINSON aka
NOLAN EDWARD KLEIN,
Defendant.

MOTION FOR DISCOVERY
AND PRODUCTION OF
EXCULPATORY MATERIALS

12 The above-named Defendant, by and through the Washoe
13 County Public Defender's Office, moves this Honorable Court for
14 an Order granting discovery pursuant to NRS 174.235 and NRS
15 174.245.

16 Further, pursuant to Brady v. Maryland, 373 U.S. 83,
17 83 S. Ct. 1194 (1963), and its progeny, Defendant moves for an
18 Order directing the prosecution to disclose and produce for
19 inspection and copying all materials in the possession of the
20 prosecution, or others, which may be favorable to the Defendant
21 and be material to the issue of guilt or punishment, or
22 exculpate the Defendant's involvement in the criminal acts
23 charged by weakening or affecting any evidence proposed to be
24 introduced against the Defendant, or in any manner may aid
25 Defendant in the ascertainment of the truth. Said disclosure
26 and production to be made without regard to whether the evidence

1 to be disclosed and produced is deemed admissible at trial
2 herein.

3 Defendant respectfully requests that said production
4 and disclosure include, but not be limited to, the following
5 evidence.

6 1. Any written or recorded statements or, OK
7 confessions or admissions attributed to the Defendant, or copies
8 thereof, within the possession, custody or control of the
9 prosecution or their agents. (NRS 174.235);

10 2. All physical and tangible evidence obtained by
11 any law enforcement agency, including, but not limited to, the
12 Washoe County Sheriff's Department, Reno Police Department,
13 Sparks Police Department, or any other agents of the Washoe
14 County District Attorney; further, to produce and itemize any
15 and all evidence in possession of the State or its agents or
16 evidence recovered from the person, vehicle or residence of the
17 Defendant when apprehended or thereafter (NRS 174.245);

18 3. Results or reports of physical or mental
19 examinations, and of scientific tests or experiments made in
20 connection with this case, or copies thereof (NRS 174.235); note

21 4. Copies of all photographs or diagrams taken in
22 connection with this action (NRS 174.244); No such pictures

23 5. All statements of witnesses or reports thereof,
24 that in any way show favorably upon the Defendant's character or
25 guilt or innocence or possible punishment (Brady, supra; United
26 States v. Agurs, 427 U.S. 97, 96 S.Ct. 2392, 49 L.Ed.2d 342 OK

to
2/2/71
M. J. [unclear]

1 (1976));

2 6. Any and all reports, summaries, or "rap sheets"
3 reflecting the criminal records or past police conduct of the
4 Defendant including prior bad acts (Brady, supra; Agurs, infra;
5 NRS 179A.100 4(b)); NRS 48.045;

6 7. Any information reflecting upon the credibility
7 of any prosecution witnesses, including, but not limited to
8 criminal records, prior inconsistent or contradictory statements
9 (oral or written), and any consideration paid, promised or
10 expected for testimony or information provided, or to be
11 provided, in this case (Brady, supra; Giglio v. U.S., 405 U.S.
12 150 (1972));

13 8. For any other orders as the Court may deem just
14 and proper in the premises; including, that said Order for
15 Discovery be made a continuing one pursuant to NRS 174.295.

16 It is further moved that if the prosecution is unable
17 to determine the materiality or exculpatory nature of the
18 witnesses' statements or other material, it be ordered that said
19 materials be turned over the Court for determination in camera.
20 United States v. Agurs, 427 U.S. 97, 96 S.Ct. 2392, 49 L.Ed.2d
21 342 (1976); United States v. Gardner, 611 F.2d 770 (9th Cir.
22 1980); United States v. Heberman, 583 F.2d 622 (5th Cir. 1978).

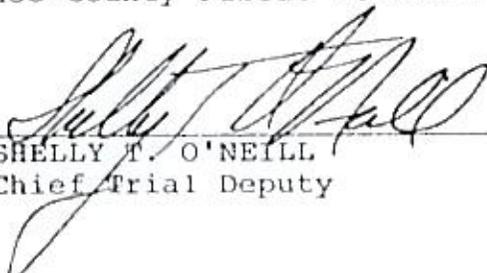
23 This Motion is made pursuant to the Points and
24 Authorities cited herein and upon the ground counsel for
25 Defendant believes production of the aforementioned materials
26

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1 and evidence is necessary for the preparation of the defense
2 under Defendant's constitutional rights to a fair trial and due
3 process of law.

4 DATED this 4th day of November, 1988.

5 DAVID G. PARRAGUIRRE
6 Washoe County Public Defender

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8 By: 
9 SHELLY T. O'NEILL
10 Chief Trial Deputy
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'88 NOV 10 AM 11:03

1 No. CR 88-1692

2 Dept. No.

S. Gray

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6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
7 IN AND FOR THE COUNTY OF WASHOE.

8 * * *

9 THE STATE OF NEVADA,

10 Plaintiff,

11 v.

OPPOSITION TO MOTION
FOR DISCOVERY

12 EDWARD ALLEN WILKINSON,
13 also known as
14 NOLAN EDWARD KLEIN,

15 Defendant.

16 _____
17 COMES NOW, the State of Nevada, by and through MILLS
18 LANE, District Attorney of Washoe County, as prepared and
19 submitted by RONALD C. RACHOW, Deputy District Attorney, and
20 opposes the Motion filed on behalf of the above named Defendant
21 for discovery and production of other items and information.
22 This Opposition is based upon the following Points and
23 Authorities.

24 POINTS AND AUTHORITIES

25 The Defendant appeared for initial arraignment on
26 October 13, 1988, in the Second Judicial District Court. The
arraignment was continued until October 18, 1988, at which time

1 the Defendant entered pleas of not guilty. The Motion for
2 Discovery was filed on November 4, 1988.

3 Criminal discovery in the State of Nevada is
4 controlled by Chapter 174 of the Nevada Revised Statutes. NRS
5 174.285 provides:

6 A motion under NRS 174.235 to 174.295,
7 inclusive, may be made only within ten days
8 after arraignment or such reasonable later
9 time as the court may permit.

10 More than ten days have elapsed since the Defendant's
11 arraignment in district court. In addition, the Defendant did
12 not file a Motion for Discovery until only four working days
13 remained before the scheduled trial date. The State submits
14 that the Motion for Discovery is not timely before the court
15 and should be denied on procedural grounds. Defendant,
16 represented by experienced counsel, has made no representation
17 as to the reason for delay or a reason why this Court should
18 not summarily deny the Motion since the statutory time has
19 passed.

20 The statutory limits of discovery within the State of
21 Nevada are contained in Chapter 174 of the Nevada Revised
22 Statutes and have been upheld by the Nevada Supreme Court.
23 Franklin v. District Court, 85 Nev. 401, 403 (1969). The
24 Motion filed by the Defendant in this case goes beyond pretrial
25 discovery which is authorized under statutory and case law.
26 For that reason, the State of Nevada is hereby opposed to all
requested items which are outside the scope of proper

1 authority.

2 The State is willing to furnish the defense with all
3 discoverable material allowed under NRS 174.235 to and
4 including 174.295.

5 There is no general constitutional right to discovery
6 and any discovery granted by the court should be supported by
7 law. Weatherford v. Bursey, 429 U.S. 545, 97 S.Ct. 837, 846
8 (1977). For discovery to be required under Brady v. Maryland,
9 373 U.S. 83, 83 S.Ct. 1194 (1963), it must be material either
10 to guilt or punishment and must be evidence which is favorable
11 to an accused. Materiality has been further defined as
12 evidence which might have affected the outcome of the trial.
13 United States v. Valenzuela-Bernal, 458 U.S. 858, 102 S.Ct.
14 3440 (1982). United States v. Bagley, 473 U.S. 667 (1985). It
15 should also be remembered that exculpatory material is strictly
16 that which indicates that the defendant did not commit the
17 crime charged. The District Attorney's Office recognizes its
18 responsibilities in this area as well as possible sanctions if
19 materially exculpatory evidence is not provided. Therefore,
20 all material required under Brady and supporting cases will be
21 provided to the Defendant.

22 Since discovery is provided for by statutory and case
23 law, it is strongly urged that this Court closely adhere to
24 those parameters in allowing pretrial discovery. The State
25 would decline to provide any requested items not within the
26 boundary of the above cited authority and respectfully requests

1 this Court rule in a manner consistent with the authority cited
2 above.

3 RESPECTFULLY SUBMITTED this 9th day of November,
4 1988.

5 MILLS LANE
6 District Attorney

7
8 By Ronald C. Rachow
9 RONALD C. RACHOW
10 Deputy District Attorney
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MILLS LANE
District Attorney

Washoe County District Attorney

Washoe County Courthouse
South Virginia and Court Streets
P.O. Box 11130 • Reno, Nevada 89520

MEMORANDUM

TO: PUBLIC DEFENDER'S OFFICE
Attention: Shelly O'Neill

FROM: RONALD C. RACHOW
Deputy District Attorney

RE: EDWARD ALLEN WILKINSON
aka NOLAN EDWARD KLEIN
CR 88-1692

DATE: November 10, 1988

Attached to this memo, please find materials that may be exculpatory and/or statements of the Defendant. This information is provided to you pursuant to Nevada Revised Statutes Chapter 174 and Brady v. Maryland. I have also attached a copy of the rap sheet of the Defendant.

I have reviewed my file as of November 9, 1988, and believe that the attached material is all that falls within statutory discovery and Brady. If I discover any other material that arguably falls within Brady or within the provisions of the Nevada Revised Statutes, it will be provided to you in an expeditious manner.

MILLS LANE
District Attorney

By _____
RONALD C. RACHOW
Deputy District Attorney

10-58-4
Enclosures

0181

Dr
Rachow

FILED

'88 DEC -8 AIO:15

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Case No. CR88-1692

Dept. No. 7

JUDI BAILEY, CLERK
By V. MUNROE
DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

THE STATE OF NEVADA,
Plaintiff,

vs.

ORDER

EDWARD ALLEN WILKINSON aka
NOLAN EDWARD KLEIN,
Defendant.

_____ /

IT IS HEREBY ORDERED that the Washoe County District
Attorney's Office shall provide the Defendant with the
following discovery:

1. Written or recorded statements or confessions
made by the Defendant, or copies thereof, within the
possession, custody or control of the State, the existence of
which is known, or by the exercise of due diligence may become
known, to the District Attorney; and

2. Results or reports of physical or mental
examinations, and of scientific tests or experiments made in
connection with the particular case, or copies thereof, within
the possession, custody or control of the State, the existence
of which is known, or by the exercise of due diligence may
become known, to the District Attorney.

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As an Advocate for the Innocent I am here to ask this Pardons Board to adopt a policy holding those accountable for misleading the Members of the Pardons Board. The Pardons Board is expected to make a fair, unbiased, informative decision based on the information that is provided to them.

I am now in possession of newly discovered exculpatory evidence as a result of the litigation that Washoe County Assistant District Attorney, Mr. Helzer, said we needed to litigate the disappearance of the missing cigarette filters that Justice Gibbons asked ADA Helzer about.

During the October 29, 2008 Pardons Board hearing in which my innocent brother, Nolan Klein was being considered for a Pardon, his Attorney, Mr. Hager repeatedly stated to this Pardons Board that Mr. Klein has always maintained his innocence and the Parole Board will not grant parole unless he admits guilt. Mr. Hager went on to say and provided to you a copy of the television interview of Washoe County District Attorney, Dick Gammick, who publicly admitted that he had opened up the DNA and tested it. Mr. Hager then demanded to know where the DNA test Results were?

Immediately following Mr. Hager representation of my brother ADA Helzer spoke to the Pardons Board to why Mr. Klein should not be given a Pardon. He went on to say. "Now before I came here, it's kind interesting, but before I even knew this was going to be considered for a Pardon, I was reviewing his file because I wanted to know more about it. I KEPT HEARING THINGS. I went over and talked to Commander Asher at the Sparks Police Department." He continued on "And what is amazing to me, is that we have this continued denial in the sense that you are SUPPOSE TO BUY INTO IT.

On June 10, 2009 for the first time the Defense saw evidence that the prosecutor Ron Rachow hid from us. And after 21 years of incarceration it finally saw the light of day with Mr. Rachow's personal handwritten notes on it.

According to Commander Asher's report it would appear to be the THEORY OF THE Sparks Police Dept. that Mr. Zarsky committed this crime for which my brother was convicted of. In the documents provided to you the Prime Suspect's report of Zarsky refers to other crimes and the other victims that they believed Mr. Zarsky committed too. However, those victims from those crimes had cleared my brother and his car.

Don't you believe that as an Officer of the court ADA Helzer had a responsibility to speak the truth to you and the truth would be to inform you that while reviewing the file there was evidence that another person had committed the crime thus supporting my brother's claim of innocence? Clearly this information that has been withheld from us for all of these years is in violation of Brady and ADA Rachow makes a reference to Brady.

I ask that the Pardons Board adopt a policy, that when an inmate who maintains their innocence and appears before you, the District Attorney MUST DISCLOSE any evidence that was located in the file and inform the Pardons Board whether or not the evidence in the file was actually turned over during Discovery. If they do not and it is discovered that they new about this and deliberately withheld it they must be sanctioned and or disbarred and this must be carried out.

Tonja Brown
2907 Lukens Lane
Carson City, NV 89706

NOTE: Additional newly discovered evidence was found in this file, showing that a Fallon Police Officer contacted the Sparks Police Dept the day after the crime, this officer recognized a man hitchhiking carry a blue suitcase out of town that resembled the composite sketch of the suspect that was just released. . This report was hidden from the defense for 21 years. Other exculpatory evidence pertaining to states witnesses were also found in this file, again hidden from us for 21 years. There is no doubt that all of this hidden evidence would have changed the outcome of the verdict, especially, since the jury was DEAKLOCED to begin with. I have spoken to some members of the jury.

PAYLESS SHOES/RODELA, THERESA 543 E. PRATER

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 1/2" 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.

IS INFORMATION PROVIDED BY _____ ON _____ IS RESTRICTED AS TO USE AND DISSEMINATION

- This Offense is now
- founded
- cleared by Arrest
- cleared otherwise
- not cleared
- ineffective

Officer ASHER #4534 Patrol

Date 5/10/88

Investigating Officer

Sgt. [Signature] 3575
Supervisor Approving



PROSECUTOR

Exhibit 1

SPARKS POLICE DEPARTMENT

SUPPLEMENTAL OR CONTINUATION REPORT

SEXUAL ASSAULT ESS SHOES/RODELA, THERESA	Date of original report 5/9/88	Case number 88-4892
	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.

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.

*appr 21st - victim cleared Nolan
withheld from defense too*

IS INFORMATION PROVIDED BY _____ ON _____ IS RESTRICTED AS TO USE AND DISSEMINATION

This Offense is now

Infounded

Seared by Arrest

Seared Otherwise

Not Cleared (inactive)

Officer ASHER #4534 Patrol
Investigating Officer
Sgt. [Signature] 3875
Supervisor Approving

Date 5/10/88
Date 5/10/88

5B

PARKS POLICE DEPARTMENT

3

SUPPLEMENTAL OR CONTINUATION REPORT

Type of original report Sett Ass / Arm Rob	Date of original report 5-10-88	Case number 88-4892
Victim of complaint	Location of original occurrence 543 E. Patten	Date and time of supplement 5-11-88 0800

Additional details of offense, progress of investigation, etc

I RECEIVED A PHONE CALL FROM DEPUTY MIKE JUDG OF CHURCHILL COUNTY S.O. JUDG STATES THAT 5-10-88 WHILE COMING INTO TOWN HE OBSERVED A SUBJECT MATCHING THE COMPOSITE HITCHHIKING SOUTH OUT OF FALLEN. JUDG STATES THAT HE LOOKED LIKE THE COMPOSITE AND WAS CARRYING A BLU SUITCASE. THE TIME OF THIS WAS DURING THE MORNING. I CONTACTED BOXX AND ADVISED HIM.

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

[Signature] 9387
Investigating Officer

[Signature] 9427
Supervisor Approving

Date 5-11-88

Date 5.11.88

0095

1 CARSON CITY, NEVADA, WEDNESDAY

2 OCTOBER 29, 2008, 2:40 P.M.

3 -oOo-

4 AGENDA ITEM II

5 -oOo-

6 ITEM H

7 NOLAN KLEIN

8 NDOC #28074

9 -oOo-

10 GOVERNOR GIBBONS: We will undertake now
11 the request of Inmate Nolan Klein, No. 28074.

12 The record will reflect Mr. Klein is
13 present and represented by his attorney, Robert Hager.
14 Mr. Hager, you have something you wish to contribute
15 to the Board.

16 MR. HAGER: I do. Thank you. First I'd
17 like to inform you that Mr. Klein has MRSA and a lot
18 of the documents I submitted to you are medical
19 records. I didn't submit all of those to you for you
20 to look at each page, but for you to see the amount of
21 medical records for Mr. Klein over the last -- since
22 November of last year. The cost of his medical
23 treatment has been \$130,000.

24 During one of his hospitalizations, and
25 the psychological report reflects this, Mr. Klein was

1 near death and not expected to live. He has one foot
2 in the grave as he is here today.

3 What we're asking you to do is to commute
4 his sentence to time served. We feel that the
5 humanitarian aspect in this case is vital.

6 Mr. Klein was honorably discharged from
7 the military, and he's eligible for treatment by the
8 VA. If he drinks or takes any drugs, because of MRSA,
9 he will die. So it is the ultimate protection against
10 any drinking or drug use.

11 I'd like to go through, I notice a lot of
12 materials in this report, but I would like to go
13 through some of those materials, and I hope you all
14 received this letter from Eng Counseling in which the
15 issue of antisocial personality disorder is addressed.
16 And also the issue of whether Mr. Klein's failure to
17 admit guilt affects any risk of recidivism.

18 If you look at the psychological reports,
19 and in this case there is a dissenting report by
20 Dr. Scofield, what those reports clearly reflect is
21 that Mr. Klein's refusal to admit guilt has weighed
22 heavily with regard to the diagnosis of antisocial
23 personality disorder and with regard to his risk to
24 re-offend.

25 In the report by Eng Counseling, you see

1 that it is stated that the answer to the first
2 question posed there, if you have that report in front
3 of you, there is no positive research available in the
4 field of the treatment of sex offenders indicates that
5 the treatment effect found in those who admit sex
6 crimes is the same for those who deny.

7 The answer to the second question with
8 regard to the antisocial personality disorder
9 diagnosis, two out of the three psychologists
10 concluded that with regard to Mr. Klein, is that it's
11 internally inconsistent to say that Mr. Klein has no
12 obvious symptoms of major medical illness and he has
13 antisocial personality disorder.

14 Furthermore, specifically with regard to
15 the antisocial personality disorder, it was found that
16 Mr. Klein demonstrates no obvious symptoms of any
17 major mental illness.

18 One of the reasons why the risk assessment
19 in this case was written the way that it is, is
20 because Mr. Klein has not had the availability of sex
21 offenders treatment in the prison system because he
22 has maintained his innocence. He has maintained his
23 innocence since day one, since the day he was
24 arrested.

25 He sent a letter shortly after he was

1 convicted requesting that the evidence be preserved in
2 this case. That evidence also included two cigarette
3 butts with filters that the victims in the case said
4 that the perpetrator had smoked. Those cigarette
5 butts were removed from evidence without a court order
6 and are not available for testing.

7 Included within the materials that I
8 submitted to you is a letter from Barry Scheck of the
9 Innocence Project offering to represent Mr. Klein if
10 he could provide evidence that could be tested with
11 new DNA technology. That evidence is not there.

12 Also included in your documents are an
13 affidavit from my law partner who went to the evidence
14 locker and saw that the evidence post trial had been
15 taken out of the evidence locker by the District
16 Attorney, and that instead of those two cigarette
17 filters that could have been used to exonerate,
18 tested, and if the DNA was not Mr. Klein's, would have
19 exonerated him, what is instead there now is some
20 loose cigarette tobacco and some paper.

21 How that can happen is beyond me. How one
22 party can have access to evidence post trial and go in
23 and remove that evidence, whether it is defense or the
24 state, I don't understand. It would be like me going
25 in and switching evidence after a trial and placing

1 somebody else's cigarettes in instead of my client's.
2 It should never happen. But that's what happened in
3 this case.

4 Because Mr. Klein has maintained his
5 innocence since the time of his arrest, and because
6 that evidence that could prove his innocence is no
7 longer available, he'll die in prison if this Board
8 doesn't commute his sentence. Because he will never
9 admit that he committed these crimes.

10 I have had conversations with him. I have
11 encouraged him to just admit. He won't do it. The
12 Parole Board has made it clear that so long as he
13 denies that he committed these crimes, he will never
14 be paroled.

15 You are all familiar with the laws related
16 to spoilation of evidence and that when evidence is
17 spoiled, it is to be inferred against the party who
18 had control of that evidence. In this case Mr. Klein
19 and his attorney never had control over that evidence.
20 The state did.

21 So we find ourselves here today with
22 someone -- and now I can go through what he's done in
23 prison, but that is really what is dramatically
24 different about this case than what you have heard in
25 the other cases. Mr. Klein, if you ask him, will you

1 admit here today that you did this and we will let you
2 out of prison, he will tell you no. It's not
3 defiance.

4 He was convicted once before of battery
5 and did a prison term when he found his wife in bed
6 with another man. He immediately pled guilty and he
7 admitted that he did that. If you ask him today, he
8 will admit that he did that, but he will never admit
9 that he committed these other crimes.

10 Now it's not just the affidavit of my law
11 partner that reflects that the District Attorney's
12 Office removed these items from evidence. I have
13 here, if it is disputed, a portion of a videotape
14 interview of the District Attorney in Washoe County
15 stating a few weeks ago on TV that of course that
16 evidence is not there, it was tested.

17 Where is the report? Where is the report
18 of the testing of those cigarette filters? It's never
19 been produced. It would either be Brady material and
20 exculpatory or it would be incriminating.

21 I'll wrap up by telling you some of the
22 things that Mr. Klein has done since he's been in
23 prison. And I have gone in the materials past -- I
24 apologize, it is not Bates numbered -- but it is after
25 the end of the medical records. You will see some

1 photographs there relating to the evidence. I
2 understand that they are difficult to see, except you
3 can see clearly a cigarette filter in one of the
4 photographs.

5 The next thing you see is a November 25th,
6 1995, letter from the Innocence Project signed by
7 Barry Scheck stating that they would be interested in
8 taking Mr. Klein's case. Mr. Klein immediately filed
9 a motion to have these cigarette filters -- am I out
10 of time?

11 GOVERNOR GIBBONS: You have one minute,
12 Mr. Hager.

13 MR. HAGER: To have these cigarette
14 filters tested, but they are no longer available.

15 In the materials you also see that
16 Mr. Klein completed a legal assistant paralegal course
17 with Blacks Home School of Law. He completed another
18 paralegal course at Mountain High School, White Pine
19 County School District. He also completed a paralegal
20 diploma at the Northern Nevada Community College in
21 White Pine County School District in July of 1992.

22 He's participated in Vietnam Veterans of
23 America, and he's also been active in the largest
24 fundraiser ever in the Breast Cancer Foundation in
25 2003. Thank you.

1 GOVERNOR GIBBONS: Thank you, Mr. Hager.
2 Is there any member of the District
3 Attorney's Office here present wishing to speak in
4 opposition to this motion?

5 MR. HELZER: There is, Governor Gibbons.
6 John Helzer on behalf of the Washoe County District
7 Attorney's Office.

8 And again, I'd like to thank the members
9 of the Pardons Board for this opportunity.

10 Without going into great detail, there's
11 been a lot of litigation in this case, a lot of
12 litigation. There have been a lot of accusations.

13 We're here to determine whether in fact
14 this individual, this defendant, should be granted the
15 relief he's requested. And it's interesting, that
16 relief is telling because, yes, this defendant will
17 not admit. That doesn't mean he didn't do it. But he
18 will not admit.

19 And so he found himself kind of boxed
20 because after much effort, he ends up, as he
21 acknowledges in his application, that the Parole Board
22 is never going to turn him loose, because since he
23 won't admit, he will not meet the psychological
24 criteria to be released.

25 So what he has to do is come in front of

1 the Pardons Board and say, You are my last hope. I
2 want you to give me -- I thought it was a term of
3 years requested, now I hear it is just time served --
4 I want you to give me basically a ticket out of here,
5 without having to admit, with no tail, and so that
6 there will be no supervision, there will be no
7 admission, there will be no requirement that he
8 actually ever comes to grips with what he did.

9 And what he did is no mystery. Payless
10 Shoes in Sparks.

11 Now before I came here, it's kind of
12 interesting, but before I even knew this was going to
13 be considered for pardon, I was reviewing his file
14 because I wanted to know more about it. I keep
15 hearing things. I went over and talked to Commander
16 Asher at the Sparks Police Department, had my intern
17 kind of highlight in all of the statements as best he
18 could, and then I went through it.

19 The victims in this case, we have an
20 18-year-old young woman and we have a 21-year-old
21 young woman that work at Payless Shoes. And the
22 defendant comes in, the one is washing the window as
23 soon as you come in, and he has a knife in her.
24 Pushes her in. Isolates them.

25 Because the issue here is identity; right?

1 Think about this. He puts them into like a bathroom
2 or storage closet. I mean, because they pretty much
3 are a chattel at that point until he goes and picks
4 one out. The 21-year-old, you are going to come with
5 me on the floor, sexually assaulted.

6 How long do you think that took?

7 Well, it was about 20 minutes before he
8 retrieved one, one young woman from that room. And
9 then there was a sexual assault. And then there was a
10 placing of this individual back into the room with the
11 other victim.

12 Do you think they could ID that
13 individual? Do you think they know who locked them
14 up, who stabbed, put the knife to them, who raped
15 them? Do you think they know? That's this case.

16 And what is amazing to me, what is amazing
17 to me is that we have this continued denial in the
18 sense that you are supposed to buy into it. And we're
19 supposed to actually consider letting him have time
20 served and walk out of here.

21 All I have heard today from many members
22 of this Board is the value of admission, the value of
23 having -- even if it is a close call. I have heard
24 the discussions that have been going on saying, well,
25 he is just going to go to the Parole Board and they

1 won't let him go unless there are safeguards and our
2 community has some assurances that there will be some
3 protections. That is not what he says. He wants it
4 all or nothing.

5 It's time for Mr. Klein to realize he did
6 it. And it's time for you to send the message to him
7 we know you did it. Do not grant the request. Thank
8 you.

9 GOVERNOR GIBBONS: Thank you, Mr. Helzer.

10 CHIEF JUSTICE GIBBONS: Mr. Helzer, what
11 about the cigarette issue?

12 MR. HELZER: Well, Your Honor, I wasn't
13 really prepared for an appeal. I do know that is an
14 accusation, and those are the types of things that we
15 see are available for review through numerous, whether
16 it is the state court, the federal courts. There has
17 been a lot of litigation in this case.

18 And to come forward and just say that
19 there is this evidence problem, well, then go litigate
20 it. But don't come in and say that is a reason to sit
21 there and give him time served, just because they say
22 that and because they say it is of significance. Not
23 at all.

24 I thought it was interesting the comment
25 when counsel said, he told him, I said, just admit it.

1 He didn't say, just tell them. He said, just admit
2 it.

3 GOVERNOR GIBBONS: Is there any member of
4 the family or victim here present to testify in
5 opposition to this motion?

6 Any member of the Board have a question?
7 Hearing none, is there a motion by the Board?

8 JUSTICE SAIITTA: Governor, I'll move to
9 deny.

10 JUSTICE CHERRY: I'll second. Justice
11 Cherry.

12 GOVERNOR GIBBONS: Motion made by Justice
13 Saitta, seconded by Justice Cherry.

14 Any comment or question by any member of
15 the Board on the motion?

16 Hearing none, Mr. Secretary, call the
17 roll.

18 MR. SMITH:

19	JUSTICE SAIITTA:	Yes.
	JUSTICE CHERRY:	Yes.
20	JUSTICE PARRAGUIRRE:	Yes.
	JUSTICE HARDESTY:	Yes.
21	CHIEF JUSTICE GIBBONS:	Yes.
	ATTORNEY GENERAL MASTO:	Yes.
22	GOVERNOR GIBBONS:	Yes.

23 MR. SMITH: Motion carries.

24 GOVERNOR GIBBONS: Request is denied.

25

1 STATE OF NEVADA,)
2) ss.
3 COUNTY OF WASHOE.)
4

5 I, ERIC V. NELSON, Certified Court
6 Reporter and a notary public in and for the County of
7 Washoe, State of Nevada, do hereby certify:

8 That I was present at the meeting of the
9 NEVADA BOARD OF PARDONS on Wednesday, October 29,
10 2008, and thereafter took stenotype notes of the
11 proceedings, and thereafter transcribed the same into
12 typewriting as herein appears;

13 That the foregoing transcript is a full,
14 true and correct transcription of my stenotype notes
15 of said proceedings.

16 Dated at Reno, Nevada, this 11th day of
17 November 2008.
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21 ERIC V. NELSON, CCR #57
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David Smith explained that there are two processes for victim notification. If an individual is incarcerated and a victim has requested notification of a parole hearing, the Pardons Board staff retains that information for future use and will notify the victim if the offender is reviewed by the Pardons Board. The second method is the district attorneys are required by statute to notify victims of applications for pardon.

Attorney General Masto requested the definition of "victim" within the draft regulations (Exhibit C).

David Smith explained that "victim" pertains to its definition in NRS 213.005 (3).

Governor Gibbons asked the Board members if any of them would like to participate in the work group covering the new NAC draft regulations (Exhibit C).

Chief Justice Hardesty, Attorney General Masto and Justice Gibbons agreed to participate in the review of the draft regulations.

Governor Gibbons also stipulated that any changes to NAC by the work group should mandate that the Board will meet no less than twice annually.

Item V Public Comment

Ms. Tonja Brown presented the Board with (Exhibit F) and requested the Board to adopt a policy holding those accountable for misleading members of the Board during the process of decision making.

Ms. Teresa Werner presented the Board with an additional handout (Exhibit G) and spoke in support of aggregating sentences.

Item VI Adjournment

Motion: To adjourn meeting

Motion made by: Justice Saitta

Seconded by: Justice Gibbons

The motion carried unanimously.

The meeting adjourned at 9:17 AM.