

IN THE SUPREME COURT OF THE STATE OF NEVADA

* * *

NORMAN K. FLOWERS,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

Electronically Filed
Case No. 55759
May 27 2010 04:01 p.m.
(Dist. Ct. No. C228755)
T. K. Linden

Case No. 53159
(Dist. Ct. No. C228755)

APPELLANT'S SUPPLEMENTAL APPENDIX

VOLUME 4

APPEAL FROM ORDER DENYING MOTION FOR NEW TRIAL

DAVID M. SCHIECK
SPECIAL PUBLIC DEFENDER
RANDALL H. PIKE
DEPUTY SPECIAL PUBLIC DEFENDER
JONELL THOMAS
DEPUTY SPECIAL PUBLIC DEFENDER
330 S. THIRD STREET, 8TH FLOOR
LAS VEGAS, NEVADA 89155

ATTORNEYS FOR APPELLANT

DAVID ROGER
DISTRICT ATTORNEY
200 LEWIS AVE., 3RD FLOOR
LAS VEGAS NV 89155

CATHERINE CORTEZ-MASTO
NEVADA ATTORNEY GENERAL
100 N. CARSON STREET
CARSON CITY, NV 89701

ATTORNEYS FOR RESPONDENT

INDEX

<u>VOLUME</u>	<u>DOCUMENT NAME/FILE DATE</u>	<u>PAGE NO.</u>
4	CRIMINAL COURT MINUTES (3/17/2010) (N/A)	688
4	MOTION FOR NEW TRIAL BASED UPON NEWLY AVAILABLE EVIDENCE, SPECIFICALLY THE CONVICTION OF GEORGE BRASS FOR MURDER (3/4/10)	663-66
4	NOTICE OF APPEAL (4/1/10)	684-85
4	OPPOSITION TO DEFENDANT'S MOTION FOR NEW TRIAL (3/9/10)	667-78
4	ORDER DENYING DEFENDANT'S MOTION FOR NEW TRIAL (4/24/10)	686-87
4	RECORDER'S TRANSCRIPT OF DEFENDANT'S MOTION FOR NEW TRIAL BASED UPON NEWLY AVAILABLE EVIDENCE HEARD ON 3/17/10 (3/23/10)	679-83

CERTIFICATE OF SERVICE

The undersigned does hereby certify that on the 27 day of MAY, 2010 a copy of the foregoing Appellant's Supplemental Appendix was served as follows:

BY ELECTRONIC FILING TO

District Attorney's Office
200 Lewis Ave., 3rd Floor
Las Vegas, NV 89155

Nevada Attorney General
100 N. Carson St.
Carson City NV 89701

/s/ RANDALL H. PIKE

RANDALL H. PIKE

FILED

MAR - 4 2010

Alison L. Johnson
CLERK OF COURT

1 0001
 2 DAVID M. SCHIECK
 3 SPECIAL PUBLIC DEFENDER
 Nevada Bar No. 0824
 4 RANDALL H. PIKE
 Assistant Special Public Defender
 Nevada Bar No. 1940
 5 CLARK W. PATRICK
 Deputy Special Public Defender
 Nevada Bar No. 9451
 6 330 S. Third Street, Suite 800
 Las Vegas, NV 89155-2316
 7 (702) 455-6265
 (702) 455-6273 fax
 8 rpike@co.clark.nv.us
 cpatrick@co.clark.nv.us
 9 Attorneys for Flowers

10 DISTRICT COURT
 11 CLARK COUNTY, NEVADA

12 THE STATE OF NEVADA,)
 13 Plaintiff,) CASE NO. C228755
 14 vs.) DEPT. NO. VII
 15 NORMAN FLOWERS,)
 16 Defendant,)

17 **MOTION FOR NEW TRIAL BASED UPON NEWLY AVAILABLE EVIDENCE,**
 18 **SPECIFICALLY THE CONVICTION OF GEORGE BRASS FOR MURDER**

19 DATE OF HEARING:
 20 TIME OF HEARING:

21 COMES NOW, Defendant NORMAN KEITH FLOWERS, by and through his attorneys,
 22 DAVID M. SCHIECK, Special Public Defender, RANDALL H. PIKE, Assistant Special Public
 23 Defender, and CLARK W. PATRICK, Deputy Special Public Defender, and hereby moves this
 24 Court pursuant to NRS 176.515 for a new trial based upon the conviction of GEORGE
 25 BRASS, an alternate suspect in this case for a Murder.

26 This Motion is made and based on the pleadings and papers on file herein; the Points and
 27 Authorities and Affidavit of Counsel attached hereto; and the argument of counsel at the
 28 hearing of the Motion.

1 **NOTICE OF MOTION**

2 TO: THE STATE OF NEVADA, Plaintiff; and

3 TO: DISTRICT ATTORNEY'S OFFICE, Plaintiff's attorneys:

4 YOU WILL PLEASE TAKE NOTICE that the undersigned will bring the foregoing Motion
5 for new trial based upon available evidence, specifically the conviction of George Brass for
6 murder on for hearing before the above-entitled Court on the 17 day of March 2010, at the
7 hour of 8:45 a.m.

8 **POINTS AND AUTHORITIES**

9 **FACTUAL BACKGROUND**

10 The State's initial theory in this case, as evidenced in it's Motion to admit other bad
11 acts, was that there was a confederate of the Defendant, and that he was the source of the
12 unknown DNA. The State, shortly prior to trial and after the disclosure of George Brass's
13 contact with Ms. Quarles prior to her death appropriately amended its Information regarding
14 the presence or involvement of a third party. The Court also heard the evidence regarding
15 Jesse Nava, who was in possession of the stereo or "a stereo" after the death of Ms. Quarles.
16 The Jury found did not convict the Defendant of the Robbery Count.

17 On October 20, 2009, after the trial of the Defendant Flowers, George Brass was
18 convicted by a jury verdict of Murder in the First degree, Attempt murder, Robbery and other
19 charges in case no. 09-C-253756-C. This conviction, if available for impeachment, certainly
20 would have been a significant factor in the jury's deliberations and, based upon this
21 information, it is more than arguable that the jury may have not found defendant Flowers guilt
22 beyond a reasonable doubt.

23 As the Court will recall, After the Court issued it's ruling on the Defendant's motion in
24 limine wherein the Court determined that the matters involving Marilee Coote would be
25 admissible, the State of Nevada identified the source of the second DNA, a George Brass.
26 Mr. Brass provided the allowed statement to Detective Sherwood. A crime scene analyst
27 collected 21 samples for fingerprint examinations. 2 App. 414. Prints were found on nine of
28 those items. 2 App. 420. None of the prints belonged to Keith Flowers.

1 This information and the additional information from Mr. Brass about the length of his
2 relationship with Ms. Quarles directly contradict the State's announced premiss at the time of
3 the hearing that Ms. Quarles was strictly involved with women. Mr. Brass's relationship was
4 not known to Ms. Quarles mother. It took over 3 years and additional investigation based in
5 part on the information provided at the arguments for the Detectives to confront Mr. Brass and
6 do the necessary DNA work. Mr. Brass was not in CODIS, due to his not yet being convicted
7 on his pending armed robbery and murder charges. The fingerprints located at the scene that
8 did not match Flowers were not compared to Mr. Brass. Items taken from the apartment,
9 including a stereo and cell phone, were never found by police officers. 3 App. 517, of course,
10 Mr. Brass' residence or vehicle was never searched as he was not identified until shortly
11 before trial.

12 ARGUMENT

13 NRS 176.515 states that:

14 "1. The court may grant a new trial to a defendant if required as a matter of
15 law or on the ground of newly discovered evidence.

16 FLOWERS asserts, that the where, as here, identity is a crucial issue and the
17 evaluation of testimony by the jury relating to it is a matter of constitutional magnitude,
18 specifically invoking due process rights. Lee v. United States, 388 F.2d 737 (9th Cir.
19 1968)..Cited in State v. Crockett, 84 Nev. 516, 519 (Nev. 1968). In determining whether or
20 not the newly available evidence is sufficient to require the granting of a motion for a new
21 trial, the Court, indicated that the evidence, as required under State v. Stanley, 4 Nev. 71
22 (1868), and State v. Orr, 34 Nev. 297, 122 P. 73 (1912), the evidence is not one of "mere
23 impeachment, but goes to the essence of [the defendant's] guilt or innocence." Under this
24 a murder conviction would certainly be of the nature that exceed "impeachment". This is
25 something that seems so significant that it would be appropriate to determine that a new
26 trial is required. As the Court stated in State v. Crockett, 84 Nev. 516, 519 (Nev. 1968).
27 for new trial to be granted, "the trial judge must review the circumstances in their entire
28 light, then decide whether the new evidence goes to the **essence** of the defendants

1 finding of guilt by the jury. The Court disapproved of the "semantic distinction between
2 *might and probably*".

3 This information, when juxtaposed with the admission of just a portion of the
4 Defendant's statement (see defendants motion for a new trial exhibit D) regarding this case
5 involving what the defendant feels evolved into an improper comment on Flowers invocation
6 of right to counsel, and his silence in violation of the Fifth Amendment, and Brass' silence for
7 almost three years further evinces the necessity for a new trial.

8 **CONCLUSION**

9 It is respectfully requested that based on the foregoing argument, this Court grant
10 Mr. Flowers a new trial.

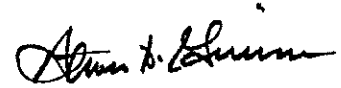
11
12 DATED this 5th day of March 2010.

13
14 RESPECTFULLY SUBMITTED:

15 DAVID M. SCHIECK
16 SPECIAL PUBLIC DEFENDER

17 

18 RANDALL H. PIKE
19 CLARK W. PATRICK
20 330 S. Third Street, Ste. 800
21 Las Vegas, NV 89155-2316
22 Attorneys for FLOWERS
23
24
25
26
27
28



CLERK OF THE COURT

1 **OPPS**
2 DAVID ROGER
3 Clark County District Attorney
4 Nevada Bar #002781
5 PAMELA WECKERLY
6 Chief Deputy District Attorney
7 Nevada Bar #006163
8 200 Lewis Avenue
9 Las Vegas, Nevada 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

12 THE STATE OF NEVADA,
13)
14)
15)
16)
17)
18)
19)
20)
21)
22)
23)
24)
25)
26)
27)
28)
Plaintiff,

CASE NO: C228755

-vs-

DEPT NO: VII

NORMAN FLOWERS,
#01179383
Defendant.

OPPOSITION TO DEFENDANT'S MOTION FOR NEW TRIAL

DATE OF HEARING: 3/17/10
TIME OF HEARING: 8:45 A.M.

COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through PAMELA WECKERLY, Chief Deputy District Attorney, and hereby submits the attached Points and Authorities in Opposition to Defendant's Motion For New Trial.

This opposition is made and based upon all the papers and pleadings on file herein, the attached points and authorities in support hereof, and oral argument at the time of hearing, if deemed necessary by this Honorable Court.

///

///

///

///

///

1 STATEMENT OF FACTS

2 Marilee Coote

3 On May 3, 2005, Silver Pines Apartments employees discovered 45 year old Marilee
4 Coote lying on her living room floor. Ms. Coote was a reliable employee of the Andre
5 Agassi Center. When she did not arrive at work by 7:30 a.m., a co-worker became
6 concerned and asked the apartment workers to do a welfare check. After the apartment
7 employees discovered the body, they contacted the police.

8 Initially, paramedics arrived, but Ms. Coote was already deceased. Police followed.
9 Ms. Coote was found lying on her living room floor, facing up and completely nude. Inside
10 her belly button were ashes from burnt incense. The skin between her upper thighs and her
11 pubic area was burned. Coote's apartment was locked, but her purse and keys were missing.
12 Inside Coote's washing machine, police found personal photos, bills, and identification
13 belonging to Coote. The items appeared to have been washed because they had a soap
14 residue on them. In the bathtub, under ten inches of water, police found other items of
15 paperwork, a phone book, and jewelry boxes covered with a towel. The apartment was
16 otherwise very neat and undisturbed.

17 The detectives initially did not view this incident as a homicide. Therefore, they
18 documented the scene, but did not collect evidence. After conducting an autopsy, however,
19 Dr. Knoblock concluded the Coote died as the result of strangulation. He also noted tearing
20 of Coote's labia and anal area. Dr. Knoblock concluded that these tears were sustained ante-
21 mortem. Coote also had contusions on her arms and forearms.

22 Ms. Coote was an acquaintance of defendant Norman Flowers's girlfriend, Mawusi
23 Ragland, who also lived in the Silver Pines complex.

24 Juanita Curry

25 While various officers were in Coote's apartment during the morning of May 3, 2005,
26 another resident of the complex, Juanita Curry, came in contact with the defendant, Norman
27 Flowers. This occurred between 7:00 and 10:00 a.m. Curry also was an acquaintance of
28 Flowers's girlfriend, Mawusi Ragland. Curry lived two floors below Coote. Curry noticed

1 the police and paramedics going in and out of Coote's apartment. From apartment
2 employees, Curry believed that Coote died of natural causes. Sometime that same morning,
3 defendant Flowers knocked on Curry's door. He asked if he could use her phone. He said
4 he was supposed to meet up with Mawusi that morning. She agreed and gave him the phone.

5 Curry is physically disabled and sometimes walks with a cane. Because of her
6 compromised physical state, she was not comfortable allowing Flowers in her apartment, so
7 she let him use her cordless phone in the doorway. After Flowers used the phone, he came
8 back a few times later, each time with a new request. He asked to use the phone again. He
9 asked for water. At one point, he asked to use her bathroom. She agreed, but when he went
10 in the bathroom, she stepped out of the apartment. As she did so, he asked her to come in
11 and help him find the bathroom light. She refused. When Flowers was at her doorstep, she
12 also noticed that when the police walked back and forth, he would turn his head away. He
13 commented, "the police make me nervous." During the final conversation in Curry's
14 doorway, Flowers leaned down and tried to kiss Curry on the mouth. She turned away.

15 Curry observed Flowers walk across the parking lot to the doorway of resident Rena
16 Gonzalez's apartment that morning. Curry left the complex a little before 11:00 in the
17 morning. When she returned, she learned that the police also had discovered the body of
18 resident Rena Gonzalez. She gave a statement to police and identified Mawusi's boyfriend
19 as someone she saw in the area of Rena Gonzalez's apartment.

20 Rena Gonzalez

21 Officers learned of the homicide involving Rena Gonzalez at approximately 4:00 p.m.
22 that same day. Rena Gonzalez's two daughters, the oldest of whom is seven years old, came
23 home from school and found their mother on her knees leaning against her bed in her master
24 bedroom. She was unresponsive. They ran and got their friend, Shayne. Shayne returned
25 with them. They tried to remove a phone cord around Gonzalez's neck and called 911.

26 Gonzalez's apartment was clean and undisturbed with the exception of the following:
27 a broken blue plastic hair comb and a single green sandal were both in the front hallway.
28 Officers could not locate Gonzalez's purse or keys.

1 Gonzalez was at the foot of her bed, with her body bent at the waist. Her upper torso
2 was on the bed with her face down and arms outstretched. A black phone cord and black
3 lanyard were around her neck. She was dressed in shorts, which were slightly pulled down,
4 and a shirt. She had the matching blue hairclip hanging from her hair and blood coming
5 from her ear.

6 At autopsy, Dr. Simms noted extensive bruising to Gonzalez's breast, right arm and
7 right leg. Dr. Simms concluded that Gonzalez died as a result of strangulation. He also
8 noted tearing to her vaginal and anal area. Dr. Simms concluded that these injuries took
9 place post-mortem.

10 Detectives learned that Rena Gonzalez was a close friend of Mawusi Ragland. In
11 fact, the two women would trade off watching each other's children. They determined that
12 Gonzalez had walked her daughters to the school bus the morning of the 3rd and would have
13 returned home around 8:30 a.m. Rena Gonzalez did not work.

14 Mawusi Ragland

15 Mawusi Ragland also lived at the Silver Pines Apartments. She lived in the
16 apartment across from Coote. She told detectives that approximately three weeks before the
17 homicide, she and Flowers had gotten into an argument and had not spoken since. In the
18 argument, Mawusi implied that she would socialize with other men. Mawusi had discussed
19 Flowers with her friend Rena Gonzalez as well, although Flowers and Gonzalez had not met.
20 According to Mawusi, Gonzalez advised her not to date Flowers.

21 When Mawusi returned home on the evening of May 3, she saw police vehicles. She
22 was told her friend, Rena, had been murdered and that her other friend, Marilee, had died of
23 natural causes. On her apartment door, Mawusi noticed a note. It was from Flowers. It
24 stated that he tried to catch her before she went to work, but that it looked like he picked a
25 bad day because "big shit is happening over here." He also asked if she had dated other men
26 since their argument. Flowers called Mawusi that evening. She was very emotional and
27 explained that both Marilee and Rena were dead. Flowers did not appear to be shocked upon
28 hearing this news. She asked him to come over and help her through this difficult time. He

1 told her he'd be right over. When Flowers did not arrive in the next 90 minutes, Mawusi
2 called him to ask where he was. He said he had not left home because when tried to call her,
3 she did not answer her phone. He also mentioned that he had seen Rena that morning and
4 had a short conversation with her. Mawusi asked him what time he was at the complex and
5 Flowers responded, "I didn't kill her."

6 Subsequently, Flowers's DNA sample was compared with swabs from Marilee
7 Coote's sexual assault kit. Both vaginal and rectal swabs matched to Flowers. In addition,
8 DNA was collected from the carpet area where Coote was laying, specifically, the carpet
9 beneath her upper thighs. That sample also matched to Flowers.

10 DNA was found in Rena Gonzalez's rectal swabs. Flowers is excluded as the source
11 of this DNA. In addition, DNA was found on the phone cord around Gonzalez's neck. He is
12 excluded as the source of that DNA as well. The partial profiles obtained from Gonzalez's
13 rectal swabs and the phone cord are consistent with a single male source and appears to be
14 the product of laboratory transfer or contamination. Upon retesting, no indication of the
15 partial male profile was present in the rectal swabs.

16 B. Facts of Case C228755: Sheila Quarles

17 Less than two months prior to the murders of Marilee Coote and Rena Gonzalez, on
18 March 24, 2005, Debra Quarles returned home from grocery shopping to her residence at
19 1001 North Pecos, Las Vegas, Clark County, Nevada, and found her eighteen year old
20 daughter, Sheila Quarles, unresponsive in a bathtub containing very warm water. Debra had
21 returned home at 2:30 in the afternoon. She was able to remove Sheila from the tub with the
22 help of a neighbor who had helped her carry in groceries. Debra immediately called 911.

23 An autopsy later revealed that Sheila died from drowning. However, strangulation
24 was a significant contributing factor to her death. Sheila also had multiple vertical
25 lacerations on her introitus, evidence of a violent sexual assault.

26 Investigation revealed that Sheila spoke to her mother, Debra, at approximately 12:30
27 p.m. and her mother arrived home to find her dead at approximately 2:30 p.m. A stereo was
28

1 also missing from the residence. In addition, detectives learned that Sheila was involved in a
2 lesbian relationship with an individual named Qunise Toney.

3 At autopsy, investigators collected samples from Sheila's vagina. Those swabs
4 contained a mixture of DNA which included semen. Qunise Toney was excluded as being a
5 source of any of this DNA. Sheila Quarles was the major component of the DNA. The male
6 portion of the DNA was entered into a DNA database. When Flowers's DNA sample was
7 collected in connection with the May murders (Coote and Gonzalez), his profile was entered
8 into the DNA database as well. After this entry, investigators were notified that Flowers's
9 profile was consistent with part of the minor component DNA from Sheila Quarles's vaginal
10 swabs. In fact, 99.9934 percent of the population is excluded as being a source of that DNA,
11 but Flowers is not. There was an additional, unknown male contributor to the vaginal swabs
12 of Sheila Quarles as well.

13 After detectives were notified of the DNA match, they recontacted Debra Quarles.
14 Quarles explained that she knew and had actually dated Norman Flowers several months
15 before the murder. She also explained that he would occasionally give her a ride home from
16 her work at the time and that he knew her family members. Quarles said that just prior to the
17 murder, she saw Flowers at her apartment complex. At that time, he explained that he was
18 working in maintenance at the complex. After her daughter's murder, Quarles suffered from
19 depression. Flowers offered to drive her to appointments with her therapist. On several
20 occasions, Flowers inquired to Debra whether the police had figured out who had murdered
21 her daughter.

22 Detectives contacted Flowers at the Clark County Detention Center on August 24,
23 2006. Detectives informed Flowers of his Miranda rights and he agreed to speak with them.
24 During the interview, Flowers said that before he would do anything to assist detectives, "I
25 have to talk to my lawyer first . . .". Upon Flowers's vague comment, conversation
26 continued for about another minute and the interview was terminated. The State admitted
27 Flowers's statement up until he stated, "I have to talk to my lawyer first. . ." in the trial
28 before Judge Bell.

1 In subsequent investigation, police identified the second DNA source from Quarles's
2 vaginal swabs. The DNA was identified to a boyfriend of hers named George Brass. Brass
3 was a friend of Quarles' brother, Ralph Quarles. Sheila Quarles's friends knew she had been
4 having sex with Brass and told the detectives about him. Detectives then spoke to Brass,
5 while he was in custody on unrelated murder charges. Brass voluntarily spoke to detectives
6 and explained that he had sex with Sheila the morning of her murder and then went to work
7 at Wal-Mart. Employment records established that Brass was at work prior to the last
8 conversations Sheila had with her mother and Qunise, meaning Sheila was alive after Brass
9 clocked in at work.

10 At the time of trial before Judge Bell, George Brass was in custody, awaiting trial, on
11 robbery and murder charges. The attorneys representing Defendant Flowers were quite
12 familiar with the case against Brass because their office represented Brass's co-defendant,
13 Eugene Nunnery.

14 Defendant Flowers' attorneys made no motion before Judge Bell under NRS
15 48.045(2) to admit evidence of Brass's conduct in his charged murder and robbery in
16 Flowers' trial. Instead, Flowers' attorneys announced ready for trial and Brass testified for
17 the State while he was awaiting his own trial. It was quite clear to the jury that Brass was in
18 custody when he testified. It was also apparent that it was the State of Nevada who had
19 charged Brass in another crime. Several months after a jury convicted Flowers, Brass
20 proceeded to trial and was convicted.

21 Now, Defendant Flowers moves this Court for a new trial based on alleged newly
22 discovered evidence. The State opposes. Not only is the evidence not newly discovered, it
23 does not amount to a proper legal basis upon which to grant a new trial.

24 ARGUMENT

25 Defendant misleadingly claims that the State's "initial theory" was that Flowers killed
26 Quarles with a confederate. This is incorrect. Well before the time of trial, the State
27 identified Brass as the second DNA source. The State also knew that Brass had an alibi at
28 the time of the murder: he was at Wal-Mart working. Thus, at the time of trial, the State

1 theorized that Quarles voluntarily had sex with Brass before he went to work. Thereafter,
2 Defendant Flowers sexually assaulted and murdered Sheila Quarles. The State's theory was
3 bolstered by the fact that Sheila spoke on the phone after Brass reported to work. The theory
4 was further proven by Dr. Simms's testimony that the sexual assault and murder of Sheila
5 occurred contemporaneously. At trial, the defense sought to blame Quarles's murder on an
6 assortment of other individuals, including Brass. Not surprisingly, blaming Brass was not
7 successful because Brass had an alibi for the sexual assault and murder.

8 A district court may grant a new trial based on newly discovered evidence. NRS
9 176.515(1). The grant or denial of a new trial will not be reversed absent an abuse of
10 discretion. Funches v. State, 113 Nev. 916, 944 P.2d 775 (1997). In order to meet the
11 requirements for a grant of a new trial, the defense must establish the following:

12 [T]he evidence must be newly discovered; material to the defense; such that
13 even with the exercise of reasonable diligence it could not have been
14 discovered and produced for trial; non-cumulative; such as to render a different
15 result probable upon retrial; not only an attempt to contradict, impeach, or
discredit a former witness, unless the witness is so important that a different
result would be reasonably probable; and the best evidence of the case admits.

16 Id. at 923-24, 944 P.2d at 779-80.

17 A. The Fact that Brass Was Involved in An Unrelated Murder is Not New Evidence.

18 At the time of Flowers's trial, George Brass was in custody. As the defense was well
19 aware, Brass was awaiting trial on an unrelated robbery and murder case. Flowers's
20 attorneys were quite familiar with this case because the Office of the Special Public
21 Defender actually represented Brass's co-defendant, Eugene Nunnery. Although aware of
22 Brass's pending case, Flowers's attorneys opted to proceed with trial rather than wait for the
23 outcome of Brass's trial. Thus, at the time Brass testified in the Flowers trial, he was not
24 convicted of robbery and murder. Significantly, had Flowers's attorneys truly believed that
25 the facts of Brass's case were relevant to Quarles's murder, they had the option of filing a
26 motion under 48.045(2) to explain how Brass's conduct in his own case related to the
27 Quarles murder. No motion was ever filed. This is likely because the facts underlying
28 Brass's charges concerned a robbery/murder quite unlike the sexual assault/murder inflicted

1 on Quarles. Flowers had the option of requesting a continuance of his own trial to see if
2 Brass was, indeed, convicted in his case in order to ask him about the charge and year of
3 conviction when he testified in the Flowers case, but he opted not to. See NRS 50.095.
4 Nevertheless, both of these options were readily apparent and existed at the time of
5 Flowers's trial. Thus, the later conviction of Brass is not new evidence. He fails to satisfy
6 the requirements that the evidence must be newly discovered and such that the exercise of
7 reasonable diligence would not have made the evidence known to the defense at the time of
8 trial.

9 2. Brass's Conviction is Not a Sufficient Basis Upon Which to Grant a New Trial. In
10 addition to not being newly discovered evidence, Brass's subsequent conviction would not
11 have changed the outcome at trial. At the time of trial, two male sources of DNA were
12 found in Sheila Quarles's vaginal swabs. One DNA profile was consistent with George
13 Brass. The other was consistent with Defendant Flowers. The State produced lay witnesses
14 who spoke to Sheila after Brass had clocked in at work. The State produced Brass's time
15 card from the day of the murder. In addition, due to a pretrial motion filed by the State, the
16 trial court permitted the State to introduce evidence that Flowers's DNA was found in the
17 vaginal swabs and on the carpet beneath another woman who had been sexually assaulted
18 and murdered: Marilee Coote. The evidence was admitted under 48.045(2).

19 At trial, Brass testified that he was acquainted with Sheila and her family. Brass said
20 that he had sex with Sheila in the morning before she was killed and that he later reported to
21 work that afternoon. Defendant Flowers is not contending that he has any new evidence to
22 dispute Brass's testimony. Thus, it falls short of what is required to warrant a new trial. See
23 Hennie v. State, 114 Nev. 1285, 1290, 968 P.2d 761, 764 (1998) (holding that new
24 information which directly contradicted testimony by key witnesses and which could not
25 have been discovered pretrial was sufficient to justify a new trial).

26 Instead, Defendant Flowers argues that Brass's subsequent conviction for murder may
27 have been helpful to him at trial because the jury would have heard that he had been
28 convicted of murder. Only evidence of Brass's conviction and the year it was sustained

1 could have been admitted by the defense. The defense would have been precluded from
2 arguing that Brass was someone of violent character or that his subsequent conduct related to
3 the murder of Sheila Quarles. See NRS 48.045(1). In addition, Brass's own testimony was
4 not the critical testimony in the case. Dr. Simms testified that the sexual assault and murder
5 were contemporaneous and the State produced lay witnesses who spoke to Sheila after her
6 contact with Brass. The State eliminated Brass as a suspect without Brass's testimony.
7 Thus, Defendant Flowers fails to establish that a different result was probable. See United
8 States v. Steel, 759 F.2d 706, 713 (9th Cir. 1985) (noting that requirement that the newly
9 discovered evidence would probably result in an acquittal is a stringent standard requiring
10 more than mere speculation).

11 **CONCLUSION**

12 Based on the foregoing, the State respectfully asks the Court to deny the instant
13 motion.

14 DATED this 9th day of March, 2010.

15 Respectfully submitted,

16 DAVID ROGER
17 Clark County District Attorney
18 Nevada Bar #002781

19
20 BY /s/PAMELA WECKERLY
21 PAMELA WECKERLY
22 Chief Deputy District Attorney
23 Nevada Bar #006163
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that service of the above and foregoing, was made this 9th day of March, 2010, by Electronic Filing to:

RANDALL PIKE, Deputy Special Public Defender
email: rpike@co.clark.nv.us

CLARK W. PATRICK, Deputy Special Public Defender
email: cpatrick@co.clark.nv.us

/s/Deana Daniels
Secretary for the District Attorney's Office

PW/dd-mvu

COPY

FILED

MAR 23 2 34 PM '10

Ann B. Johnson
CLERK OF COURT

1 TRAN

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

4
5 STATE OF NEVADA,)

6 Plaintiff,)

7 vs.)

8 NORMAN KEITH FLOWERS aka)
9 NORMAN HAROLD FLOWERS, III,)

10 Defendant.)
11)

CASE NO. C228755

DEPT. VII

12 BEFORE THE HONORABLE LINDA MARIE BELL, DISTRICT COURT JUDGE
13 WEDNESDAY, MARCH 17, 2010

14 **RECORDER'S TRANSCRIPT OF**
15 **DEFENDANT'S MOTION FOR NEW TRIAL**
16 **BASED UPON NEWLY AVAILABLE EVIDENCE**

17
18 APPEARANCES:

19 For the State:

PAMELA WECHERLY, ESQ.
Chief Deputy District Attorney

20
21 For the Defendant:

RANDALL H. PIKE, ESQ.
Assistant Special Public Defender
CLARK W. PATRICK, ESQ.
Deputy Special Public Defender

22
23
24
25 RECORDED BY: RENEE VINCENT, COURT RECORDER

1 Wednesday, March 17, 2010 - 9:00 a.m.

2
3 THE COURT: Page 17, State of Nevada versus Norman Flowers,
4 Case Number C228755. Mr. Flowers is not present. He's in custody, in
5 prison.

6 MR. PATRICK: He's in -- yes, Your Honor.

7 THE COURT: Okay. And he's represented by Mr. Patrick and Mr. Pike.
8 State represented by Ms. Wecherly. This is on for a motion for a new trial.

9 MR. PIKE: That's correct, Your Honor. Basically, factually in this case,
10 it was laid out fairly well in the original case -- or our motion as well as the
11 State's response, but it ultimately came down to the question as to which of
12 the two semen donors who actually committed this crime.

13 Now, it wasn't until after Mr. Brass was located some -- almost
14 two years after this happened and after the police had told him that more or
15 less he had immunity from any sort of prosecution that he came forward,
16 admitted that he had had sex with the deceased the morning that she was
17 killed -- or on the day she was killed and --

18 THE COURT: You had that information before trial; right?

19 MR. PIKE: Yes.

20 THE COURT: Okay.

21 MR. PIKE: We had that information. It was given to us totally before
22 trial. And during the course of the trial, the way it would've changed the trial
23 is basically Mr. Flowers did not testify, none of his previous background came
24 into it; and had we been able to impeach the Defendant with a conviction for
25 murder, I definitely think it would've made a difference, along with the fact

1 that there was a robbery associated with it, and there was a robbery charge
2 that was associated with this case.

3 And, in fact, it was the charge of stealing the items or robbery as a
4 motive that ultimately was found -- the Defendant was found not guilty in this
5 case. So it would have had a significant impact, we believe, to the jury, and
6 we would request that based upon that information a new trial be granted.

7 THE COURT: Okay. Ms. Wecherly.

8 MS. WECHERLY: My recollection at trial is different than Mr. Pike's. I
9 actually don't even think they were trying to blame George Brass, the person
10 who eventually sustained a later conviction. At trial they were blaming
11 another individual named Jesse Nava, who actually was deceased at the time
12 of trial.

13 None of this is here nor there because their office was well
14 aware that Mr. Brass had charges against him. He was actually in custody
15 when he testified. Their office represented Mr. Brass' co-defendant on the
16 murder and robbery charge. They opted to go to trial when they did, knowing
17 that Mr. Brass' trial was pending.

18 The other point I would make is that Brass was absolutely
19 excluded as a -- as a suspect in the murder, not because of his own
20 testimony, but because of work records where he was at work at Walmart at
21 a time before the victim was killed. He had a really short, narrow time frame
22 when the murder occurred, and Mr. Brass essentially had an alibi at that time.

23 And the third point I'd like to make is what they're suggesting
24 they would've liked to have argued to the jury would be an improper character
25 argument saying that, well, Mr. Brass had committed a murder, and so it's

1 likely he committed this murder as well, which would've been an improper
2 argument. The only thing they could've used it for was the fact that he had
3 been convicted in the year of conviction.

4 And based on all of that, I don't think respectfully that they've
5 met the standard at all that's required for a new trial.

6 THE COURT: Okay.

7 MR. PIKE: Properly, it would've been argued that we did attack this
8 alibi. It was not as airtight; that it was subject to manipulation that was
9 brought out during cross-examination, and he had the time and the
10 opportunity and the fact that he hid the relationship for two years until after
11 he was given that -- that coverage. And the fact that he had the ability to
12 alter the records regarding his alibi, then the impeachment would've been
13 properly argued in much different light.

14 And so I believe at the time of trial that I would've certainly been
15 able to get into that and argue it properly. So it was not something that
16 would've been automatically excluded from an argument, and I would've
17 phrased in an appropriate fashion.

18 THE COURT: Okay. Well, I appreciate that, Mr. Pike. I don't think,
19 though, that a conviction when he had already been arrested and charged with
20 the crimes and when the Defense had been provided the information
21 constitutes -- under those circumstances constitutes new evidence that would
22 warrant a new trial, so I'm going to deny the motion. Thank you.

23 MR. PIKE: Thank you very much, Your Honor. Would you like us to
24 prepare the order on that?

25 THE COURT: We'll let the -- the State can prepare the order.

1 MS. WECHERLY: Okay. We will. Thank you.

2 MR. PIKE: All right. Thank you.

3 [Proceeding concluded at 9:05 a.m.]
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19

20 ATTEST: I hereby certify that I have truly and correctly transcribed the
21 audio/video proceedings in the above-entitled case to the best of my ability.

22 *Renée Vincent*
23 RENEE VINCENT, Transcriber
24 District Court, Dept. VII
25 (702) 671-4339

ORIGINAL

FILED

APR 1 11 32 AM '10

[Signature]
CLERK OF COURT

1 NOAS
 2 DAVID M. SCHIECK
 3 SPECIAL PUBLIC DEFENDER
 Nevada Bar No. 0824
 4 RANDALL H. PIKE
 Deputy Special Public Defender
 Nevada Bar No. 1940
 5 330 South Third Street, Ste. 800
 Las Vegas, NV 89155-2316
 (702) 455-6265
 6 Fax: 455-6273
rpik@co.clark.nv.us
 7 cpatrick@co.clark.nv.us
 Attorneys for Defendant

8 DISTRICT COURT
 9 CLARK COUNTY, NEVADA

10 THE STATE OF NEVADA,	}	CASE NO. C228755
11 Plaintiff,	}	DEPT. NO. VII
12	}	
13 vs.	}	
14 NORMAN FLOWERS,	}	
15 Defendant.	}	

16 NOTICE OF APPEAL

17 DATE: N/A
18 TIME: N/A

19 TO: THE STATE OF NEVADA, Plaintiff;
 20 TO: DAVID ROGER, DISTRICT ATTORNEY; and
 21 TO: DEPARTMENT VII OF THE EIGHTH JUDICIAL DISTRICT COURT
 OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK

22 NOTICE is hereby given Defendant NORMAN FLOWERS, presently incarcerated in the
23 Nevada State Prison, appeals to the Supreme Court of the State of Nevada from the denial of his

24 ...

25 ...

26 ...

27 ...
28

1.84

1 Motion for New Trial on March 17, 2010.

2 DATED this 1 day of April, 2010.

3 DAVID M. SCHIECK
4 CLARK COUNTY SPECIAL PUBLIC DEFENDER

5
6 By 
7 RANDALL H. PIKE
8 DEPUTY SPECIAL PUBLIC DEFENDER
9 NEVADA BAR #4771
10 330 S. THIRD ST., STE. 800
11 LAS VEGAS, NEVADA 89155-2316
12 (702) 455-6265

13 **CERTIFICATE OF MAILING**

14 The undersigned employee with the Clark County Special Public Defender's Office,
15 hereby certifies that on the 1st day of April, 2010, a copy of the Notice of Appeal was deposited
16 in the United States mail at Las Vegas, Nevada, enclosed in a sealed envelope upon which first
17 class postage was fully prepaid, addressed to District Attorney's Office, 200 Lewis Ave., 3rd
18 Floor, Las Vegas NV 89155; the Nevada Attorney General's Office, 100 N. Carson, Carson
19 City, NV 89701; and Norman Flowers, No. 39975, High Desert State Prison, P.O. Box 650,
20 Indian Springs, Nevada 89070; that there is a regular communication by mail between the place
21 of mailing and the place so addressed.

22 DATED: 4-1-2010

23 
24 KATHLEEN FITZGERALD
25 An employee of The Special Public Defender

108

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

ORDR
DAVID ROGER
Clark County District Attorney
Nevada Bar #002781
PAMELA WECKERLY
Chief Deputy District Attorney
Nevada Bar #006163
200 Lewis Avenue
Las Vegas, NV 89155-2212
(702) 671-2500
Attorney for Plaintiff

FILED

APR 24 8 13 AM '10

Ann. L. Johnson
CLERK OF THE COURT

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,
Plaintiff,

-vs-

NORMAN FLOWERS,
#01179383
Defendant.

Case No. C228755
Dept No. VII

ORDER DENYING DEFENDANT'S MOTION FOR NEW TRIAL

DATE OF HEARING: 03/17/2010
TIME OF HEARING: 8:45 A.M.

THIS MATTER having come on for hearing before the above entitled Court on the 17th day of March, 2010, the Defendant not being present, REPRESENTED BY RANDALL H. PIKE, Deputy Special Public Defender the Plaintiff being represented by DAVID ROGER, District Attorney, through PAMELA WECKERLY, Chief Deputy District Attorney, and the Court having heard the arguments of counsel and good cause appearing therefor,

///
///
///
///

RECEIVED
APR 24 2010
CLERK OF THE COURT

1081


1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS HEREBY ORDERED that the DEFENDANT'S MOTION FOR NEW TRIAL,
shall be, and it is DENIED.

DATED this 10th day of ~~March~~ ^{April}, 2010.


DISTRICT JUDGE

DAVID ROGER
DISTRICT ATTORNEY
Nevada Bar #002781


PAMELA WECKERLY
Chief Deputy District Attorney
Nevada Bar #006163

jh/MVU

District Case Inquiry - Minutes

Home	Case 06-C-228755-C	Just Ct. 06-GJ-00103	Status INACTIVE
Summary	Plaintiff State of Nevada	Case#	Attorney Roger, David J.
Index	Defendant Flowers III, Norman H		Attorney Special Public Defender
Calendar	Judge Bell, Linda		Dept. 7
Continuance	Event 03/17/2010 at 08:45 AM	DEFT'S MTN FOR NEW TRIAL BASED UPON NEWLY AVAILABE EVID/37	
Minutes	Heard By Bell, Linda		
Parties	Officers Tina Hurd, Court Clerk		
Def. Detail	Shelly Landwehr/si, Relief Clerk		
Next Co-Def.	Renee Vincent, Reporter/Recorder		
Charges	Parties 0000 - State of Nevada	No	
Sentencing	S1		
Bail Bond	006163 Weckerly, Pamela C.	Yes	
Alias Detail	0001 - Flowers III, Norman H	No	
Crim. Detail	D1		
Exhibits	SPD Special Public Defender	Yes	
Judgments	001940 Pike, Randall H.	Yes	
District Case	009451 Patrick, Clark W.	Yes	
Party Search	Mr. Pike argued this case involved two semen donors. Mr. Brass did not reveal his relationship with the victim until two years later, after he had been given immunity. It was then that Mr. Brass admitted to having sex with the victim the day she was killed. During the course of the trial, it would have changed the trial had they been able to impeach the Deft. This new evidence would have been significant to a jury. Further arguments regarding the robbery charge and motive.		
Corp. Search	Ms. Weckerly argued the Defense tried to blame Mr. Brass and another individual. Defense went to trial knowing trial of Mr. Brass was pending. Further, Mr. Brass had an alibi; he was at work during the time of the killing. Their argument would have been improper.		
Atty. Search	Further arguments by Mr. Pike regarding the ability of Mr. Brass, to alter the records. Court stated, it did not believe this constitutes new evidence that would warrant a new trial. COURT ORDERED, motion DENIED.		
Bar# Search	NDC		
ID Search	Due to time restraints and individual case loads, the above case record may not reflect all information to date.		
Calendar Day			
Cal. Month			
Holidays			
Logout			
Help			
Legal Notice			