

IN THE SUPREME COURT OF THE STATE OF NEVADA

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Tracie K. Lindeman

NORMAN K. FLOWERS

Appellant,

vs.

THE STATE OF NEVADA

Respondent.

Docket No. 55759

CONSOLIDATED WITH

Docket No. 53159

Direct Appeal From an Order Denying Motion for New Trial
Eighth Judicial District Court
The Honorable Linda Bell, District Judge
District Court No. C288755

APPELLANT'S OPENING BRIEF

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1 **I. INTRODUCTION AND SUMMARY OF THE ARGUMENT**

2 Appellant Norman Keith Flowers was convicted of burglary, sexual assault, and first
3 degree murder (under a felony-murder theory), following the death of Sheila Quarles. 2 App
4 250-251. Sheila drowned in a bathtub, showed signs of strangulation, and was found to have
5 vaginal injuries. Her body contained semen which was identified as belonging to Flowers
6 and George Brass. The State’s theory was that Brass had sex with Sheila a few hours prior
7 to her death and that Flowers subsequently went to her apartment, sexually assaulted her and
8 killed her. Other than the semen, there was no physical evidence that Flowers was in the
9 apartment and no one saw him near or in the apartment the day Sheila was killed. 2 App
10 329-502; 3 App 503-628 George Brass was at the scene of Ms. Quarles death when police
11 were investigating. He did not admit to having sex with her shortly before her death until
12 almost the eve of trial after police advised him that they were not going to prosecute him.
13 2 APP 493-497.

14 After the trial in this matter, George Brass was convicted of an unrelated Murder and
15 Robbery (C253756). Based upon this conviction, the Defendant brought a Motion for a New
16 Trial based upon the newly available evidence. 4 App 663-66 The State opposed the
17 Motion. 4 App 667-78 At the hearing on March 17, 2010, Judge Bell denied the Motion.
18 4 App 686-87; 688.

19 A timely Notice of Appeal was filed on April 1, 2010 from the hearing. 4 App 684-
20 85. Flowers is requesting this Court remand the matter back to the Court below to grant a
21 new trial.

22 **II. STATEMENT OF THE CASE AND JURISDICTIONAL STATEMENT**

23 This is an appeal from a denial of Flowers’ post trial motion for a new trial. This is
24 an ancillary issue that is best considered in conjunction with the pending appeal of the
25 underlying judgment of conviction pursuant to a jury verdict. (Case No. 53159) Flowers
26 adopts and incorporates by this reference the Statement of the Case and Jurisdictional
27 Statement contained in the Opening Brief.

28 This Court has jurisdiction over this appeal pursuant to NRS 177.015.

1 **III. STATEMENT OF THE ISSUE ON APPEAL**

2 Whether the district court violated Flowers' constitutional rights by denying the
3 appellant's Motion for a new trial.

4 **IV. PROCEDURAL HISTORY**

5 On December 13, 2006, the State charged Appellant Norman Flowers with one count
6 of burglary, one count of first degree murder, one count of sexual assault and one count of
7 robbery. 1 App. 1. Sheila Quarles was identified in the Indictment as the victim. 1 App. 1.
8 The State filed a motion indicating its intent to seek the death penalty. 1 App. 30, 82, 112.

9 On December 26, 2006, the State filed a motion to consolidate this case with the case
10 of State v. Flowers Dist. Ct. No. C216032. 1 App. 8. Marilee Coote and Rena Gonzalez
11 were identified as the victims in that case. 1 App. 8-12. Flowers opposed the motion to
12 consolidate. 1 App. 21. During a hearing on April 13, 2007, the State informed the district
13 court (Judge Mosley) that Judge Bonaventure denied the motion to consolidate the two cases.
14 2 App. 259. Judge Mosley indicated a desire to have the cases consolidated and asked that
15 the matter be heard before Judge Villani, who was assigned the other case following Judge
16 Bonaventure's retirement. 2 App. 261-62.

17 On January 23, 2007, Flowers filed a motion to preclude evidence of other bad acts.
18 1 App. 35. The State opposed the motion. 1 App. 48. On November 5, 2007, the State filed
19 a motion for clarification of the court's ruling. 1 App. 64. Flowers opposed the motion. 1
20 App. 77. On November 15, 2007, the matter was heard by Judge Bell. 2 App. 63. He
21 ordered that a Petrocelli hearing be conducted. 2 App. 264. The hearing was held on August
22 1, 2008. 2 App. 267-324. The district court ruled that evidence concerning the Coote
23 allegation was admissible but evidence concerning the Gonzalez allegation was not. 2 App.
24 318, 327, 332. The district court further ruled that the State could present evidence from the
25 detective about similarities between the two cases, from the nurse and the coroner/medical
26 examiner about the way Coote died, and DNA evidence. Other evidence concerning that
27 case was found to be inadmissible. 2 App. 318. On September 29, 2008, Flowers filed a
28 motion to reconsider the ruling on the motion in limine to preclude evidence of other bad

1 acts. 1 App. 120. The district court denied the motion and allowed Flowers to make a
2 continuing objection to the evidence. 2 App. 331-34. The district court found that the record
3 was preserved concerning admissibility of the evidence. 2 App. 334. The district court ruled
4 that Flowers was entitled to a cautionary instruction as the evidence was introduced and to
5 a jury instruction. 2 App. 334.

6 Jury trial began on October 15, 2008. 2 App. 331. During trial, the State objected to
7 testimony from William Kinsey, who was called as a witness by Flowers. 3 App. 541-42.
8 Specifically, Flowers wished to elicit testimony from Kinsey that he was aware of the fact
9 that Sheila Quarles was dating someone named Keith. 3 App. 541. The district court
10 sustained the State's hearsay objection to this testimony after noting that Kinsey did not ever
11 personally observe Sheila and Keith together as Kinsey was incarcerated during the relevant
12 time. 3 App. 541-43.

13 After struggling with deliberations for more than 24 hours, the jury returned verdicts
14 of guilty on the charges of burglary, first degree murder and sexual assault. 1 App. 182-83;
15 3 App. 625. The jury noted on a special verdict that it unanimously found Flowers guilty of
16 a murder committed during the perpetration of a burglary, sexual assault or robbery. It did
17 not unanimously find him guilty of willful, deliberate and premeditated murder. 1 App. 183;
18 3 App. 622. The jury found him not guilty of robbery, 1 App. 183; 3 App. 622.

19 Following the verdicts, on October 30, 2008, Flowers filed a motion for a new trial.
20 1 App. 187. The motion was based upon the district court's rulings on the admission of
21 evidence from another case and the admission of a portion of Flowers' statement to the
22 police. The State opposed the motion. 1 App. 236. On November 18, 2008, the district
23 court denied the motion. 1 App. 248; 3 App. 630.

24 The sentencing hearing was held on January 13, 2009. 3 App. 632. The judgment of
25 conviction was filed on January 16, 2009. 2 App. 250. A notice of appeal was filed on
26 January 26, 2009. 2 App. 252. An amended judgment of conviction was filed on February
27 12, 2009. 2 App. 254. The district court sentenced Flowers to serve a term of 48 months to
28 120 months for burglary, a consecutive term of life without the possibility of parole for first

1 degree murder, and a consecutive term of 120 months to life with the possibility of parole for
2 sexual assault. 2 App. 255; 3 App. 640. An amended notice of appeal was filed on February
3 20, 2009. 2 App. 256.

4 Flowers filed a Motion for New Trial on March 4, 2010. 4 App 684-85. The State
5 filed it's response on March 9, 2010. 4 App 667-78. The district court denied the motion
6 after a hearing on March 17, 2010. 4 App 769-83; 686-87. This appeal follows.

7 **V. STATEMENT OF FACTS**

8 Appellant adopts the Statement of Facts as contained in the companion appeal
9 pending before this Honorable Court, and further states as follows.

10 Detective Sherwood investigated the source of the second semen sample and learned
11 from Detective Long that the source had been identified. 3 App. 527. George Brass, who
12 was also known as "Chicken" was identified as the second source of semen. The detectives
13 only learned of "Chicken" or George Brass a few months before trial. 3 App. 530. The DNA
14 levels from Sheila's vaginal sample and the sample from her underwear were "pretty much
15 even" as to the levels attributed to Flowers and Brass.¹ 3 App. 556.

16 Debra knew both Flowers and Brass. 2 App. 373. Flowers dated Debra for about four
17 months in 2004. 2 App. 378. Flowers knew Sheila and Debra's other children. 2 App. 378.
18 She saw Flowers at her apartment complex about two weeks prior to Sheila's death. 2 App.
19 379. At that time, Debra and Sheila were sitting outside near their apartment. 2 App. 379.
20 They asked Flowers what he was doing there and he said that he worked as a maintenance
21 man at a couple of the apartment complexes owned by the landlord. 2 App. 379. They talked
22 for about 20 minutes. 2 App. 379.

23
24 ¹ George Schiro, a DNA expert, testified that it is possible to have a false "hit" when
25 evaluating DNA in a case where a mixture is present. 3 App. 558. As the Quarles case, it
26 would be expected that between 40 and 130 people in the Las Vegas valley would have the
27 same profiles as those attributed to Flowers and Brass. 3 App. 558. It is not possible to
28 determine from DNA how long a sperm sample has been present or in which order two sperm
samples were deposited. 3 App. 558. Other clothing could have been examined to establish
a timeline as to when the semen was introduced. 3 App. 559.

1 Brass lived in the same apartment complex as the Quarles family as did several
2 members of Brass's family. 2 App. 373. Debra knew that Brass and Sheila were friends, but
3 did not know of any sexual relationship between them. 2 App. 374.

4 Following Sheila's death, Flowers approached Debra while she was at work, hugged
5 her and said "I hear what happened to your baby. That's really . . . fucked up. She was a
6 nice girl. She didn't deserve that." 2 App. 379. He also said that Debra looked down and
7 out and that she should see a psychiatrist for depression. 2 App. 379. Flowers recommended
8 a psychiatrist and drove her to the two appointments she attended. 2 App. 379.

9 **V. ARGUMENT**

10 **A. The district court erred by denying Flowers' motion for a new trial.**

11 Newly discovered impeachment evidence may be sufficient to justify granting a new
12 trial if the witness impeached is so important that impeachment would necessitate a different
13 verdict. See Hennie v. State, 114 Nev. 1285, 968 Pl.2d 761 (1998). In the present case, the
14 State's witness was not only an alternate suspect as a result of his DNA being found in the
15 body of the deceased, but his actions in withholding his identity for years certainly belied the
16 credibility and strength of his alleged "alibi".

17 **Standard of Review**

18 Flowers acknowledges that the granting of a new trial in criminal cases on the ground
19 of newly discovered evidence is largely discretionary with the trial court, and that court's
20 determination will not be reversed on appeal unless abuse of discretion is clearly shown.
21 McCabe v. State, 98 Nev. 604, 655 P.2d 536 (1982) . Given the peculiar circumstances of
22 this case, Flowers believes that the district court abused its discretion and that a new trial is
23 mandated.

24 **Argument**

25 In Flowers' trial, the ultimate issue was which of the DNA "donors", if either, were
26 the cause of the death of Ms. Quarles. There was no physical evidence as to the actual
27 identity of the perpetrator of the death-producing act, nor were there any eyewitnesses. The
28 State, in an effort to prove identity relied upon other bad act evidence to establish identity.

1 The State, in an effort to secure a conviction against Flowers vouched for the credibility of
2 it's witness, Mr. Brass, the alternate suspect, even making improper commentary upon
3 Flowers' right to remain silent. Clearly, the credibility of Mr. Brass became an important
4 issue to the jury via the arguments of the State.

5 In Giglio v. United States, 405 U.S. 150 (1972) the Court focused on the reliability
6 of witness testimony and its effect on the jury. Id. The Court stated that "'when the reliability
7 of a given witness may well be determinative of guilt or innocence,' nondisclosure of
8 evidence affecting credibility falls within this general rule [of disclosure]." Id. at 154 (quoting
9 Napue v. Illinois, 360 U.S. 264, 269 (1959)). While this is not a case of nondisclosure, it is
10 a case in which the potential impact of impeachment evidence must be considered as a basis
11 for a motionf or a new trial. The Giglio Court determined that a new trial is required if "the
12 false testimony could . . in any reasonable likelihood have affected the judgment of the jury."
13 Id. at 154 quoting Napue, at 269 . Although the main focus of the ruling in Giglio deals with
14 the obligations and duties of the prosecution to divulge information, it is informative in that
15 it is clear that the rule from Giglio is that when there is evidence relevant to the credibility
16 of a witness, a jury is entitled to know about it. Id. at 155.

17 While the Court allowed in the "other bad act" evidence against Flowers over
18 objection, the impact of the evidence was improperly extended in the present case. NRS
19 48.045(2) prohibits the use of "other crimes, wrongs or acts . . . to prove the character of a
20 person in order to show that he acted in conformity therewith." Such evidence "may,
21 however, be admissible for other purposes, such as proof of motive, opportunity, intent,
22 preparation, plan, knowledge, identity, or absence of mistake or accident." "To be deemed
23 an admissible bad act, the trial court must determine, outside the presence of the jury, that:
24 (1) the incident is relevant to the crime charged; (2) the act is proven by clear and convincing
25 evidence; and (3) the probative value of the evidence is not substantially outweighed by the
26 danger of unfair prejudice." Tinch v. State, 113 Nev. 1170, 1176, 946 P.2d 1061, 1064-65
27 (1997). In assessing "unfair prejudice," this court reviews the use to which the evidence was
28 actually put – whether, having been admitted for a permissible limited purpose, the evidence

1 was presented or argued at trial for its forbidden tendency to prove propensity. See Rosky
2 v. State, 121 Nev. 184, 197-98, 111 P.3d 690, 699 (2005). In the present case the comments
3 upon Flowers' non-testimony also appears to be an improper extension of the bad act
4 arguments.

5 The probative value of the evidence from the Coote case was substantially outweighed
6 by the danger of unfair prejudice to Flowers. Presentation of evidence concerning the Coote
7 case was a substantial portion of the evidence presented at trial. The State presented
8 evidence from the apartment manager who discovered her body, officers who responded to
9 the scene, a medical examiner concerning the autopsy, a fingerprint examiner, an expert in
10 DNA, Coote's friend, and Coote's neighbor. In essence, the State presented a second trial
11 concerning Coote within the trial concerning Sheila. Further, extensive argument about the
12 Coote case was made during closing arguments. 3 App.597-98, 611-12. By its very nature,
13 evidence of another murder is highly prejudicial. Under these circumstances, the district
14 court abused its discretion in finding that the probative value of the evidence was not
15 outweighed by the danger of unfair prejudice to Flowers. Evidence of a conviction of murder
16 by Mr. Brass would also have been highly prejudicial to the credibility of the
17 witness/alternate suspect Brass.

18 A simple comparison of the evidence concerning Flowers and Brass reveals that the
19 State's case against Flowers was not strong. Both men were identified as having semen
20 inside of Sheila's vagina; neither man was known by Sheila's mother to be in a relationship
21 with Sheila; and neither man immediately told police officers investigating the case that they
22 had a sexual relationship with Sheila. Brass had work records which indicated that he was
23 at work when Sheila was killed, but no witness testified that he was at work and it was
24 acknowledged that someone else could have signed him in and out at work. Finally, Brass
25 was seen near Sheila's apartment on the day she was killed while Flowers was not. The
26 motion for a new trial should have been granted.

27
28

1 **VII. CONCLUSION**

2 For each of the reasons set forth above, Flowers is entitled to a new trial.

3 DATED this 27th day of May, 2010.

4 Respectfully submitted,

5 /s/ *RANDALL H. PIKE*

6
7 By: _____
8 Randall Pike
State Bar 1940

9 **CERTIFICATE OF COMPLIANCE**

10 I hereby certify that I have read this appellate brief, and to the best of my knowledge,
11 information, and belief, it is not frivolous or interposed for any improper purpose. I further
12 certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in
13 particular, N.R.A.P. 28(e), which requires every assertion in the brief regarding matters in
14 the record to be supported by a reference to the page of the transcript or appendix where the
15 matter relied on is to be found. I understand that I may be subject to sanctions in the event
16 that the accompanying brief is not in conformity with the requirements of the Nevada Rules
17 of Appellate Procedure.
18

19 DATED: 5/27/2010

20 /s/ *RANDALL H. PIKE*

21 By: _____
22 Randall Pike
State Bar 1940

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CERTIFICATE OF SERVICE

The undersigned does hereby certify that on the 27th day of May, 2010 a copy of the Appellant’s Opening Brief was served as follows:

BY ELECTRONIC FILING TO

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/s/ RANDALL H. PIKE

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