C114390
27734

NEVADA STATE PUBLIC DEFENDER

October 1, 1996

JAMES J. JACKSON
STATE PUBLIC DEFENDER

REGIONAL OFFICE
309 S. THIRD STREET, 4TH FLOOR
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PHONE (702) 455-6265
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Curtis Downing
P.O. Box 1989
Ely, Nevada 89301

Dear Curtis:

I am in receipt of your correspondence dated 9-26-96. I fully understand your concerns. I really do not think that you should proceed pro se on a case as serious and complicated AND WINNABLE as this. I frankly do not think that I do a bad job at trial, and I think that you would be very happy with my representation when all is said and done. However, if you insist on making what I feel is a very GRAVE MISTAKE, I cannot stop you. The bottom line is that you have a constitutional right to represent yourself if you so chose. But I am telling you, that it is a huge error.

Your trial is set in April. I plan on going all-out on this case. As I stated above, I feel that it is a fairly defensible case -- particularly if the judge does not allow in evidence of your other convictions. But you have to trust me to work up the file thoroughly. I just do not understand what is so pressing that you need excessive time in the law library for? And I know that you said that you haven't been able to call me, but I find that quite surprising given that Patrick McKenna, who is the most high risk prisoner Ely has right now, can call me nearly every day. And he is NEVER allowed out of his cell to make phone calls. In other words, maybe you need to communicate to the corrections officers the fact that YOU NEED to get in touch with your attorney regarding an upcoming trial. They shouldn't stop you from doing that.

Before I file any motions, I would ask you to reconsider your decision to proceed pro se. Also, I would ask that you contact Orlando and have him look into the problem of you not being transported to CCDC. Let me know what you want to do, and don't hesitate to call if you have any further questions or concerns.

Very truly yours,

NEVADA STATE PUBLIC DEFENDER

Nancy M. Lemcke
Deputy State Public Defender

C114390
27734

MEMO

TO: **Rude**

FROM: **Nancy**

RE: **Curtis Downing/Appellate case**

DATE: **June 2, 1997**

Case # C114390 Appellate Case # 27734

RUDE:

Since you were assigned to handle Downing's trial, I assume you are assigned to his appeal, as well. Remember, Downing had several rapes in the system. He was convicted of one, which was on appeal to the Nev. Supreme Court. On May 22, 1997, the Supreme Court rejected the appellate arguments made on Downing's behalf, and affirmed his conviction(s). I sent Downing copies of all of the relevant documentation from the Supreme Court, and I indicated that someone (possibly you) would come see him and discuss with him any further appellate rights he may have. Given that he received 6 life sentences on that case, it would seem to me that you ought to at least discuss any further appeals and/or post-conviction stuff. Please go see him when you get a chance. Let me know if you need anything else.

NANCY

Nancy,

I spoke with Mike Cheney + he said not to file a writ to the U.S. Supreme Court. Just write Downing a letter informing him that his Conviction was affirmed. Downing on his own will file a Pet.

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NANCY

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trial tactics?

MR. CICHOSKI: I am, Your Honor. After discussions with the defendant in this case we're moving to withdraw.

THE COURT: So it's a matter of trial tactics and trial strategy that you've decided that you're not going to oppose the State using the DNA evidence; that's on the condition, of course, that they can properly qualify a person as an expert in that field?

MR. CICHOSKI: That's correct.

THE COURT: So you're not waiving any foundational objections you may have to any expert the State wishes to present; is that correct?

MR. CICHOSKI: That's correct.

THE COURT: And the State then we will not -- will accept them to withdraw their objection to the introduction of the evidence as such with the proper foundation then there's no reason to have an evidentiary hearing.

MR. LUKENS: Your Honor, I would make one request. That is Mr. Downing is a very bright individual and is not a typical defendant. He has filed and attempted to file several motions in this case that indicate that he has a conflict with his attorney.

THE COURT: Well, he's tried to make a motion to have the attorney dismissed and another attorney appointed.

MR. LUKENS: For that reason I would like to have Mr. Downing himself say that he has discussed with Mr. Cichoski withdrawing the challenge to DNA evidence, that this discussion that he had was informative and that Mr. Cichoski was able to answer his questions and that Mr. Downing is in agreement with that decision.

THE COURT: Mr. Downing, do you agree with the decision of your attorney as a matter of trial tactic to withdraw the objection of DNA evidence?

THE DEFENDANT: Well, Your Honor, I'm kind of put in a position in answering that question at this time because frankly I'm not satisfied with counsel. So in answering that, I would agree to counsel going forward as counsel of record and as well as his determined trial tactics at this time, which I'm not satisfied with.

As Your Honor knows on the 7th, I believe it was, we were in your courtroom for -- excuse me, was that the 7th or the 3rd? The 3rd, excuse me.

Last Monday we were in your courtroom to put a motion on for hearing, but we subsequently had an impromptu evidentiary hearing, and at the present time

I was not allowed to present any evidence nor was I able to call any witnesses on my behalf, nor was I afforded the opportunity of having the representation of counsel during that evidentiary hearing.

I have prepared a motion for reconsideration of your motion -- of my motion to dismiss counsel, and I would specifically ask that Your Honor pay specific attention to the Defendant's Exhibit of his motion because I think that further substantiates the defendant's claim of ineffective assistance of counsel. I also believe, Your Honor, that --

MR. LUKENS: Excuse me a second. Do you have a copy of the latest motion for consideration, Your Honor?

THE COURT: Is that the one he drew himself?

MR. LUKENS: And it's one that has an exhibit on the end like this.

THE COURT: You mean this one?

MR. LUKENS: No. There's a --

THE COURT: Wait a minute. Maybe I have it.

THE DEFENDANT: I believe you do, Your Honor. He would not let me present it on --

THE COURT: Okay. This is your motion for reconsideration, okay.

THE DEFENDANT: Yes, sir.

As I was stating, the Exhibit A, I believe substantiates further the defendant's position of ineffective assistance of counsel. I know that the Court has probably looked at me as the one who has been delaying this trial, but I also believe that, Your Honor, as I have presented to you several letters inquiring as to who my counsel was for some ten months back through the year of 1994.

I had sent counsel what I had termed as judicial notices, but I basically have been instructed further that they were just letters to counsel on my desire to expedite this matter and have frequently phrased that time was of the essence. I have some, at least 10 or 15 letters that I had sent to counsel asking them to contact me, to let know what was being done in the case.

I had also had my mother in contact with counsel during that time as well as my girlfriend Abrigail Fendly who was in contact or seeking to be in contact with counsel with phone calls being unreturned.

There is still yet even further evidence that the defendant can produce of counsel's ineffectiveness in this matter. I think the fact that it took counsel over a year and a half to begin to investigate in this

case further substantiates defendant's position that nothing was done in his behalf.

And because of the length of time that took place potential witnesses to this matter were impaired as far as memory ability, as well as the defendant himself not being able to recall certain things other than the fact that he's diligently been working with his case himself and has sought to file certain motions to also help expedite this manner.

THE COURT: Which certain motions did you want to file?

THE DEFENDANT: Your Honor, well, the motion for reconsideration was one that I wanted filed --

THE COURT: No, I'm talking about didn't you -- didn't you want a motion to suppress the evidence?

THE DEFENDANT: Yes, I did.

THE COURT: That motion was made, and we had a hearing and it was denied.

THE DEFENDANT: Well, Your Honor, the motion that was presented by counsel was not, in fact, the motion that the defendant would have presented. Granted I have to accept what has been done. I think that counsel even failed to -- excuse me -- substantially argue that motion due to the fact that

the State has contended continuously throughout their motions that the evidence they obtained from my apartment was in fact the evidence that they had sought, and it's quite clear, Your Honor --

THE COURT: It's my understanding from Mr. Guyman that he wasn't going to introduce any of that evidence.

THE DEFENDANT: Yes, Your Honor, but the point of the matter is it still stands. This has been the false allegations that have continued to be made against the defendant. I mean, they're saying --

THE COURT: You understand that's not going to the jury.

THE DEFENDANT: Yes, Your Honor, I understand that it's not going --

THE COURT: The jury's going to be the one that decides your fate in this case. How could you be prejudiced if they're not going to use the evidence that you claim --

THE DEFENDANT: That's my whole point, Your Honor. Where was the probable cause for this search? I mean, we're getting back into --

THE COURT: We're not going to use any of that evidence that they found in the search. Mr. Guyman has indicated to me the State does not

intend to introduce any of that evidence.

THE DEFENDANT: If I remember correctly, he also reserved a certain portion of that. Now, I may be wrong, but I believe that he had sought to reserve a certain portion --

THE COURT: In any event, the motion to suppress was denied so he could use it if he wanted to. In other words, what I'm saying to you is we had a hearing on that motion to suppress that you wanted to be presented, and I ruled that the motion to suppress should be denied.

Now, that might be one of the grounds which you can appeal to the Supreme Court should you be convicted, but first of all we have to go through jury trial and you have to be convicted otherwise it doesn't make any difference.

THE DEFENDANT: Okay.

THE COURT: Now, at the time you pled guilty to this you rejected the plea bargain; is that correct?

THE DEFENDANT: That is correct, Your Honor.

THE COURT: What was the plea bargain that they offered you?

THE DEFENDANT: Truthfully, Your Honor, I really don't remember.

THE COURT: Mr. Cichoski, can you inform the Court what the plea bargain was that he rejected.

MR. CICHOSKI: Your Honor, the original plea bargain where he pled guilty back in July of '94 --

THE COURT: I wasn't satisfied with the guilty plea memorandum because it left out the fact that it was a nonprobationable offense so I allowed him to withdraw his guilty plea and proceed with the not guilty plea and go to trial.

MR. CICHOSKI: That's correct, Your Honor.

THE COURT: I think it had to do with other cases that were in the system; it wasn't just this case.

MR. CICHOSKI: No, he pled guilty at least to this case and to the case involving Tammy Zole and I would have to --

THE COURT: That was the plea bargain he rejected that; is that correct?

Mr. Downing, one time you pled guilty to this offense --

THE DEFENDANT: That is correct.

THE COURT: -- and you rejected and you want to go to trial so we're giving you that opportunity.

THE DEFENDANT: Well, I understand that, Your Honor, and I appreciate the opportunity to go to

trial. But the fact of the matter is that I don't mind going to trial; it's just going to trial with present counsel.

Your Honor, when counsel came to see me Friday, we had an opportunity to finally really, I guess, talk at length, but in order to even talk to counsel I asked that, you know, there were certain matters that I wanted to discuss with him in private, and counsel was afraid to sit with the defendant alone subsequently to find out that, I guess, he was afraid that I was going to beat him up.

As far as I'm concerned, Your Honor, that shows he, you know, he has no trust in his client, and, therefore, how can I have trust in him, you know, to represent me in this matter.

And further, Your Honor, I would also state for the record that during 1994 at the time that I took the plea bargain, counsel either stood by or waited in the wings while I was intimidated in this courtroom and coerced and badgered by Mr. Guyman with these remarks and statements that he had said to the defendant. And I think that further, you know, showed that counsel was ready to just wash his hands of this matter rather than prepare a defense.

And I think in the year and a half that it

took for them to investigate the case further substantiates that he had no desire to present a defense for the defendant when, in fact, he had everything at his disposal. He had the names. He had the addresses. He had telephone numbers.

THE COURT: You're talking about the alibi witness now?

THE DEFENDANT: Yes, Your Honor, the alibi witness; that is correct.

THE COURT: And one of them is your mother.

THE DEFENDANT: One of them was my mother, yes, and the other two were minor children who at this time now, you know, recall very little, and I think had they been, you know, contacted at that time would have made all the difference in this matter.

THE COURT: I had previously denied your request to dismiss counsel. If you want to make a motion to reconsider I'll deny that too, and we're ready to go to trial.

THE DEFENDANT: In this event, Your Honor, I have prepared an order of you dismissing said motion that I might under NRS 177.025 appeal to the Supreme Court on a matter of law alone as a -- this is a matter of law on defendant's right to counsel and effective assistance of counsel, and I believe I have the right

to appeal.

THE COURT: You will at the conclusion of the jury trial. You can appeal that if you wish.

THE DEFENDANT: So you are refusing, then, to sign this order --

THE COURT: I'm not going to sign an order to let you appeal. You can appeal if you want to, but I'm not going to sign the order. I don't know what you prepared, but I'm not going to sign any order to allow you to appeal. That's not an appealable order at this point.

THE DEFENDANT: Then I would state for the record that as soon as an order is signed denying defendant's motion to dismiss counsel as well as a motion for reconsideration of counsel, that I might be made aware of this so that I may then also file that appeal.

THE COURT: Let's wait and see what the jury does. If the jury finds you not guilty there's nothing to appeal; isn't that true?

THE DEFENDANT: Yes, Your Honor, that is correct.

THE COURT: The only way you can appeal is in the event that the jury should find you guilty you have 30 days in which to file an appeal. Everything that

you said is being taken down by the court reporter so that's part of the record so the record is complete in regard to that.

Now, one of the things that Mr. Lukens asked is whether or not you concur with the judgment of your attorney as a matter of trial strategy to not oppose the introduction of DNA evidence. If you don't wish to comment on that you don't have to.

THE DEFENDANT: I would reserve not to comment, Your Honor.

THE COURT: Okay. But, Mr. Cichoski, you made your own determination that you are not going to continue to oppose the introduction of the DNA evidence because you filed an opposition on May the 19th to the motion -- I'm sorry.

You filed a motion to exclude the DNA evidence, and the State has filed an opposition to that on May 19th. So the motion, then, to exclude the DNA evidence is denied as based on Santillanes, S-a-n-t-i-l-l-a-n-e-s, versus State, 104 Nevada --

MR. CICHOSKI: Well, Your Honor, we --

THE COURT: -- at page 699 assuming the State can prove that the trustworthiness and reliability of the evidence when it lays its proper foundation for the witness. In other words, the State will be required

before the witness will be allowed to testify to establish the trustworthiness and reliability of the DNA evidence.

The Court will make that determination of whether or not the expert can testify. That would be all part of the foundation.

MR. LUKENS: Your Honor, in light of the defendant's statement where he doesn't want to say he concurs in counsel's decision to do that, the State is prepared and ready to go forward with reference to that hearing to show the reliability of DNA evidence and would ask the Court to allow the State to simply put on enough evidence that's sufficient in a hearing this afternoon so that the Court can make the ruling and say the requirements of the Santillanes case have in fact been satisfied and that the DNA, the reliability of DNA evidence has in fact been demonstrated to the Court and it's going to allow the State to use --

THE COURT: What I'll do, this afternoon we're going to pick the jury, and after we pick the jury if you want at that point want to have an evidentiary hearing before we have the opening statements that's fine.

MR. CICHOSKI: Your Honor, I have officially withdrawn my motion to exclude the DNA in this case.

I'm not opposing its introduction into this case given proper foundation qualifying the --

MR. LUKENS: We have an expert that's qualified.

MR. CICHOSKI: I'm not going to be opposing the introduction. I don't see the reason for a hearing. I'm not prepared to argue in a hearing.

THE COURT: When I talk about a hearing, I'm talking about foundation. They have to lay a proper foundation regarding the expert witness if the expert witness is going to testify to the DNA evidence, testify as whether or not its trustworthiness and reliability is sufficient and whether or not there's a -- under the Santillanes, S-a-n-t-i-l-l-a-n-e-s, versus State case, whether or not it can meet the State test of Nevada, which is trustworthiness and reliability.

That's just something that you can do in laying the foundation when you get ready to call the expert witness. You can take as much time as you want. If you want to call that an evidentiary hearing you can. All you have to do is lay the proper foundation.

MR. LUKENS: Your Honor, I would then ask this because I only want to try Mr. Downing one time with reference to these charges. I know that

Mr. Downing is intelligent enough that he would use this as a basis for postconviction relief and arguing ineffective assistance of counsel.

THE COURT: If you lay a proper foundation I will allow it in, but the proper foundation will also include whether or not its trustworthiness and reliability in the general community, whether or not it can be -- since he's withdrawn whether or not it can be considered trustworthy and reliable, he has withdrawn his objection to DNA evidence. That may come up in regards to ineffective assistance of counsel.

Mr. Cichoski has indicated to me on the record that's he's doing this as a matter of trial strategy and tactics.

MR. CICHOSKI: That is correct, Your Honor.

THE COURT: So if that's the case I don't see any reason for a hearing.

We'll be in recess till 1:30.

MR. LUKENS: Your Honor, I hate to say this, but I want to express my concern again.

There was a case that the Supreme Court reversed, and here's what happened in that case. Dave Gibson of the public defender's office, who as we all know is a very competent attorney, was representing a fellow charged with murder. During the course of the

trial, the defendant got on the witness stand and said something that was absolutely absurd.

When it came time to argue for the jury, Mr. Gibson in arguing to the jury said, My client -- did not argue what his client had testified to from the witness stand instead argued a different theory saying just convict him of second degree murder. He obviously didn't know what he was doing.

The Supreme Court reversed and the basis for its reversal in ordering a new trial was that they said that Mr. Gibson was obligated to present the defense that his client instructed him to do.

Since there is this conflict between Mr. Downing and Mr. Cichoski as evidenced by the motions, if Mr. Downing is not in agreement with the waiver of the request for an evidentiary hearing, I don't want the Supreme Court to reverse and send it back when the State is prepared and ready to go forward with that, and that's my concern.

MR. CICHOSKI: Your Honor, I'm --

THE COURT: If you lay a proper foundation then there shouldn't be any probable for reversal. They have filed an extensive brief in opposition to the DNA evidence, and they are now withdrawing that as a matter of trial tactics is what I've been told.

We'll be in recess till 1:30.

-oOo-

ATTEST: FULL, TRUE AND ACCURATE TRANSCRIPT OF PROCEEDINGS.

Janie L. Olsen,
CCR No. 406, RPR

sentences on a Robbery With Use of a Deadly Weapon conviction. I explained to Mr. Downing that having his trial set in the ordinary course would provide us sufficient time to properly prepare for trial.

I responded to Mr. Downing's letter dated August 26, 1993 on September 9, 1993. (See Exhibit C.) In this letter I assured Mr. Downing that this was the first time that I had received any contact from either him or his family. I sent him a copy of his preliminary hearing transcript which I had by that time. I also requested that he send me a letter detailing his relationship with the victim in this case in order to allow me to do proper investigation.

I received a response to my September 9, 1993 letter from Mr. Downing. The letter that I received back from him was dated September 14, 1993. (See Exhibit D.) This letter was non-responsive to my request that Mr. Downing provide me with his version of the facts in this case. Instead, Mr. Downing recites biblical verse and assured me that everything was in God's hands.

I also received another letter from Mr. Downing which was undated. (See Exhibit E.) This letter made a request for all of the discovery which I possessed in the case.

On September 21, 1993 I responded to Mr. Downing's request by sending him a copy of the police reports, medical reports, and victim's statements which were in the file. (See Exhibit F.) I then rehearsed to Mr. Downing a synopsis of the facts as he had related them to me prior to the preliminary hearing in this case. I explained to Mr. Downing that we were aware of only two possible witnesses in the case, Abigail Finley (the defendant's girlfriend) and Mike Downing (the defendant's brother). I then asked Mr. Downing to provide me with the names, addresses, and phone numbers of any other witnesses which might prove helpful to the defense in this case.

My file does not reflect that I received any other written communication from Mr. Downing until July 1994.

Some time after September 1993 Mr. Downing was transported to the Nevada State Prison in Ely, Nevada. Mr. Downing told me that the reason that he was transported to Ely was because of the length of his sentence (Mr. Downing was and is serving a 24-year prison sentence for Robbery With Use of Deadly Weapon) as well as the violent nature of that offense. He also stated that he was sent to Ely because of the violent nature of the charges which were pending against him (i.e., Sexual Assault With Use of Deadly Weapon and Robbery With Use of Deadly Weapon).

Did not "timely" contact these witnesses which was very important.

Mr. Downing and I communicated a number of times by telephone. During one of those telephone conversations with Mr. Downing I explained to him that the main piece of evidence against Mr. Downing at that time was a partial palm print which was found on an inside window sill of the victim's apartment. Mr. Downing and I discussed how that palm print could have possibly gotten on the window sill as well as the possibility that it was not his palm print. We agreed that the best course of action to take at the time was to ask for a continuance of the trial which was set for November 29, 1993 in order to have an independent fingerprint examiner review the State's findings.

My documented letters clearly refute this false claim.

Shortly after I had filed my motion to continue, I spoke with Chief Deputy District Attorney John Lukens. Mr. Lukens explained to me that they were doing DNA testing in this case. He further explained to me that Mr. Downing was a suspect in another sexual assault case. Mr. Lukens said that they had received a positive DNA match between Mr. Downing and the victim of the as-yet-unfiled case. Mr. Lukens further explained that the DNA test on the victim in my case had come back inconclusive because of some flaw in the testing procedure. However, Mr. Lukens believed if they were to repeat the test that they would come back with a positive result. Mr. Lukens asked if I had a problem with a continuance in the case so that they could rerun the DNA test between Mr. Downing and the victim in this case. Mr. Lukens also suggested that we might possibly be able to work out a negotiation which would include both my sexual assault case and the other sexual assault case which had not yet been filed. (See Exhibit G.) Accordingly, on November 22, 1993 our motion to continue the trial date in this case was granted without objection from the State. (See Exhibit H.) The trial was reset for March 28, 1994.

Yet I was with a consent defense understanding & defense etc.

I continued to maintain telephone contact with Mr. Downing while he was in the Nevada State Prison in Ely, Nevada. He telephoned me and asked me when the results from the DNA test would be in. I told him that we were waiting to receive the results from the District Attorney's Office but that the District Attorney's Office had informed me that it apparently takes weeks for Cellmark Diagnostics to perform a DNA test because of the backlog of requests that they were handling.

I eventually received a report from the District Attorney's Office which was dated February 10, 1994 showing that there had been a positive match made between Mr. Downing and the victim in my case. (See Exhibit I.)

Shortly before the calendar call of the March 28, 1994 trial date the District Attorney's Office filed a motion to endorse

(EXHIBIT "W-2")

witnesses in this case. The witnesses which the State wished to endorse were certain scientists who work for Cellmark Diagnostics.

I informed Mr. Downing that the State was attempting to endorse witnesses from Cellmark Diagnostics in order to use DNA evidence against him in his trial. We discussed the possibility of proceeding to trial on March 28, 1994. On March 25, 1994 I was present with Mr. Downing in District Court No. 12 where we formally objected to the State's motion to endorse new witnesses in this case because it did not give us proper time to prepare to rebut or meet this new evidence. The State had no objection to our motion to continue. (See Exhibit J.) Judge Leavitt vacated the trial date set for March 28, 1994 and reset the trial for July 5, 1994.

Shortly after the calendar call of March 25, 1994, I received a motion to admit evidence of other crimes, wrongs or acts from the District Attorney's Office. The State was seeking to admit evidence of the other sexual assault case which was now pending against Mr. Downing in their case-in-chief in this case. On April 6, 1994 Mr. Downing appeared in District Court 12 with Mr. Roger Hillman from our office. Mr. Hillman represented that we needed further time in order to fashion our response to the State's motion to admit evidence of the other sexual assault case (Case No. 93F8611X) in my case. (See Exhibit J.)

On April 7, 1994 I personally went and sat in the gallery of Justice Court No. 4 to listen to the preliminary hearing in Case No. 93F8611X. I went to listen to the preliminary hearing in that case, so as to be better able to respond to the State's motion to admit that crime in my case. Present at the preliminary hearing were Mr. Downing and Kevin Williams from our office.

On April 27, 1994 I was present in District Court 12 with Mr. Downing for a hearing on the State's motion to admit evidence of other crimes, wrongs or acts (i.e., Case No. 93F8611X). The motion was partially granted allowing the State to bring in evidence of Case No. 93F8611X regarding Mr. Downing's alleged sexual assault of a person by the name of Tami Zold as well as the alleged attempt sexual assault of a woman by the name of Sheri Ann Souder. The motion was denied as to another alleged sexual assault victim by the name of JoAnn Swanson. (See Exhibit K.) During this period of time from March 19, 1993 through early May of 1993 Mr. Downing was being housed in the Clark County Detention Center after which he was transported back to the Southern Nevada Correctional Center at Indian Springs, Nevada. Mr. Downing was informed of the motions which were being filed by the State and was provided with a copy of the State's motion as well as with a copy of my response.

On May 13, 1994 I asked my investigator to contact Cellmark Diagnostics and request a copy of the paperwork which supported the conclusion that Mr. Downing's semen was found inside of Christy Childs. On May 18, 1994 I received a memo back from my investigator explaining to me that Cellmark Diagnostics refused to provide me with any of the supporting paperwork in this case. (See Exhibit L.)

On June 20, 1994 I filed a motion for discovery in this case requesting that the District Attorney's Office be ordered to provide me with all of the paperwork which supported Cellmark Diagnostics' conclusion.

Mr. Downing was returned to the Clark County Detention Center in June 1994. Shortly after Mr. Downing's return to the Clark County Detention Center I and my investigator, Jackie McDaniel, as well as Kevin Williams visited with Mr. Downing. I explained to Mr. Downing that we had not yet received any of the paperwork supporting the DNA test results. Because we had not received any of this paperwork Kevin and I felt that it was highly unlikely that the District Attorney would be able to use any DNA evidence for the trial scheduled July 5, 1994.

On July 1, 1994 Mr. Downing and myself and Kevin Williams were present in District Court 12 for the calendar call on this case. It was in open court, at the time of calendar call, that the District Attorney's Office proffered to the defense approximately 200 pages of supporting evidence and documentation as well as a copy of the autoradiographs concerning the DNA results in this case. The defense vehemently objected to the State being allowed to introduce DNA evidence at the trial slated for the following Tuesday, however, Judge Leavitt ordered that the trial would proceed on July 5, 1994.

Over the weekend Kevin Williams and I spent a lot of time preparing for the trial of this case. We spent a lot of time over at the Clark County Detention Center with Mr. Downing reviewing what would be happening at the trial in this case as well as the possibility of accepting an offer which had been made by the District Attorney's Office. (See Exhibit M.)

I hope that the foregoing material is adequate to answer your letter. I communicated in writing with Mr. Downing when responding to his letters. I kept in telephone contact with him on numerous occasions while he was being housed at the Nevada State Prison to discuss the progress of his case. Mr. Downing and I visited in person and by phone while he was being housed at the Clark County

Detention Center during March, April, June and July of 1994. It is my understanding that you do not wish me to cover any of the communications which happened between myself and Mr. Downing since June 1994. Should you require supplemental information, please feel free to contact me.

Sincerely,

CLARK COUNTY PUBLIC DEFENDER

By _____
Mark D. Cichoski
Deputy Public Defender

MDC/lld
Enclosures