

STATE OF NEBRASKA VS. JUNEAL D. PRATT

Members of the Nebraska Innocent Project believe it is likely that Juneal Pratt is innocent of the rape, sodomy, and robbery he was convicted of in 1975. This timeline of his case was compiled using the original trial transcript (“bill of exceptions”), other legal documents, and information from Pratt.

Prior to 1975 CRIMINAL RECORD. By the age of 19 Juneal Pratt had been cited or arrested 76 times over a 5 year period. Specifically, he has been charged with, but never convicted of: possession of a hand gun, possession of marijuana, assault involved in a fight (charges dismissed), plus about 70 traffic tickets. During the arrest for the handgun and marijuana possession, Pratt attempted while under the influence to run from the police. This resulted in a fall which injured his left leg above the knee. It required several stitches, and a splint was applied to keep the leg straight to avoid pulling stitches out when bending. The injury required use of crutches for a short time. This knee treatment occurred on **July 19, 1975**. During the trial of STATE V. PRATT, Dr. Dennis Cavanaugh testified that the splint was removed July 21, 1975. Pratt was advised to continue using crutches for 4-5 days more.

8/2/75 Sat. CRIME OF SODOMY, RAPE, ROBBERY. This crime occurred at the Imperial 400 Motel, 22nd and Douglas, Omaha about 1:00 a.m. on this date. Victims were sisters Kathy, 19, and Gail, 17 Schiefen of 3811 Ridge Ave., Sioux City, IA who were visiting Omaha for the weekend. Gail was raped and Kathy was forced to perform oral sex in their motel room. Items of jewelry were stolen from their room.

8/2/75 POLICE WERE CALLED BY GAIL. Cruiser Officer Solck arrived at 3:18 a.m. Room and car “dusted” for prints. Trial Transcript, p.259, records Detective Paul Stone as saying that a partial print was located on the victims’ car that **did not match Juneal Pratt**.

RAPE KIT COMPLETED. Police took both sisters to University of Nebraska Medical Center. Dr. Robert Penn examined them and prepared a rape kit, which cannot be found today. Dr. Penn testified at trial that Gail (the sister who had allegedly been raped) had had sex in the past 12 hours with no trauma to the pubic area. He found **no motile sperm** in vagina only 2-3 hours after the rape (though he said that sperm can remain motile for up to 24 hours after intercourse). (T.p. 163). At trial there was no explanation for why the sperm were nonmotile only two hours after the rape. Pratt says he was asked for a sample of semen while in jail, presumably to see if his sperm were motile. He never heard the result.

8/2/75 early VIEWED MUG SHOTS. The women were taken from UNMC to the Omaha Police Department to look at mug shots. During the sexual assaults the sisters said their heads were covered, but they had a clear view of their assailant prior to that for about an hour. Kathy picked out 3 photos from approximately 200: John Wayne, Terry Jones, and Vanlamor Jones, saying it either was the assailant or looked like him. Kathy's description of the perpetrator from her memory was: age 19-20, 5'6", 135-140 lbs, very dark skin, goatee, afro hairdo, blue fishnet shirt, maroon pants, black patent boots with suede part, blue honky hat with red trim. (T. p 249) Gail said (T.p. 228) the assailant had a bushy Afro hairdo under the hat. At the trial she said "His hair looked different," than it did at the crime scene (T. p. 238-9) Pratt and a family member both testified that his hair had not changed; it was short both at the time of the crime and at trial.

Defense counsel noted at the time that the three individuals in the mugshot photos looked similar to each other, but not to Juneal Pratt. At the time, Pratt was 20 years old, 5'5" tall, 117 pounds, and dark skinned. He had a small goatee, and his hair was short.

STOLEN ITEMS. At the police station the sisters reported four items missing: a watch and a ring from each. Gail had apparently lost two rings, but only reported one as stolen. Gail's rings were a plain gold band and a silver ring with a blue stone. Gail testified that the ring stolen from her was a "round band" without a diamond setting like the one in Kathy's "promise ring"(T. p. 232). When questioned in cross-examination, however, Gail said "I can't remember" which of the rings she reported stolen. (The police property list would show this, but is unavailable.)

Gail claimed that Juneal Pratt was wearing her gold band ring in the lineup. During the trial she tried it on and it fit her. She also claimed to be able to identify it as hers by some markings made on it when it was polished using a machine. Pratt testified that the gold band ring he was wearing was cheap and common and had belonged to his younger sister. She corroborated this at trial.

8/2/75 After viewing the mugshots, apparently the sisters returned to the motel room because Detective Stone testified that he called them on the phone there when he came on duty at 7:30 a.m. to tell them he wanted to talk to them. Gail testified that on leaving the police station they went back to the motel to wash their hair (T. p. 197) and then went to Peony Park with their friends. They testified that they walked around, rode on rides, and stayed that night with a friend.

8/10/75 ARRESTED FOR CRIME OF PURSE SNATCHING. Juneal Pratt was arrested for a purse snatching at the Imperial 400 Motel. He snatched a purse from Karla Ailayala (various spellings). She resisted and he hit her several times. Police officer on the premises chased Pratt, caught, and arrested him. Pratt has admitted to this crime, but charges were dropped in order to call this victim to testify against Pratt for the other crimes.

8/11/75 POLICE LINEUP. During the time Pratt was being detained in the city jail on the purse snatching charge, he was ordered to submit to two police line-ups. The first was a one-man "show-up," which was viewed by the purse snatching victim. For the second line-up police ordered Pratt to remove his street clothing except his shoes and put on jail garb (not a uniform, but some discarded clothing at the station). He was wearing a gold band ring. He was then placed in the line-up with two other men, one over six feet tall and the other 5'8 or 9." None of the three looked like the victims' description nor like each other. Both of the other two were in street clothing, one wearing a fishnet shirt, the other a hat similar to the one the sisters described on the assailant. Per testimony on page 146 of the transcript, Kathy recognized that one person in the line-up was not wearing street clothes. The 3-person line-up was viewed by Kathy and Gail, who had been assaulted on August 2nd. They were told by the officer conducting the line-up (Stone) that it included a suspect.

The sisters viewed the lineup of the 3 black men, Pratt, John Bell, and Harold Mix (the latter two were the only black males being held in the city jail). According to Kathy's testimony and that of Detective Stone, who conducted the procedure, (T. p. 254) she asked to see Pratt up close 2-3 times. She commented that the shoes he was wearing were like those of the assailant. (T. pp.233-4; 254; 264-7). Kathy also mentioned that Pratt was wearing a gold band ring that looked like that of her younger sister (not Gail). She did not mention any other distinguishing marks such as a limp or injuries, scars, or facial features.

Gail asked to view the line-up a second time because one (Pratt) "was wearing my ring." While Gail was in the room a second time to look at the ring, Kathy came in (T. p.233). While viewing at the same time, Gail testified that "I asked my sister if she'd ever seen that ring before." (T.p.233) During Cross-examination of Kathy she was asked if she could say that it was, in fact, Gail's ring. She said "No, I cannot positively." (T.p. 115)

Voice identification was also used. All three men in the line-up were asked to read aloud a "script" of words and phrases the sisters said their

assailant had used. Only Pratt was required to read twice. Both sisters identified Pratt's voice.

COMMENTARY: According to an Innocence Project study of the first 200 DNA exonerations in the country, the most common cause of wrongful convictions was eyewitness misidentification (77% of cases). When the identification is cross racial, the likelihood of misidentification increases. There is a strong resemblance between Juneal Pratt and Carl Martin, the serial rapist originally suspected by the police (see photos). The resemblance is striking both in their mug shots taken at a young age, and the way the two men look now, in their fifties. Pratt could easily have been mistaken for Martin by persons of another race with no exposure to African Americans in past experience as the Shiefens testified was true of them. The fact that the two sisters were in the identification room at the same time is not considered good practice either then or now. In addition, Kathy's degree of certainty seemed to increase substantially from the time of viewing the line-up to the time of the trial. Officer Stone, describing the identification process in the trial, said "She (Kathy) was hesitant" and asked to look at Pratt "two or three more times." (T. p.254) "She just couldn't be sure." According to Stone, "after about five minutes looking at him [Pratt] she said that he was the one." (T.p.254). Contrast this to her testimony at trial that she had "no doubt" that she had identified the right person (T. p. 87) even though at trial "His hair looks different" (i.e., not in an Afro).

This 1975 lineup procedure violates almost all the Department of Justice guidelines issued in 1998. They recommend the following:

- Lineups should contain at least 6 people
- Fillers in the lineup should look as much like victim's description as suspect does
- Viewer should be instructed that the suspect may or may not be in the lineup to prevent their feeling compelled to select someone
- Double-blind: neither police nor viewer should know which is the suspect so officer cannot give signals, consciously or not, as to which is the "correct" selection
- Lineup should be shown serially rather than all at once so viewer will compare each with memory of the perpetrator rather than compare them with each other.
- Viewer's degree of confidence should be assessed at the time of viewing the lineup (carries weight with juries and tends to increase over time)

The further a lineup deviates from these guidelines, the more likely it constitutes a violation of 14th amendment right to due process.

8/12/75 Pratt signed a form saying MIRANDA rights had been read to him and he understood them. At a preliminary hearing Pratt and his attorney argued that he had not been told he had a right to have an attorney at the line-up.

Defense attorney argued that “the [U.S.] Supreme Court has held that a lawyer is critical to the line-up” (T.p.34). The judge’s response was that at the time of the line-up Pratt had not yet been charged with a crime.

Approx 8/17/75 POLICE SOLICIT PERJURY. Pratt has stated to us that Detective Paul Stone came to visit him after he had been transferred to the County Jail. He told Pratt he knew he wasn’t guilty of the rape, sodomy, and robbery. Stone said he believed Carl Martin, a serial rapist, had done it, and if Pratt would testify against Martin, Pratt would only be charged with the purse snatching. Otherwise Pratt would be charged with the sodomy, rape, and robbery of the two sisters. Pratt said he didn’t know anything about the crime that occurred on 8/2, so refused to testify. Stone left, and Pratt was later convicted of those crimes. Charges in the purse-snatching crime were dismissed so that the victim, Karla A., could testify at the rape trial that he had attacked and stolen from her. **There was no mention of any other suspects at Pratt’s trial.** Carl Martin is in prison in Tecumseh serving over 200 years for more than 100 rapes he has admitted to. The statute of limitations has run out for this rape.

10/27-30/75 TRIAL. Pratt was charged with sodomy, forcible rape, and two counts of robbery. District Judge Rudy Tesar presided; Defense was by Tom Riley and Tom Kenney, Public Defenders. Kathy and Gail Schiefen testified that they arrived at the motel after midnight, registered, parked in the parking lot behind motel, and took the elevator to their second floor room. A black male got on the elevator with them. With a “billy club” as a weapon, he forced them to let him enter their room, but first made them go into the stairwell and down a flight of stairs with him to avoid some people whose voices they heard in the hall. **(No mention of a stiff leg or favoring one leg.)**

In the room, the sisters said he tied them to chairs with cords from their radio and hair curlers, and went through their luggage several times. He ripped both of their blouses down the front, but left them on. He raped Gail on the bed (she testified that he did ejaculate); “sodomized” Kathy (made her perform oral sex on him), made a phone call (no phone records or fingerprints of an ungloved [according to trial testimony p. 234] man were mentioned) in which he identified himself as Pete, smoked a joint of marijuana, took some of the sisters’ jewelry, and left with their car keys. During the sexual assaults he covered their faces with clothing. Police found no fingerprints in the room (report said it was “dusted”); half a palm print was taken from the car. It **did not match Pratt’s.**

Pratt’s patent leather and suede shoes that Kathy seemed to have used to identify him were a type very common among young black males at that time. The gold ring Pratt wore was also very common.

Pratt did not have a strong alibi. He said he was “drinking and using” at that time so could not be sure where he was and when; however, at trial his mother and another household member testified that he was at home from about midnight until 8:00 a.m.

- JUROR ISSUE During the trial it came to the attention of the court that one of the jurors, Robert Vanmoorlegan, had talked about the case with City Prosecutor John McGrath. The two were business partners. This juror mentioned in their conversation that, though he himself was remaining neutral until hearing the whole case, the women on the jury had already formed a judgment (T. p.330-341). Despite this information, only Mr. Vanmoorlegan was dismissed.
- 10/30/75 CONVICTION. Jury found Pratt guilty of sodomy, forcible, rape, and 2 counts of robbery. He was sentenced to 32-95 years (all consecutive). He got 5 to 10 years for sodomy, 7 to 20 for rape, and 10 to 30 years each for the two robberies. During his imprisonment he tried to escape twice, once in 1976, once in 1982, which added time to his sentence. Otherwise has had good behavior.
- 1977 DIRECT APPEAL. Conviction was affirmed. Defense attorneys were Frank B. Morrison and Bennett G. Hornstein. One judge in dissent said making the two robbery sentences consecutive was excessive.
- May, 2004 MOTION FOR DNA TESTING. The State of Nebraska passed a statute in 2001 giving inmates the right to petition to have DNA testing done on any existing physical evidence from their case. Pratt’s first, pro-se motion for DNA testing was denied, but when appealed it was allowed.
- 7/12/04 HEARING. District Judge Spethman ordered County Attorney Sarah McGowan to look for physical evidence collected in Pratt’s case that could be tested for DNA.
- 8/10/04 County Attorney McGowan filed a state inventory based on information from the Property Division of Omaha Police Department (see copy). The inventory list was as follows: one yellow flowered blouse, one blue and white checked blouse, one pair of pink underpants, ladies, one pair white ladies’ underpants, and one bra. Transcript shows the clothing had been handed over to the court. In the original list of trial exhibits, number 18 was “panties,” with page numbers listed as references in the transcript. At some point this item #18 on the exhibit list no longer said “panties,” but was left blank. There is no explanation for its deletion. The rape kit that was collected, according to the state, is also missing. Prosecutors claim that in 1975 rape kits were kept at the hospital for some time and then destroyed. Dr. Penn has declined to discuss procedure with Nebraska Innocence Project members.

DNA TEST RESULTS. Although the police property list included panties, and the items from this list were supposedly turned over to the court by County Attorney McGowan, no panties were delivered to the UNMC forensic lab for DNA testing when the blouses and bra were. The blouses had stains of unknown origin on them and these were tested for DNA. One was a “mixed sample” with DNA from several persons, but **only one male. That male was NOT Pratt. Pratt was “excluded”**, but in order to get a clearer picture of the male’s identity it was necessary to know the victim’s DNA profile in order to remove it from the sample.

COMMENTARY: *What happened to BOTH pairs of panties? Although they had been removed from both women prior to the sexual activity and thus may not have contained semen, their disappearance is odd. No explanation has been given for the disappearance of these items.*

August, 2006. CERTIFICATION FOR OUT OF STATE WITNESS. District Judge Spethman granted permission to obtain a DNA sample from one of the victims (Gail), who now lives in Colorado. She resisted, refusing to give a DNA sample, even though it did not entail coming to Nebraska. It was a cheek swab and deposition that could be done quickly in her home community.

July, 2007 APPEAL. Nebraska prosecutors opposed asking victims for their DNA and appealed Judge Spethman’s ruling to Judge Russell Bowie, who had replaced Spethman when he retired. Bowie ruled in favor of the prosecution. Nebraska Supreme Court noted that DNA testing act does not include obtaining new physical evidence to be tested.

9/07 or 10/07 Pratt’s attorney, Jerry Soucie, of the Nebraska Public Advocacy Commission, will make a motion for a new trial based on new evidence from DNA testing.

Despite being incarcerated for a crime he did not commit, Pratt has maintained his sanity and his humanity. After trying to escape in 1976 and 1982, he has had no further misconduct on his record. He has taken advantage of many rehabilitative opportunities available in the prison. To date he has earned 148 college credit hours. He has had paralegal training and earned Certificates in Carpentry, Plumbing, Flooring, Electrical Wiring, Blueprint reading, Culinary Arts, and Printing Technology. He has taken courses in Parenting , Job and Work Attitudes, Transitional Skills, Alternative to Violence levels 1, 2, and 3, Mental health “GOLF” group, levels 1, 2, and 3, Chemical Dependency, and Transactional Analysis levels 1 through 5. He has also become quite an accomplished artist.

Pratt completed the minimum number of years of his sentence in 2001, at which time he was eligible for parole. However, the Parole Board told Pratt that he would never be considered for parole unless he took the in-patient sex offender program, which he did for two years. Because Pratt maintained his innocence in the final work assignment, he received less than the highest rating on completion. Despite the fact that prison unit staff members have recommended to the Parole Board that Pratt be released on parole, the Board has refused. To be paroled, Pratt must confess to a crime he did not do (take more treatment which requires confession). He has served 32 years to date.

1/08 Douglas County District Judge Russell Bowie heard arguments about whether DNA results excluding Pratt justified vacating his conviction or giving him a new trial. After reading briefs submitted by both sides, Bowie ruled no on both issues. Attorney Soucie will appeal the decision to the Nebraska Supreme Court.

This chronology was written by Nancy Gilliland, Nebraska Innocence Project volunteer, and reviewed by Juneal Pratt.

7/08 – Juneal Pratt will be seeing the Parole Board and would welcome letters to them in his behalf.

Write to Juneal Pratt:

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Lincoln, NE 68542-2800

Write to the Parole Board:

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Board of Parole
PO Box 94754
Lincoln, NE 68509-4754