

TEXT OF MOTION FOR NEW TRIAL FOR MARK CURTIS. This motion was submitted to trial judge Harry Perkins on November 9. He ruled against the entire motion on November 18 just before sentencing Mark Curtis to 25 years in jail. The points raised in the motion and the evidence attached to it will form part of the basis for appealing the conviction:

New trial motion

1. The Court erred in its ruling on the following questions of law:

- a. In overruling Defendant's Motion to Produce wherein the State of Iowa was requested to produce the personnel file of Des Moines Police Officer Joseph Gonzalez;
- b. In sustaining the State of Iowa's objection to Des Moines Police Officer Joseph Gonzalez' testimony that he had been suspended for lying about police activities by former Des Moines Chief of Police Wendell Nichols (see Exhibit A);
- c. In granting the State of Iowa's Motion in Limine [a motion made just prior to opening of trial] prohibiting Defendant from introducing any evidence concerning the alleged victim's father, Keith Morris, and his attack on the Mark Curtis Defense Committee Headquarters at the Pathfinder Bookstore and the fact that the Polk County Attorney declined prosecution of Mr. Morris for that incident;
- d. In granting the State of Iowa's Motion in Limine prohibiting the Defendant from the introduction into evidence that Defendant Curtis suffered serious injuries in a beating administered by Des Moines Police Officers Wolf and Dusenbery at the Des Moines City Jail after Defendant's arrest;
- e. In sustaining the State of Iowa's objection to testimony by the Defendant that Des Moines Police Officers Wolf and Dusenbery called Defendant Curtis a "Mexican-lover, just like you love those coloreds" at the time of the beating, indicating knowledge by the Des Moines Police Department of his activist work and indicting institutional bias against the Defendant;
- f. In sustaining the State of Iowa's objection to testimony by Defendant Curtis concerning his sister's sexual abuse, as such evidence was relevant to Defendant Curtis' motivation in stopping to help a woman in distress;
- g. In sustaining the State of Iowa's Motion in Limine to exclude testimony by Defendant Curtis and others concerning the FBI surveillance of Defendant Curtis and CISPES, the Committee in Solidarity with the People of El Salvador, the Socialist Workers Party, and Young Socialist Alliance (see Exhibits B and C); and
- h. In denying the request by the jury to have portions of the testimony of Police Officers Gonzalez and Glade read to them to aid in their deliberations.

2. The Court erred in refusing to properly instruct the jury on the issue of alibi, as

the unrebutted testimony of the alleged victim indicated that the assailant arrived at her home as early as 7:35 p.m., but no later than 8:10 p.m. This testimony was based on her insistent recollection that the attack occurred shortly after the beginning of a television program called "Video Soul." Unrebutted defense testimony demonstrated that the Defendant was at the Los Compadres restaurant from before 7:30 p.m. until 8:30 p.m.

3. The Court erred in dismissing from the jury, James Garcia. Although Mr. Garcia initially indicated after the trial and before jury deliberations that he thought he could not be fair, upon inquiry by counsel for the Defendant, Mr. Garcia stated that his only reason for his statement was that he knew of two locations referred to in the trial.

Such knowledge in no way disqualified Mr. Garcia from service upon the jury, nor could it constitute bias or prejudice to either the State of Iowa or the Defendant. The removal of James Garcia was without cause, and the removal of the only juror with a Mexican-American background denied Defendant of a fair cross-section of the community and denied his right to a fair and impartial trial. There is a pending defense Motion for Mistrial, which has not yet been ruled upon, and Defendant, hereby, requests a ruling on same.

4. Jury misconduct occurred when a juror indicated that he had made up his mind on Defendant Curtis' guilt before the defense began their testimony, contrary to the opening admonition to the jury by the Court. (see attached Affidavit of Juror Blanche Stockbauer, marked Exhibit D and made a part hereof.)

5. The Court erred in failing to conduct an inquiry into possible juror misconduct. (see attached Affidavit of Patricia Haberman, marked Exhibit E and made a part hereof)

6. Defendant Curtis states that Juror Blanche Stockbauer believes Defendant Curtis to be not guilty of the crime charged, and, therefore, the verdict was not arrived at through a fair expression of opinion on the part of all jurors. (see attached Affidavit of Juror Blanche Stockbauer, marked Exhibit D and made a part hereof.)

7. In the foregoing actions and errors, the Court has violated the Defendant's right to due process of law as provided by the 5th, 6th and 14th Amendments to the U.S. Constitution and the Constitution of the State of Iowa.

8. Defendant requests a new trial on the grounds that the verdict is contrary to the evidence presented at trial.

Respectfully submitted,

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Attorney for Defendant

Exhibit A

An article headlined "Nichols: Pair punished enough" that appeared in the Des Moines Register of May 24, 1978.

By Rox Laird

Des Moines Police Chief Wendell Nichols said Wednesday he feels he took appropriate action against two police officers who were accused of using unnecessary force in arresting two men in March.

As a result of the incident, in which one of the men arrested suffered a head injury, Nichols disciplined four officers, including placing one on probation for a year, delaying one's merit pay increase, and suspending all four for periods ranging from two to 14 days.

Although the incident occurred nearly two months ago, it just came to light Monday night during a meeting of the City Council, which was asked to pay an \$851.50 out-of-court damage settlement for one of the men injured.

Some council members were critical of the police department when the incident was discussed, but Nichols said he believes he took appropriate action against the officers. "I'm not making any apologies for what I did, I think it was ample," Nichols said.

The council approved the out-of-court settlement for John Walte, who alleged he received unnecessarily rough treatment by two officers after he and a companion were arrested at Grandview Park Mar. 31.

According to a letter to the council written by Assistant City Attorney James Sullivan, Walte and James Dowell, both 18, were taken to City Jail after a fracas involving the two men and officers David Foreman and Joe Gonzales.

According to police records, the officers were responding to a report of a crowd disturbance at the park. Dowell was arrested for an outstanding traffic warrant, which turned out to be an outdated warrant that had not been removed from the crime computer.

According to Sullivan's letter, Officer Forman "without provocation... placed his foot on Walte's chest and pushed him" into a police cruiser.

Later, while the two were being booked at police headquarters, "Gonzales attempted to provoke (Walte) into a fight" and in the process Walte suffered a head injury, the letter said.

Also, Sullivan's letter said, Foreman "grabbed" Dowell by the hair, "threw him around" and grabbed a phone from Dowell as he was making a telephone call.