

# With Justice For All

*This is a member's column and NCDAA asks that you submit noteworthy outcomes in your criminal defense practice for publication. The column is here for you. It can be used to report on any cases and issues that would be of interest to the criminal defense community. The column is here for all NCDAA members and we hope that many of you will take advantage of this opportunity. Submissions need not be lengthy.*

*Copy deadline for the next issue of the Habeas Corpus is June 8, 1998. Mail, phone and fax information can be found on Page 2 of this issue. We look forward to hearing from you.*

The following was submitted by Melody Kramer, Esq. of Lincoln:

I am disappointed to see that no one has been winning any cases lately, or think that their wins are not deserving of mention. I had an acquittal several months ago that did not break any new legal ground, but reaffirmed my faith in the common sense of jurors. It also reminded me that even apparent "loser" cases can be won.

My client was charged with First Degree False Imprisonment of a woman that lived on the same block that he lived. The woman's version of events was that at about 3:00 a.m. she heard someone trying to get into her basement apartment and after ignoring the sounds for awhile, she decided to go and look. She says she opened her apartment door to look out and a man with socks over his hands, jumped out and grabbed her, putting his hands over her mouth and around her back, and said "take me to your room". She said he then dropped his hand from her mouth, she screamed, he went up the stairs

and left. The police were not called until almost noon the next day.

My client was charged about three months later after the woman reported to the police that she had identified the perpetrator by seeing him at his place of employment (the landlord of both the woman and my client had given her his name and work place for her to check out). The evidence against my client was simply that he had been, or might have been, out of his house around the time of the incident, and that the woman said she was 100% positive he was the perpetrator. There was no physical evidence.

The State witness ended up giving me the reasonable doubt I needed. First, the woman admitted to "fabricating" a story of identification to the investigating officer prior to her ever seeing my client in person. Second, the woman testified she smelled no unusual odors about the perpetrator, while another State witness testified to him being very drunk that night. Third, the woman initially reported that the perpetrator had a well-groomed beard, changed her description at trial to perhaps a day's growth of beard. However, another State witness (a very hostile one) testified that he did not have a beard earlier that evening, did not have one the next morning, and in the years she had known my client, she had never seen him with a beard. This was a classic case demonstrating that you can never predict what will happen at trial.

I did learn something interesting in this case, however, that should be a reminder to all criminal defense attorneys. I received the most important exculpatory evidence a few days before trial in the form of the police reports which recorded the woman's initial description of the assailant which differed in material respects from her preliminary hearing and deposition testimony.

This is clearly **Brady** material and a **Brady** motion had been filed and granted, yet the prosecutor did not think it was exculpatory and only turned it over to me in an abundance of caution. This reminded me yet again that from the State's point of view, nothing is exculpatory.

## NCPA Website

The Nebraska Commission on Public Advocacy welcomes you to its new website at:

<http://www.nol.org/home/ncpa>

The table of contents includes the full text of recent opinions of the Nebraska Supreme Court and Nebraska Court of Appeals (including both published decisions and cases not designated for permanent publication) which address criminal defense issues and practice in the juvenile courts; copies of the Major Case Resource Center's newsletter--The Howls of Dire Portent; a site for information about the NCPA and links to other websites of particular importance to Nebraska's criminal defense bar. Standards of Review and Propositions of Law have recently been added to the website. If one is writing a brief or motion, this location is an excellent beginning point for up to date citations to controlling precepts.