

IN THE SUPREME COURT OF THE STATE OF NEVADA

Case No. 74743

WILLIAM BRANHAM

Appellant,

v.

ISIDRO BACA, WARDEN, et al.,

Respondent.

Appeal From Order Denying a Post-Conviction Petition for
Writ of Habeas Corpus
Second Judicial District Court, Washoe County

The Honorable Elliott A. Sattler, District Judge

**APPELLANT'S APPENDIX TO THE OPENING BRIEF
VOLUME III OF VII**

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ALPHABETICAL INDEX

1.	Answer to Petition for Writ of Habeas Corpus, Case No. CR92-1048.....	1222
	Dated June 1, 2017	
2.	Information, Case No. CR92-1048	001
	Dated May 26, 1992	
3.	Judgment, Case No. CR92-1048.....	1156
	Dated April 14, 1993	
4.	Jury Instructions, Case No. CR92-1048	1123
	Dated March 9, 1993	
5.	Motion to Dismiss Petition for Writ of Habeas Corpus, Case No. CR92-1048.....	1225
	Dated June 1, 2017	
6.	Notice of Appeal, Case No. CR92-1048	1295
	Dated December 15, 2017	
7.	Notice of Entry of Order, Case No. CR92-1048.....	1286
	Dated December 5, 2017	
8.	Opposition to Motion to Dismiss Petition for Writ of Habeas Corpus, Case No. CR92-1048	1231
	Dated June 16, 2017	
9.	Order Dismissing Appeals, Case No. 24478, 24648.....	1183
	Dated December 18, 1996	
10.	Order of Affirmance, Case No. 45532	1186
	Dated November 10, 2005	
11.	Order to Respond, Case No. CR92-1048	1220
	Dated May 16, 2017	
12.	Order to Set Oral Argument, Case No. CR92-1048.....	1248
	Dated August 17, 2017	
13.	Partial Transcript of Proceedings- Cross, Redirect, and Recross- Examination of John Neal O'Donnell, Case No. CR92-1048...	121
	Dated March 2, 1993	
14.	Partial Transcript of Proceedings- Testimony of Dr. Ellen Clark, Case No. CR92-1048.....	696
	Dated March 5, 1993	

15.	Partial Transcript of Proceedings- Testimony of Joseph Masters, Case No. CR92-1048	859
	Dated March 8, 1993	
16.	Petition for Writ of Habeas Corpus, Case No. CR92-1048	1190
	Dated April 7, 2017	
17.	Reply to Opposition to Motion to Dismiss Petition for Writ of Habeas Corpus, Case No. CR92-1048	1244
	Dated June 26, 2017	
18.	Transcript of Appeal- Trial, Case No. CR92-1048	011
	Dated March 1, 1993	
19.	Transcript of Appeal- Trial, Case No. CR92-1048	1020
	Dated March 9, 1993	
20.	Transcript of Appeal- Trial, Case No. CR92-1048	187
	Dated March 2, 1993	
21.	Transcript of Appeal- Trial, Case No. CR92-1048	322
	Dated March 3, 1993	
22.	Transcript of Appeal- Trial, Case No. CR92-1048	506
	Dated March 4, 1993	
23.	Transcript of Appeal- Trial, Case No. CR92-1048	755
	Dated March 5, 1993	
24.	Transcript of Appeal- Trial, Case No. CR92-1048	929
	Dated March 8, 1993	
25.	Transcript of Proceedings- Motion to Dismiss Petition for Writ of Habeas Corpus, Case No. CR92-1048	1251
	Dated September 20, 2017	
26.	Transcript of Proceedings- Sentencing, Case No. CR92- 1048.....	1157
	Dated April 14, 1993	
27.	Transcript of Proceedings- Telephone Testimony of Carmen Cruces, Case No. CR92-1048.....	005
	Dated February 24, 1993	

CHRONOLOGICAL INDEX

VOLUME I

1. Information, Case No. CR92-1048 001
Dated May 26, 1992
2. Transcript of Proceedings- Telephone Testimony of Carmen
Cruces, Case No. CR92-1048..... 005
Dated February 24, 1993
3. Transcript of Appeal- Trial, Case No. CR92-1048..... 011
Dated March 1, 1993
4. Partial Transcript of Proceedings- Cross, Redirect, and Recross-
Examination of John Neal O'Donnell, Case No. CR92-1048... 121
Dated March 2, 1993

VOLUME II

5. Transcript of Appeal- Trial, Case No. CR92-1048..... 187
Dated March 2, 1993

VOLUME III

6. Transcript of Appeal- Trial, Case No. CR92-1048..... 322
Dated March 3, 1993

VOLUME IV

7. Transcript of Appeal- Trial, Case No. CR92-1048..... 506
Dated March 4, 1993
8. Partial Transcript of Proceedings- Testimony of Dr. Ellen Clark,
Case No. CR92-1048..... 696
Dated March 5, 1993

VOLUME V

9. Transcript of Appeal- Trial, Case No. CR92-1048..... 755
Dated March 5, 1993
10. Partial Transcript of Proceedings- Testimony of Joseph Masters,
Case No. CR92-1048..... 859
Dated March 8, 1993

VOLUME VI

11.	Transcript of Appeal- Trial, Case No. CR92-1048.....	929
	Dated March 8, 1993	
12.	Transcript of Appeal- Trial, Case No. CR92-1048.....	1020
	Dated March 9, 1993	
13.	Jury Instructions, Case No. CR92-1048	1123
	Dated March 9, 1993	
14.	Judgment, Case No. CR92-1048	1156
	Dated April 14, 1993	

VOLUME VII

15.	Transcript of Proceedings- Sentencing, Case No. CR92-1048.....	1157
	Dated April 14, 1993	
16.	Order Dismissing Appeals, Case No. 24478, 24648	1183
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DATED this 4th Day of April, 2018.

Respectfully submitted,

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CERTIFICATE OF ELECTRONIC SERVICE AND MAILING

I hereby certify that this document was filed electronically with the Nevada Supreme Court on April 4, 2018. Electronic Service of the foregoing **Appellant's Appendix to The Opening Brief (Volumes I-VII)** shall be made in accordance with the Master Service

List as follows:

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An Employee of the
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CR92-1048
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District Court
Washoe County
DC-9900051859-011
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Dept. No. 5

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE
THE HONORABLE MARK HANDELSMAN, DISTRICT JUDGE

--oOo--

ORIGINAL

THE STATE OF NEVADA,)	
)	
Plaintiff,)	TRANSCRIPT ON APPEAL
)	
vs.)	Trial
)	
WILLIAM EDWARD BRANHAM,)	March 3, 1993
)	
Defendant.)	Reno, Nevada
)	

APPEARANCES:

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The Defendant: WILLIAM EDWARD BRANHAM

Reported by: RICHARD L. MOLEZZO, CSR40, CP, CM, RPR
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19
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23
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I N D E X

WITNESSES: Direct Cross Redirect Recross

FOR THE STATE:

SWINEHART, Gary Lee	3	18	36	
RICE, Edward E.	40	45		
WHITEMORE, Joyce	50	58	64	67
MACKAY, Marilyn C.	72	96		
POORMAN, Dudley	111			

Outside the presence of the jury - pg 137

POORMAN, Dudley	154
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<u>EXHIBITS:</u>	<u>Marked for</u> <u>Identification</u>	<u>Admitted</u> <u>into</u> <u>Evidence</u>
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SS		8
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1 RENO, NEVADA; WEDNESDAY, MARCH 3, 1993; 10:20 A.M.

2 --oOo--

3
4 THE COURT: Thank you very much. Be seated,
5 please.

6 We return to CR92-1048, State of Nevada versus
7 William Edward Branham. Mr. Branham is present in court,
8 along with Miss Wilson and Mr. Hall.

9 Good morning to you, ladies and gentlemen of
10 the jury. The jury has returned and is in place.

11 Would you be ready to proceed?

12 MR. HALL: Yes, I'm ready, your Honor.

13 THE COURT: Ready, Miss Wilson?

14 MS. WILSON: Yes, your Honor.

15 THE COURT: All right. Go ahead.

16 Good morning. If you'd approach the lady to
17 my right, please, raise your right hand, listen carefully to
18 the oath, be sworn in.

19 (Witness sworn.)

20 THE COURT: If you'd have a seat in the chair
21 by the microphone, please.

22 ///

23 ///

24 ///

GARY LEE SWINEHART,

called as a witness by the plaintiff herein,

being first duly sworn, was examined and

testified as follows:

DIRECT EXAMINATION

BY MR. HALL:

Q Sir, would you state your name, and spell your

last name.

A My name is Gary Lee Swinehart.

Q And where were you employed in January,

February of 1992?

A Swiss Chalet.

Q What did you do at the Swiss Chalet?

A I was bartender.

Q And what were your duties there?

A Pardon?

Q What were your duties there at the Swiss Chalet?

A Just bartending. Serving our customers and

that.

Q What shift did you work?

A Graveyard.

Q Did you know Beverly Fetherston?

A Yes, I worked with her.

2 1 Q What shift did she work in February of nineteen
2 ninety--
3 A At the time, it was swing shift.
4 Q Do you know what days off she had?
5 A Friday and Saturday, I'm pretty sure.
6 Q Are you sure about that?
7 A No, not sure. It's been a while.
8 Q Okay. Do you know Bill Branham?
9 A Yes.
10 Q Is he here in the courtroom today?
11 A Yes.
12 Q Would you point him out and describe what he's
13 wearing, please?
14 A He's sitting over there.
15 Q What's he wearing?
16 A Sweater with spots on it and levis, slacks.
17 THE COURT: The record will show that the
18 defendant has been identified. He's the only male at that
19 direction as indicated by the witness.
20 MR. HALL: Thank you, your Honor.
21 BY MR. HALL:
22 Q Mr. Swinehart, do you know what the relationship
23 was between Beverly Fetherston--
24 A From my understanding, it was friendship.

1 Q How did you meet Bill Branham?
2 A In the bar.
3 Q How long had you known Mr. Branham?
4 A At the time, about six or eight months off and
5 on. You know, really didn't know him.
6 Q Did you see him in the bar?
7 A Yes.
8 Q How often did you see Mr. Branham in the bar?
9 A Oh, maybe three or four times a week.
10 Q That would have been at the Swiss Chalet?
11 A Yes.
12 Q Do you know whether or not he was ever 86'd
13 from the bar?
14 A Yes, he was 86'd.
15 Q Do you know when that was?
16 A The first time, I don't know what date it was,
17 but I know the first time was for a week, and after that
18 something else happened. He was 86'd permanently.
19 Q Now, directing your attention to '92, January
20 and February of '92, what was Bev's relationship with
21 Mr. Branham?
22 A Friends. I thought they were boyfriend and
23 girlfriend at the time, though, personally.
24 Q Do you know where Mr. Branham lived?

2

1 A Pardon?

2 Q Did you know where Mr. Branham lived?

3 A He was living with Bev at the time.

4 Q Miss Fetherston?

5 A Yes.

6 Q Do you know whether or not Miss Fetherston ever

7 had any problems with Mr. Branham?

8 A Well, from the grapevines, through that stuff,

9 she kicked him out 'cause he didn't have no more money or

10 whatever, and that, so he had to pack up and move out.

11 Q Do you know John Bell?

12 A Yes.

13 Q How do you know John Bell?

14 A Through the bar. Through Bev and that. He was

15 just a customer that came in.

16 Q Do you know what the relationship was between

17 Mr. Bell and Miss--

18 A Well, they were just seeing each other.

19 Drinking buddies.

20 Q Do you know whether or not Mr. Bell ever lived

21 with Miss Fetherston?

22 A No, he never lived with her. I know that.

23 Q Do you recall any time when-- Or did you ever

24 observe Miss Fetherston and Mr. Branham having any arguments

1 or problems?

2 A I don't recall. I really don't.

3 Q Do you recall the last time that you saw
4 Miss Fetherston?

5 A Pardon?

6 Q Do you recall the last time that you saw
7 Miss Fetherston?

8 A Just before her day off.

9 My ears are plugged. I got a cold.

10 Q I'll try and speak up.

11 A Okay. Sorry.

12 Q Mr. Swinehart, I'm showing you what has been
13 marked as State's Exhibit SS. Take a look at that Exhibit,
14 please.

15 What is it?

16 A A check from the Swiss-- or from Bev, made out
17 to the Swiss Chalet.

18 Q Have you seen that document before?

19 A Yes.

20 Q When did you see that document? Or that check?

21 A Can't remember what day it was, but I know what
22 date it was on the check, but it was on a Thursday. On the
23 graveyard she took the same date as what they had during the
24 day, even though it was another day. Complicated.

1 Q Let me get out a calendar and see if that would
2 help you. All right?

3 A Okay.

4 Q Showing you a calendar for February, 1992.

5 Do you recall whether or not you saw Bev sign
6 that check, the check that you have in your hand marked SS?

7 A Um-hum.

8 MR. HALL: I'd move for admission of State's SS.

9 MS. WILSON: No objection.

10 THE COURT: Admitted.

11 (State's Exhibit SS was admitted into evidence.)

12 BY MR. HALL:

13 Q Now, when did Bev write that check?

14 A It was on the 6th, like on there's on a
15 Thursday. But like when I go on the shift, graveyard, we
16 have to use this date for this.

17 It was on the 6th. Back to the 7th. Because
18 after midnight, it goes to the 7th. But like you always
19 wanted to use this--

20 Q When was the last day that Bev worked?

21 A The 6th. She came back Friday morning.

22 Q Are you sure?

23 A Yeah.

24 Q Okay. Who was there Friday morning?

2 1 A There was John, and Ted came in to relieve me,
2 and Bev and myself.

3 Q Do you recall making a statement to the police
4 on or about the 20th day of February, 1992?

5 Do you recall making a statement to the police--

6 A I'm sorry?

7 Q Do you recall making a statement to the police?

8 A About what?

9 Q About this case.

10 A No, I don't.

11 Q Okay.

12 A I really don't.

13 Q Okay. Did you ever meet with the police?

14 A Yes.

15 Q And did they ask you questions when you met
16 with the police?

17 A I don't remember what questions they asked, or
18 anything like that. I don't remember. Really, I don't.

19 Q Okay. Well, let me show you a transcript.
20 Okay? This is a transcript which purportedly was taken or--
21 a transcript of your conversation with the police taken on
22 February 20th, 1992.

23 A Um-hum.

24 Q Okay. I'm directing your attention to the last

1 page. That will be page 12. Would you read that page for
2 me, please.

3 THE COURT: Just read it to yourself, please,
4 sir.

5 THE WITNESS: Yes.

6 BY MR. HALL:

7 Q Does that refresh your recollection, sir?

8 A Yes.

9 Q Now, do you recall what days Bev was off?

10 A Trying to think. I don't know if it was Friday
11 and Saturday, or Saturday and Sunday.

12 Q Could it have been Wednesday and Thursday, or
13 Thursday and Friday?

14 A Yes, it could have been. But that was a long
15 time ago, because I was always changing the shift.

16 Q You don't know when Beverly Fetherston was off?

17 A No, really, I don't.

18 Q You know when she cashed check number 207?

19 A Well, that's when I was working on shift. She
20 was off-- Oh, she was off.

21 Q Okay. When did she cash the check?

22 A On the 6th, Thursday.

23 Q Okay. Thursday, the 6th of February, 1992?

24 A Um-hum.

2 1 Q Okay. When did she cash the check? What time
2 of day was it?
3 A It was after midnight.
4 Q That would have been early morning hours of
5 February 6th?
6 A Yes.
7 Q Now, on the day of February 6th, did you see
8 Miss Fetherston?
9 A Yes.
10 Q What time did you see Miss Fetherston?
11 A I have no idea what time it was.
12 Q Was it in the afternoon? Was it in the morning?
13 Do you recall?
14 A Morning, more than likely.
15 Q Okay. And who else was there that morning?
16 A There was John, Ted Rice, and myself and Bev.
17 Q And what were you all doing?
18 A Well, I just got off shift, and I was sitting
19 there having a cocktail with her and John. That's when Ted
20 came on shift.
21 Q Now, let's concentrate on the check a little
22 bit. Do you remember when you cashed the check?
23 A Yes.
24 Q Okay. Did you notice whether or not

1 Miss Fetherston had a checkbook?

2 A Yes, she had a checkbook.

3 Q Showing you what has been marked as State's LL
4 for identification. Take a look at that Exhibit, please,
5 sir.

6 A This doesn't look like the one I seen her with.
7 But of course I never paid much attention to her checkbook.

8 Q Okay. So you don't know whether or not that's
9 her checkbook?

10 A No. All I know is her purse.

11 Q Let me show you State's CC.

12 A That's her purse.

13 Q You're sure about that?

14 A Positive.

15 Q No questions in your mind?

16 A No.

17 Q Do you know where Miss Fetherston kept her
18 checkbook?

19 A In her purse. She always put it back in her
20 purse.

21 Q How do you know that?

22 A 'Cause I've seen her pull it out. Cashed enough
23 checks for her where she just put it right back in the purse.

24 Q Did she always put it in her purse?

2 1 A Yes.

2 Q Did she ever keep it in her coat pocket?

3 A No, not that I ever seen.

4 Q How many times have you seen Miss Fetherston

5 cash checks at the Swiss Chalet?

6 A Well, on my shift there was several times.

7 Q Now, when Miss Fetherston came in on the 6th

8 of February, that morning after she cashed the check--

9 And are you sure that's the date?

3 10 A Yes.

11 Q Do you remember when you were at the preliminary

12 hearing? Remember that?

13 A Yes.

14 Q And do you remember testifying on that date?

15 A Yes.

16 Q Now, do you recall whether or not you said that

17 you saw her on Friday or Thursday?

18 A It was Friday morning. She was supposed to meet

19 Bill Friday morning.

20 Q You saw Miss Fetherston on Friday morning?

21 A Thursday morning. Thursday morning. I take

22 that back. It was Thursday morning.

23 Q Are you sure about that?

24 A Yes, I am sure about that. Thursday morning.

3 1 Q Okay. Do you recall what you testified to at
2 the preliminary hearing?

3 A No.

4 Q I'm showing you a transcript of the preliminary
5 hearing, and I'm directing you to page 64. There's a
6 highlighted portion at the bottom. Would you read that to
7 yourself, please.

8 Do you recall what your testimony was at the
9 preliminary hearing after refreshing your recollection with
10 the preliminary-hearing transcript?

11 A No.

12 Q Did you say--

13 A I'm sorry. I just totally lost everything. I
14 really do.

15 Q Okay. So were you mistaken during your
16 testimony at the preliminary hearing--

17 A I just got my dates mixed up, that's all.
18 'Cause I never know when something is going to happen. It
19 happens, you know. I never paid any attention to the date,
20 the day, time or nothing.

21 Q Well, now, going back and looking at the check
22 that you cashed and then remembering who was there the next
23 day, do you know--

24 A It was like Thursday when she cashed it, so it

3
1 was like Friday morning. Seems like it to me, 'cause that's
2 the way it always worked out. I had to work on the 6th.
3 That was Thursday, even though it was Friday after midnight.
4 That's where I get all messed up, because I have to go by
5 the 6th.

6 Q Well, after you cashed the check, did
7 Miss Fetherston come in the following morning?

8 A I really don't know now. I really don't.

9 Q Okay. Well, did you ever have an opportunity
10 to be at the Swiss Chalet when Beverly Fetherston was there?

11 A Yes.

12 Q Okay. When was the last time that you saw
13 Beverly Fetherston at the Swiss Chalet?

14 A When she cashed the check. That was the last
15 time.

16 Q Did you see her after that?

17 A No.

18 Q Well, didn't you just testify that you saw
19 Miss Fetherston, Ted Rice, Poorman, yourself, all at the bar
20 the following morning?

21 A Yes, that's Friday morning. That's what I'm
22 trying to say, because when I do the 6th, it's actually the
23 7th after midnight. That's Friday.

24 Q Okay. What happened that morning?

1 A Well, when Bev was there and Bill and I were
2 sitting there having a cocktail, Ted come in and relieved me.
3 There was a phone call for Bev.

4 Q Who was that; do you know?

5 A Well, from what I understand, it was Bill
6 calling for Bev.

7 Q Okay. And what happened after that telephone
8 call?

9 A Well, Bev was nervous and upset. Because Bev--
10 when the phone rang, Bev says, "If that's for me, I'm not
11 here."

12 Q I'm sorry. Can you repeat that?

13 A Bev said, "If that's for me, I'm not here."

14 Q Who did she tell that to?

15 A Ted Rice, the bartender on shift at the time.

16 Q Okay. And then what happened?

17 A Well, Ted took it, ended up saying, "She told
18 me to tell you that she wasn't here."

19 And then he replied, "Well, your car is here."
20 He already seen that. So Bev took over the phone and talking
21 to Bill on the phone.

22 Q And did you hear any of that conversation?

23 A No. This is after she got through. She just
24 hung up and she was sitting there.

1 Q How did she act after she hung up the phone?
2 A Well, I have to throw something in there,
3 because John grabbed the phone away from Bev and took it and
4 says, "Pack your clothes and get the-- out because I'm moving
5 in."
6 Q John Bell was there?
7 A Yes.
8 Q He was there on February 6th?
9 A Um-hum.
10 Q Or was this Friday?
11 A This was Friday morning.
12 Q And you're positive of that?
13 A The 7th. Okay. We'll say the 7th. I'm away
14 from the 6th now.
15 Q Okay. And what was the conversation between
16 Mr. Bell and Mr. Branham?
17 A He-- Just what I said.
18 Q Okay. Then what happened?
19 A Well, hung up and just set there drinking, and
20 Bev was upset and all. She--
21 Q What happened after that?
22 A They left. They had another drink first, but
23 then they left.
24 Q Mr. Bell and Miss Fetherston left?

1 A Yes.

2 Q Did you ever see her after that?

3 A No.

4 Q All right. That was the last time you saw her?

5 A Yes.

6 Q You're sure about that?

7 A Positive now.

8 Q Positive now?

9 A Yes.

10 Q Did you forget to mention John Bell's name when
11 you first told the jury who was there at the bar that
12 morning?

13 A No.

14 MR. HALL: That's all the questions I have.

15 THE COURT: Thank you. Miss Wilson?

16 MS. WILSON: Your Honor, may I have permission
17 to approach closer to Mr. Swinehart?

18 THE COURT: Sure.

19

20 CROSS-EXAMINATION

21 BY MS. WILSON:

22 Q Good morning.

23 A Good morning.

24 Q Can you hear me?

3 1 A Vaguely.

2 Q Okay. Would you like me to get closer?

3 A I'll just watch your lips.

4 Q Okay.

5 A I'll move closer.

6 Q Mr. Swinehart, do you still work at the Swiss

7 Chalet?

8 A No.

9 Q How long have you been gone from there?

10 A About seven weeks now.

11 Q Seven weeks.

12 Are you employed?

13 A Not at the moment. I have a job to go to today.

14 Q Okay. Now, you worked at the Swiss Chalet for

15 a period of time; right?

16 A Yes.

17 Q And during that period of time, how long was it?

18 A It was a little over a year.

19 Q Okay.

20 A Close to two years.

21 Q Now, during that time you knew Beverly and Bill;

22 right?

23 A Yes.

24 Q And you knew Ikie and Richard; right?

3 1 A Yes.

2 Q Would you classify the Swiss Chalet as a very
3 close-knit family bar?

4 A Yes.

5 Q And if someone was out of line at the Swiss
6 Chalet, would they get 86'd?

7 A Temporarily. But they always got a second
8 chance.

9 Q And people would get 86'd for mouthing off?

10 A Vulgar language, yes.

11 Q Okay. And Mr. Branham, who you know,--

12 A Yes.

13 Q --was kind of loud sometimes and obnoxious;
14 right?

15 A Yes.

16 Q Okay. Now, during the time that you were a
17 bartender, did you ever see Mr. Branham physically hurt
18 Beverly Fetherston?

19 A I seen him grab ahold of her, but I don't know
20 if he hurt her or not. I seen him grab her.

21 Q Grab her by the arm?

22 A Yes.

23 Q Okay. Did you ever see him hit her?

24 A Not physically, no.

3 1 Q Ever slap her?

2 A No.

3 Q Okay. Now, you knew Beverly for about eight

4 months; right?

5 A Yes, at the time.

6 Q Okay. And you were friends with her,--

7 A Yes.

8 Q --as well as a co-worker?

9 A Yes.

10 Q Did you ever have any romantic involvement with

11 her?

12 A No.

13 Q Do you know what "sparking" is?

14 A "Sparking"?

15 Q "Sparking".

16 A Hum-um.

17 Q Okay. Now, you worked graveyard shift?

18 A Um-hum.

19 Q Which is 12:00 to 8:00?

20 A Yes.

21 Q And Beverly worked before you; right?

22 A Yes.

23 Q So you took-- you carried on after her shift?

24 A Yes.

1 Q Okay. Now, one night in February, you came
2 on and relieved her of shift and she stayed with you until
3 3 o'clock in the morning?

4 A Well, she left for a short while, then she came
5 back.

6 Q And she drank at the bar--

7 A (Nods head affirmatively.)

8 Q --until 3 o'clock in the morning?

9 A Yes.

10 Q Okay. Now, when you cashed a check for her,
11 that was not uncommon; was it?

12 A No.

13 Q And you knew she had money in the bank?

14 A From what she said. I don't know how much,
15 but she said she had money in the bank, or else I wouldn't
16 took her check.

17 Q Okay. And you knew that she had stash money,
18 what she called stash money?

19 A Yes.

20 Q Now, she would talk about her finances in a
21 limited way at the Swiss Chalet. Isn't that true?

22 A Yes, it is.

23 Q Would you classify the Swiss Chalet and the
24 neighborhood around it as a dangerous one?

1 A No.

2 Q Not really?

3 A No, not-- not to me, it isn't.

4 Q Okay. It's a homey area?

5 A Yes. Family bar location, all that.

6 Q It was common for Beverly to sit after shift

7 and have cocktails. Isn't that true?

8 A Yes.

9 Q And that was called like a double shifter?

10 A Yes.

11 Q Okay. And that was not unusual for her to do;

12 right?

13 A No, it was not unusual.

14 Q Okay. Most of the time isn't it true that she

15 would walk to work and walk home?

16 A Yes.

17 Q And so at 3 o'clock in the morning, it was not

18 unusual for her to walk back to her house?

19 A No, it wasn't unusual.

20 Q Okay. Now, do you recall her keys having a

21 little noisemaker on them?

22 A Yeah, there was a bunch of stuff on there.

23 Q Okay. Do you remember a noisemaker by chance,

24 a whistle, or anything like that?

3 1 A I never really paid that attention. She had so
2 much stuff on there, she could have had anything on there.

3 Q Okay. Now, when the telephone rang-- Remember
4 that time? The telephone rang and she said, "If it's for me,
5 I'm not here"?

4 6 A Right.

7 Q Well, before that telephone rang, she told you
8 she was supposed to meet him at noon; right?

9 A Well, in the morning sometime.

10 Q Okay. So she was going to meet him that day?

11 A Um-hum.

12 Q All right. Now, when that telephone rang,
13 she was drinking coffee and bourbon?

14 A Yeah, bourbon-coffee.

15 Q Which was her typical drink in the morning;
16 right?

17 A Right.

18 Q Okay. And that particular day you recall that
19 she was wearing stretch pants?

20 A I don't know what she was wearing.

21 Q Do you remember caprice slacks and a sweater?

22 A I know she was wearing a sweater. But the pants
23 or the slacks or whatever, I'm really not sure.

24 Q And the sweater, do you recall if it had a

4 1 design on it like a pink diamond?

2 A No.

3 Q Did it have a mouse wearing ice skates?

4 A I don't remember nothing about that, what design
5 was on it. Just know that it was a sweater.

6 Q She always wore sweaters; right?

7 A Not always, no. Not always.

8 Q But she was notorious for wearing sweaters?

9 A Yes.

10 Q Okay. Now, when the phone rang, John Bell was
11 there?

12 A Yes.

13 I have to say something, that I got that all
14 mixed up, 'cause when-- the time-- that's when John and Bev
15 and I were there that Ted Rice came in when John grabbed the
16 phone. Then when she was supposed to meet Bill the next
17 time, that's when she was nervous she had to go meet Bill.

18 Q Okay. But she was supposed to meet Bill at
19 noon; right?

20 A Sometime during the morning.

21 Q Right.

22 A You know.

23 Q Now, did you see John Bell take the phone from
24 her and say, "You're moving out and I'm moving in"?

1 A Yes, I was sitting right there.

2 Q So if he said he never did that, that would be
3 untrue?

4 A Well, I was sitting right there when he did it.
5 He grabbed the phone from Bev and said, "Pack your stuff and
6 get the-- out, and I'm moving in."

7 Q Okay. If you want to use the exact language,
8 you can.

9 A No, I don't like using that kind of word.

10 Q Okay. But I'm saying you're permitted to.

11 Now, Beverly told you that she didn't know what
12 to do with regard to Bill and her?

13 A Yeah.

14 Q And he was already out of the residence when she
15 was supposed to meet him? He was already gone when she was
16 supposed to meet him before noon; right?

17 A Not that I know of. All I know is that there
18 was a phone call and supposed to be Bill on the phone.

19 Q Well, do you remember her saying, "Gary, I
20 don't know what to do"?

21 A Yes, she took and mentioned that, "Gary, I
22 don't know what to do."

23 Q And you said, "Well, if-- if you want to,
24 let him move back in"?

1 A Yes, I did exactly.

2 Q And she said, "I think I'm going to let him
3 move back in"?

4 A Right.

5 Q All right. Now, she had wanted to have John
6 Bell move in?

7 A Yes. That was-- some talk of it.

8 Q Okay. Because she had a romantic relationship
9 with him?

10 A That was between them. I really don't know.
11 They were just going with each other. What they did was
12 their own business.

13 Q Okay. Now, at the time that Bill lived with
14 Bev, he was-- he'd cook and he'd clean house; right?

15 A That was my understanding, yes.

16 Q Okay. Do you ever remember Mr. Branham saying,
17 "I'm going to kill you"?

18 A No, I never heard him say about killing her.
19 Only thing I've ever heard is, "The only good thing for you
20 is dead."

21 Q Okay. And that was said when she had a hacking
22 cough, and he came to the side door and gave her Robitussin
23 and aspirin and she was hacking and coughing and he said,
24 "Sounds like you got to die before you get better"?

1 A I don't remember hearing anything like that
2 said.

3 Q What do you remember?

4 A I don't even know nothing about Robitussin or
5 aspirin.

6 Q What do you remember about that statement?

7 A Just what I said. "The only good thing for you
8 is dead." That was it. That's-- I don't know. She didn't
9 even have a cold.

10 Q When was that said?

11 A I don't know. That was quite a while ago.

12 Q Okay. Do you remember making a statement to
13 the police on February 20th when the police came to talk to
14 you?

15 A Nope.

16 Q I'm going to show you--

17 MS. WILSON: May I approach?

18 THE COURT: Sure.

19 BY MS. WILSON:

20 Q I'm going to show you a transcript of your
21 statement to the police, and I'm going to ask you to look at
22 this date and see if that refreshes your memory.

23 See it has your name up here?

24 A Um-hum.

4 1 Q See its date?
2 A Yes.
3 Q Okay. Now, that statement was taken February
4 20th. Do you dispute that?
5 A I'm not one for dates.
6 Q Okay.
7 A Really, I'm not.
8 Q Now, in that statement to the police, you told
9 them about that statement that you heard. Okay?
10 A Um-hum.
11 Q And you-- And the police said, "When did you
12 hear that statement?"
13 And you said to them, "Oh, it was approximately
14 one month ago."
15 A Yeah.
16 Q So if the interview was February 20th, you heard
17 that statement January 20th?
18 A Like I said, I don't know the date. I mean I
19 hear stuff like that all the time in the bar.
20 Q All right.
21 A You know.
22 Q Your impression of Bill Branham was that he was
23 all talk and no action?
24 A Yeah.

1 Q Big talker?

2 A Um-hum. When he was drinking.

3 Q Okay. And that was the one and only time that
4 you ever heard anything like that, any statement like that
5 with the word "die" or anything like that in it?

6 A Yes.

7 Q Okay. Now, Beverly would act belligerent and
8 loud when she was drinking beer; right?

9 A Yes.

10 Q And you saw her that way?

11 A Yes.

12 Q And when the police talked to you, you told
13 them-- after you found out she was dead, you said, "You
14 better go talk to Butch Poorman"; right?

15 A Yeah, because Butch supposed to be-- she was
16 supposed to be out with, or something like that. I never
17 knew what was going on. All I know, Butch and her supposed
18 to meet or something.

19 Q And Butch Poorman said to you that he was the
20 last person to see her?

21 A Yes. That's true.

22 Q And when he said that to you, you were wondering
23 how he could say that?

24 A Yeah, because those people said they seen her

4 1 last.

2 Q Now, the preliminary hearing that you have

3 already testified in, you recall that?

4 A Yeah.

5 Q That was back in May of 1992. Do you recall

6 that?

7 A Yes.

8 Q Before you take the witness stand, you raise

9 your right hand and swear to tell the truth; right?

10 A Yes.

11 Q Okay. Now, at the preliminary hearing you said

12 that you were not sure whether you saw her the rest of the

13 day, meaning Thursday, but you recall seeing her the

14 following morning, being Friday morning?

15 A Yes.

16 Q Okay. And that was at the Swiss Chalet Bar?

17 A Yes.

18 Q And you've known Bill Branham for about a year;

19 right?

20 A For the same time as Bev, yes.

21 Q All right.

22 MS. WILSON: Court's indulgence?

23 BY MS. WILSON:

24 Q You would classify both of these people, Bill

1 and Bev, as heavy drinkers?

2 A Yes. At the time, yes.

3 Q And you have a good basis for that because
4 you've been a bartender for years; right?

5 A Yes. Off and on.

6 Q Okay. When they would argue, they would argue
7 mutually; right?

8 A Yes.

9 MS. WILSON: Court's indulgence?

10 BY MS. WILSON:

11 Q At the time, you only knew John Bell for a
12 couple of months; right?

13 A Yes. Very short time.

14 Q After the death of Beverly Fetherston, you did
15 not see John Bell in the bar. Isn't that true?

16 A True.

17 Q And in fact, you hadn't seen him until how many
18 weeks after you learned about the death?

19 A Gosh, I don't have no idea. It's been a while.
20 It was a long time.

21 Q About a month or so?

22 A Yes. Easy to say, yes, a month or more.

23 Q And he came to your house?

24 A Yes.

4 1 Q And he learned about this through you?
2 A Right.
3 Q Did he cry?
4 A No, he was just shocked.
5 Q So--
6 A At least he said he was shocked.
7 Q If he testified that he cried when he learned
8 that in front of you, that would be an untruth?
9 A Yeah, he didn't cry in front of me.
10 Q Okay.
11 A He was just shocked.
12 Q Okay. And to your knowledge, Bev was to meet
13 Bill before noon Friday morning?
14 A From what I understand, yes. From what she
15 said.
16 Q Okay. Now, you never saw Bill Branham on
17 Wednesday or Thursday or Friday?
18 A No, I didn't.
19 MS. WILSON: Court's indulgence?
20 BY MS. WILSON:
21 Q Now, let's talk a little bit about that quote,
22 "The only best thing for you is dead." That's not a direct
23 quote; is it?
24 A To me, it was just something said. I never

1 paid no-- really no attention to it.

2 Q But you don't know if those were in fact the
3 exact words said?

4 A No.

5 Q Do you have a little hearing problem?

6 A Yes.

7 Q Okay. And you don't pay attention to that
8 because you hear that stuff in the bar all the time?

9 A Yes.

10 Q Didn't surprise you?

11 A No.

12 Q And you were about four or five feet away?

13 A Three or four. I was right there by the sink,
14 corner.

15 Q Bev was a smoker?

16 A Yes.

17 Q Heavy smoker?

18 A Never paid no attention. I know she smoked.

19 Q Bar's full of smoke anyway; right?

20 A Yes.

21 Q Okay. When that statement was made that you
22 heard, did you see Mr. Branham and Beverly arguing loudly?

23 A Oh, there was a few words that came out loud.
24 But like I said, you know, you always hear that stuff in

1 the bar.

2 Q Well, point of fact is you didn't believe that
3 any fighting was going on because there was no loud words
4 said at the time?

5 A Oh, there's one or two or three or four, but
6 not continuous.

7 MS. WILSON: Preliminary-hearing transcript,
8 page 78.

9 Your Honor, there's a need for a couple of
10 sentences before.

11 THE COURT: Go ahead.

12 BY MS. WILSON:

13 Q "Question: Do you recall if they were in a
14 fight--"

15 "Answer: No."

16 "Question: --when the statement was made?"

17 "Answer: No."

18 "Question: You don't recall or--"

19 "Answer: No, I don't recall, because there was
20 no loud words. Real loud words, anyway."

21 A Um-hum.

22 Q Okay. Both parties did not use wholesome words;
23 right?

24 A Right.

5 1 MS. WILSON: Thank you.

2 THE COURT: Redirect, Mr. Hall?

3
4 REDIRECT EXAMINATION

5 BY MR. HALL:

6 Q I'm a little confused, Mr. Swinehart, on these
7 dates. The last time that you saw Miss Fetherston at the
8 bar, did she get a phone call?

9 A Yes.

10 Q Was John Bell there when she got this phone
11 call?

12 A On that one, no. 'Cause now I got it right.
13 Because this happened prior to when Bill took and told-- I
14 mean John took and told Bill to "pack his stuff and get the--
15 out".

16 Q Do you recall whether or not John Bell told that
17 to Beverly Fetherston and then Beverly Fetherston told that
18 to Bill Branham, or do you recall whether or not he took the
19 phone--

20 A No, John took and said on the phone to Bill.

21 Q Do you know when that was?

22 A Dates, I don't know. It was in the morning,
23 I know that.

24 Q Do you recall how long before-- it was before

1 the last time Bev was in the bar?

2 A No, I don't.

3 Q Okay. Now, the last time that Miss Fetherston
4 was in the bar, she got a phone call?

5 A Yes.

6 Q And who was the phone call from?

7 A Bill. Yeah, Bill.

8 Q Okay. Do you know whether or not she was going
9 to go meet Bill Branham?

10 A She said she was going to meet Bill. She talked
11 to me about it, and she wanted to-- she asked me what should
12 she do. I said, "Why don't you just take him back? Let him
13 move back in."

14 Q Did you see her after that?

15 A No, I didn't.

16 Q Do you recall what date that was?

17 A No.

18 Q Could it have been a Thursday when she got that
19 phone call?

20 A Yes, it could have been.

21 Q Now, when you heard the comment about, "The
22 best thing for you is dead", was that during an argument
23 between Miss Fetherston and Mr. Branham?

24 A They were having a discussion.

1 Q Can you describe this discussion?

2 A I didn't hear too much. But I just know I heard
3 certain things. And it was like-- Tell you the truth, I
4 really don't know what all that discussion was about. They
5 were just hashing things out, getting back together or some
6 sort of baloney.

7 Q Do you know whether or not Miss Fetherston ever
8 kicked Mr. Branham out of her house?

9 A Yes, yes.

10 Q When did she do that?

11 A Oh, gosh, I don't know. I have no idea.
12 Really don't.

13 Q Do you know how many times Miss Fetherston
14 kicked Mr.--

15 A Oh, she always telling him she's going to kick
16 him out.

17 Q State's PP.

18 Sir, I'm showing you what has been marked as
19 State's Exhibit PP for identification. Do you recognize
20 these?

21 A Not really, I don't.

22 Q Never seen them before?

23 A If I did, I don't recall. I really don't.

24 Q Do you know whether or not those are

5 1 Miss Fetherston's keys?

2 A Nope. Because the ones I seen before had a
3 bunch of other stuff on it. Big clump of keys.

4 Q So you don't know?

5 A No, I don't know.

6 MR. HALL: That's all I have. Thank you.

7 THE COURT: Thank you.

8 Miss Wilson, any recross?

9 MS. WILSON: No, thank you.

10 THE COURT: You may step down, sir. Thank you
11 for your testimony.

12 THE WITNESS: Thank you.

13 MR. HALL: Ted Rice.

14 THE COURT: Good morning.

15 THE WITNESS: Good morning.

16 THE COURT: If you would step forward, approach
17 the lady to my right, please, raise your right hand, be sworn
18 in.

19 (Witness sworn.)

20 THE COURT: If you'd have a seat in this empty
21 chair over there.

22 THE WITNESS: Okay.

23 ///

24 ///

5
1 EDWARD E. RICE,
2 called as a witness by the plaintiff herein,
3 being first duly sworn, was examined and
4 testified as follows:
5

6 DIRECT EXAMINATION

7 BY MR. HALL:

8 Q Mr. Rice, could you state your name, spell your
9 last name.

10 A Yes. My name is Edward E. Rice, but my nickname
11 is Ted, and everybody calls me Ted.

12 Q Mr. Rice, were you working at the Swiss Chalet
13 in February of 1992?

14 A Yes, I was.

15 Q And what were your duties down at the Swiss
16 Chalet?

17 A Bartender.

18 Q Did you know Beverly Fetherston?

19 A Yes, I did.

20 Q How long had you known Beverly Fetherston at
21 that time?

22 A Well, at that time I'd known her over a year,
23 because I knew her when she went to work there.

24 Q How long did you work there at the Swiss Chalet?

1 A Well, on and off for about two years, I would
2 say.

3 Q As a bartender?

4 A Uh-huh.

5 Q Did you know Mr. Branham?

6 A No, I didn't know him. Not personally.

7 Q Now, do you remember February of 1992?

8 A Um-hum.

9 Q And did you start working at the Swiss Chalet
10 in February?

11 A Well, I think I started working there either
12 the latter part of January or the first of February.

13 Q And what shift were you working?

14 A Well, I was working more or less relief. I was
15 working days, two or three days, and then I'd work a couple
16 swing shifts.

17 Q Do you remember the last day that you saw
18 Beverly Fetherston in the Swiss Chalet?

19 A Um-hum.

20 Q What day was that?

21 A Well, I was working days, and I can't put my
22 finger on what day it was. It was the day that she was going
23 to be off that night, and she wasn't coming on till the next
24 afternoon. That's the only way I can put my finger on it.

1 Q Okay.

2 A She was off--

3 Q She was off the day that you--

4 A Um-hum.

5 Q What happened that day?

6 A Well, she was having a few drinks in there when

7 I went to work. I relieved Gary. And she was having a few

8 drinks and she had a phone call, and she said, "I'm not

9 here."

10 So I told whoever it was on the phone that,

11 "She isn't here."

12 And so, oh, just a few minutes, he calls back.

13 He must have called four or five times. And then he-- he

14 was getting angry, she was getting angry, I was getting

15 tired.

16 So he called up again and said, "Well, I know

17 she's there because her car's outside."

18 And I said, "Look. My orders are to say she

19 wasn't there."

20 And so Beverly got upset and she says, "Oh, I'll

21 take the phone."

22 And I was glad she did. And but she took the

23 phone then and they-- they talked for a while.

24 Q Who else was there that day?

1 A Well, now, the only one that I can actually
2 remember-- recall was Gary, 'cause he and Bev were sitting
3 next to each other.

4 Now, I know there had to be some more people
5 in there, but I can't recall who they were.

6 Q Did you work the day after that?

7 A Yes.

8 Q Did you see Bev that day?

9 A No.

10 Q Beverly Fetherston?

11 A No.

12 Q Did you work the day after that, or the two
13 days--

14 A Yeah, because I worked the day that she was
15 supposed to come back to work to relieve me, you know. And
16 she didn't show.

17 Q Would that have been Saturday?

18 A Yeah.

19 Q Would that have been Saturday, February 8th?

20 A That sounds about right.

21 Q Let me show you a calendar here. February,
22 1992. You worked for Miss Fetherston on February 8th, and
23 that would have been Saturday. Do you recall you saw her on
24 Friday?

1 A Yeah. Yeah, she-- I-- I worked the Friday,
2 Saturday and Sunday days.

3 Q Okay. Did you work Thursday?

4 A And-- No. I was-- I'm trying to recall. I--
5 I can't recall. I'd have to look back on the record, because
6 I can't-- But Saturday she was supposed to come in and she
7 didn't show that day. And so I had-- I had to work until
8 the owner came down and relieved me.

9 Q On Saturday?

10 A Um-hum.

11 Q Did you see her the day before that?

12 A The day--

13 Q Friday.

14 A The day before is the day that she was in there.

15 Q Was that the same day that you got the phone
16 call?

17 A Yeah. That was a Friday.

18 Q You're sure about that?

19 A I'm positive as I can be, yes.

20 Q Okay. How did Miss Fetherston act after she
21 received these phone calls?

22 A She seemed in appearance to be upset.

23 Q Do you know John Bell?

24 A No, I can't say as I know him.

1 Q Do you know who the telephone calls were from?

2 A All-- All I knew was she said, "Bill", and
3 that's all I knew.

4 Q Did she say anything about going to meet Bill
5 or anything else--

6 A Yeah. She said, "Well, I guess I better go
7 meet him", after she finally talked on the phone. And that
8 was the sum and substance of it.

9 Q So she left?

10 A Yeah, she left pretty shortly, uh-huh.

11 Q Did she leave by herself?

12 A Yes. As far as I can remember, she did.

13 MR. HALL: That's all I have. Thank you.

14 THE COURT: Thank you. Miss Wilson?

15

16 CROSS-EXAMINATION

17 BY MS. WILSON:

18 Q Mr. Rice, do you have any trouble hearing me?

19 A No, I can hear you. I've got my hearing aids,

20 so--

21 Q Okay. How old are you, sir?

22 A I'm 72.

23 Q 72..

24 And you wear glasses?

1 A Um-hum.

2 Q Do you always wear glasses?

3 A Always.

4 Q Okay. Are you nearsighted or farsighted?

5 A Well, now, that I can't-- I don't know. I've

6 never been told which one I am. But I have trifocals.

7 Q Is it easier for you to see people far away or

8 close up?

9 A Oh, I can see-- with my glasses, I can see

10 them either way.

11 Q Okay. Now, when you started working at the

12 Swiss Chalet, this is a family type bar; right?

13 A Right.

14 Q And it's something where you have local

15 customers and sometimes you have people that aren't local;

16 right?

17 A Right.

18 Q Now, would it be fair to say that at all times

19 when you're tending bar, you're not paying attention to

20 who's there and who's not there?

21 A No. I pay attention to who's there, but I don't

22 know them.

23 Q Okay. And sometimes it would be fair to say

24 that people may come in and go and you may not see them?

1 A Come in and go? Yes.

2 Q Okay. Now, the time that the phone call-- you
3 picked up the phone, did the person on the telephone say,
4 "This is Bill Branham"?

5 A No.

6 Q Okay. So you don't know who was on the phone?

7 A No.

8 Q Before the phone call happened, did you know
9 that Bev was going to meet Bill Branham?

10 A No, I didn't.

11 Q Okay. Would it be fair to say that Gary
12 Swinehart and Bev were talking together and you may not
13 have heard everything that they said?

14 A Oh, yes, that's possible.

15 Q Okay.

16 A 'Cause I never-- I don't bother about the
17 conversations, you know.

18 Q Okay. Now, finally when this person said, "I
19 know her car's there", she took the phone, and that's when
20 you heard her say, "Bill"?

21 A No, no, that isn't when I heard her say, "Bill."
22 She said, "Bill", previous to that. She said, "Bill is
23 sure--"

24 Q Persistent, or something?

1 A Right. Words to that effect.

2 Q Okay. Now, as far as you can remember, this
3 was in the morning?

4 A Um-hum.

5 Q And you had to relieve her on a Saturday; is
6 that right?

7 A No, no. She relieved me on the Saturday
8 evening.

9 Q Okay. But this particular Saturday you had to
10 work because she didn't work?

11 A Yeah. I had to work overtime, see.

12 Q Okay. And this situation that you're talking
13 about happened the day before?

14 A Um-hum.

15 Q Okay.

16 MS. WILSON: Thank you.

17 THE COURT: Any redirect?

18 MR. HALL: No redirect.

19 THE COURT: Thank you for your testimony.
20 You're free to leave, sir.

21 THE WITNESS: Thank you.

22 MR. HALL: Your Honor, let me check in the
23 hallway and see if I have any witnesses out here.

24 THE COURT: All right.

6
1 MR. HALL: I'm sure there's a couple of folks
2 downstairs, and I believe my investigator went to get them.

3 THE COURT: All right. Let's take a recess
4 until 11:30, and we'll be able to provide you with some
5 testimony at that time. We stand in recess.

6 (Recess.)
7

8 THE COURT: Thank you. Be seated, please.

9 We're back with CR92-1048, State of Nevada
10 versus William Branham. Parties and counsel are present.
11 The jury is in place.

12 Are you ready, Mr. Hall?

13 MR. HALL: Ready, your Honor.

14 THE COURT: Good morning. If you would approach
15 the lady to my right, please. If you'd approach this lady,
16 please, raise your right hand, be sworn in.

17 (Witness sworn.)

18 THE COURT: If you'd have a seat right over
19 here in the dark-colored chair.

20 ///

21 ///

22 ///

23 ///

24 ///

1 JOYCE WHITMORE,
2 called as a witness by the plaintiff herein,
3 being first duly sworn, was examined and
4 testified as follows:

6 DIRECT EXAMINATION

7 BY MR. HALL:

8 Q Ma'am, would you state your name, and spell
9 your last name.

10 A Joyce-- My last name?

11 Q Yes.

12 A Pardon me. Whitmore.

13 Q How do you spell that?

14 A W-h-i-t-m-o-r-e.

15 Q Did you know Beverly Fetherston?

16 A Yes, I did.

17 Q How did you know Beverly Fetherston?

18 A Well, I got to know her pretty closely as a
19 friend and talk on my days off and other incidents, but I
20 got to know the woman pretty well.

21 Q Where do you work?

22 A Harrah's.

23 Q Were you working at Harrah's back in 1992?

24 A Yes.

1 Chalet?

2 A Mostly 4:30 in the morning on my way to work,
3 I would have my coffee, you know, and he'd have my coffee
4 for me. And my days off, which is Wednesday and Thursday,
5 I'd go down in the morning and sometimes in the afternoon
6 with them--

7 Q What do you do?

8 A Just get my coffee, sit at the end of the bar
9 and on the far stool.

10 Q Do you recall what shift Beverly Fetherston was
11 working back in February of 1992?

12 A Mostly she covered Gary. Gary worked midnight
13 to 8 o'clock, and she took over after that. She would come
14 in.

15 Q When did Mr. Rice work? Ted Rice. Do you
16 remember Ted Rice?

17 A Ted was working-- I guess her-- From what I
18 heard, I've seen him, you know, other incidents, but when
19 he was taking over for her when she didn't show the one
20 morning. He was called in, yes.

21 Q Do you recall whether or not Miss Fetherston
22 ever worked swing shift?

23 A I think there was some incidences, yeah, that
24 something happened and she got called in, yes.

1 Q Do you recall what days she had off?

2 A No, I don't. I can't. I can't.

3 Q Do you recall whether or not you had occasion
4 to be in the Swiss Chalet on February 6th of 1992?

5 A Yeah.

6 Q How do you remember that day?

7 A Well, mainly I went in-- I-- I got off from my
8 things and went in, and Gary was sitting there with a couple
9 of his friends, and I said I was going to go down to the Old
10 Reno Club and play pennies. But I finished my coffee and--

11 Q What happened that day?

12 A Oh. Kind of a weird situation. I mean sat for
13 almost five hours and played cribbage with Gary. There were
14 phone calls and there was other incidences and things coming
15 in, and she did not answer it.

16 But mainly I remember they were playing cribbage
17 for hours. And I usually went back after I got out of the
18 Old Reno and the other-- and went back, and they still were
19 playing cribbage.

20 Q What time did you get to the Swiss Chalet that
21 day?

22 A First time probably about 7 o'clock, 7:30 in
23 the morning. Yeah.

24 Q When did you leave?

6 1 A Oh, an hour or so, maybe an hour and a half
2 after that. I talked with somebody, had my coffee, finished
3 it, you know, and then went on down to the Old Reno, which
4 I usually did.

5 Q When did you come back?

6 A Oh, probably 1:30, 2 o'clock, 2:30, somewhere
7 in that vicinity.

8 Q Did anything happen while you were there when
9 you were at the Swiss Chalet that morning?

10 A There was a lot of nervous things, calls and
11 incidents, but I was-- was not in on it. I was sitting--

12 Q You don't know who the calls were from?

13 A No, I don't.

14 Q Did you ever have an opportunity to see
15 Miss Fetherston and Mr. Branham together?

16 A Yes.

17 Q When was that?

18 A That was Halloween. We had a Halloween thing
19 at the Swiss Chalet, you know, come in costume and that.

20 Q Did you see them together after Halloween?

21 A Yes, and Gary's birthday party, and one other
22 time we had a small little party-like thing, snacks, you
23 know, like family-style deal.

24 Q Is Mr. Branham here in the courtroom today?

1 A He doesn't look like he was. He's kind of
2 changed his looks.

3 Q What's different about him?

4 A Mustache, and hair's not quite so long.

5 Q Well, are you sure that Mr. Branham is here in
6 the courtroom?

7 A Well, I can't be positive on that one. It's
8 been a long time since I looked, really. I remember in my
9 mind, you know, what-- when he had his beard and mustache,
10 the other--

11 Q Do you recall any conversations between
12 Miss Fetherston and Mr. Branham?

13 A Yes.

14 Q What was the last conversation that you heard
15 between Miss Fetherston and Mr. Branham? What was the
16 nature of that conversation?

17 A It was over the car.

18 Q When was that?

19 A Keys to the car. I can't tell you exactly the
20 time on that one. But I can tell you that it happened, he
21 wanted the car keys and she didn't want to give him. She
22 offered to get him a cab to go home. Sleep it off. He was
23 drunk. He really was. He was drunk.

24 Q Do you remember the last time that you saw

1 Miss Fetherston?

2 A The last time I saw her was I think on a
3 Thursday, if I remember right. Real early in the morning.
4 Was the last time that I--

5 Q And where was that?

6 A In the Swiss Chalet.

7 Q Who else was there?

8 A And that's also the incident that's when I went
9 to the Old Reno. I went to the Old Reno that day. I went
10 and got my money, changed my check, you know, pay my rent,
11 and then I end up at the Old Reno play pennies.

12 Q Who else was at the Swiss Chalet that morning?

13 A Let me see. There was some little gal with dark
14 hair. I don't-- Donna, something. And myself, and a couple
15 of the old guys that usually come in there all the time. I
16 wouldn't be able to tell you their names, but I know them if
17 I see them. And a couple of taxi people from the taxi.

18 Q Now, this conversation that you heard between
19 Miss Fetherston and Mr. Branham regarding the car, how long
20 before the last time you saw Miss Fetherston at the Swiss
21 Chalet was that?

22 A I-- I would say in the vicinity of about three
23 or four days.

24 Q And is that all that was said?

1 A Quite an argument, really.

2 Q Can you recall any specific statements made
3 during the course of that argument?

4 A Yes, I can.

5 Q What were those?

6 A I'm sorry. He said that she was a "dead bitch",
7 and he was angry, he needed money, he wanted the car keys and
8 the other, and it went on and on. So I just kind of excused
9 myself-- excused myself and got out of there.

10 Q That was about three or four days--

11 A I would say in the vicinity, yes, three or four
12 days, if that.

13 I wasn't down. Gary came home and told me about
14 the incident of her. Him and Richard, Ikie's husband, were
15 going to go over and check out because Saturday or whatever,
16 Friday or Saturday, the other day that she did
17 not show for work, and it wasn't like her.

18 You know the conversation in the bar, but it
19 was not like her not to show up for her job. Not on any
20 incidents.

21 And they just went over, I guess, got the police
22 or somebody, they went over to the house and said something
23 about a kitchen light in the window and the cat was up in the
24 window. And after that, I just-- just hearsay of

1 conversation in the bar.

2 MR. HALL: No further questions.

3 THE COURT: Thank you. Miss Wilson?

4
5 CROSS-EXAMINATION

6 BY MS. WILSON:

7 Q Good morning. Your name again?

8 A Joyce Whitmore.

9 Q Joyce Whitmore?

10 A Yes.

11 Q Joyce, you have never made a police statement;
12 have you?

13 A I was talked to by some agents, I think, or
14 policemen or something.

15 Q Did you make a written statement?

16 A I don't know, ma'am. I really don't know.
17 They were taking incidences of what I witnessed.

18 Q Did you have a piece of paper in front of you
19 and write down what you just testified to?

20 A Not that I know of.

21 Q Okay. Now, you never appeared at the
22 preliminary hearing; right?

23 A No, I did not.

24 Q So the testimony that you're giving today is

1 from your memory?

2 A Yes, it is.

3 Q Okay. Now, Gary Swinehart is presently your
4 boyfriend?

5 A No, he's not. We're not with each other.

6 Q But at the time--

7 A At the time--

8 Q --in February, he was?

9 A Yes, yes, he was.

10 Q Okay. And you would be with him in the bar
11 during his shift; right?

12 A Sometimes. Not all the time.

13 Q All right. Did you feel that you had a good
14 relationship with Mr. Swinehart--

15 A Yes.

16 Q --during the time that you lived together?

17 A Yes, we did.

18 Q Who was his physician?

19 A He didn't have one, honey. If I took him to
20 the doctor, I took him to the emergency at the hospital.

21 Q Did you ever have to take him to the doctor
22 for a memory lapse?

23 A No.

24 Q Does he have Alzheimer's?

1 A Not that I know of. This is something I didn't
2 know about.

3 Q What other physical problems does he have?

4 A Mainly his drinking, hon.

5 Q Okay. And so everything else is fine; right?

6 A Yes.

7 Q Okay. Now, Beverly would relieve Gary?

8 A Yes.

9 Q Okay. So if Gary said that he would relieve
10 Beverly, that would be an untruth?

11 A No. There was-- There was incidences in the
12 bar if somebody didn't show that they call somebody, you
13 know. Even-- Even her husband got called in sometimes for
14 a second one if something happened or somebody didn't show.

15 Q So what was the typical relief status of each
16 other, Gary and Bev?

17 A Mainly-- Most of the time that I knew of, they
18 relieved each other.

19 Q And Bev would relieve him after his shift?

20 A Pardon?

21 Q Beverly would relieve him after his shift?

22 A Yes.

23 Q Okay. Would it be fair to say that you're not
24 a hundred percent on target with everybody's shifts; right?

1 A Yeah, I'm not, yes.

2 Q You don't work with these--

3 A No. I knew of incidences, but I wasn't present
4 to know who is precisely, no.

5 Q February the 6th, the time that the phone call
6 occurred where Ted Rice picked up the phone, were you there
7 then?

8 A Yeah, I was sitting down at the end with my
9 coffee. Yes, I was.

10 Q You didn't hear any conversation; did you?

11 A No, I didn't hear what went on, no.

12 Q Okay. And then you left the bar?

13 A Yes. Like I said, I went to the Old Reno.
14 That's where I go.

15 Q How many hours were you gone?

16 A Oh, at least three or four, maybe five.

17 Q So you don't know what went on--

18 A Otherwise than that, no, I do not.

19 Q And the times that you have seen my client were
20 on Halloween and Gary's birthday--

21 A Parties and incidences, yes.

22 THE COURT: Excuse me just one second.

23 Miss Whitmore, you see the gentleman seated
24 right next to you with a machine?

1 THE WITNESS: Yes.

2 THE COURT: His responsibility is to take down
3 every word that's said. And it would be much easier for him
4 if you'd let Ms. Wilson finish her question so that he can
5 get every word she says before you begin your answer. Could
6 you try to do that?

7 THE WITNESS: Yes. Excuse me.

8 THE COURT: Thank you.

9 BY MS. WILSON:

10 Q Now, you did talk to Detective Jenkins or
11 Duncan; did you not?

12 A The names are-- Their names, I don't know.
13 Yeah, I talked to two people.

14 Q They were Reno police officers; right?

15 A I did not know what they were, whether they
16 were Reno or not. They were officers.

17 Q And you told them that you heard the same
18 statement that Gary heard; right?

19 A It was said at several times, ma'am.

20 Q You told the detectives that you heard a
21 statement that Gary heard--right?--about, "The only best
22 way you are is dead"?

23 A Oh, no. Not that one, no.

24 Q You didn't hear that?

1 A No, no, no.

2 Q And you didn't tell that to a detective?

3 A Not that I know of. I'm sorry.

4 Q Okay. That's okay.

5 Now, you never told anybody, any officer, that
6 Mr. Branham wanted keys three or four days before Thursday,
7 February 6th; did you?

8 A Not-- Ma'am, I-- it's been a long time to ask
9 me something like that.

10 Q You never said that to an officer. You would
11 remember that; wouldn't you?

12 A Not-- Not after over a year, hon. I really
13 wouldn't. There's a lot of-- lot of incidences in my life
14 that have happened.

15 Q Do you think you could have said that to an
16 officer?

17 A I might have. I don't remember, ma'am. I do
18 not remember.

19 Q Okay. And you're sure that that conversation
20 that you heard, quote, she was a "dead bitch", was three or
21 four days before Thursday, February 6th?

22 A You mean-- How are you putting that, to
23 remember the precise times?

24 Q Yeah.

1 A No.

2 MS. WILSON: Thanks.

3 THE COURT: Anything else, Mr. Hall?

4

5 REDIRECT EXAMINATION

6 BY MR. HALL:

7 Q Were you ever down at the bar, at the Swiss
8 Chalet,--

9 A Yes, um-hum.

10 Q --when Beverly Fetherston and the defendant Bill
11 Branham were down there?

12 A Yes, I was.

13 Q Okay. Now, is the day that you talked about--

14 A Yes.

15 Q --and I believe your statement was, "You're
16 dead, bitch",--

17 A Yes, I'm sorry. That is the way it was said.

18 Q And you mentioned that Mr. Branham had requested
19 some money--

20 A Yes, and the keys.

21 Q Did you ever see him that kind of conduct
22 before, requesting money?

23 A I think the two other incidents, but I couldn't
24 tell you exactly the time.

1 Q Do you know where Miss Fetherston kept her
2 money?

3 A Yes, I do.

4 Q Where did she keep her money?

5 A She had a wallet in-- in two or three pockets
6 in the side of her pocketbook. She had sometimes few of the
7 tips in it that she put it. But mainly-- her main money she
8 put under the wallet, right under the base.

9 Q Why would she do that?

10 A 'Cause she didn't want it found, and she didn't
11 want to hand it over, I guess, whatever. She just didn't
12 want--

13 MS. WILSON: Objection, your Honor. No
14 foundation.

15 THE WITNESS: She never carried in the pocket
16 as far as more than 20, \$30.

17 THE COURT: Sustained.

18 Mr. Hall, do you want to rephrase the question
19 to see if there's a proper foundation for that answer?

20 MR. HALL: Yes.

21 BY MR. HALL:

22 Q Do you know whether or not Miss Fetherston was
23 giving money to Mr. Branham?

24 A Yes, she was.

1 Q Do you have any personal knowledge as to whether
2 or not Mr. Branham was taking money from Miss Fetherston?

3 A Only hearsay, sir, on that one.

4 Q Who told you that?

5 A Several people in the bar themselves.
6 Different-- Different people, not the same person.

7 Q Did Miss Fetherston ever tell you?

8 A One time, yes.

9 Q When was that?

10 A Oh, Lord. Toward-- After Halloween time the
11 first incident.

12 Q Did she--

13 A She had got-- Pardon me. She had gotten
14 several tips in money and stuff. Like I said, she-- at that
15 time she tucked the money underneath and just one 20-dollar
16 bill on the outside pocket.

17 Q Did she ever tell you why she put her money
18 in her wallet and tucked that money up under the wallet?

19 A Yes, she did.

20 Q When I say "she", of course I'm referring to
21 Beverly--

22 A Yes, she did. She told me--

23 Q What did she tell you?

24 A She told me she didn't want the money gotten,

1 or know how much she had, or whatever. She didn't want to
2 hand it over.

3 Q To who?

4 A To Bill. And that was her own words. That came
5 from her.

6 MR. HALL: Thank you. Nothing further.

7 THE COURT: Any recross?

8 MS. WILSON: Yes, your Honor. Court's
9 indulgence?

10 THE COURT: All right.

11
12 RECROSS-EXAMINATION

13 BY MS. WILSON:

14 Q Going back to the statement that you made
15 regarding what Mr. Branham said--

16 MS. WILSON: I would like to approach, your
17 Honor, and show Miss Whitmore a possible statement to
18 refresh her memory.

19 MR. HALL: Your Honor, I would object. Unless
20 there can be an offer of proof made that this was a
21 transcript of her testimony or transcript of her statement.

22 MS. WILSON: Be happy to. Do you want me to
23 make it in front of the jury?

24 THE COURT: No. Why don't you both approach,

1 please.

2 (Discussion at the bench.)

3 BY MS. WILSON:

4 Q Miss Whitmore, are you saying that you never
5 made a statement to the police that you were with Gary
6 Swinehart and heard, "The only best way for you is dead"?

7 MR. HALL: Your Honor, compound question.
8 First she asked--

9 THE COURT: Well, let me see if the witness
10 understands it. The objection to a compound question is to
11 ensure that the witness isn't confused by the question.

12 Did you understand that question?

13 THE WITNESS: I'm sorry, your Honor. I-- I--
14 I don't remember the incident--

15 THE COURT: No. Instead of giving me the
16 answer, let me just ask you this first: Did you understand
17 Miss Wilson's question?

18 THE WITNESS: No, I did not. The way--

19 THE COURT: Break it down then, please,
20 Miss Wilson.

21 MS. WILSON: Okay.

22 BY MS. WILSON:

23 Q You spoke with police officers--

24 A Yes.

1 Q --and you didn't--

2 A I don't remember names, no. I don't. I really
3 don't.

4 Q You didn't say to a police officer that you were
5 with Gary Swinehart when you heard a statement, "The only
6 best way you are is dead"?

7 A I don't remember. I don't. If I-- If it was
8 so, I don't remember. I really don't remember.

9 Q That's the only-- Well, I'll retract that.

10 MS. WILSON: That's fine.

11 THE COURT: Anything else?

12 MR. HALL: Nothing further, your Honor.

13 THE COURT: You may step down. Thank you very
14 much for your testimony. You're free to go.

15 It's a little past the noon hour, so this would
16 be an excellent time for us to take the noon recess. We will
17 reconvene at 2:00 p.m. this afternoon.

18 You're instructed, ladies and gentlemen of the
19 jury, not to discuss this case amongst yourselves or with
20 anyone else, or to form any conclusions concerning any issue
21 in this case until such time as it is submitted to you as a
22 jury and you are specifically asked to deliberate. You are
23 not to read, look at or listen to any media accounts of this
24 event, should there be any.

8 1 Thank you very much for your attention this
2 morning, and we look forward to seeing you at 2:00 p.m. this
3 afternoon. Court's in recess.

4 (Noon recess.)
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3 1 RENO, NEVADA; WEDNESDAY, MARCH 3, 1993; 2:20 P.M.

2 -ooo-

3
4 THE COURT: Be seated, please.

5 We're back with CR92-1048, State of Nevada
6 versus Branham. Mr. Branham is present, Miss Wilson is
7 present, and Mr. Hall is present, as is the jury.

8 Ladies and gentlemen, before we begin, I'd like
9 to apologize for the delay in beginning this afternoon. As
10 we discussed during the selection process, there are some
11 matters of law which are for the Court and counsel to be
12 concerned with, and there are matters of fact about which
13 you are to be concerned.

14 We have spent a little time resolving purely a
15 question of law. And it has delayed us a little this
16 morning-- or this afternoon. So I apologize. We'll do our
17 best not to cause you any other inconvenience.

18 Counsel ready to proceed?

19 MR. HALL: Yes, your Honor.

20 THE COURT: Go ahead, Mr. Hall.

21 If you would step over to the lady to my right,
22 please, raise your right hand, be sworn.

23 (Witness sworn.)

24 THE COURT: This is your seat right over here.

1 There's water, if that would be of any help to you.

2
3 MARILYN C. MACKAY,
4 called as a witness by the plaintiff herein,
5 being first duly sworn, was examined and
6 testified as follows:
7

8 DIRECT EXAMINATION

9 BY MR. HALL:

10 Q Ma'am, would you state your name, spell your
11 last name.

12 A My name is Marilyn C. Mackay, M-a-c-k-a-y.

13 Q Did you work at the Swiss Chalet in late 1991,
14 early '92?

15 A '90, '91.

16 Q '90, '91.

17 When did you quit working at the--

18 A December, '91.

19 Q Did you know Beverly Fetherston?

20 A Oh, December-- I'm sorry. December, '92. It
21 was '91, '92.

22 Q When did you start working at the Swiss Chalet?

23 A In-- I believe it was March of 1991.

24 Q And what did you do there at the Swiss Chalet?

1 A Bartender.

2 Q Did you know Beverly Fetherston?

3 A Yes, I do.

4 Q How do you know Miss Fetherston?

5 A She was an employee.

6 Q What shift were you working when you first

7 started?

8 A Graveyard.

9 Q What shift was Miss Fetherston working; do you

10 know?

11 A Day shift.

12 Q Did the shifts change after you quit; do you

13 know?

14 A Yes.

15 Q What were the shifts later on in '92, if you

16 know?

17 A Well, '91, I went to swing shifts. Bev was

18 still on grave-- on day shift. When I quit December of '92,

19 I-- Bev was transferred to swing shift, and I left because

20 I was moving.

21 Q Where did you move to?

22 A Tonopah, Nevada.

23 Q Is that where you live now?

24 A Yes.

1 Q Now, how long had you known Bev before she died?

2 A Approximately two years.

3 Q Can you describe your relationship with
4 Miss Fetherston?

5 A Bev and I were very close. Close friends.

6 Q Did you see her on a regular basis?

7 A Oh, yes.

8 Q Did she confide in you?

9 A Very definitely.

10 Q Did you confide in her?

11 A Yes.

12 Q Do you know William Branham?

13 A Yes, I do.

14 Q Is he here in the courtroom today?

15 A Yes, he is.

16 Q Would you point him out and describe what he's
17 wearing, please?

18 A Sitting over there.

19 MS. WILSON: Your Honor, we'll stipulate to
20 Mr. Branham's presence.

21 THE COURT: Thank you.

22 BY MR. HALL:

23 Q Do you know what the relationship was between
24 Mr. Branham-- Let me back up a little bit.

1 How did you first come to meet Mr. Branham?

2 A Met Mr. Branham back probably about ten, eleven
3 years ago, when I was employed at Gooley's Restaurant and
4 Lounge bar on Fourth Street, and he was a customer. As well
5 as I knew him from the Baron Lounge. He was a customer
6 there.

7 Q How did you meet Mr. Branham from the Baron
8 Lounge?

9 A Through one of the bartenders and being a
10 customer there. But one of the bartenders.

11 Q Who was that?

12 A Bonnie Kukenbucker, or whatever her last name
13 is.

14 Q Guggenbickler?

15 A Yes.

16 Q How well did you know Miss Guggenbickler?

17 A I'd say I knew her quite well. We had only
18 known each other maybe approximately three, four years.
19 But we were very good friends.

20 Q Do you know whether or not Mr. Branham and
21 Miss Guggenbickler had any kind of a relationship?

22 A Yes, they did.

23 Q What was that; do you know?

24 A I know they lived together. Probably more than

1 once. Kind of a back-and-forth relationship.

2 Q And subsequently when did you start working
3 for--

4 After that, when did you start working for the
5 Swiss Chalet?

6 A It was in I'd say approximately March of '91.

7 Q And did you have a continuing relationship with
8 Mr. Branham during that time?

9 A Yes.

10 Q And what was your relationship with Mr. Branham?

11 A Bartender. He was a customer.

12 Q Did you see him on a regular basis?

13 A Yes.

14 Q Do you know whether or not he was employed
15 during-- when you first met him when you worked at Gooney's?

16 A Yes, he was.

17 Q When you started working at the Swiss Chalet,
18 do you know whether or not Mr. Branham was employed?

19 A No, he wasn't.

20 Q Do you know when-- Or do you know whether
21 Mr. Branham ever became a roommate of Miss Fetherston's?

22 A Yes, I do.

23 Q When was that?

24 A Well, what street was it on that she lived?

1 He probably was a roommate with her for at least a year.

2 Q Did Miss Fetherston change residences in '91;
3 do you know?

4 A Yes.

5 Q Do you recall whether or not she was living on
6 Crampton Street in '91?

7 A Crampton, yes.

8 Q Does that sound familiar?

9 A Yes.

10 Q Did she move from that address?

11 A Yes, she did.

12 Q Okay. And where did she move to; do you know?

13 A I don't know the name of the street.

14 Q Was it close to the Swiss Chalet?

15 A Yes. Within very definite walking distance.

16 Q Had you ever been over to her house?

17 A Oh, yes.

18 MR. HALL: Mind if I use one of your Exhibits,
19 counsel?

20 BY MR. HALL:

21 Q I'm showing you Defense Exhibit 30. Showing you
22 the top photograph,--

23 A Yes.

24 Q --does that look familiar?

1 A Yes.

2 Q Is that Beverly Fetherston's house? Does that
3 photograph depict Miss Fetherston's house?

4 A Yeah, this one here.

5 Q This one right here?

6 A I believe it is.

7 Q Middle?

8 A Yes.

9 Q Okay.

10 MR. HALL: The record reflect that the witness
11 Miss Mackay has identified the middle residence in the top
12 photograph on Defendant's Exhibit 30, which purports to be
13 129 and a half Wells Street.

14 BY MR. HALL:

15 Q Now, how many times had you been over to Bev
16 Fetherston's house?

17 A Several times, both residences.

18 Q Did you socialize with Miss Fetherston on a
19 regular basis outside of work?

20 A Yes.

21 Q Okay. What was the relationship between
22 Miss Fetherston and Mr. Branham when they first became
23 roommates, if you know?

24 A It was strictly a renter, housemate, sleeping

1 on the couch without a bedroom.

2 Q When you say "sleeping on the couch without a
3 bedroom", what residence are you talking about when you say
4 that?

5 A Talking both residences.

6 Q Why was Mr. Branham living with Miss Fetherston?
7 Do you know that?

8 A In the beginning, her husband had passed away.
9 And he was over there to help her out, more or less, to
10 console her, whatever. I don't know. But ended up
11 continuing just to stay there sleeping on the couch.

12 Bev talked to me then about a possible renter
13 with him, because I had male renters in my house--only a
14 three-bedroom--and wondered how I felt about it, 'cause she
15 needed financial help at that time. Her husband had passed
16 away, and she could use the extra rent money. That's how
17 it began.

18 Q What was Miss Fetherston's relationship with
19 Mr. Branham once they got over to the Wells Street address?

20 A It was the same thing, as a renter in her home.

21 Q Do you know whether or not that relationship
22 deteriorated in the latter part of 1991?

23 A Yes.

24 Q How do you know that?

1 A Through talking with Bev. Bev confided in me
2 a lot. And Branham-- Branham was out of work, unemployed,
3 supposedly looking for work, but never getting a job. And
4 she couldn't financially support him living there. She
5 wanted him out.

6 Q When did Miss Fetherston first communicate to
7 you that she wanted Mr. Branham out?

8 A I'd say a good six, seven months from date back.
9 I'd say like the summer before.

10 Q Well, let's start with-- Let's use as a
11 reference point when Miss Fetherston died. How long before
12 that had Miss Fetherston indicated to you that she wanted
13 Mr. Branham out?

14 A June, July. Right in there. I mean it had
15 been--

16 Q That would have been back when they were living
17 on Crampton Street?

18 A She did on Crampton Street, and also definitely
19 on Wells.

20 Q Now, let's focus on the latter part of 1991.
21 That would have been-- I'd like to focus on November,
22 December.

23 Now, during that period of time, did you have
24 continued contact and conversation with Miss Fetherston?

9 1 A Yes, I did.

2 Q And did she at that time communicate to you

3 regarding her relationship with Mr. Branham?

4 A Yes.

5 Q What did she tell you at that period of time

6 about their relationship, if anything?

7 A She was really afraid of him. It got to the

8 point that there was times that she didn't want to go home

9 because of Mr. Branham's attitude and drinking, so forth.

10 And she stayed at my house several times.

11 Q Why did she stay at your house?

12 A She was afraid to go home.

13 Q Did you have an opportunity to see Mr. Branham

14 during the months of November, December of 1991?

15 A Yes, I did.

16 Q And can you tell me how he was acting or what

17 you saw him do on those occasions?

18 A Most of the time he was drunk, he was very

19 verbal, very abusive, both ways. He threatened Bev. At one

20 period of time he threatened me. He didn't like Bev having

21 friends at all. Didn't matter whether it was male or female.

22 He just was-- just really abusive, very verbal with his

23 abuse.

24 Q Do you know whether or not Mr. Branham was ever

9 1 physically abusive to Miss Fetherston?

2 A Yes, I do.

3 Q And how do you know that?

4 A I've seen her with black eyes. I've seen her
5 with a cut-open lip.

6 MS. WILSON: Objection, your Honor. There's
7 no foundation laid for personal knowledge of this.

8 THE COURT: All right. Sustained. Would you
9 go back and lay the foundation, please.

10 BY MR. HALL:

11 Q When did you see Miss Fetherston with a black
12 eye?

13 A Had to be between September and November.

14 Q Of 19--

15 A Say October. '91.

16 Q And when you saw Miss Fetherston with a black
17 eye, did you inquire as to how she got that black eye?

18 A Oh, yeah.

19 Q What did she tell you?

20 A That it was from Bill Branham. He had knocked
21 her around pretty good and she stayed awake most of the night
22 crying. And I asked her why she didn't call me or come to
23 my place. She felt that she could handle the situation.

24 Q With respect to the cut lip, when was that?

1 A I'd say October, November.

2 Q About the same time?

3 A About the same time. Although they were two
4 separate incidents.

5 Q And did you inquire as to how she got the split
6 lip?

7 A Yes.

8 Q What was her response?

9 A It was the same thing. She said that Bill was
10 drunk and she'd wanted him out, he wasn't going to leave,
11 and promised he'd go get a job, and that she felt she could
12 handle this at the time.

13 MS. WILSON: Your Honor, I'd object.
14 Nonresponsive as to if the decedent indicated that that cut
15 lip was from Bill Branham.

16 THE COURT: I believe the witness did say that
17 that's exactly what Miss Fetherston had told her.

18 THE WITNESS: Yeah.

19 THE COURT: Overruled.

20 BY MR. HALL:

21 Q Now, later that year, in December, you were
22 still working at the Swiss Chalet?

23 A Yes.

24 Q And did you talk to Beverly Fetherston during

9 1 the month of December about Bill Branham?

2 A Yes.

3 Q And what did she tell you in December of 1991
4 about Bill Branham, if anything?

5 A There was several times in December that she
6 was afraid to go home and she came, stayed at my house.
7 Sometimes one night, sometimes two or three nights. She
8 would stay at my place because of situations at the house
9 that she didn't want to go there.

10 Q Do you know how much time-- Well, let me--
11 Let me rephrase that.

12 How much time did you spend at the Swiss Chalet
13 during that month of December?

14 A I worked five days a week, five shifts a week.
15 Sometimes extra, if somebody needed a day off or was sick or
16 something. I worked-- I was a good fill-in. But I always
17 spent some time after I got out of work and had a drink or
18 two or something and then I'd go home.

19 Q Were your habits similar to Miss Fetherston's?

20 A Yes.

21 Q Do you know how much time Miss Fetherston was
22 spending down at the bar, Swiss Chalet, during that period
23 of time?

24 A I'd say right about the same thing I was doing.

1 Because we'd stay after work and have a drink together, you
2 know. It was about the same amount of time.

3 Q When did you move?

4 A I moved January 14th-- January 12th, '92.

5 Q January 12th of 1992?

6 A Um-hum.

7 Q Talking about the Swiss Chalet a little bit,
8 and your relationship with Bev, do you know what Bev used
9 as her social outlets? Can you describe her social life?

10 A Well, we used to go downtown together quite
11 often, get off and just walk downtown. She'd come over and
12 see me on my shifts when I was working. I'd see her on her
13 shifts when she was working. It was mainly just getting out
14 around people.

15 Q Do you know whether or not her social life
16 revolved around the Swiss Chalet at all?

17 A Yes.

18 Q Did you have mutual friends that hung out at
19 the Swiss Chalet?

20 A Yes, we did.

21 Q And who did those include?

22 A Brenda and Tom Henry. Marion, I don't know her
23 last name. She's a little old lady about 80 years old that
24 we enjoyed seeing almost every day, you know. Passed away,

1 so-- Mary, and Dan Price.

2 A lot of them were couples, but then there were
3 a lot of them sometimes that were singles.

4 Q Do you know Dudley Poorman?

5 A Yes, I do.

6 Q How do you know Dudley Poorman?

7 A She was customer there, because she also did the
8 cleaning there.

9 Q Did you say "she"?

10 A You said Debby?

11 Q No, I said Dudley.

12 A Oh, Dudley. Oh, I'm sorry. Yes, he was a
13 customer in there.

14 Q Does he have a nickname?

15 A Butch.

16 Q Do you know what the relationship was between
17 Dudley Poorman and Beverly Fetherston?

18 A They were friends. He was friends with her
19 husband before Mike and she were married, and her husband
20 passed away the April before, '91.

21 Q How about John Bell? Do you know John Bell?

22 A Yes, I do.

23 Q And how do you know John Bell?

24 A John Bell is a good friend of mine, and I was

1 meeting him through a girl that used to live at our house.

2 Q And who would that be?

3 A Jackie.

4 Q What was the relationship between Jackie and
5 John Bell?

6 A Very close friends. In fact, she had the baby
7 by Bell.

8 Q She has a baby by John Bell?

9 A Yes.

10 Q What was the relationship between John Bell and
11 Beverly Fetherston?

12 A John Bell met Bev-- Well, Jackie and John were
13 separated during that December of '91, and John was living
14 in my house for just two- or three-week period. And Bev came
15 there and stayed at my house. And he was also a customer in
16 the Swiss Chalet. She had met him there, so she-- They were
17 mainly just friends.

18 Q Did they get along pretty well?

19 A Yes.

20 Q Do you know whether or not they had any kind of
21 a romantic relationship?

22 A I think possibly, 'cause-- end of December, in
23 January, they might have.

24 Q Do you know whether or not Miss Fetherston asked

9 1 Mr. Bell to move into her apartment or house over on Wells
2 Street?

3 A Yes.

4 Q And do you know when that was?

5 A In January.

6 Q Do you know what was going to happen to
7 Mr. Branham if Mr. Bell moved into the residence?

8 A I know that Beverly Fetherston told me that she
9 had told Bill that he had to move out. That John was moving
10 in.

11 Q Were you ever present at the bar during any
12 of those conversations regarding John Bell moving in and
13 Mr. Branham moving out?

14 A No.

15 Q Who helped you move out--

16 Or excuse me. When you moved on January 12th,
17 was that when you were moving to Tonopah?

18 A Yes.

19 Q Who helped you move?

20 A Well, the week previous, Bev helped pack. And
21 John Bell helped me move, Bill Branham helped me move. I had
22 three or four other guys and wives that helped. I had about
23 five or six that were helping me.

24 Q Do you know whether or not John Bell and Bill

1 Branham were together on that day?

2 A Yes, they were.

3 Q And what did you see them do?

4 A Temperament is not very good at all. So I don't
5 remember if I sent Bill Branham or if I sent John to go get
6 the-- with the other fellow to go get the U-Haul truck. But
7 one of them just to get them out of there, 'cause I didn't
8 want them together.

9 Q Do you know whether or not John Bell and Bill
10 Branham took off in Beverly's car that day?

11 A I don't remember that.

12 Q Do you ever remember having to pick up John Bell
13 in Verdi?

14 A Yes, I do.

15 Q When was that?

16 A It was that fall. Had to be November, October.
17 It was that fall of '91.

18 Q Do you know how John Bell got out to Verdi?

19 A Yes.

20 Q How was that?

21 A Went out to Verdi with Bill Branham.

22 Q How did they get out there?

23 A By-- Bill Branham drove Bev's car.

24 Q Now, before you moved, did you ever have an

9 1 opportunity to meet with Mr. Branham by yourself?

2 A By myself, other people around, or--

3 Q Let me rephrase that.

4 Did you ever offer Mr. Branham a ride in your
5 car?

6 A Yes.

7 Q When was that?

8 A That was August, September, '91. And I went
9 to the In-Ca-Hoots to pick him up, him and another fellow.

10 Q Why did you go to the Inn-Ca-Hoots to pick up
11 Mr. Branham?

12 A He had called Bev Fetherston at work-- taken
13 her car and gone over there. He called her, said he was
14 too drunk to drive. Bev told him on the phone, 'cause she
15 was working, that, "Don't drive the car. I'll call a cab.
16 Take a cab."

17 I told her, I said, "Well, I'll just run over
18 there--" I'd just come in the door when she had the phone
19 call. I said, "I'll go over and pick him up."

20 And I went over there. He got real abusive with
21 me and refused riding or anything, told me to get out of
22 there, this and that, you know, just--

23 So he ended up-- he and this other gentleman
24 ended up taking the car and took off with it.

9 1 Q When was this?

2 A That was when I went to In-Ca-Hoots to pick him
3 up.

4 Q I understand that. What time of year was that?
5 What month; do you recall?

6 A Probably around September.

7 Q Was he physically abusive with you at that time?

8 A Yes.

9 Q How was that?

10 A He-- Well, he knocked me back, grabbed my arm,
11 swinging me back around when Mark, who was with him, told
12 him to leave me alone and take his hands off of me.

13 Q Who was Mark?

14 A Mark Rode was with him at the In-Ca-Hoots.

15 Q Do you know if Miss Fetherston ever cashed any
16 checks out at the Swiss Chalet?

17 A Yes, she did.

18 Q Do you know anything about Miss Fetherston's
19 finances?

20 A I-- I can't say a whole lot of nothing about
21 her finances or anything. I know she had a problem as far as
22 getting any money on her husband's death, which did finally
23 come through some. But she was very quiet on what she had in
24 the bank or whether--

10

1 I know she had a broker, but I don't know his
2 name. So I know she had something.

3 Q Did she have a purse?

4 A Yes.

5 Q Did she carry her purse with her around most
6 of the time?

7 A Oh, yes.

8 Q Did she have a checkbook?

9 A Yes, she did.

10 Q Where did she keep her checkbook?

11 A In her purse.

12 Q Did she always keep it in her purse; do you
13 know?

14 A Yes.

15 Q Do you know what her checkbook looks like?

16 A If I remember, it was dark-colored. But I
17 don't know.

18 Q Do you remember what her purse looked like?

19 A Yeah. It was brown leather. Yes.

20 Q Showing you State's CC--

21 A Yes.

22 Q --and LL,--

23 A Yes.

24 Q --do you recognize the purse?

1 A Yes.

2 Q That would be State's CC. Is this Beverly
3 Fetherston's purse?

4 A Yes, it is.

5 Q I'm showing you LL. What is LL?

6 A That looks like her checkbook. It was dark.
7 Dark cover on it.

8 Q Did she keep this in her purse?

9 A Oh, yes.

10 Q Now, once Miss Fetherston and Mr. Bell entered
11 into their relationship, latter part of December, do you know
12 how Mr. Branham took the relationship between Mr. Bell and
13 Miss Fetherston?

14 A Very unhappy.

15 Q How do you know that?

16 A Very much so.

17 Well, I know what his actions were in December
18 over knowing that he was-- she was seeing some of John Bell.
19 Or that was friends with him. He was very abusive verbally
20 and shoving, this sort of thing, in the Swiss Chalet with
21 her and me both because of friendships that he didn't like.

22 He thought we were all instigators to what she
23 was doing, and that sort of thing. So, you know, he was just
24 very abusive. Lot of threatening at that time.

1 Q Did you ever have any telephone conversations
2 with Miss Fetherston in late January, early February of 1992?

3 A Yes, I did.

4 Q When was the last time that you talked to
5 Beverly Fetherston?

6 A She called me-- Well, I'd been back to Reno
7 once and I'd seen her since I moved. And then she called me
8 to tell me she was going to try to come down on Thursday and
9 Friday of her days off, which she didn't come down.

10 She said she had to get out of there and there
11 was a lot of problems, a lot of threats, and so forth. And
12 Bill was constantly calling her--he had moved out then--and
13 constantly calling her, this sort of thing, and she wanted
14 to get out of town.

15 Q When was this conversation?

16 A That was Sunday or Monday, which would have been
17 like the 3rd or-- 2nd, 3rd or 4th of February is the last
18 time I talked to her.

19 Q Here's a calendar of February of 1992. The 2nd
20 would have been a Sunday.

21 A She called me during Sunday morning or Monday
22 morning, and I'm not sure which one it was. Said she was
23 coming down on the 5th or the 6th, 7th. And she didn't
24 come down.

1 Q Showing you State's PP, do you recognize
2 State's PP?
3 A Yes.
4 Q What is it?
5 A It's her car keys and her-- her owl. She
6 always-- She liked her owls.
7 Q Is that the set of keys that she always carried?
8 A Yes.
9 Q Did she have any other keys; do you know? Do
10 you recall her--
11 A Not that I know of. I don't remember.
12 Q Do you remember these being Beverly
13 Fetherston's?
14 A Yes, I do.
15 Q I hope I'm not getting too personal, but how
16 old are you?
17 A I'll be 53 this month, 16th.
18 Q Not to get into your personal habits just a bit:
19 Do you smoke cigarettes?
20 A Yes, I do.
21 Q Do you drink on a regular basis?
22 A Yes, I do.
23 Q Did you drink on a regular basis back in '92?
24 A Yes.

1 Q And what do you do out in Tonopah?

2 A I'm bartending.

3 Q Is it fair to say that you drink every day?

4 A Yes.

5 Q And more than one or two drinks?

6 A Yes.

7 Q Finally, is this a photograph of Beverly

8 Fetherston?

9 A Yes.

10 MR. HALL: That's all I have.

11 THE COURT: Thank you. Your witness.

12

13 CROSS-EXAMINATION

14 BY MS. WILSON:

15 Q Are you okay?

16 A (Nods head affirmatively.)

17 Q Miss Mackay, it would be fair to say that you

18 were very close to Beverly Fetherston?

19 A Yes.

20 Q And this has been hard on you?

21 A Yes, it has.

22 Q And you've been living with this for now a year,

23 over a year; right?

24 A Yes.

1 Q When you worked at the Swiss Chalet, you had a
2 period of time where you would work your shift and then
3 you'd get off shift,--

4 A Yes.

5 Q --and when you were off shift, you would still
6 stay there and have some cocktails; right?

7 A Right.

8 Q And you had been told by Ikie and Richard that
9 they didn't like you to party after your shift was over.
10 Isn't that true?

11 A No.

12 Q No?

13 Did they ever say, "We don't like you pulling
14 a double shifter", or anything like that?

15 A No.

16 Q Was it common for Bev to drink after her shift?

17 A Yes.

18 Q Okay. Would it be fair to say that the two of
19 you would drink after your shift together?

20 A Sometimes.

21 Q Okay. Now, you know Beverly was a smoker;
22 right?

23 A Yes.

24 Q Would you say that she was a heavy smoker?

0

1 A She probably smoked about the same as I did.

2 Q Okay.

3 And now, let's see. The Crampton residence,
4 you were her friend at that time, too?

5 A Yes.

6 Q Okay. Then you knew her husband Michael?

7 A Yes, I did.

8 Q And you knew that not only Bill Branham lived at
9 the residence, but a fellow by the name of Razz; right?

10 A (Nods head affirmatively.)

11 Q And to your knowledge, Bill Branham maintained
12 a very platonic relationship with Beverly; right?

13 A That's right.

14 Q Now, would it be fair to say that your knowledge
15 of her included people that she would have as a boyfriend,
16 boyfriend-girlfriend relationship?

17 A I don't know what you mean.

18 Q Were you intimate enough with her to know that
19 she had boyfriend-girlfriend relationships through the period
20 of time after her husband Michael died?

21 A That she had relationships with girls and guys?

22 Q No, no. I'm sorry.

23 A I don't quite understand.

24 Q Boyfriend-girlfriend relationships, sexual

1 relationships, after her husband died.

2 A Not to my knowledge she had any sexual
3 relationships.

4 Q Did you introduce John Bell to her?

5 A Well, she met him as a customer in the bar--

6 Q So if--

7 A --through me because--

8 Q Oh, through you?

9 A A personal friend of my husband and mine.

10 Q Would it be correct then that John Bell and
11 Beverly spent the night at your house together?

12 A She came there, she slept on the couch--

13 Q Would it be fair to say--

14 A --one time.

15 Q --that John Bell and she came to your house and
16 spent the night?

17 A Well, I guess, but it's putting it kind of the
18 wrong way.

19 Q Well, what if John Bell testified--

20 A John Bell lived at my house. She came home
21 with me. He was already home. He was staying at my house,
22 living there.

23 Q She spent the night with him at your house?

24 A Yes, later she did.

1 Q Okay. Now, you're not really keen on Bill
2 Branham. Would that be fair to say?
3 A Not necessarily, no.
4 Q Okay. You like him?
5 A I-- I've known Bill Branham probably ten,
6 eleven years.
7 Q Like him?
8 A Yes, I did.
9 Q Okay. You like him now?
10 A I can't really say that I do.
11 Q Okay. When you talk about your knowledge of
12 Bill Branham and Bonnie Guggenbickler, you knew that they
13 were living together?
14 A Yes.
15 Q Did you-- You said you saw an on-again/
16 off-again relationship?
17 A Right.
18 Q Isn't that the type of relationship that he had
19 with Beverly?
20 A No.
21 Q So when you say that they fought and she would
22 kick him out or she'd threaten to kick him out and then
23 they would get back together again, isn't that how the
24 relationship went?

10 1 A No, that's not true, because they didn't have
2 a relationship like Bonnie and he had.

3 Q Well, not sexual;--

4 A Okay.

5 Q --right?

6 A Right.

7 Q Okay.

8 Now, when you say that she was afraid of Bill
9 Branham and that she stayed out of the house, that was during
10 the time period that she was with John Bell. Isn't that
11 true?

12 A No.

13 Q Well, you said December.

14 A She stayed at my house in November, too.

15 Q November?

16 A It was long before John Bell.

17 Q Okay. When do you recall John Bell first
18 meeting Bill Branham?

19 A Probably New Year's Eve day or night.

20 Q Okay.

21 A That's when he moved into my house. Christmas
22 Eve, not New Year's.

23 Q John Bell is a fellow that was going with your
24 kind of adopted daughter Jackie?

1 A Yes.

2 Q So in other words, John Bell didn't move into
3 your house as a stranger?

4 A No.

5 Q If we talk about Jackie being an adopted
6 daughter, you virtually have a granddaughter by John Bell
7 and Jackie?

8 A Yes.

9 Q Okay. Now, wouldn't it be a fact that when
10 Bill Branham was abusive to Beverly Fetherston, she would
11 be mouthy and abusive back to him?

12 A Naturally. I would, too.

13 Q All right.

14 Now, let's talk about the situation that you
15 indicate that she had a black eye. And you stated that that
16 was around October, November. Is that right?

17 A Right.

18 Q Now, was that black eye present at the Halloween
19 party?

20 A Seems like it was, but I can't remember for
21 sure. She covered up with makeup, tried not to show it too
22 much.

23 Q And you were the only person that she told or
24 confided in that that was from Bill Branham that you know of?

1 A That I know of.

2 Q And the same with the split lip?

3 A Yes.

4 Q Okay. Now, do you recall Beverly having to use
5 cough lozenges because of a smoking cough?

6 A She got a cold or something. She used
7 Fisherman's Friend.

8 Q Did you see her use Chloraseptic, too?

9 A Yes. Started that because of me.

10 Q Now, let's talk a little bit about your time
11 that you moved.

12 Now, isn't it true that Bill Branham helped
13 move you?

14 A Yes.

15 Q And isn't it true that you started moving around
16 the end of January, packing things up--

17 A End of January, no. I was moved by January.
18 I moved on the 12th.

19 Q Of--

20 A January.

21 Q Of January. Okay.

22 Isn't it true that this incident where you had
23 to pick up John Bell from Verdi, that was around 1 o'clock
24 in the morning--

1 A That's right.

2 Q --before you found him; right?

3 A Right.

4 Q And Bill Branham was responsible for that;

5 isn't that true?

6 A Right.

7 Q And it would be fair to say that you were

8 furious at Bill Branham for leaving him out there?

9 A Well, I didn't think it was right.

10 Q Okay. And you had to go out to Verdi and you

11 couldn't find him at first, and then you finally located him?

12 A Well, I was at the right place. He was outside

13 walking around. Then he came back in. Yeah, I was there.

14 Q But he didn't leave him out there at 1 o'clock

15 in the morning?

16 A No, he left him out there during that evening

17 sometime.

18 Q Okay. Now, isn't it true that the day after

19 that incident, he and John Bell are helping you move?

20 A No. That happened before. That happened in

21 the fall.

22 Q The fall?

23 A Yes.

24 Q Then if John Bell testified that he didn't know

1 Mr. Branham until December, he would be telling a lie or an
2 untruth. Is that right?

3 A Well, I'm trying to think. No, I just know
4 there wasn't any snow on the ground.

5 Q Okay.

6 A You know, as far as-- I mean this happened
7 so long ago, it's hard to--

8 See, John had been-- John and he had both been
9 in the Swiss Chalet before February. They could have met
10 before then. But this was--

11 Q Well, John Bell testified that he didn't know
12 Bill Branham until the fall.

13 A Well, I don't know if he did or not, because--
14 I mean he'd be in, which wasn't very often, because they'd
15 bring the baby down to see me. They didn't stay very long
16 or anything like that, so--

17 Q Do you have any independent recollection of
18 you moving around the time that you picked John Bell up in
19 Verdi?

20 A Well, I picked him up out there before I ever
21 moved, you know.

22 Q That's your recollection?

23 A Yes.

24 Q And you will admit that that's quite a while

1 ago?

2 A It's been over a year ago.

3 Q Now, you never made any written police report
4 in this case; right?

5 A No.

6 Q And you didn't testify at the preliminary
7 hearing in this case; right?

8 A No.

9 Q So everything that you're talking about today
10 is from your memory; right?

11 A From when I was here a year ago, over a year
12 ago, yes.

13 Q Okay.

14 MS. WILSON: Court's indulgence?

15 THE COURT: All right.

16 BY MS. WILSON:

17 Q Isn't it true that Bill Branham never touched
18 you in a physical way?

19 A No.

20 Q Could you demonstrate what he did to you
21 physically?

22 A Yes.

23 Q Go ahead.

24 A Well, when I walked into the In-Ca-Hoots, he

1 and Mark was sitting at the bar, which wasn't far from the
2 door. And I went up to them and I said, "Come on, guys,
3 let's go." You know, "Let's-- I'm here to pick you up."
4 Because Bev had told him on the phone that I was coming to
5 pick them up.

6 And he just-- He turned around to me, he shoved
7 me with this arm here, shoved me around and had ahold of
8 this arm (indicating), and told me to get out of his way.

9 Q Okay.

10 A And the owner of the bar there was standing
11 right there and saw it, so I stood over by her. I wasn't
12 going to pay any attention.

13 Then he got up and he went in the bathroom.
14 He was throwing up. Mark Rode told him to leave me alone,
15 I was there to help.

16 Q Mark Rode was present at the time?

17 A Yes.

18 Q And would it be fair to say that he pushed you
19 out of the way?

20 A Yes.

21 Q After he pushed you out of the way, did he go
22 to the bathroom?

23 A Yes.

24 Q And that's when he vomited?

1 A Yes.

2 Q Did he hop off a bar stool to get away from
3 you?

4 A No, 'cause I immediately moved away from him.

5 Q Okay. But did he have to hop off a chair or a
6 bar stool?

7 A Well, he was on a bar stool, yeah. He got up
8 and went staggering into the bathroom.

9 Q Bee line?

10 A Kind of, yeah.

11 Q Would it be fair to say that you knew some of
12 Bev's finances?

13 A Not necessarily her real deep finances. I knew
14 she had a checking account, I knew she had a broker.

15 Q And that was learned while at the Swiss Chalet
16 Bar; right?

17 A Yes.

18 Q Now, isn't it true that Bill Branham was 86'd
19 from the Swiss Chalet before Thanksgiving?

20 A Yes.

21 Q So when you talk about December of 1991, where
22 he was verbal in the bar, that was after he was 86'd?

23 A Before and after. After they let him come back
24 in under restrictions that he would mind his behavior and be

1 good in there, you know.

2 Q So if Richard Sokolik or Ikie Sokolik testified
3 that he was not to come in after Thanksgiving, that would be
4 an untruth?

5 A Well, it was, but then they did-- I believe it
6 was Thanksgiving that they agreed to let him come down for
7 Thanksgiving Day if he'd behave.

8 Q But after that time he was not in the bar.
9 Isn't that true?

10 A No. He was-- He could be in there as long as
11 if he maintained right.

12 Q So--

13 A And then within a couple of weeks it was-- he
14 got 86'd again.

15 Q If Ikie Sokolik or Richard Sokolik said that he
16 was not to come in the bar after Thanksgiving, that would be
17 an untruth?

18 A That I can't say for sure, 'cause I know he was
19 86'd and then they did let him come back in, and it was only
20 for about two weeks and he was 86'd again.

21 Q So you're not real sure of the time span; right?

22 A I know they let him come back. I'm pretty sure
23 of that on Thanksgiving.

24 Q Okay. Do you know for a fact that Bill Branham

1 was not in Beverly Fetherston's residence as a roommate
2 February 2nd, 3rd, 4th, and so on?

3 A That, I don't know. I was living on Tonopah.

4 Q Well, you indicated that she called you.

5 A Yes, she did.

6 Q Did she tell you that--

7 A Told me that she kicked him out--

8 Q He was not in the residence?

9 A That she kicked him out and she was getting
10 constant phone calls from him.

11 Q And that was February 2nd?

12 A Yeah, it was that weekend at that time.

13 Q So he was out of the residence?

14 A Yes, as far as I know, he was.

15 Q Okay. The car keys that Mr. Hall showed you,
16 do you know if there were other keys that she had?

17 A She only had three or four keys on her ring.

18 Q Do you know if she had a key ring with a
19 noisemaker on it?

20 A No.

21 Q If--

22 A Not that I remember.

23 Q If Gary Swinehart testified that the key ring
24 that you saw was not the key ring that he recalls, would

1 that be an untruth on his part?

2 A I would say so, yes. That is her ring.

3 Q Okay.

4 MS. WILSON: Thank you.

5 THE COURT: Mr. Hall, anything else?

6 MR. HALL: I think that's all I have, your
7 Honor.

8 THE COURT: Thank you very much for your
9 testimony, Miss Mackay. You're excused.

10 Mr. Poorman, if you would approach the lady to
11 my right, please, raise your right hand, listen carefully
12 to the oath and be sworn in.

13 (Witness sworn.)

14 THE COURT: If you'd have a seat in the chair
15 by the microphone, please.

16
17 DUDLEY POORMAN,
18 called as a witness by the plaintiff herein,
19 being first duly sworn, was examined and
20 testified as follows:

21

22 DIRECT EXAMINATION

23 BY MR. HALL:

24 Q Sir, would you state your name, and spell your

11 1 last name.

2 A Beg your pardon?

3 Q I'm sorry. Would you state your name, and
4 spell your last name.

5 A Okay. Dudley Poorman. P-o-o-r-m-a-n.

6 Q What is your occupation?

7 A Warehouseman. Laborer right now.

8 Q And where did you grow up?

9 A California.

10 Q Did you ever live in Carson City?

11 A Yes, I did.

12 Q When did you live in Carson City?

13 A '68, '69, and the early part of '70.

14 Q And when did you graduate from high school?

15 A 1969.

16 Q And what did you do after that?

17 A I went into the Army.

18 Q And how long were you in the Army?

19 A One year, eight months, four days.

20 Q Did you travel anywhere with the Army?

21 A Yes.

22 Q Where did you go?

23 A Well, from Fort Ord, I went to Vietnam.

24 Q So you're a Vietnam veteran?

1 A Yes, sir.

2 Q How long have you lived in Reno?

3 A Off and on for the past 21 years.

4 Q And did you have an opportunity to meet Bill

5 Branham?

6 A Yes.

7 Q How long have you known Mr. Branham?

8 A It's been since 1990, about.

9 Q Did you know Mike Fetherston?

10 A Yes.

11 Q How do you know Mike Fetherston?

12 A I knew him through a little bar over on B Street

13 called Side Track.

14 Q When did you meet Mike?

15 A Back in 1990.

16 Q Did you ever come to know Beverly Fetherston?

17 A Yes.

18 Q And how did you come to know Beverly Fetherston?

19 A She was bartending there at the Side Track on

20 B Street.

21 Q What was your relationship with Miss Fetherston?

22 A We were very good friends.

23 Q And did you socialize with her on a regular

24 basis?

1 A Off and on whenever I was what, in the
2 neighborhood of her house after I moved here from Sun Valley
3 over to what, Crampton Street over off Wells Avenue. And
4 then I was over at her other house, what-- the little alley,
5 moving her off Crampton to the South Wells address.

6 Q 129 and a half Wells?

7 A (Nods head affirmatively.)

8 Q What was the relationship between Beverly
9 Fetherston and Bill Branham when she was living over on
10 Crampton Street?

11 A Roommates.

12 Q Did you socialize with the both of them, that
13 would be Mr. Branham and Miss Fetherston, over on Crampton?

14 A I went over and visited with them, yeah.

15 Q Was there any problems between-- Were there
16 any problems in the relationship between Miss Fetherston and
17 Mr. Branham at that time?

18 A At that time, no, I can't remember any problems
19 at all.

20 Q And when did you assist Miss Fetherston in
21 moving over to Wells, the Wells address?

22 A It was the last part of the summer of 19-- '90?
23 '91. Last part of the summer of '91.

24 Q And did Mr. Branham assist in that move?

1 A Um-hum. Yes, he did.

2 Q And once you got over to the Wells Street
3 address, what was the relationship like between
4 Miss Fetherston and Mr. Branham?

5 A Roommates in the beginning, I guess.

6 Q And do you know where Miss Fetherston was
7 working at that time--

8 A Yes, she was working at the Swiss Chalet on
9 Mill Street.

10 Q Did you see her over at the Swiss Chalet?

11 A Um-hum. Yes, I did.

12 Q Did you go over there on a regular basis?

13 A Sometimes twice, three times a week when I got
14 off work.

15 Q Did you ever talk to Miss Fetherston about her
16 relationship with Mr. Branham?

17 A A couple a times.

18 Q Is Mr. Branham here in the courtroom?

19 A Yes, he is.

20 Q Would you point him--

21 MS. WILSON: We'll stipulate that Mr. Branham
22 is here.

23 THE COURT: All right. Mr. Branham's
24 identification has been agreed to.

1 BY MR. HALL:

2 Q When did you talk to Miss Fetherston regarding
3 Mr. Branham?

4 A The last time was what, February 6th of last
5 year.

6 Q Well, I'd like to try and go in chronological
7 order. So we can go back before February 6th, and we'll
8 work our way up to February 6th.

9 A Okay.

10 Q Okay.

11 A There was a time what, back in what, November
12 or December of '91 there at Swiss Chalet that she was asking
13 me some questions about a couple of things.

14 Q Like what?

15 A Where she could buy a gun.

16 Q Why was she inquiring about a gun?

17 A She was afraid of somebody.

18 Q Who was that?

19 A Bill.

20 Q And what did you tell her?

21 A Well, I told her about LOP Guns down over here
22 on Wells Avenue.

23 Q Do you know whether or not Miss Fetherston--

24 Well, you've indicated that Miss Fetherston was

1 afraid of Mr. Branham.

2 A Yes.

3 Q Did she communicate that to you on other
4 occasions, her fear of Mr. Branham?

5 A That time and-- and the morning of the 6th,
6 February, last year.

7 Q Did you ever see Mr. Branham be physically
8 violent with Miss Fetherston?

9 A No.

10 Q Would you have interceded had you seen any
11 violence take place between Mr. Branham and Miss Fetherston?

12 A Yes, I would have.

13 Q What were your feelings towards Miss Fetherston?

14 A She was a very good friend of mine. And--

15 Q Now, did you have any animosity towards--
16 Did you not like Mr. Branham in '91, the latter
17 part--

18 A We didn't have any problems at that time.

19 Q Do you have a problem with him now?

20 A Well, I can say I don't like the guy now.

21 Q You can say that you don't like him now?

22 A Yes.

23 Q Why is that?

24 A Because of what happened.

1 Q Is that going to cloud your testimony here
2 today?
3 A No.
4 Q Okay. Let's go to February 6th. Do you recall
5 that day?
6 A Yes, I do.
7 Q Were you working then in February of 1992?
8 A Yes, I was.
9 Q Where were you working?
10 A Advanced Plastics over on Greg Street.
11 Q What were you doing there?
12 A I was a machine operator, plastic moulding,
13 on graveyard shift.
14 Q And what did you do when you got off your shift
15 on February 6th?
16 A I got a ride down to-- it was either a bus or
17 a friend of mine gave me a ride either to the blood bank
18 or else I got off the bus-- I'm not sure how I got back
19 downtown, but I got downtown. So I walked from what,
20 Second Street over to the Swiss Chalet.
21 Q And who was there at the Swiss Chalet when you
22 got there?
23 A Let's see. Gary was there, Gary Swinehart.
24 He had just gotten off his graveyard shift. And there was

1 day shift bartender, little man named Ted. And was a couple
2 of other people in there. I can't really remember who.

3 Q Were you going to meet anybody there
4 specifically that day?

5 A No.

6 Q Do you remember whether or not Beverly
7 Fetherston was there?

8 A Yeah, she showed up what, about an hour after
9 I was there, maybe two hours.

10 Q What time did you get to the Swiss Chalet?

11 A It was about what, 8:30 in the morning.

12 Q And what happened when Miss Fetherston got to
13 the Swiss Chalet?

14 A Oh, we said "Hi" and started talking, and she
15 ordered a drink.

16 Q Do you recall what she was wearing that day?

17 A Well, she was wearing jeans, and I thought she
18 was wearing a sweater.

19 Q Okay. Now, after Miss Fetherston got to the
20 bar, ordered a drink, sitting around, anything out of the
21 ordinary happen?

22 A Phone rang, and Bev went to Ted, "If that's
23 for me, I'm not here."

24 And Ted goes, "Bev, it's for you." And he

1 gives her the telephone.

2 So-- And she got on the phone and she talked
3 for a bit, hung up. That was about it.

4 Q How did she act after she got through talking
5 on the phone?

6 A Well, she wasn't too happy about it. She said
7 she was going to have to go over to the house and talk to
8 Bill.

9 Q Who was she talking about? Bill who?

10 A Bill Branham.

11 Q When did she get that phone call; do you know?

12 A 11:30. Maybe. About 11:30.

13 Q Did she leave before you left?

14 A Yes, she did.

15 Q What were you doing?

16 A Well, Gary told me that Bev-- Beverly had this
17 girl that I wanted to meet and-- a girl Linda. She showed
18 up, and I finally got to meet her. And so we all sat there,
19 sat around, talked, had a few drinks together, and Linda
20 left, then Bev left, and then I left the bar.

21 Q Where did you go?

22 A I went over to Beverly's house, stopped by to
23 thank her for introducing me to Linda. And while I was
24 there, she asked me to run over to the Short-Stop store and

1 get a 12-pack of beer.

2 Q Where'd you get the money?

3 A From Beverly. She dug into her purse and gave
4 me all the change that she had, a couple of dollar bills and
5 some quarters, dimes, nickels.

6 Q No big bills?

7 A No.

8 Q What kind of beer did you get?

9 A MeisterBrau.

10 Q Showing you CC, does this look familiar?

11 A Um-hum. Yes.

12 Q What is it?

13 A It looks like a purse. Beverly's purse.

14 Q Is this the purse that she took the money out
15 of?

16 A Yes.

17 Q Okay. And where were you when Miss Fetherston
18 gave you the money?

19 A In the living room of her house.

20 Q Did she have her purse in her living room?

21 A At that time I believe so, yes.

22 Q And what time did you go over and get the beer?

23 A This was about I guess 1 o'clock.

24 Q How far is the Short-Stop from Beverly's house?

1 A Well, if you take the shortcut through the
2 apartment parking lot, underground parking lot, it's about
3 maybe a minute and a half, two minutes.

4 Q You got the beer and came right back?

5 A Yes. Right.

6 Q You didn't stop anywhere?

7 A No.

8 Q Who was there when you first got there?

9 A Bill was there. Bill Branham was there. And
10 Beverly.

11 Q Beverly. Anybody else?

12 A No. Well, just the cat.

13 MS. WILSON: Your Honor, we'll stipulate to
14 Mr. Branham being with Mr. Poorman and Beverly Fetherston at
15 that time.

16 THE COURT: Thank you.

17 BY MR. HALL:

18 Q Okay. That was on the 6th?

19 A Yes.

20 Q How do you know it was the 6th of February?

21 A Because it was day before payday.

22 Q You recall payday?

23 A Yeah. That was Friday.

24 Q Do you recall whether or not Miss Fetherston's

2 1 car was there?

2 A Not on that Friday morning, no.

3 Q How did we get to Friday?

4 A I don't know.

5 Q Okay. Did I say Friday?

6 A (Nods head affirmatively.)

7 Q Okay. Excuse me. Thursday. Was the car there
8 on Thursday?

9 A When I first got there, yes.

10 Q Show you State's S, State's R, State's Q. What
11 is depicted in those photographs?

12 A Beverly's car.

13 Q How do you recognize that car?

14 A Well, I got to drive it a couple of times when
15 she was with Mike. When Mike was still alive. And she was
16 working over there at the Side Track, and I took Mike over
17 to the VA Hospital.

18 Q Here in town?

19 A Yeah.

20 Q In this car depicted--

21 A Right.

22 Q --in R, S and Q?

23 A Um-hum.

24 Q What happened when you got the beer and came

1 back to Beverly's house on Thursday?

2 A Well, brought it back, came in, knocked on the
3 door, went in, passed three beers out, put the rest in the
4 refrigerator.

5 Q Did you put the carton in the refrigerator?

6 A Yes.

7 Q Okay. Then what--

8 A Sat down, started talking, and Bill come off
9 the wall with saying-- talking about this John, John Bell,
10 since he had spent the night over there at Beverly's house.
11 That Bill--

12 Let's see. That John wasn't any good, and that
13 he didn't deserve to live, and he wanted to kill him.

14 Q That was on Thursday, February 6th?

15 A Yes.

16 Q What did Miss Petherston say about that?

17 A Well, she didn't like the way Bill was talking
18 about John. Said, "John's a nice guy. You don't need to
19 talk to him-- talk about him like that." And Bill just
20 kept going on and on about it.

21 Q Could you tell whether or not Miss Petherston
22 had been drinking that day?

23 A Oh, yes. She had been drinking at the bar.

24 Q Do you know whether or not Mr. Branham was

1 drinking that day before you gave him the MeisterBrau beer?

2 A Yes, I believe he was.

3 Q What is that belief based upon?

4 A The way he looked. Yeah.

5 Q Have you seen people drunk before?

6 A Yes, I have.

7 Q On a number of occasions?

8 A Yes. I used to be a bartender.

9 Q Did Mr. Branham-- You believed him to be under
10 the influence?

11 A At the time, yes.

12 Q Okay. Was he wasted, or was he--

13 A He was still semi. Well, he was still coherent.

14 Q How about yourself? Had you been drinking that
15 day?

16 A Yes, I had.

17 Q How many beers did you have by the time you got
18 over to Miss Fetherston's?

19 A I'd say anywhere between four and six.

20 Q I'm assuming you're drinking beer. Is that a
21 correct assumption?

22 A Yes.

23 Q Did you drink beer on a regular basis?

24 A Social drinker, yes.

1 Q How many beers do you think you drink in a day?

2 A Oh, sometimes two, sometimes none, sometimes
3 twelve to eighteen.

4 Q Now, on this particular day, February 6th,
5 you had a few beers?

6 A Yes.

7 Q Maybe six?

8 A Before I gotten over to Beverly's house,
9 anywhere between six to eight. And I had a couple there
10 while I was sitting there.

11 Q Now, after you heard the conversation about
12 John Bell, do you remember any other conversation?

13 A No.

14 Q Do you remember whether or not Mr. Branham ever
15 indicated Thursday while you were there that he was going to
16 go to California?

17 A No.

18 Q Did he ever indicate that he was going to go
19 visit his daughter?

20 A No. 'Cause I didn't even know he had a daughter
21 at that time.

22 Q Did he indicate he was going to go see his
23 friends in California?

24 A No.

1 Q Did you hear him ask if he could borrow
2 Miss Fetherston's car?

3 A No.

4 Q Do you know at that time whether or not he
5 was living in the apartment?

6 A At that time, he was not.

7 Q I don't mean the apartment, I mean the house,
8 129-- the house you were at. Was he living there?

9 A No.

10 Q How do you know that?

11 A Because Bev-- Beverly told me at the bar that
12 she had thrown him out before.

13 Q That morning?

14 A No. Before that day.

15 Q No, I'm saying--

16 A But that day she told me he had been thrown
17 out of that house.

18 Q That morning Miss Fetherston told you that she
19 had kicked Bill out before--

20 A Right.

21 Q --that Thursday?

22 A (Nods head affirmatively.)

23 Q Did you see any of his belongings there at the
24 house?

1 A No, I didn't.

2 Q Have you ever been in Miss Fetherston's bedroom?

3 A Yes, I was.

4 Q Okay. I'm showing you State's J. Recognize

5 what's depicted in that photograph?

6 A Shoes, chair, garbage can.

7 Q Where is that?

8 A That's her bedroom.

9 Q Okay. Directing your attention to the upper

10 right-hand corner,--

11 A The hats.

12 Q --the hats.

13 Do you know whose hats those are?

14 A Those were Mike's, her husband.

15 Q Mike Fetherston?

16 A Right.

17 Q Is there a rack of hats there?

18 A Yes, there is.

19 Q Were all of those Mike's; do you know?

20 A I believe so, yes.

21 Q Do you know whether or not there's any other

22 property belonging to Mr. Fetherston there at the house?

23 A Well, actually, I guess it all belonged--

24 between Beverly and Mike, belonged to them both, everything

1 there in the house.

2 Q Do you recall seeing any property belonging to
3 Mr. Branham there at the house that day?

4 A No.

5 Q Show you State's II for identification. Do you
6 ever remember seeing this?

7 A No, I don't.

8 Q This is a green plastic bag--is it not?--full
9 of something?

10 A Yeah, it is.

11 Q You don't know what's in there?

12 A No.

13 Q Now, after you had a couple beers, you heard
14 Mr. Branham talk about John Bell, what happened after that?

15 A Well, soon after, after a couple of beers, like
16 I had worked the graveyard shift and it was getting on into
17 the afternoon, I had basically had enough, I gather, and my
18 eyes closed on me and I went to sleep for a bit.

19 Then I came to as soon as Bev put this cover--
20 afghan over me. And I sat back up and said, "My goodness",
21 and grabbed another beer and out the door I went, and went
22 home.

23 Q Do you know how many beers were left when you
24 grabbed that--

1 A There was about three or four left in the
2 12-pack after I had retrieved one for myself.

3 Q Okay. Do you remember the color of the afghan
4 that Miss Fetherston put on you?

5 A Well, no, I don't. Not offhand.

6 Q Do you remember whether or not she had any
7 afghans or blankets on the couch?

8 A Yes, she had what, a green and white one on
9 the back of the couch, but that wasn't the one she covered
10 me up with, because that was still on the back of the couch.

11 Q I'm going to show you State's Exhibit BB.
12 There's another comforter shown in BB. Does that look
13 familiar?

14 A That's the one, yeah, the stripes.

15 Q I show you PP. Do you recognize this?

16 A Yeah, Beverly's key chain, yeah.

17 Q Now, at one time did you ever-- Well, let me
18 rephrase that.

19 Have you ever seen Beverly Fetherston use a
20 credit card or--

21 A Automatic teller card for a bank, yeah.

22 Q When was that?

23 A June of '90. Yeah. June of '90. I was living
24 out South Virginia then.

1 Q Did you see her use a teller card, ATM or credit
2 card on a regular basis?

3 A No, not really. Just maybe once or twice.

4 Q Now, you left at 4 o'clock?

5 A Around 4:00. Between 3:30 and 4 o'clock.

6 Q Then what did you do after that?

7 A I walked on home.

8 Q What did you do when you got home?

9 A Went to sleep.

10 Q What did you do when you got up?

11 A Oh, about 8:30, Linda came over and I made her
12 dinner, then I got ready to work, and we left the house about
13 five after 10:00. And I walked Linda back to her house that
14 Thursday night.

15 Q Where was Linda living at that time?

16 A Linda lives in that three-story apartment
17 building right behind where Beverly lived at.

18 Q Showing you Defendant's Exhibit 28,--

19 A Okay.

20 Q --the upper right-hand photograph.

21 A Okay, yeah.

22 Q Is that where Linda lives?

23 A Yeah. Linda lived right up here, I think. 318.

24 Q When you took Linda home, did you check to see

1 if you-- if-- Well, did you look down at Beverly's house?

2 A Well, when I took Linda home, as we were
3 crossing over the parking lot in front of the bank, I could
4 see over where Beverly usually parks her car next to her
5 house. And I didn't notice her car at all.

6 Q What time was that?

7 A This was almost 10:30. And then Linda and I
8 walked underneath through the parking garage to the apartment
9 building and knocked. I got her to the back stairs and she
10 went up, and I went over towards Fourth Street to catch my
11 ride to work.

12 Q The next day after you got off work, I guess
13 that would have been the same day--

14 A Okay. No, it would be Friday morning.

15 Q Friday morning. That's when you got off work?

16 A (Nods head affirmatively.)

17 Q Did you have an opportunity to go by
18 Miss Fetherston's house?

19 A I got off the bus and went over to the Swiss
20 Chalet, had two beers and left there, crossed over Mill,
21 went through the alley, went by Bev's house, and there was
22 no car there.

23 Q What time was that?

24 A That was about 8:30, quarter to 9:00 in the

1 morning.

2 Q Did you have an opportunity to go by
3 Miss Fetherston's house again after that?

4 A Saturday-- Saturday night around 7:30,
5 8 o'clock.

6 Q How was it that you came to be by her house
7 at that time?

8 A I went-- I was heading over to the Swiss Chalet
9 to see how she was doing. And I walked into the Swiss Chalet
10 and I noticed that she wasn't there. And that was after I
11 walked by her house, noticing the car wasn't there.

12 Q So what did you think about that?

13 A Well, I didn't stop-- I didn't stay. I noticed
14 Rich was behind the bar. I wound up-- I turned around and
15 went back towards my house, went over to the Talk of the
16 Town. Then I went home.

17 Q When did you find out that Bev had died?

18 A It was Tuesday morning, the following Tuesday
19 morning.

20 Q And how did you find that out?

21 A By going to the bar, Swiss Chalet, after getting
22 off work.

23 Q Who told you--

24 A Sunday-- Sunday night I had gone to work, and

1 my boss was stuck up in Truckee with a broken clutch cable
2 on his motorcycle. So waited around for about an hour, so
3 we didn't open up the plant. So this girl, she gave us--
4 a few of us guys a ride home.

5 And they had mentioned to me that they had come
6 down Mill Street that Sunday night and noticed a few police
7 cars at the location of where Beverly's house was, in that--
8 that general area. And I had a funny feeling about it.

9 Then Monday night I went to work, and Tuesday
10 morning when I got off, I was told that Beverly was found
11 dead.

12 Q What did you do when you found that out?

13 A Went directly over to the police station and
14 gave them a statement, figuring, you know, my fingerprints
15 were in the house and they'd probably be wanting to talk to
16 me anyway.

17 Q Do you think John Bell's responsible for Beverly
18 Fetherston's death?

19 A No.

20 MS. WILSON: Your Honor, I think that's opinion
21 evidence and takes away from the province of the jury.

22 THE COURT: Well, you've offered two objections.
23 One is that it goes to the ultimate issue in this case. The
24 Evidence Code in effect in our state will say that that's

1 not a prohibition. An ultimate-issue question may in fact
2 be posed.

3 The second half of your objection, however,
4 is that it is beyond the personal knowledge of this witness
5 and it is opinion testimony. Opinion testimony may only be
6 offered by experts and may only be offered in limited
7 circumstances recognized by the Code.

8 MR. HALL: Let me rephrase the question.

9 BY MR. HALL:

10 Q Do you have any specific information that would
11 lead-- any evidence that would lead you to believe that John
12 Bell was responsible for the murder of Beverly Fetherston?

13 A No.

14 Q Do you have any evidence that would lead you
15 to believe that the defendant Bill Branham is responsible
16 for the murder of Beverly Fetherston?

17 A I guess got to say no to that, too.

18 THE COURT: Before we deviate too far from
19 this, ladies and gentlemen, I'll instruct you to disregard
20 Mr. Poorman's initial opinion as to whether or not Mr. Bell
21 had committed this crime.

22 Although he is entitled to testify about all
23 facts that he has within his own personal knowledge, he is
24 not permitted under our law to offer an opinion as to

3 1 something outside his area of expertise.

2 So I'll ask you to disregard his opinion
3 concerning John Bell.

4 BY MR. HALL:

5 Q Do you remember when you woke up in
6 Miss Fetherston's house on February 6th--

7 A Um-hum. Yes.

8 Q --on the couch?

9 What did you see when you woke up?

10 A Bev just put the what, afghan on me and there
11 was what, just this couch and chair in the living room,
12 and she was sitting on Bill's lap over in the corner in the
13 chair.

14 Q And how did that strike you?

15 A Strange, after the way she talked to me about
16 him earlier in the day. But then again, you know, they
17 looked all right, because I thought they were getting along.

18 Q You didn't see any animosity between
19 Miss Fetherston and Mr. Branham--

20 A No.

21 Q --that afternoon?

22 A (Shakes head negatively.)

23 Q Show you State's Exhibit F. What does that
24 depict?

4 1 A Twelve-pack of beer got pulled out of the
2 refrigerator and sitting on the coffee table.

3 Q Okay. The coffee table, does it look the same
4 or similar as it was when you were there?

5 A It looks more messed up than when I left.
6 There's only beer cans on the table were mine. And I
7 picked them up, threw those away when I got up.

8 Q Okay. The chairs-- Is there a chair depicted
9 in that photograph?

10 A Yes, right in the corner.

11 Q Is that where you saw Miss Fetherston--

12 A Yes.

13 Q --and Mr. Branham?

14 A Yes.

15 MR. HALL: That's all I have. Thank you.

16 THE COURT: This would be a good time, I think,
17 to offer you a brief recess before we proceed further.
18 We'll stand in recess until five minutes to 4:00.

19 (Recess.)
20

21 (The following proceedings were had outside the
22 presence of the jury:)

23 THE COURT: Be seated, please.

24 We're back on the record outside the presence

1 of the jury in CR92-1048, State of Nevada versus William
2 Branham.

3 Initially before trial, the State through
4 Mr. Hall had marked--

5 Excuse me. I think I'd like to ask Mr. Poorman
6 to step outside, if I could. This really has nothing to do
7 with you, Mr. Poorman, but I can't let you hear evidence
8 outside of--

9 THE WITNESS: Okay. No problem.

10 (Mr. Poorman left the courtroom.)

11 THE COURT: The State had marked and moved to
12 admit two tablets of morphine. Those tablets were found in
13 Mr. Branham's wallet--

14 MR. HALL: Excuse me, your Honor. Pardon me
15 for interrupting.

16 THE COURT: Go ahead.

17 MR. HALL: Sixteen tablets of morphine were
18 found in Mr. Branham's possession.

19 THE COURT: How many were left in the container?

20 MR. HALL: That was marked State's GG, your
21 Honor, and there were approximately twenty or more.

22 THE COURT: Why was I under the impression there
23 were two?

24 MR. HALL: I don't know. But we do have the

1 evidence here, and we can certainly--

2 THE COURT: There were sixteen tablets found
3 in Mr. Branham's wallet?

4 MR. HALL: Yes. Obviously, they are the same
5 tablets that are in the prescribed medication for Michael
6 Fetherston.

7 THE COURT: It's my error, obviously. For
8 some reason I was under the impression that there were two
9 morphine tablets found in Mr. Branham's wallet. Apparently
10 there are far more than that.

11 There are sixteen tablets in State's Exhibit HH.
12 The tablets are purple in color and appear to be identical
13 to the tablets which are in State's Exhibit GG, that being
14 a container of morphine sulfate, 30 milligrams, prescribed
15 to Michael Fetherston, the deceased husband of the victim in
16 this case.

17 Initially-- Well, let me back up.

18 The State's contention is that the State wanted
19 to have this evidence admitted to establish that, number one,
20 Mr. Branham was in the home, 129 and a half Wells Avenue, on
21 the 6th of February, 1992, and that he was there not only by
22 virtue of his placement there by Mr. Poorman, but that he
23 was present by virtue of the circumstantial effect of the
24 evidence being found in his possession, which could be a

1 reasonable assumption that these morphine tablets had been
2 removed from Miss Fetherston's house. Specifically from a
3 dresser drawer in the bedroom wherein these tablets were
4 known to be located.

5 Mr. Hall feels that evidence is not only
6 relevant, but significant, because it places Mr. Branham
7 not only in the home on the 6th of February of 1992, but
8 places him circumstantially in the bedroom of that home on
9 that date, as well.

10 It's significant that he was in the bedroom
11 because the purse which has been introduced in this case, I
12 don't know the Exhibit Number, but Miss Fetherston's purse,
13 as well as checks contained therein, were the subject of
14 someone removing those checks, and checks were taken from
15 Miss Fetherston's purse, ultimately found in the possession
16 of Mr. Branham. And a reasonable inference could be drawn
17 that Mr. Branham did in fact remove the checks from the
18 purse located in the bedroom, which happened to be the same
19 location of these morphine tablets.

20 Clearly, this evidence is relevant. However,
21 under NRS 48.035 there is an additional inquiry that has to
22 be satisfied by the Court. And the rule would read as
23 follows: "Although relevant evidence may be excluded if its
24 probative value is substantially outweighed by the danger of

1 unfair prejudice, confusion of the issues, or misleading the
2 jury, or by considerations of undue delay, waste of time or
3 needless presentation of cumulative evidence."

4 Basically, the inquiry from me is: Is the
5 probative value high, number one? Number two, is the
6 prejudicial impact low? If it is, it's to be admitted.
7 Conversely, if the probative value is low and the prejudicial
8 impact is substantial, it should be excluded discretionarily
9 under NRS 48.035.

10 Mr. Hall would be able to establish-- or would
11 be able to offer circumstantially by the introduction of HH
12 and GG that Mr. Branham was in the bedroom of this particular
13 home.

14 My initial thought was that Mr. Hall would be
15 able to satisfy that same circumstantial conclusion if he
16 were able to persuade the jury that the checks and the
17 checkbook that were taken from the purse that was located in
18 the bedroom were in fact removed by Mr. Branham. Then it
19 would seem a logical conclusion that Mr. Branham was in
20 that bedroom, took the checkbook and the checks.

21 In my view, that would satisfy Mr. Hall's
22 desire to place Mr. Branham in the bedroom. Additionally,
23 Ms. Wilson has already stipulated in prior testimony of
24 Mr. Poorman that Mr. Branham was in fact present at the home

1 of Beverly Fetherston on February 6th, 1992.

2 With regard to the prejudicial effect of this
3 particular evidence, it seems to me that anytime jurors are
4 advised that a defendant is in possession of illegal
5 narcotics, nonprescribed narcotics, such as the morphine in
6 this case, that there may well be a tendency which I may not
7 be able to erase by having the jury know that Mr. Branham
8 was in possession of illegal narcotics.

9 What Mr. Hall might gain from the introduction
10 of GG and HH would be to place Mr. Branham in the home on
11 the 6th of February and in the bedroom of Ms. Fetherston on
12 the 6th of February.

13 I am satisfied that Mr. Hall is able to do that
14 without the introduction of these morphine tablets. And as
15 such, I do believe that there is probative value to the
16 introduction of GG and HH, but that that probative value
17 is outweighed by the prejudicial impact and the potential
18 confusion of issues which would establish the innocence or
19 guilt of William Branham.

20 Now, Mr. Hall, I would like to give you an
21 opportunity to place on the record any argument you'd wish
22 to make, and I will listen carefully to that which you have
23 to say. It may be that you will persuade me my reasoning
24 is incorrect. So I'd like to give you the opportunity to

1 do that.

2 MR. HALL: Your Honor, first of all I'd like
3 to start off by saying that Mr. Branham-- it is alleged that
4 Mr. Branham stole the checks from Miss Fetherston and
5 thereafter forged those checks. The evidence contained in
6 GG and JJ-- Or G and H?

7 THE COURT: GG and HH.

8 MR. HALL: --GG and HH also show that
9 Mr. Branham was stealing from Miss Fetherston.

10 When he came back to town on February 11th,
11 1992, he was in possession not only of Miss Fetherston's
12 checkbook, but also in possession of tablets of morphine
13 which obviously came from the bedroom of Miss-- Miss
14 Fetherston.

15 The defendant, if he was stealing from
16 Miss Fetherston as he did the checks, I think the jury
17 should be aware of all of the facts. And part of the facts
18 show that he stole or he was in possession of those morphine
19 tablets which came from the bedroom of Miss Fetherston.

20 I think the better way to address this issue
21 would be with a curative instruction indicating to the jury
22 that the fact that he was in possession of morphine tablets
23 should not be used as a mark-- a bad mark on his character,
24 and it's not used for the purpose of showing that he is a

4 1 drug user or a drug addict, solely for the purpose of drawing
2 an inference that the defendant was in the bedroom and that
3 he took those pills from Miss Fetherston on or about the
4 6th of February, 1992.

5 I think it is part of the-- part of the res
6 gestae of the defense. Obviously the defendant was in
7 the house, he was in possession of the pills, the morphine
8 tablets, he came back, he was in possession of those tablets.
9 I think the jury should have all of the facts, and those are
10 the facts of this case.

11 I think denying me the opportunity to provide
12 all that evidence to the jury is an error. I believe that it
13 is very probative. There are-- obviously is some prejudicial
14 impact to that, but that's what the defendant did. It can't
15 be controverted. He was in possession of those pills. And
16 if he was in possession of those pills, then the jury should
17 know that.

18 THE COURT: But the problem I'm having,
19 Mr. Hall, is you can't prove that he took these pills on
20 the 6th of February. You can't establish that those pills
21 weren't in his possession after he had taken these pills
22 sometime when he was living in the home with Miss Fetherston.

23 MR. HALL: I suppose the same could be said
24 that I can't show when he stole the checkbook or when he

1 stole the other checks.

2 THE COURT: Well, I think it's more likely
3 that you would be able to show some checks written by
4 Miss Fetherston that would lead you to a more certain time
5 frame than could be established by the presence of these
6 morphine tablets in Mr. Branham's possession.

7 The probative-- Had Mr. Branham not lived at
8 any time within Miss Fetherston's home, I would say that the
9 probative value of this evidence would be significantly
10 higher. Significantly higher. But he has theoretical access
11 to this property during the entire time he lived with her.

12 The prescription is dated 12/90. So basically
13 they were around for, if I've understood the testimony,
14 almost the entire time that Mr. Branham was associated with
15 Miss Fetherston.

16 MR. HALL: I think Miss Wilson could make that
17 argument in front of the jury, and allow the jury to decide
18 what weight to give to that evidence.

19 THE COURT: And aren't we confusing the jury now
20 with having to try to figure out something about an uncharged
21 narcotic possession that reflects badly on Mr. Branham's
22 character?

23 The issue here really is whether Mr. Branham's
24 a murderer. That's what we're here to decide, not whether

1 Mr. Branham has some controlled substance that he's not
2 supposed to possess.

3 MR. HALL: Well, there's no question that he has
4 a controlled substance that he's not supposed to possess.

5 THE COURT: But how does that circumstantially
6 assist your case beyond what I've described with regard to
7 placing Mr. Branham at the scene of the murder, which would
8 infer that he was in fact the guilty party?

9 MR. HALL: 'Cause I would be able to argue that
10 he was in the bedroom and he took the pills possibly after
11 she was dead.

12 THE COURT: Well, aren't you-- You're going to
13 be putting on evidence that he removed the checks, her checks
14 from the purse in the bedroom; are you not?

15 MR. HALL: Yes.

16 THE COURT: So you will be placing him in the
17 bedroom, removing property of hers, stealing from her.

18 MR. HALL: And my argument is the fact that the
19 pills were in the bedroom and he has pills in his possession
20 aids the finder of fact in their determination as to whether
21 or not he was in fact in the bedroom, and that's where he got
22 the checkbook.

23 And I think that is very probative, and I think
24 that would outweigh the prejudicial effect, especially in

1 light of a curative instruction.

2 THE COURT: Curative instructions are designed
3 to cure a potential error. I don't want the potential error
4 to exist in the first place. I'd like to avoid falling off
5 the wire before I have to worry about pulling out the safety
6 net.

7 MR. HALL: I simply offer that as an
8 accommodation to the defense, should they want that.

9 THE COURT: Miss Wilson, do you wish to be
10 heard on this?

11 MS. WILSON: The concern that I have, your
12 Honor, is that we've already stipulated to Mr. Branham's
13 presence at that particular time and date, and I feel that
14 that bell has been rung. It may not have been significant,
15 because I didn't intend to trick anyone into believing that
16 he wasn't there at that time.

17 However, when I voiced a stipulation in open
18 court, I think it draws attention to the fact that he was
19 there. And that's my concern, as well as the concern that
20 I made in our pretrial motions regarding this.

21 So I just-- I think that Mr. Hall's concern
22 about linking him is established by my stipulation. And
23 furthermore, it's established by Mr. Branham being in Valley
24 Bank on Tuesday, the 11th, and passing a check that didn't

1 belong to him out of the checkbook.

2 And I think Mr. Hall can establish that quite
3 easily. Detective Jenkins arrested him as he had attempted
4 to pass an instrument that didn't belong to him.

5 And if I might just approach the checkbook--
6 Yup, the first check in the checkbook is 209, and the check
7 that Mr. Branham had was 208. So we've got a link there.

8 THE COURT: Mr. Hall, anything else?

9 MR. HALL: I would simply add this case is a
10 purely circumstantial case, as the Court well knows. Every
11 bit of circumstantial evidence that will aid the jury that
12 the defendant was in possession of property that he should
13 not rightly be in possession of and that it came from Beverly
14 Fetherston's bedroom and found with that property shortly
15 after she died is certainly very probative of whether or not
16 the defendant killed Beverly Fetherston.

17 THE COURT: What argument can you make
18 concerning this-- these morphine tablets that would
19 establish-- link Mr. Branham to this murder?

20 MR. HALL: My argument would be that once
21 Beverly Fetherston was killed, the defendant pilfered her
22 bedroom, whereupon he stole her checkbook and he stole these
23 morphine tablets and he took off.

24 While she was alive, he would not have had the

1 opportunity to steal the morphine tablets or the checkbook.
2 And that is strengthened by the fact that both items it can
3 be argued came from the bedroom, a place where he did not
4 sleep or did not belong.

5 And that's buttressed by the photographs that
6 show only one person was sleeping in that bed. At least that
7 can inferentially be argued, as well. Not to mention the
8 hair that was found on the couch and the rest of the evidence
9 that goes to point to the defendant's guilt in this case.

10 I also have the statute here which does cite
11 some case law. And the cases-- or at least the factual
12 scenarios which are set forth in the annotations of 48.035
13 would indicate in my mind that the admission of this evidence
14 would not be prejudicial error.

15 THE COURT: All right. Why don't you go ahead
16 and place that on the record.

17 MR. HALL: I would cite to Bishop v. State,
18 Seim v. State-- Let me give you the cite. 92 Nevada 510.
19 Seim v. State. S-e-i-m v. State. That's also 95 Nevada 89.
20 And also Young v. State, 102 Nevada 233.

21 And as the annotation says that on appeal from
22 conviction of First Degree Murder, Robbery and Arson,
23 appellant's claim that the trial Court erred in admitting
24 into evidence bank bag, found eight months later after the

5 1 crime, was rejected by Supreme Court, with the passage of
2 time between the crime and discovery of bank bag went to
3 weight not admissibility of evidence and trial Court's
4 discretion in determining whether probative value of evidence
5 outweighed any inference of prejudice was not abused.

6 THE COURT: Do you--

7 MR. HALL: I think that addressed the time
8 factor and also the prejudicial effect. I'm sure that there
9 are other cases which I've not had the opportunity to brief
10 at this time, but I think the overwhelming weight of
11 authority would be in my favor.

12 THE COURT: Do you want to respond to that,
13 Miss Wilson?

14 MS. WILSON: I'm just sitting here thinking
15 about the bell that's already rung.

16 THE COURT: And what bell is that?

17 MS. WILSON: That I stipulated that he's present
18 in the home. Because my understanding of the Court's ruling
19 was that this was decided, and that's-- that's why I agreed
20 to the stipulation.

21 THE COURT: Well, let's talk about the substance
22 of this, instead of the procedure.

23 Mr. Poorman was pretty specific about who was
24 there, and it's my belief that Mr. Branham is not going to

1 offer testimony contrary to that in this case.

2 MS. WILSON: No, but I think it drew attention
3 to the fact--

4 THE COURT: I don't.

5 MS. WILSON: When you verbalize it in open
6 court, it draws attention to it. I told you during--

7 THE COURT: I disagree with that.

8 MS. WILSON: Well,--

9 THE COURT: Tell me what you think about what
10 Mr. Hall has just said,--

11 MS. WILSON: I think that--

12 THE COURT: --because that would be new. I've
13 heard you ring the bell twice now. I understand that
14 argument. Address the new one, if you would.

15 MS. WILSON: I think that during the pretrial
16 motions I felt that the Court could use your discretion in
17 what you think would be fair. I think you articulated my
18 concerns perfectly.

19 This is a murder trial. The evidence of drugs
20 is not relevant to prove or disprove murder. It's highly
21 prejudicial to Mr. Branham. I think typically when you have
22 a Petrocelli hearing, the State puts on clear and convincing
23 evidence, if they can, that the uncharged bad conduct is
24 appropriate to come in. I don't believe that they have met

1 their burden.

2 It is a collateral matter. It is not having
3 to do with physical violence, which would be uncharged bad
4 conduct that may have some relevance to whether or not he
5 was a murderer. To indicate that this uncharged bad conduct
6 has any relevance other than prejudicial in nature is a ruse.
7 And that's my feeling.

8 THE COURT: The statute NRS 48.035 finds its
9 origin in the Federal Rule. The Federal Rules have almost
10 been adopted in their entirety, although there have been
11 some minor modifications. No such modification relates to
12 NRS 48.035.

13 The Advisory Committee's notes, which are found
14 in 56 Federal Register Digest 183 at 218 on this particular
15 issue defines "unfair prejudice" within the context of
16 Federal Rule 403 and NRS 48.035 as meaning an "undue tendency
17 to suggest a decision on an improper basis, commonly, though
18 not necessarily, an emotional one".

19 The Advisory Rule also suggests that, "In
20 reaching a decision whether to exclude evidence on the basis
21 of undue prejudice, consideration should be given to the
22 availability of other means of proof."

23 I have tried to consider the availability and
24 the legitimacy of the State's position in establishing,

5 1 number one, Mr. Branham's location on February 6th of 1992
2 in the home of Beverly Fetherston.

3 The State has been able to accomplish that
4 through the testimony of Dudley Poorman, as well as the
5 stipulation of defense counsel to that specific fact.

6 It's my belief that the State will have a
7 sufficient basis by other means of proof to establish
8 that Mr. Branham did in fact remove property from
9 Miss Fetherston's bedroom. Specifically, the removal of
10 the checkbook.

11 Mr. Branham, as we all know at this point,
12 was caught in possession of this checkbook, in an act which
13 appears to be uttering a forged instrument or forging an
14 instrument himself.

15 I don't make a final determination as to his
16 innocence or guilt on that issue. That's for the jury to
17 decide. But I certainly feel the State has ample evidence
18 to establish that Mr. Branham was in fact engaged in forging
19 the name of Miss Fetherston in an effort to obtain funds
20 from Miss Fetherston's bank account.

21 And if I am correct in that belief--and I'm
22 comfortable that I am--Mr. Hall would be able to
23 circumstantially then argue that the checkbook came from the
24 purse, the purse was found in the bedroom, ergo, Mr. Branham

5 1 was in the bedroom.

2 In view of the availability of the other means
3 of proof--

4 And I note that although what I've just recited
5 may be circumstantial in nature, what could be obtained
6 through the introduction of GG and HH is no less
7 circumstantial in nature. Therefore, I do believe that
8 the prejudicial impact outweighs the probative value, and
9 GG and HH will be denied.

10 Okay. We're ready.

11 (Whereupon, the jury returned to the courtroom
12 and the following proceedings were had:)

13 THE COURT: Welcome back. Be comfortable. Have
14 a seat, please.

15 Thank you again for your patience. We had a
16 little legal work to do. But I think it's been accomplished
17 and we're ready to resume.

18 If you would resume the witness stand, please,
19 Mr. Poorman. Your oath stays with you, sir.

20
21 CROSS-EXAMINATION

22 BY MS. WILSON:

23 Q Mr. Poorman, you made a statement to the police
24 on February 11, 1992. Isn't that true?

1 A Yes, ma'am.

2 Q All right. And Detectives Wood and Douglas took
3 your statement?

4 A Yes.

5 Q And you were with Beverly Fetherston on February
6 6th; right?

7 A Yes.

8 Q And you first arrived at 1:00 p.m.?

9 A Around there, yes.

10 Q Okay. And that's when she gave you money to
11 buy beer; right?

12 A Yes, she did.

13 Q Now, she usually parked her car in a little
14 driveway where the gate is to the front door; right?

15 A Yes, she does.

16 Q Okay. I'm going to show you Defense 29.

17 MS. WILSON: May I approach, your Honor?

18 THE COURT: Of course.

19 BY MS. WILSON:

20 Q I ask you to look at that and see if you can
21 determine where she typically parked that vehicle.

22 A Right there.

23 Q Okay.

24 A Right there. Oh, no. The other side. This

1 other side, yeah.

2 MS. WILSON: May I have Mr. Poorman show the
3 jury where he's pointing?

4 THE COURT: Sure. Point out the location,
5 if you would, Mr. Poorman.

6 THE WITNESS: Okay.

7 THE COURT: Can you see this, Mr. Hall? Feel
8 free to approach.

9 THE WITNESS: Right here between these two
10 buildings, two-story apartment and Beverly's house. And the
11 gate was right there. Right at the end. Front door was on
12 the other side.

13 BY MS. WILSON:

14 Q Mr. Poorman, the two-story building that you
15 pointed to over here, that was her neighbor; right?

16 A Yes.

17 Q Did you know him?

18 A No, I didn't.

19 Q Okay. Now, the apartment complex that you
20 advised that Linda lived in,--

21 A Yes.

22 Q --that would be in Defense 28; right?

23 A Um-hum.

24 Q Okay. Can you point to where Beverly's home

6 1 is in the upper right-hand corner that you're showing to be
2 the apartment complex?

3 A Yes. Right here.

4 Q Okay. So in between the apartment complex and
5 her home is the two-story home?

6 A Yes.

7 Q Okay. And I'm going to show you Defense 30,
8 and ask you to look at--

9 You identified the top.

10 A Okay.

11 Q I'd ask you to look at the bottom.

12 A All right.

13 Q Do you see where Beverly's home was in the
14 bottom?

15 A Yes, I do.

16 Q Would you point it out?

17 A Right here.

18 Q Okay. Can you point it out so the jury can see?

19 A Right here.

20 Q Now, would it be fair to say that this was
21 taken from the apartment complex?

22 A Yes, it would.

23 Q Okay. Is that how you would look down to see
24 her home and the parking area?

1 A Yes, if I was looking down that way from
2 upstairs.
3 Q Okay. And you did that in this case; did you
4 not?
5 A No, I didn't.
6 Q You didn't determine whether her car was there
7 from the apartment complex?
8 A No, I didn't.
9 Q Okay. Now, did you know Mr. Branham's last
10 name?
11 A Not until this started.
12 Q When you talked to the police, do you know that
13 you called him Bill Brown?
14 A Yes.
15 Q Were you thinking of Bill Branham?
16 A Yes, I was.
17 Q Okay. So you didn't know Bill Branham very
18 intimately; did you?
19 A I didn't know his last name.
20 Q Did you know him intimately?
21 A We had a few drinks together now and then.
22 Q Okay. He wouldn't be classified as a best
23 friend?
24 A No.

1 Q And you wouldn't have knowledge-- or personal
2 knowledge of Mr. Branham's personal effects; would you?

3 A Not really, no.

4 Q So when you indicate that you didn't see any
5 of Mr. Branham's things in the residence, that was just your
6 opinion; right?

7 A I didn't see any of his things there.

8 Q Well, you don't know any of his things; do you?

9 A I knew Bev's things.

10 Q Okay. You don't know his; right?

11 A Right.

12 Q Okay. Now, when you talk about the MeisterBrau
13 container--

14 A The 12-pack box?

15 Q Right. --and you put it in the fridge,--

16 A Yes.

17 Q --did you ever take that out?

18 A No.

19 Q Okay. So when you see a photograph of the
20 MeisterBrau container on the coffee table, you didn't put
21 it there?

22 A No, I didn't.

23 Q All right. And as far as you knew, when you
24 left at 4 o'clock, it was in the fridge?

1 A Yes.

2 Q Okay. Now, the occasion that you went over to
3 the home, that was Thursday, February 6th?

4 A Right.

5 Q Showing you Defense 4 right here, the 6th;--

6 A Okay.

7 Q --correct?

8 A Yeah.

9 Q Okay. Thursday.

10 A Thursday.

11 Q And when you guys all started talking, it was
12 very pleasant?

13 A At first.

14 Q You, Bev and Bill?

15 A Right.

16 Q Okay. And he never got physical with you?

17 A No.

18 Q In fact, he's never gotten physical with you?

19 A No, he hasn't.

20 Q And you've never seen him get physical with Bev?

21 A No.

22 Q Now, he says that he wants to kill a guy by the
23 name of John?

24 A Right.

6 1 Q And he said that because John was bisexual and
2 had a relationship with Bev. Isn't that true?
3 A That's how it went that day, yes.
4 Q Okay. And you recall John driving a Volkswagen
5 bug; right?
6 A Yes, I do.
7 Q And you're fairly comfortable that Bev had on
8 blue jeans and a sweater; right?
9 A Yes.
10 Q Not pink stretch pants?
11 A Not pink stretch pants, no.
12 Q You'd remember that?
13 A Yes.
14 Q And not a sweatshirt?
15 A To the best that I could recollect, she was
16 wearing a sweater at the bar.
17 Q Okay. And you indicted that it had a pink
18 design on the front; right? Pink diamonds?
19 A That's what I thought, yes.
20 Q You'd remember if it was a mouse on ice skates;
21 wouldn't you?
22 A Yes, I would.
23 Q And that was not what she was wearing; right?
24 A I don't remember her wearing that.

1 Q Okay. And when you saw her, she wasn't wearing
2 socks or shoes?

3 A She was barefoot in her house.

4 Q Okay. And you didn't see a checkbook or her
5 purse at that time; right?

6 A When I first got to the house, she brought her
7 purse out and gave me a couple of dollar bills, one, two
8 three dollar bills and a bunch of change, quarters, dimes
9 and nickels.

10 Q Okay.

11 A Then I went to the store. And when I got back,
12 I wasn't even looking for the purse.

13 MS. WILSON: Court's indulgence?

14 BY MS. WILSON:

15 Q Do you recall telling the police that you didn't
16 actually see her purse that day?

17 A Well, I saw it when she was at the bar, I saw
18 it when she pulled the money out at her house--

19 Q So you--

20 A --for me to go over to the store. And then
21 after that, I didn't see it.

22 Q You didn't say to the police that you didn't
23 even actually see the purse that day?

24 A I don't remember.

1 MS. WILSON: May I approach?
2 THE COURT: You may.
3 MS. WILSON: Page 6 of his statement.
4 BY MS. WILSON:
5 Q Mr. Poorman, could you look at this to yourself,
6 this question and this answer.
7 A Okay.
8 Q Do you recall making that statement to the
9 police?
10 A Yes.
11 Q Is that true or false?
12 A It's true.
13 Q Okay. So you didn't see the purse that day?
14 A Well, not-- not after I got back from the store.
15 Q Okay. Now, you've known Bev for almost two
16 years; right?
17 A Yes.
18 Q And you knew Bill for about a year and a half?
19 A Right.
20 Q And you first met her at the Side Track Bar?
21 A Right.
22 Q Okay. And you have been to her residence on
23 South Wells and Crampton?
24 A Yes.

1 Q And you knew her well enough to know her husband
2 Mike; right?

3 A Yes.

4 Q Now, when she was living at the Crampton
5 residence, she lived with Bill, Razz and Mike. Isn't that
6 true?

7 A At first it was Razz, Mike and Beverly there
8 at the house. And then after Mike died, Bill moved in.

9 Q Okay. And they all lived together?

10 A Yeah.

11 Q Now, when you knew Bill, you knew him to have
12 a ferret?

13 A Yes.

14 Q Okay. And as far as you knew, he slept on the
15 couch?

16 A Yes.

17 Q Now, when you woke up that day of the 6th, you
18 passed out from drinking and being tired; right?

19 A Basically, yes.

20 Q And she was sitting on his lap?

21 A Yes.

22 Q Okay. And the time was about 4 o'clock when
23 you left?

24 A Right about then.

1 Q And Mr. Branham was still there when you left?

2 A Yes.

3 Q Okay. And when you left, Bev and Bill were
4 getting along fine?

5 A Seemed like.

6 Q And that's what you told the police?

7 A Yes.

8 Q Okay. When you left at 4 o'clock, Bev's car
9 was still there; right?

10 A Yes.

11 Q And that's when you left. And then you came
12 back over to pick Linda up at--

13 A No.

14 Q --at 10:15?

15 A I just walked Linda home about that time.

16 Q About 10:15?

17 A After we left my house.

18 Q And the car was gone?

19 A Yes.

20 Q Okay. And then you went to work at 11 o'clock
21 at night?

22 A Yes.

23 Q 'Cause that was your work shift,--

24 A Right.

1 Q --grave?
2 A Yes, ma'am.
3 Q Okay. Now, when you got off work Friday
4 morning, you went to the Swiss Chalet?
5 A Yes.
6 Q Okay. And what time was that?
7 A Between 8:00, 8:30.
8 Q Okay. Had a couple of drinks?
9 A Yes.
10 Q And then after that, about 9:00 a.m. or so,
11 you go back over to Linda's?
12 A No.
13 Q No?
14 A Well, yeah. I went upstairs to Linda's, knocked
15 on her door, no answer, went back downstairs, went through
16 the alley out to Wells Avenue.
17 Q Okay. And that was about 9 o'clock in the
18 morning Friday morning?
19 A After 9:00.
20 Q Okay. I'm going to show you Defense 16 and
21 ask you if that's the alley that you walked through? Does
22 that look familiar?
23 A Yes, that's the alley.
24 Q Okay. Can you show that to the jury?

1 A (Witness complies.)

2 Q And that is-- How would you describe where
3 that alley is?

4 A This street back here being what, Park Street,
5 I believe; and the street up here where this building is,
6 up right here with a blue and white sign being Wells Avenue.

7 Q Where is Miss Fetherston's home in that photo?

8 A Right over here on the-- on the right-hand side.

9 Q Okay. Can you see it in that photo?

10 A Basic-- Let's see. Two-story apartment--
11 See the corner of it.

12 Q Where is that?

13 A Right here.

14 Q Okay. Would you show the jury that.

15 A Little corner of the building right here.

16 A little out.

17 Q Thank you.

18 A Yeah.

19 Q And that was Friday about 9:00 a.m.; right?

20 A Um-hum. Yes, ma'am.

21 Q And then after that, that would kind of be
22 your sleeping time?

23 A Well, it was Friday. It was actually bill-
24 paying time.

1 Q Was what?
2 A Bill-paying time.
3 Q Okay. And you went home and didn't leave your
4 home until midnight;--
5 A Yeah.
6 Q --right?
7 A Right.
8 Q Were you sleeping at that time?
9 A For a while.
10 Q 'Cause you're a graveyard worker?
11 A Right.
12 Q Okay. Now, when you left your home again,
13 you went out to the bar, Talk of the Town?
14 A Right.
15 Q That was around midnight?
16 A Yes.
17 Q Okay. This would be Friday midnight.
18 A Okay.
19 Q Is that right?
20 A Yes.
21 Q Okay. That's still-- Now, we're up to February
22 7th at midnight?
23 A Going into February 8th.
24 Q Okay. Right.

1 After that, Talk of the Town, you left there
2 and came walking down Wells and past the Pink Pussycat?

3 A Okay.

4 Q That was--

5 A Yeah.

6 Q --around 1 o'clock in the morning?

7 A Yes.

8 Q Okay. And you noticed that the car was not
9 there?

10 A Yes.

11 Q Now, did you hear any fighting around the Pink
12 Pussycat at that time, approximately 12:30 or 1:00 a.m.?

13 A No.

14 Q And that would be early Saturday morning?

15 A Right.

16 Q Okay. And you weren't involved in any kind of
17 fighting; right?

18 A No.

19 Q Then after that you went over to the Swiss
20 Chalet and talked to Gary?

21 A Right.

22 Q That's Swinehart?

23 A Yes.

24 Q And now we're talking about--

1 A February 8th.

2 Q --February 8th, which is a Saturday morning?

3 A Um-hum. Gary's graveyard shift.

4 Q Okay. And you stayed there until about 11:00

5 a.m.--

6 A (Nods head affirmatively.)

7 Q --Saturday morning?

8 A Um-hum.

9 Q Then you went home?

10 A Right.

11 Q Okay. Late Saturday night, early Sunday

12 morning, you told Gary that you felt something was funny?

13 A Yes. I had a funny feeling inside.

14 Q Okay. And you told Gary that you were the last

15 person to see her alive?

16 A I was one of the last people to see her alive,

17 but--

18 Q Do you recall telling him that?

19 A Yes.

20 Q Okay.

21 A It was right before I wenten over to the police

22 station and made my statement.

23 Q Now, you had seen Bill and Bev fight like cats

24 and dogs?

1 A No.

2 Q No?

3 A No, I never saw Bill and Beverly fight except
4 for the little argument that was going on about John on the
5 6th.

6 Q That's the onliest time?

7 A Yeah.

8 Q That was a verbal--

9 A Just verbal.

10 Q --situation?

11 A Just verbal.

12 Q And you've heard her threaten to kick him out
13 a couple of times?

14 A Back in November, December, during that time.
15 And then when I saw her in February, she told me that she
16 had kicked him out.

17 Q Okay. Now, you didn't have any sex with
18 Beverly?

19 A Never.

20 Q Okay. And as far as you know, Bill didn't?

21 A No.

22 Q Okay. 'Cause you always believed that their
23 relationship was platonic?

24 A Yes.

7 1 Q And as far as you knew, Bill slept on the couch
2 and she had her own bedroom?

3 A Yes.

4 Q Now, when you woke up, that split second that
5 you woke up, you did see a romantic look between the two?

6 A Not that I can recollect, but it was friendly.
7 It looked like, you know, they were friend-- being friendly.
8 She was sitting on his lap.

9 Q Did you know that Beverly wanted him to move
10 back in?

11 A No.

12 Q Okay. Now, the prior owner of the Side Track
13 Bar was a man named Buddy; right?

14 A Right.

15 Q And his real name is Gunnar?

16 A Yeah.

17 Q And he had a business relationship with Bev
18 and Mike?

19 A Yes, ma'am.

20 Q Okay. And they all lived together when Mike
21 was alive in Sun Valley?

22 A Yes.

23 Q And then the business relationship with Buddy
24 went sour; right?

1 A Yes, it did.

2 Q And Buddy owed Mike and Bev 10- to \$15,000?

3 A I never knew the exact amount.

4 Q Do you recall telling the police that?

5 A I told the police that he owed them money, but
6 I don't remember any exact amount, 'cause Beverly never
7 mentioned an exact amount to me.

8 MS. WILSON: Page 21.

9 BY MS. WILSON:

10 Q I'd like to show you to refresh your memory
11 page 21.

12 MS. WILSON: May I approach?

13 THE COURT: You may.

14 BY MS. WILSON:

15 Q Read that to yourself.

16 A Okay.

17 Q Okay. After refreshing your memory, do you
18 recall telling the police that he owed her 10- to 15,000?

19 A Two-- Yeah, okay.

20 Q Okay.

21 A She also asked me to go out to Sun Valley and
22 repossess his trailer-- repossess Buddy's trailer for her,
23 which I denied doing or having any part of--

24 Q Would it be fair to say, Mr. Poorman, that

1 some of these financial things were discussed in the bar?

2 A Oh, well, they weren't discussed at the Side
3 Track. Yeah, I guess so, yeah, over at Swiss Chalet.

4 Q Okay. Now, Buddy worked behind the bar and Bev
5 worked the bar, and Mike worked the bar when Buddy couldn't
6 work because of being passed-out drunk?

7 A Right.

8 Q Did you ever meet Buddy?

9 A Yes.

10 Q Do you recall the time that Bev had the ATM
11 card with you?

12 A Yes.

13 Q And you recall her pulling it out of her purse
14 and handing it to Bill Branham?

15 A Yes.

16 Q And on that occasion they were giving you a
17 ride to the food stamp office?

18 A Yes. That was June of '91.

19 Q And they were on food stamps, too?

20 A Were they?

21 Q Weren't they?

22 A Not that I know of.

23 Q Okay. You observed Bill hit the machine and
24 get money out of it; right?

1 A Yes.

2 Q And he walked over to the Short-Stop store to
3 pick up a few beers?

4 A Right.

5 Q And he knew her PIN number?

6 A Yes.

7 Q And Bev was there when he used the card?

8 A Yes, she was riding in the passenger's seat,
9 front passenger seat of the car.

10 Q She didn't have to go up to the machine and
11 tell him, he did it on his own; right?

12 A Right.

13 Q And that's when Bill and Bev lived over at
14 the Crampton Street address; right?

15 A Right.

16 Q Now, Bev let Bill use the brown Firebird quite
17 often; right?

18 A Yes.

19 Q And Bev wanted to sell that car; did she not?

20 A Yes, she did.

21 Q Now, you don't know if these are the only keys
22 that Bev had; do you?

23 A No, I don't.

24 Q And you don't know if Bill had any car keys

17
1 himself?

2 A As far as I know, there was only one set of
3 car keys.

4 Q But you don't know; do you?

5 A No.

6 Q Be fair to say that you didn't know a lot of
7 personal things between the two; right?

8 A Right.

9 Q Now, when you first knew Mr. Branham, he had
10 a job at the Restaurant Supply warehouse; right?

11 A Yes, I believe on Sunshine Avenue.

12 Q Okay.

13 A Down by the Indian Colony. I think it's
14 Sunshine.

15 MS. WILSON: Court's indulgence?

16 THE COURT: Okay.

17 BY MS. WILSON:

18 Q Going back to the Friday morning that you
19 noticed that the car was still not there,--

20 A Right.

21 Q --do you recall that you believe that that was
22 between the hours of 8:30 and 10 o'clock a.m.?

23 A In the morning, yes.

24 Q Between those times?

1 A Yeah. Well, it was right after 9 o'clock,
2 after I left the bar.
3 Q Well,--
4 A Yeah.
5 Q --you can't be positive of the exact time that
6 you--
7 A No. I wasn't looking at my watch.
8 Q Okay. I understand.
9 A I got a pocket watch, not a wrist watch.
10 Q Now, to your knowledge, Mr. Branham never
11 threatened Bev in your presence?
12 A Not in my presence, no.
13 Q Okay. And you saw Beverly talk to Bill on
14 the telephone on February 6th; right?
15 A That's what she told me, it was Bill on the
16 other end.
17 Q And you saw her talk to him?
18 A Yes.
19 Q Okay. Now, you didn't talk to him on the
20 telephone?
21 A No.
22 Q And after she hung up, she indicated that she
23 had to go home?
24 A Right.

1 Q And she walked out the back door?

2 A Yeah.

3 Q And you didn't notice if she was shaking or
4 crying at that time?

5 A She didn't look too happy when she walked out.

6 Q Did she appear to be in control of herself?

7 A Pretty much so.

8 Q Okay.

9 MS. WILSON: Court's indulgence?

10 BY MS. WILSON:

11 Q Now, she was going to sell her car for \$2500;
12 isn't that true?

13 A That's the price she offered it to me for.

14 Q Okay. It wasn't unusual for Mr. Branham to
15 drive that car?

16 A No.

17 Q And you'd fallen asleep at her residence on
18 two occasions; right?

19 A The Crampton Street house one time right after
20 I moved into town, a couple blocks away from Crampton Street.
21 One time gotten off work, went to the Swiss-- Swiss Chalet
22 and walked on home, stopped in, said "Hi" to Bev and Bill
23 and the ferret, and then I nodded out a little bit and then
24 I went home.

1 And then the next time was over at the 129 and
2 a half Wells Avenue house.

3 Q Okay. Now, you would classify yourself as a
4 social drinker?

5 A Yeah.

6 Q Are you a heavy drinker, moderate or light
7 drinker?

8 A Between moderate and heavy on occasion.

9 Q Okay.

10 A Sometimes not at all.

11 Q Okay.

12 MS. WILSON: Court's indulgence?

13 BY MS. WILSON:

14 Q Now, Linda is no longer around town; right?

15 A I believe she is.

16 Q What's her last name?

17 A I still don't know.

18 Q Okay. But she's not in that apartment complex?

19 A No.

20 Q And she was not in that apartment complex
21 shortly after you went to visit her; right?

22 A On the 7th of February last year she wasn't
23 there when I knocked on her door.

24 Q Okay.

1 A I think the room number was 318.

2 Q Okay.

3 MS. WILSON: Court's indulgence?

4 BY MS. WILSON:

5 Q Now, on Thursday, the 6th, Bev appeared
6 intoxicated to you?

7 A Yes.

8 Q And you could tell that because her words were
9 slurred?

10 A Almost slurred. They were still pretty clear.

11 Q Are you saying that they weren't slurred?

12 A I'm saying that almost. She was getting there
13 to that one point.

14 MS. WILSON: 110, preliminary-hearing
15 transcript.

16 THE WITNESS: Here we go again.

17 MS. WILSON: May I approach?

18 BY MS. WILSON:

19 Q Mr. Poorman, I'd like you to look at your
20 transcript on page 110. Read this part to yourself.

21 A Okay.

22 Yeah.

23 Q Refreshing your memory with page 110 of the
24 preliminary-hearing transcript, her words were slurred;

1 correct?

2 A Yes.

3 Q And she had a glow about her--

4 A (Nods head affirmatively.)

5 Q --that you recognized as intoxicated; right?

6 A Yes. But she was still pretty understandable.

7 Like, you know, didn't have to have her repeat herself.

8 Q Okay. And you were intoxicated, too?

9 A Yes, I was.

10 Q And so was Mr. Branham?

11 A Yes.

12 Q And you could tell he was because you've gotten
13 drunk with him before?

14 A Yes.

15 Q And just before you went home, he didn't appear
16 angry to you; did he?

17 A No. We weren't arguing at all between
18 ourselves.

19 Q And he didn't appear to be angry at her?

20 A Not before I left, no.

21 Q Okay.

22 A He was just angry at John.

23 Q Okay. Now, you've seen Beverly and John Bell
24 together?

1 A Once or twice at the bar.

2 Q And on both occasions they appeared quite
3 friendly?

4 A Yes.

5 MS. WILSON: That's all I have. Thank you.

6 THE COURT: Mr. Hall?

7 Or let me ask this: Do you expect to be
8 somewhat lengthy with Mr. Poorman?

9 MR. HALL: It will take a few minutes.

10 THE COURT: Could you quantify it for me?

11 MR. HALL: Probably 15 minutes.

12 THE COURT: All right. Then you'll have some
13 recross, I take it?

14 MS. WILSON: Yes.

15 THE COURT: All right. I think we'll conclude
16 for tonight then, and we'll have Mr. Poorman join us in the
17 morning.

18 Ladies and gentlemen, you are instructed not
19 to discuss this case amongst yourselves or with anyone else,
20 or to form any conclusion concerning this case until it is
21 submitted to you as a jury. You are not to read, look at
22 or listen to any media accounts of this event, should there
23 be any.

24 I'd like to thank you, Mr. Poorman, for your

1 testimony. I would request that you be back no later than
2 10 minutes to 10:00 tomorrow in the a.m. We will reconvene
3 at 10:00 a.m. tomorrow morning. Court stands in recess.

4 (Proceedings continued to March 4, 1993, at 10:00 a.m.)

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1 STATE OF NEVADA)
2) ss.
3 COUNTY OF WASHOE)

4 I, RICHARD L. MOLEZZO, official reporter of the
5 Second Judicial District Court of the State of Nevada, in and
6 for the County of Washoe, do hereby certify:

7 That as such reporter I was present in
8 Department No. 5 of the above court on Wednesday, March 3,
9 1993, at the hour of 10:20 a.m. of said day, and I then and
10 there took verbatim stenotype notes of the proceedings had
11 and testimony given therein upon the Trial of the case of
12 THE STATE OF NEVADA, Plaintiff, vs. WILLIAM EDWARD BRANHAM,
13 Defendant, Case No. CR92-0546 and CR92-1048.

14 That the foregoing transcript, consisting of
15 pages numbered 1 to 183, both inclusive, is a full, true and
16 correct transcript of my said stenotype notes, so taken as
17 aforesaid, and is a full, true and correct statement of the
18 proceedings had and testimony given upon the Trial of the
19 above-entitled action to the best of my knowledge, skill and
20 ability.

21
22 DATED: At Reno, Nevada, this 28th day of July, 1993.

23
24 /bb


RICHARD L. MOLEZZO CSR #40