

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 IV OF VII**

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27.	Notice of Appeal, Case No. CR92-1048	1295
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DATED this 4th Day of April, 2018.

Respectfully submitted,

/s/ Jonathan M. Kirshbaum

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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:

Terrance P. McCarthy, Deputy District Attorney

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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,
vs.
WILLIAM EDWARD BRANHAM,
Defendant.

TRANSCRIPT ON APPEAL
Trial
March 4, 1993
Reno, Nevada

APPEARANCES:

For the Plaintiff:

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For the Defendant:

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The Defendant:

WILLIAM EDWARD BRANHAM

Reported by:

RICHARD L. MOLEZZO, CSR40, CP, CM, RPR
Computer-Aided Transcription

I N D E XWITNESSES:

<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
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FOR THE STATE:

POORMAN, Dudley

3 8

CROW, Jack Ray

10 12 12

McRUNNELS, Charles Lee

13 20 39 44
47

WOOD, David

48 59

HOYT, Tracy

65 69 71

KOSSOL, Keith

72 76

BRUNSON, Tammy

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KATELEY, Dean Marshall

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FOR THE STATE:

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1 RENO, NEVADA; THURSDAY, MARCH 4, 1993; 10:35 A.M.

2 --oOo--

3
4 THE COURT: Good morning. And be seated,
5 please, ladies and gentlemen.

6 We've returned to CR92-1048, State of Nevada
7 versus William Branham. Mr. Branham is present, along with
8 Miss Wilson and Mr. Hall. The jury is present and in the
9 jury box.

10 I once again apologize for this delay in
11 beginning this morning. We had a relentless calendar this
12 morning. This happens to be the day that I'm required to
13 do all the probates, estates, a variety of other criminal
14 matters, and we had fourteen cases this morning. So I'm
15 sorry we've run a little bit late.

16 Are you ready to proceed?

17 MR. HALL: Yes, your Honor.

18 THE COURT: Ms. Wilson?

19 MS. WILSON: Yes, your Honor.

20 MR. HALL: Going to recall Mr. Poorman.

21 THE COURT: All right. Mr. Poorman, your oath
22 stays with you today, sir.

23 MR. HALL: Actually, this would be redirect,
24 not recall.

1 DUDLEY POORMAN,
2 called as a witness by the plaintiff herein,
3 being previously duly sworn, was further
4 examined and testified as follows:
5

6 REDIRECT EXAMINATION

7 BY MR. HALL:

8 Q Mr. Poorman, are you familiar with Mr. John
9 Bell's vehicle that he had back in '92?

10 A '69 Volkswagen.

11 Q Did you ever see that Volkswagen over at Beverly
12 Fetherston's?

13 A No.

14 Q Do you see that--

15 If I recall your testimony yesterday, you said
16 that you had been back by Beverly Fetherston's on a number
17 of occasions after February 6th, 1992?

18 A Yes, I had.

19 Q That weekend, did you see Mr. Bell's Volkswagen
20 over in the vicinity of Beverly Fetherston's home?

21 A No, I didn't.

22 Q Now, when you took Linda home--

23 Linda was the girl that you met down at the
24 Swiss Chalet?

2 1 A Yes.

2 Q Did you have a clear view to the parking area

3 usually used by Beverly Fetherston to park her car?

4 A Yes, I did.

5 Q Did you see her car there when you took Linda

6 home Thursday-- Thursday night?

7 A Well, as we were coming through the parking lot

8 where the Short-Stop store is and the Valley Bank is, or what

9 is Bank of America now, there was no car there. I had a

10 clear shot of it from the parking lot.

11 Q What time was that?

12 A Between 10:00, 10:30.

13 Q When you--

14 A Almost 10:30, yeah.

15 Q When you were interviewed by the police on

16 February 11th, 1992, did you indicate to them that

17 Miss Fetherston had given you money?

18 A Just for buying beer that day.

19 Q You told that to the police?

20 A I believe so, yes.

21 Q When you told that to the police, do you recall

22 whether or not you mentioned her retrieving that money from

23 her purse?

24 A I believe so, yes.

1 Q Okay.

2 A Yeah.

3 Q I'm going to show you your transcript, page 1
4 and 2 at the bottom. Would you read that to yourself. And
5 the next page at the top.

6 Did you mention Miss Fetherston's purse at
7 that juncture, the initial part of the interview, when
8 Miss Fetherston gave you the money for the MeisterBrau?

9 A Right.

10 Q Did you mention it to the police at that time?

11 A I don't believe so.

12 Q Okay. Now, did you ever have any personal
13 problems with the defendant?

14 A No, except for that one time that he left me
15 stranded over there at Tiger T's on Fourth Street.

16 Q Did he ever give you-- Did he ever give you
17 any guff, so to speak?

18 A No.

19 Q Why is that?

20 A Had no reason to.

21 Q Now, in your testimony yesterday you stated
22 that you went back over to the Swiss Chalet Friday morning?

23 A Okay, yes.

24 Q What time did you go to the Swiss Chalet?

1 A As soon as I got off work.

2 Q What time was that?

3 A Let's see. Got off work around what, 7:30.

4 Got over there, it was about 8:00, 8:00-- between 8:00 and

5 8:30.

6 Q And how long did you stay at the Swiss Chalet?

7 A Long enough to have a couple beers. It was

8 about 20, 25 minutes.

9 Q Did you see Beverly Fetherston over at the

10 Swiss Chalet on Friday?

11 A No, I didn't.

12 Q Did you see her after Thursday?

13 A No, I didn't.

14 Q Where did Beverly Fetherston usually hang out,

15 so to speak?

16 A Well, sometimes at the Hideout Bar, and

17 sometimes over there, Swiss Chalet. When I lived over on

18 B Street, she used to come over there to the Abbay Hotel.

19 Q When was that?

20 A This was when she was-- Oh, that's when she

21 first brought Bill over for me to meet. That was way back

22 in 1990.

23 Q Would you know Miss Fetherston to drive over

24 to the Abbay?

1 A She would drive over to Sparks, then drive back
2 over to the Reno area.

3 Q When she didn't have her car, would she go over
4 to the Abbay?

5 A No.

6 Q Do you know where Miss Fetherston would go if
7 she didn't have her car, say in February of 1992?

8 A Well, she'd go to a place in walking distance
9 from her house.

10 Q Where would that be?

11 A Swiss Chalet or the Hideout.

12 Q Did you go back over to the Swiss Chalet after
13 Friday morning?

14 A Yeah, late that night, early Saturday morning.

15 Q Did you see Miss Fetherston over there on that
16 occasion?

17 A No.

18 Q And you indicated that Miss Fetherston was
19 wearing levis and a sweater. That was to the best of your
20 recollection?

21 A Yes.

22 Q Do you know what she had on under the sweater?

23 A No.

24 Q Do you know anyone-- Do you know anyone who

1 would want to hurt Beverly Fetherston?

2 A No.

3 Q Do you know whether or not she had any enemies?

4 A No.

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

6 THE COURT: Thank you. Miss Wilson?

7
8 RECROSS-EXAMINATION

9 BY MS. WILSON:

10 Q Mr. Poorman, directing your attention to Friday
11 morning, the time that you indicated you went to the Swiss
12 Chalet, that was 8 o'clock to 8:30 Friday morning; correct?

13 A Yes.

14 Q And then you had a few beers at that time?

15 A One or two.

16 Q And then after that you walked over to Linda's
17 apartment?

18 A Right.

19 Q And at that time you noticed that the car was
20 missing?

21 A As soon as I came back down off the stairs and
22 walked back through the alley, yes.

23 Q And then after you noticed that, you went home;
24 right?

1 A Right.

2 Q And you stayed at home until midnight Friday
3 night?

4 A Right.

5 Q So you didn't go back over to the Swiss Chalet?

6 A Until early Saturday morning-- Friday night,
7 Saturday morning.

8 Q Right. You never went back to the Swiss Chalet
9 after a couple of drinks in the morning on Friday morning
10 until midnight?

11 A After midnight, right.

12 Q That would encompass the whole day; right?

13 A Well, that was-- that means I was out of the
14 area for the whole day except for down by my house.

15 Q Right. Now, you do know that Buddy owed Mike
16 and Bev approximately 10- to \$15,000; right?

17 A Yes.

18 MS. WILSON: Thank you.

19 THE COURT: Thank you, Mr. Poorman. You may
20 step down.

21 Good morning morning, sir. If you'd approach
22 the lady to my right, please, raise your right hand, listen
23 to the oath, be sworn in, please.

24 (Witness sworn.)

1 THE COURT: This would be the chair available
2 to you, sir, by the microphone, please.

3
4 JACK RAY CROW,
5 called as a witness by the plaintiff herein,
6 being first duly sworn, was examined and
7 testified as follows:

8
9 DIRECT EXAMINATION

10 BY MR. HALL:

11 Q Mr. Crow, would you state your name and spell
12 your last name, please.

13 A Jack Ray Crow, C-r-o-w.

14 Q Did you know Beverly Fetherston back in 1992?

15 A Yes.

16 Q Did you have an opportunity to do any work on
17 her car?

18 A Yes.

19 Q What kind of a car was that?

20 A It was a Firebird, I think early '80s. '81,
21 '82.

22 Q And you're a mechanic?

23 A Right.

24 Q Where's your shop?

1 A 1629-A Prater Way.

2 Q And did you take Miss Fetherston's car to your
3 shop to work on it?

4 A That's right.

5 Q Show you State's Exhibit T. Does that refresh
6 your recollection?

7 A That's it.

8 Q What is it?

9 A It's a-- I'm sure it was either a Firebird or
10 Camaro. I really can't be positive. It's been so long ago.
11 But it was a little six-cylinder V-6, Camaro or Firebird.

12 Q What color was it?

13 A A brown color, chocolate maybe.

14 Q Where'd you pick up the car?

15 A I picked it up at the bar she was working at.

16 Q Do you recall the name of the bar?

17 A Swiss Chalet.

18 Q Did she give you keys to the car?

19 A Yes.

20 Q Can you describe those keys?

21 A Two GM keys. On General Motors you have to have
22 one key for the door and another key for the ignition. What
23 she gave me was just the two car keys.

24 Q She didn't give you any other keys?

1 A No.

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

3 THE COURT: Miss Wilson?

4

5 CROSS-EXAMINATION

6 BY MS. WILSON:

7 Q Mr. Crow, you've been a mechanic for a while?

8 A About 35 years.

9 Q Now, would you say that a Camaro and a Firebird
10 are similar in appearance?

11 A Basically, yes. They are both F-body cars.

12 Q And a Camaro and a Trans Am and a Firebird--

13 A Basically, yeah. The Trans Am and the Firebird
14 are basically the same car.

15 Q Okay. And have you ever had any personal
16 relationship with Miss Fetherston?

17 A No.

18 MS. WILSON: That's all I have.

19 THE COURT: Anything else?

20

21 REDIRECT EXAMINATION

22 BY MR. HALL:

23 Q How long did you have the car?

24 A The best I recall, about three days. Two or

1 three days.

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

3 THE COURT: Anything on that line?

4 MS. WILSON: (Shakes head negatively.)

5 THE COURT: You may step down. Thank you very
6 much.

7 MR. HALL: Would you please step forward and be
8 sworn.

9 (Witness sworn.)

10

11 CHARLES LEE McRUNNELS,
12 called as a witness by the plaintiff herein,
13 being first duly sworn, was examined and
14 testified as follows:

15

16 DIRECT EXAMINATION

17 BY MR. HALL:

18 Q Sir, would you state your name, and spell your
19 last name.

20 A Charles Lee McRunnels. M-c-R-u-n-n-e-l-s.

21 Q Where were you living in February, 1992?

22 A 125 South Wells.

23 Q How long had you lived there?

24 A I lived there for about 12 months.

1 Q And who were your neighbors to the east?
2 A To the east of me were Bill and Beverly.
3 Q Show you a photograph. Let me show you
4 Defendant's 29. Is your house depicted in Defendant's 29---
5 A Yes.
6 Q --up in the right-hand photograph?
7 A Yes.
8 Q Which one is yours?
9 A This one right here.
10 Q The house on the right in the upper right-hand
11 photograph?
12 A Correct.
13 Q Where did Miss Fetherston live; do you know?
14 A Beverly?
15 Q Yes.
16 A This house right here.
17 Q Identified 129 and a half Wells, next to your
18 house?
19 A Yes.
20 Q And do you know how long Beverly Fetherston
21 lived in that house?
22 A Oh, I'd say somewhere around six months maybe.
23 I could be wrong.
24 Q Did she live with anyone; do you know?

1 A Bill, as far as I know.

2 Q Is he here in the courtroom?

3 A Yes, sir.

4 Q Point him out and describe--

5 MS. WILSON: Your Honor, we stipulate
6 Mr. Branham is present.

7 THE COURT: The identification of the defendant
8 is stipulated by the defense.

9 BY MR. HALL:

10 Q Did you have any relationship with
11 Miss Fetherston or Mr. Branham?

12 A No, sir.

13 Q Did you have any opportunity to speak with
14 either Miss Fetherston or Mr. Branham?

15 A In passing.

16 Q Did you ever socialize with them over at their
17 house?

18 A No.

19 Q Did you invite them over to your house?

20 A No.

21 Q During the time of February, 1992, did you spend
22 much time at your house?

23 A Yes.

24 Q Why was that?

1 A Pretty much laid up and needed to stay around,
2 lay in bed, do what I could.

3 Q Were you somewhat disabled?

4 A Yes, sir.

5 Q What was that due to?

6 A A back injury and a knee injury.

7 Q I'm not prying too much.

8 A Oh, fine.

9 Q Do you recall what kind of a car they had?

10 A It was a brown Camaro or Trans Am type vehicle.

11 Q Who drove that car?

12 A They both did.

13 Q Are you familiar with that car?

14 A Yes.

15 Q Did you see that car on a regular basis?

16 A Yes, sir.

17 Q How often did you see it?

18 A Every day.

19 Q What was your former employment?

20 A I was an auto mechanic.

21 Q Are you familiar with automobiles?

22 A Yes, sir.

23 Q Let me show you the photographs which I have
24 marked as S, R and T.

1 A Okay.

2 Q Take a look at those, please.

3 What do those photographs depict?

4 A It looks just like their car.

5 Q Did you ever talk to either Mr. Branham or

6 Miss Fetherston to find out who owned that car?

7 A No, sir.

8 Q Do you recall February, first part of February,

9 1992?

10 A Vaguely.

11 Q Do you remember Thursday, Friday, the 6th and

12 7th of February, 1992?

13 A Yes.

14 Q Do you recall seeing that car in the driveway

15 on February 6th, 1992?

16 A What day was that?

17 Q That was a Thursday.

18 A I believe it was in the lot. I believe it was

19 in the lot in front of the cleaner's across the alleyway on

20 the Thursday.

21 Q When you say "in the lot", do you mean--

22 A The parking lot.

23 Q Driveway?

24 A The parking spaces that they have in the

1 cleaner's in the rear.

2 Q Where do they usually park their car?

3 A In front of my house there across on my side
4 of the alley.

5 Q Showing you photograph Defendant's 29, upper
6 right-hand photograph, will you point out to the jury where
7 they would usually park their car?

8 A Usually would park the car in this space right
9 here. And where I saw it Thursday, I believe it was on the
10 opposite side of this fence in front of my house.

11 Q Is there a laundromat close by?

12 A Yes, there is, right on this end over here.
13 The parking lot of the laundromat.

14 Q Now, do you recall the weekend before the police
15 came over to the house?

16 A Not really.

17 Q Were you home most of the time that weekend;
18 do you know?

19 A Probably.

20 Q Do you recall seeing anybody other than Bill
21 Branham or Beverly Fetherston go over to that house,
22 Beverly Fetherston's house?

23 A During what time?

24 Q During that weekend.

4 1 A No, sir.

2 Q That would be--

3 A No, sir, I didn't.

4 Q --Friday, the 7th; Saturday, the 8th; Sunday,

5 the 9th.

6 A No, sir.

7 Q Did you ever see any white VW bugs over at the

8 residence?

9 A A couple, three weeks earlier than the event

10 occurred, yes.

11 Q Did you see one the weekend of the 7th, 8th and

12 9th?

13 A No.

14 Q Did you see anybody else over at the house?

15 A No.

16 Q Did you hear any commotion?

17 A No, sir.

18 Q Did you hear any yelling and screaming on

19 Saturday night?

20 A No, sir.

21 Q Did you hear any yelling and screaming Friday

22 night?

23 A No, sir.

24 Q Did you hear anybody say, "You bitch", or any

1 crashing, or anything like that?

2 A No, sir.

3 Q Is there a lot of traffic through that alleyway
4 next to your house? Was there a lot of traffic?

5 A Yeah, foot and vehicle, yeah.

6 Q Did you have any problem with anybody trying
7 to break into your house?

8 A Just my garage downstairs. I've had that when
9 I first moved there.

10 Q When was that?

11 A Oh, probably about eight months previous to
12 this.

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

14 THE COURT: Your witness, Ms. Wilson.

15 MS. WILSON: Thank you.

16

17 CROSS-EXAMINATION

18 BY MS. WILSON:

19 Q Good morning, Mr. McRunnels.

20 A Good morning.

21 Q Now, Mr. McRunnels, you made out a written
22 police report; correct?

23 A I believe so, yes.

24 Q Pardon me?

1 A Yes.

2 Q Do you recall the date of that?

3 A I believe it was Saturday night.

4 Q Okay. Would it refresh your memory if I showed
5 it to you?

6 A Please.

7 MS. WILSON: May I approach?

8 THE COURT: Sure.

9 BY MS. WILSON:

10 Q Just read it to yourself.

11 A Okay.

12 Q Okay. Do you recall when you did make that
13 written statement?

14 A I believe it was either Saturday or Sunday
15 night.

16 Q Did you read the date--

17 A Yes, I did. Yes, I did.

18 Q What date was that?

19 A That was Sunday night.

20 Q And that was a written statement by you?

21 A Correct.

22 Q And you indicated, did you not, that you saw a
23 brown Trans Am vehicle at the residence Friday morning, the
24 7th of January?

1 A I believe it was a Trans Am type vehicle, yes.

2 Q And you said you saw it Friday morning, the
3 7th of January;--

4 A Correct.

5 Q --right?

6 A Correct. February, I believe it was; wasn't it?
7 Wouldn't it be February?

8 Q Would you like to see your police report?

9 A Excuse me. The one I just saw?

10 Q Yes.

11 A No, thank you.

12 Q Okay. Then do you recall what day you wrote
13 down that you saw the vehicle, the Trans Am type vehicle?

14 A I believe it was Thursday and Friday, both days
15 that I saw it, of February.

16 Q Okay.

17 MS. WILSON: May I approach?

18 BY MS. WILSON:

19 Q Take your time and read this.

20 A Thanks.

21 Thank you.

22 Q Okay. Did you tell the police on the 9th of
23 February that you saw a brown Trans Am type vehicle on Friday
24 morning, the 7th of January?

1 A Yes.

2 Q Okay. And then you indicated that you saw the
3 same vehicle across the alley at the dry cleaner parking lot
4 on the 6th?

5 A Correct.

6 Q And you hadn't seen it since Friday morning?

7 A Yeah, correct.

8 Q Okay. And you indicated that you saw a white
9 male in his 30's in the area with a car at different times?

10 A Correct.

11 Q Then after that written statement was made,
12 you again spoke to the police on February 14th; right?

13 A Correct.

14 Q And that was about noontime; right?

15 A Yeah, I believe so.

16 Q Okay. You told the police that you had never
17 seen Beverly Fetherston?

18 A Well, I've seen her in passing, but, you know,
19 never even as much as a "Hello", you know.

20 Q Do you recall telling the police that you've
21 never seen her?

22 A Well, I think they were asking more, "Did you
23 know her or talk to her" versus "see her", you know. I saw
24 her coming and going every once in a while. But if I had

1 to pick her out of a line, I don't think I could, no.

2 Q Page 1. Directing your attention to this line
3 and this line.

4 A Um-hum.

5 Q Does that refresh your memory of what you said
6 to the police?

7 A Vaguely, yes.

8 Q And you told the police that you would not know
9 her because you've never really ever seen her?

10 A Up close. I mean from a distance.

11 Q Isn't that what you told the police?

12 A I believe so, yes.

13 Q Now, directing your attention to the photograph,
14 that would be Defense 30, can you show the jury where your
15 home is in the bottom picture?

16 A Yes. Right here.

17 Q Okay. And where was Mr. Branham and Beverly
18 Fetherston living?

19 A They were in the house to the east here.

20 Q Okay. And let's see. How about the top
21 picture? Where was your home?

22 A My home is on the far right and--

23 Q Right here?

24 A Yes, correct.

1 Q Okay. Are you familiar with the area, the
2 surrounding area?
3 A Yes.
4 Q Would that be an accurate depiction of the
5 surrounding area?
6 A Yes.
7 Q This being Mill and Wells?
8 A That's correct.
9 Q And Wells and Mill again?
10 A Correct.
11 Q And the parking lot--
12 A Yes.
13 Q --at the corner?
14 A Um-hum.
15 Q Okay. And this is a well-traveled area?
16 A Yes.
17 Q Okay. Let's look at 28, Defendant's 28. When
18 you talk about--
19 Well, I should ask you: Where's your home in
20 the upper right?
21 A This here.
22 Q Okay. Are you familiar with the complexes that
23 you see?
24 A Yes.

1 Q Where is it that you indicate is a well-traveled
2 area?
3 A This alleyway right here.
4 Q Is it also depicted in this lower left picture?
5 A Yes, it is. It's the alley here.
6 Q Right here?
7 A Yeah. Horizontal there.
8 Q By the way, do you see a Firebird in this
9 picture near the truck?
10 A Looks like a Camaro, actually.
11 Q Right here?
12 A Yeah, in the back. Looks like a Camaro.
13 Q Okay. And would that be Miss Fetherston's?
14 A No.
15 Q Okay. Do you feel comfortable with knowing
16 their car versus other cars?
17 A Yes.
18 Q Now, the usual pattern of the car was that it
19 would be gone all night and then it would be there in the
20 morning; right?
21 A Correct, yes.
22 Q And usually around 1:00 p.m. the car would be
23 gone; right?
24 A A.m.?

1 Q P.m.

2 A I believe so, on some days, yeah.

3 Q That's what you told the police; right?

4 A I believe so.

5 Q Okay. Now, you could not say that the car was

6 there in general hours, because half the time it was broken

7 down and they would walk, or the car would break down

8 somewhere and they'd have to leave it; right?

9 A Yeah.

10 Q The car would not be driven every day. Isn't

11 that true?

12 A Not every day. It would go in spurts.

13 Q Okay. And you do recall that there were times,

14 and there was one time in particular, that it was broke down

15 for a month?

16 A Yeah.

17 Q And somebody would have to come and work on it?

18 A Yeah, I believe once or twice that happened.

19 Q Okay. And then they'd work on it for a while,

20 and then you'd see it broken down again, and you wouldn't see

21 it for two or three days, and then it would show up again?

22 A Correct. It was usually parked around the

23 corner.

24 Q Okay. It was pretty sporadic when the car would

1 come and go. Isn't that true?

2 A Well, I guess. It wouldn't be sporadic on a
3 constant basis.

4 Q Well, there wasn't a time that you could count
5 on it being gone?

6 A Probably not, no.

7 Q Now, you believe that you saw Mr. Branham move
8 out of the residence on Wednesday, February 5th?

9 A Sometime earlier that week, yeah. He was just
10 moving items out of the house.

11 Q That was on Wednesday, the 5th; remember?

12 A I believe so.

13 Q That's what you told the police; correct?

14 A Correct.

15 Q And initially when you talked to the police you
16 told them that you thought Mr. Branham was moving out the
17 6th, but then in retrospect you believed it was the 5th,
18 Wednesday; right?

19 A Correct. It could have even been Tuesday, as
20 far as my memory goes.

21 Q But you told the police Wednesday?

22 A I believe so, yes. Best I could recall.

23 Q And that was on February 14th that you told
24 them that?

1 A Yes, I believe so.

2 Q And you viewed Mr. Branham moving a few articles
3 into a pickup that had a camper shell; right?

4 A Correct.

5 Q You approached Mr. Branham and asked him if he
6 was moving out, and he said, "Yeah, movin' out"?

7 A Yeah. "I was taking my garbage downstairs and
8 saw him in passing.

9 Q That's what he said?

10 A Correct.

11 Q He wasn't in any hurry,--

12 A (Shakes head negatively.)

13 Q --anything like that?

14 A No.

15 Q The vehicle used to move was a truck; right?

16 A Correct.

17 Q Now, you remember the car being gone Wednesday,
18 February 5th, at night?

19 A The best I can recall, yeah.

20 Q That's what you told the police; right?

21 A Correct.

22 Q Then on Thursday it was parked out there a
23 little bit in the morning, and then you didn't see it the
24 rest of the day;--

6 1 A Correct.

2 Q --correct?

3 A Correct, yes.

4 Q And then you had to go to the store around
5 10:30 or 11 o'clock, before noon, and then it was there,
6 and an hour later it was gone?

7 A Correct.

8 Q You saw it in the cleaner parking lot
9 towards the alley. Were there businesses in this area,
10 Mr. McRunnels?

11 A This is the cleaner's there.

12 Q Do you see the cleaner's?

13 A Yes, in the lower picture right here, the brick
14 building.

15 Q Right down here?

16 A Yeah.

17 Q Let's see if I can get you a better picture of
18 that area.

19 I don't know if you answered my question.
20 There are businesses in this area; aren't there?

21 A Yes.

22 Q Okay. A cleaner's and a beauty shop, et cetera?

23 A That's correct.

24 Q And the Pink Pussycat is on the other side?

6
7

1 A Yes.

2 Q Not in these pictures, but close by; right?

3 A Yes.

4 Q Okay. Showing you Exhibit 18, does this depict
5 the cleaner's and the parking lot?

6 A Yes, it does.

7 Q And where did you see that vehicle?

8 A Parked on the end lot right here.

9 Q Okay. And what time was that on Thursday?

10 A Oh, midday.

11 Q So that would be Thursday, the 6th, midday?

12 A Yes, I believe.

13 Q Did you see Mr. Poorman--

14 Do you know Dudley Poorman?

15 A No, I don't.

16 Q Did you see Dudley-- I mean Bill Branham on the
17 6th?

18 A I don't think so, no.

19 Q Okay. Now, you summarized that maybe somebody
20 was coming or going because that wasn't the normal parking
21 spot; right?

22 A Yes, correct.

23 Q And you surmised that maybe they thought it
24 would not start so they parked it there so they could jump

1 it; right?

2 MR. HALL: Objection, your Honor. Calls for
3 speculation.

4 THE COURT: Miss Wilson?

5 MS. WILSON: Shows his mental intent, your
6 Honor. Not for the truth of the matter, but what he believed
7 at the time.

8 MR. HALL: Not a hearsay objection, your Honor.

9 THE COURT: He can only testify to that which
10 he is capable of observing or otherwise knowing.

11 MS. WILSON: That's okay. I'll move on.
12 Unimportant.

13 THE COURT: Sustained.

14 BY MS. WILSON:

15 Q Now, that was the first time you had ever seen
16 it parked there?

17 A Correct.

18 Q Now, behind you is the three-story apartment
19 complex; right?

20 A Yes.

21 Q Now, you don't know the cars that are in that
22 particular apartment complex garage; do you?

23 A Somewhat. I walk through there to go to the
24 store, yeah.

1 Q Do you know every car?
2 A No, I don't.
3 Q Now, you don't remember the car returning all
4 day Thursday. Isn't that true?
5 A Later in the day, yes.
6 Q Later Thursday?
7 A I believe so, yes.
8 Q You recall telling the police that you don't
9 remember the car returning all day Thursday?
10 A After I saw it in the cleaner parking lot, yes.
11 Q You did tell the police that?
12 A I can't remember. I believe so.
13 Q Okay. Page 5. I ask you to refresh your memory
14 on page 5. From here down.
15 A Um-hum.
16 Q Okay. Does that refresh your memory? Take your
17 time.
18 A Thank you.
19 Not really, but go ahead.
20 Q Okay. You told the police that you didn't
21 recall seeing it the rest of the day Thursday?
22 A Correct.
23 Q Okay. Now, you went to a friend's house to
24 play music on Thursday; right?

1 A In the afternoon, I believe, yes.

2 Q And then you went to pick up your mail on

3 Thursday to get the Penny Saver?

4 A In the morning, yes.

5 Q And you're sure that was a Thursday?

6 A Yes.

7 Q Now, you believe you saw the car on Friday

8 morning;--

9 A Correct.

10 Q --is that right?

11 A Correct. Excuse me.

12 Q Okay. And you feel that you were sure of that

13 because it rained Friday morning, and you remember that

14 because you were thinking of the wet mail on Friday morning?

15 A I believe it rained Thursday.

16 Q Well, did you say to the police that you believe

17 that it rained Friday morning, you remember that because you

18 were thinking of the wet mail on Friday morning?

19 A I don't believe-- I believe it rained both

20 days, actually.

21 Q Do you recall saying to the police that you

22 believed it rained Friday morning, and you remember that

23 because you were thinking of the wet mail on Friday morning?

24 A I believe so, yes.

1 Q Okay. Now, you believe you saw the car Friday
2 morning at 10:30 a.m. or 11 o'clock in the morning?
3 A Correct.
4 Q Now, did you ever tell Richard Sokolik that you
5 saw the car on Friday and Saturday and Bill was driving?
6 A I don't-- Richard who?
7 Q Sokolik.
8 A I don't believe I even know him.
9 Q So if he so testified, he would be incorrect?
10 A I may know him if I was to see him. I don't
11 think I know his name, though.
12 Q He's a white-haired gentleman with glasses that
13 was with the police on Sunday when they found Beverly--
14 A Oh, the bar owner or manager, whatever it is?
15 Q Yes.
16 A Yeah, I believe so.
17 Q Did you tell him that you saw the car on Friday
18 and Saturday morning with Bill Branham driving?
19 A I believe it was Friday, yes. I'm not sure if
20 it was Saturday.
21 Q Okay. Now, when Bill Branham was moving out,
22 he did not appear upset or mad; correct?
23 A No.
24 Q Am I correct?

1 A Yes, you are.

2 Q Okay. And in your opinion, he didn't show any
3 emotions?

4 A No, ma'am.

5 Q Would it be fair to say that your contact with
6 him was very limited?

7 A Yes.

8 Q And so if he was upset, you wouldn't really know
9 because you didn't know him that well?

10 A That's correct.

11 MS. WILSON: Court's indulgence?

12 BY MS. WILSON:

13 Q After you-- Well, let me retract that. The
14 last time you noticed the car was Friday; right?

15 A Yes.

16 Q Okay.

17 MS. WILSON: Court's indulgence?

18 BY MS. WILSON:

19 Q Now, you also spoke with a police officer by the
20 name of Officer Ferguson. Do you recall that?

21 A Not offhand, no.

22 Q Okay.

23 MS. WILSON: May I approach?

24 THE COURT: You may.

1 BY MS. WILSON:

2 Q Showing you-- Sorry, counsel.

3 MR. HALL: Objection, your Honor. This is
4 not the witness's statement, so she can't refresh his
5 recollection.

6 BY MS. WILSON:

7 Q Now, you spoke with Officer Ferguson. Do you
8 recall that?

9 A I spoke with an officer in my home--I don't know
10 if that was his name or not--the evening--

11 Q Okay. You told that officer that you saw the
12 deceased's vehicle, the deceased person's vehicle, on
13 Thursday and again on Friday; right?

14 A I believe so, yes.

15 Q And then you said that you had last seen a white
16 male approximately 30 years old, slender build, with blond
17 hair driving the vehicle?

18 A I believe that was earlier in the week, yes.

19 Q And you said that?

20 A I believe so.

21 Q And you said that that male you believed to be
22 the new boyfriend of the deceased?

23 A No, I'm not sure about that, no.

24 Q And you said that you thought the male

1 frequented the Swiss Chalet Bar?

2 A I wouldn't know. Never been in there.

3 Q And you could give no further information
4 because you'd only seen that male a few times?

5 A Okay.

6 Q Do you recall saying that?

7 A No, I don't.

8 Q Now, you never heard the deceased and
9 Mr. Branham quarreling?

10 A No, never.

11 Q You believe Mr. Branham to have a slight temper?

12 A I don't know him that well.

13 Q Okay. You knew that both the deceased and
14 Mr. Branham frequented the Hideout Lounge; did you not?

15 A I believe so, yes.

16 Q And you believe that Mr. Branham drove the
17 vehicle several times in the past?

18 A Correct.

19 Q But you don't know when the last time
20 Mr. Branham drove the vehicle?

21 A No, I don't.

22 MS. WILSON: Thank you.

23 THE COURT: Mr. Hall?

24 ///

REDIRECT EXAMINATION

BY MR. HALL:

Q Do you recall your testimony in cross-examination about you hadn't seen Beverly Fetherston?

A Yes.

Q Let me show you your statement, page 1 of the statement. Do you recall what your statement was to the police regarding seeing Miss Fetherston or Mr. Branham?

A I believe so.

Q What did you say?

A That I know them in passing and wouldn't, you know, know them right offhand up front. But seen them in passing, as far as that goes.

Q So when you saw your statement to the police, would that change your testimony at all in terms of your contact with Beverly Fetherston?

A No, no.

Q Now, are you absolutely sure what days you saw the Trans Am that you identified in State's R, S and T?

A Pretty positive, yes.

Q Okay. And you're sure that that's the car you saw?

A Yes, no doubt about that.

Q Couldn't be anybody else's car?

1 A No way.

2 Q Sure about that?

3 A Positive.

4 Q How are you positive that that was the car that
5 you saw?

6 A For one thing, there's only one car like that
7 around that has a T-tops on the top-- black T-tops and the
8 paint was all deteriorated. The car stuck out.

9 Q Couldn't have been another car similar to that
10 one?

11 A I doubt it.

12 Q Referring to your statement that you gave to
13 Officer Ferguson on the 9th day of February, 1992, you made
14 reference to seeing a white male in his 30's in the area with
15 the car at different times. What were you talking about
16 there?

17 A I was probably speaking about Bill, more than
18 likely. Excuse me, Mr. Branham.

19 Q That's the guy you were talking about,
20 Mr. Branham?

21 A Yes, sir.

22 Q You're sure about that?

23 A Pretty sure. Unless I was speaking of a
24 previous-- you know, months ahead of time, something like

1 that.

2 Q Well, directing your attention to that weekend,
3 Friday, Saturday and Sunday, did you see anybody else over
4 there?

5 A No, sir.

6 Q Now, there was a time when Mr. Branham appeared
7 to be moving?

8 A Correct.

9 Q And you talked to him-- you asked him if he was
10 moving out?

11 A Yes.

12 Q Okay. Do you recall exactly what day that was?

13 A Oh, I believe it was Wednesday, the 5th.

14 Q Are you sure about that?

15 A Not clearly, but to the best of my recollection.

16 Q Could it have been a week before that?

17 A No. Maybe a day before that, but not a week.

18 Q Now, when did you have an opportunity to speak
19 with the bar owner or manager?

20 A I believe it was Sunday night when they came
21 over wondering where she was.

22 Q That was kind of a big guy, kind of heavy-set
23 fellow?

24 A Yes, silver hair.

9 1 Q Silver hair.
2 Who's your landlord?
3 A Then it was Norma-- I couldn't even pronounce
4 her name.
5 Q Lagomarsino?
6 A Yes. Thank you.
7 Q When did you have an opportunity to meet with
8 anybody regarding Norma Lagomarsino?
9 A Regarding this case?
10 Q Regarding this case.
11 Let me rephrase that question.
12 A Thank you.
13 Q When did you first meet with Mr. Sokolik?
14 A The bar owner? That was Sunday evening, I
15 believe it was, when they were looking--
16 Q What did you tell him?
17 A I gave him Norma's phone number so they could
18 call her and get in touch with her, because they wanted to
19 get in the house, I believe. Check out to see what was
20 going on.
21 Q When did you give them that information?
22 A At the time that I met them.
23 Q And you believe that was Sunday?
24 A Yes, it was.

1 Q Could it have been Saturday?

2 A No.

3 Q And what happened after you gave them that
4 information regarding Norma Lagomarsino?

5 A I went for a walk around the corner, and I
6 believe they took off, too, to go make a phone call to her.
7 Went back to the bar, someplace.

8 Q Then what happened?

9 A Excuse me?

10 Q What happened after that?

11 A I came back home and it was all quiet, and went
12 back outside and police everywhere.

13 Q Did you see any other--

14 When you talk about the other car in the area at
15 different times, what car were you talking about, referring
16 to your statement?

17 A Sorry. Ask that again.

18 Q Referring back to your statement, "White male
19 in 30's in area", that was-- was that your testimony that
20 was Mr. Branham that you were talking about?

21 A I believe so, yes.

22 Q "And with the car at different times." It was
23 that brown Trans Am that belonged to Beverly Fetherston?

24 A That's correct.

1 Q You didn't see any other cars in the area other
2 than Beverly Fetherston's; is that your testimony?

3 A During that weekend?

4 Q Yes.

5 A No, I didn't.

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

7 THE COURT: Any recross?

8 MS. WILSON: Yes.
9

10 RECROSS-EXAMINATION

11 BY MS. WILSON:

12 Q Mr. McRunnels, you spoke with Officer Ferguson
13 on Sunday night when they found the deceased; right?

14 A Correct.

15 Q And then you also made a written statement on
16 the 9th when they found the deceased; right?

17 A I believe so, yes.

18 Q And then you spoke with detectives on the 14th
19 of February? They came to your home?

20 A Yes.

21 Q Okay. Now, when you spoke with Mr. Ferguson,
22 Officer Ferguson on the 9th, you indicated to Officer
23 Ferguson that you had seen the vehicle on Thursday, the 6th,
24 and Friday, the 7th?

1 A Correct.

2 Q And it was parked in the vicinity of the
3 residence?

4 A Yes.

5 Q And then you said that you last saw a white male
6 approximately 30 years old with a slender build and blond
7 hair driving the vehicle?

8 A I believe so, yes.

9 Q Did Mr. Branham ever have blond hair?

10 A Not that I know of, no.

11 Q Okay. Now, you believed that man to be a new,
12 quote, "boyfriend" of the deceased; right?

13 A I wouldn't go as far as to say a boyfriend, but
14 I didn't know who he was.

15 Q Do you deny making that statement to Officer
16 Ferguson?

17 A No, I don't. It's possible I could have said
18 that.

19 Q Okay. And you could not give any further
20 information regarding that person because you had only seen
21 him a few times?

22 A Correct.

23 Q You're referring to another person, not
24 Mr. Branham. Isn't that true?

1 A It's very well possible.

2 MS. WILSON: Thanks.

3 THE COURT: You may step down. Thank you.

4 THE WITNESS: Thank you.

5 MR. HALL: May I have a couple of questions on
6 redirect, your Honor, regarding the area that was just
7 brought up by defense counsel, Ms. Wilson?

8 MS. WILSON: I'd object.

9 THE COURT: I've given you an opportunity to
10 redirect. I think the formalities are that you have your
11 direct examination and a singular redirect. Ms. Wilson's
12 only entitled to her cross and one recross.

13 I guess it's-- I could do so if you can assure
14 me that it's something not repetitive.

15 MR. HALL: Not repetitive.

16 THE COURT: All right. Go ahead.

17 MR. HALL: Thank you, your Honor.

18 MS. WILSON: May I have a second glance if it's
19 not repetitive, too.

20 THE COURT: Yes, and then we won't have any more
21 of these. We'll have direct, redirect, cross and recross.

22 I'll rely on your representation that this is
23 something that apparently was overlooked or is something new
24 that could not have been asked in your redirect. So go

1 ahead, and I'll give Ms. Wilson an opportunity, and then that
2 will be the end of it.

3
4 FURTHER REDIRECT EXAMINATION

5 BY MR. HALL:

6 Q When did you see this blond man?

7 A I believe it was a week to several weeks
8 earlier.

9 And let me add as far as it being a boyfriend,
10 it could have very well been somebody working on the car,
11 too.

12 Q Did you see the blond man the week of the 6th,
13 7th-- the weekend of the 7th, 8th and 9th?

14 A I don't believe so, no.

15 MS. WILSON: I don't have any questions.

16 THE COURT: You may step down. Thank you very
17 much for your testimony.

18 THE WITNESS: Thank you, your Honor.

19 THE COURT: Good morning. If you would kindly
20 approach the clerk, please, and raise your right hand and be
21 sworn.

22 (Witness sworn.)

23 THE COURT: Have a seat, please.

24 ///

1 DAVID WOOD,
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 Sir, would you state your name, and spell your
9 last name.

10 A David Wood. W-o-o-d.

11 Q What is your occupation?

12 A I'm a police detective with the Reno Police
13 Department.

14 Q And how long have you been employed in the
15 Detective Division?

16 A Two years.

17 Q How long have you been with the Reno Police
18 Department?

19 A Seven years.

20 Q And what were your duties back on February--
21 during February of 1992?

22 A You'll have to excuse me. I've had a bit of a
23 cold over the last week, so I have to clear my throat from
24 time to time.

1 THE COURT: There should be some water there,
2 also, if that will be of any help.

3 THE WITNESS: I might do that in just a minute,
4 your Honor.

5 That night I was called out as part of an
6 investigative team for what was considered to be a suspicious
7 death.

8 BY MR. HALL:

9 Q That would have been February 6th, 1992?

10 A February 9th, I believe.

11 Q Excuse me. February 9th, 1992?

12 A Yes.

13 Q What were your duties in February of 1992 with
14 respect to the Police Department?

15 A As a detective.

16 Q Okay. And part of those duties, was that to
17 investigate suspicious deaths?

18 A Correct.

19 Q And what did you-- what time did you respond--
20 Or where did you respond on February 9th, 1992?

21 A To 129 and a half South Wells.

22 Q And what did you observe when you got to that
23 location?

24 A Upon making entry to this residence, we observed

1 Beverly Fetherston laying on her back on the west wall of the
2 living room to the residence, and on top of her face was a
3 pillow, and she was covered with numerous quilts, afghans,
4 whatever you want to call them, that had actually been placed
5 in between her legs.

6 Q Do you know who placed the afghan between her
7 legs?

8 A No, I don't.

9 Q You said there were "numerous afghans". Showing
10 you State's BB for identification,--

11 A That would appear to be one afghan.

12 Q Okay. Is there another afghan depicted in the
13 photograph?

14 A Yes, on the back of the couch.

15 Q All right. Is that what you were talking about
16 when you said "numerous afghans"?

17 A Yes.

18 Q The photograph, State's BB, did that accurately
19 depict the way you saw Miss Fetherston on February 9th, 1992?

20 A Yes, it is.

21 Q And what did you do after you saw
22 Miss Fetherston on the couch deceased?

23 A Well, typically what happens in-- in a death
24 investigation is we begin to document and process the scene.

1 I was provided with the task of taking notes. I-- We had
2 a search warrant, and so I-- we all went about the task of
3 sifting through the residence to see if we could find
4 anything of evidentiary value.

5 Q Why did you make an application for a search
6 warrant?

7 A I'm sorry?

8 Q Why did you make an application for a search
9 warrant?

10 A We didn't know the-- the total background about
11 the residence. In other words, who-- who all had right to
12 be in the residence. And we wanted to make sure that the
13 search and investigation that we conducted was purely legal
14 as possible.

15 Q Did you have any information that led you to
16 believe that the death of Beverly Fetherston was suspicious
17 at that time?

18 A At the time, there was-- there was no apparent
19 forced entry to the residence. The door was locked, as I
20 recall. There were-- The general totality of her in the
21 living room appeared to be suspicious, with-- with no
22 garments on her-- her bottom portion of her body, bottom
23 half of her body.

24 Upon looking at her body in particular, I recall

1 it appeared to be what-- what could be considered trauma at
2 the time. Further, it appeared that there could have been
3 possibly a disturbance at the residence, although I don't
4 believe that that was ever found to be true.

5 So basically when-- when we-- when we enter a
6 death situation like that, if any of these signs come up as
7 flags, then we want to treat the investigation as suspicious.
8 It may-- It may be later on that it wasn't, but we have to
9 be on the safe side.

10 Q Did you interview any individuals that gave you
11 any more information regarding Beverly Fetherston and her
12 life and subsequent death?

13 A During that night, yes, I interviewed a former
14 employer of Mrs. Fetherston's by the name of Ikie Woody, I
15 believe, and her husband Richard Sokolik, who had--

16 Mr. Sokolik, by the way, had been the person
17 that reported to the police that he was suspicious and that
18 he would like the police to come over and check the residence
19 'cause he hadn't heard from Mrs. Fetherston for quite some
20 time.

21 Q Did you have some information regarding
22 Miss Fetherston's vehicle?

23 A I-- I couldn't say that I did.

24 Q Did you have any information regarding

1 Miss Fetherston's roommate or possible roommate?

2 A During the course of the interviews with--

3 with Ikie Woody and Richard Sokolik, Mr. Branham's name came

4 up, yes.

5 Q Did you assist in the search of the vehicle?

6 A No, I did not.

7 Q Did you assist--excuse me--in the search of the

8 house?

9 A Yes, I did.

10 Q That would be 129 and a half Wells?

11 A Yes.

12 Q Did you have an opportunity to search the

13 entertainment center?

14 A Yes, I did.

15 Q What, if anything, did you find in the

16 entertainment center?

17 A This would be on the second search warrant,

18 and we-- we had by that time on the second day of the

19 investigation obtained some information that there was some

20 possible account activity that wasn't aboveboard.

21 So on the second search warrant we were-- we

22 were looking for anything that would-- would indicate that.

23 In the entertainment center, I located two blank checkbooks.

24 Q I show you State's FF for identification. Do

1 you recognize this?

2 A Yes.

3 Q How do you recognize this?

4 A As a-- As a box containing checks.

5 Q Okay. Can you open it up?

6 A Yes.

7 Q What does it contain?

8 A Two books of blank checks.

9 Q Whose account do those checks belong to?

10 A Beverly Fetherston.

11 Q Do you recall which book was on top of which

12 when you retrieved that box from the entertainment center?

13 A No, I don't.

14 Q Okay. What are the numbers on those two checks?

15 What does it start with?

16 A One book starts with 234, and one book starts

17 with 301.

18 Q Do you know what the account number is on that--

19 those checks?

20 A Yes. It would be 1224007240301.

21 Q Isn't the account number in the middle of the

22 checks? Isn't-- Or do you know?

23 A No, I don't know that much about banking

24 accounts on checks. There's a further number beyond that,

1 too.

2 Q What number is that?

3 A 356096941.

4 Q Okay. I'm going to show you what has been
5 marked as State's UU, VV, WW, XX and YY. Will you look at
6 those checks, sir.

7 What account are those checks-- What is the
8 account number on those checks?

9 A 356096941.

10 Q The account number on the checks that I've
11 handed you, that would be State's UU through YY, does that
12 account number match the account number on the checks that
13 you retrieved from the entertainment center?

14 A Yes.

15 Q Once you retrieved the checks from the
16 entertainment center, did you have an opportunity to contact
17 anyone at the bank?

18 A That day we'd already been in contact, as I
19 recall.

20 Q What was the purpose of your being in contact
21 with the bank?

22 A To see exactly what account activity had
23 transpired recently with that account.

24 Q What bank did you contact?

1 A Valley Bank.

2 Q Did you go over and talk to anybody at the bank?

3 A Yes. I talked with I believe it was the

4 operation manager.

5 Q Do you recall who that was?

6 A It was a female. I can't recall her name.

7 Q Where did you go to talk to this person?

8 A To the Valley Bank on South Wells.

9 Q Is that in close proximity to 129 and a half

10 Wells?

11 A Yes, it is.

12 Q Do you know whether or not that was Beverly

13 Fetherston's branch?

14 A No-- Yes, it was. They indicated it was, I

15 believe.

16 Q Did you at any time obtain any documents from

17 the bank?

18 A Yes, I did.

19 Q What documents did you obtain from the bank?

20 A I obtained those Exhibits, those checks.

21 Q That would be UU through--

22 A YY.

23 Q --YY?

24 A Yes. And I believe I was provided with some

1 statements, as well.

2 Q Those checks, are they in the same or similar
3 condition today as they were when you picked them up from the
4 bank?

5 A Yes.

6 Q Have you seen any changes or alterations to
7 those checks?

8 A No.

9 MR. HALL: Move for admission of State's UU
10 through YY, and also the box and its contents, which is
11 State's Exhibit FF.

12 MS. WILSON: No objection.

13 THE COURT: All offered are admitted.

14 (State's Exhibits FF and UU through YY were
15 admitted into evidence.)

16 BY MR. HALL:

17 Q Did you obtain some other checks from the bank?

18 A Yes.

19 Q And I'm showing you State's TT, RR, SS, ZZ and
20 BBB. I'm not going to show you BBB, just the other ones.

21 Do you recall those checks?

22 A Yes.

23 Q When did you retrieve those checks from the
24 bank?

12 1 A At the same time.

2 Q Are they in the same or similar condition as

3 they were when you picked them up?

4 A Yes.

5 MR. HALL: Move for admission of State's ZZ,

6 SS, RR and TT.

7 MS. WILSON: No objection.

8 THE COURT: Admitted.

9 (State's Exhibits RR, SS, TT and ZZ were admitted

10 into evidence.)

11 BY MR. HALL:

12 Q Did you also have an opportunity to pick up

13 any other evidence from the bank?

14 A Yes. There were some surveillance tapes, as

15 I recall, they turned over to us at that time.

16 Q And you said you received some statements.

17 Who did you take statements from?

18 A Well, what I-- what I was referring to, I

19 believe, was that we-- we had received some bank statements

20 or computer printouts of the account activity. And then I

21 can't recall if I took written statements from the bank

22 employees or not.

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

24 THE COURT: Thank you. Miss Wilson?

1 MS. WILSON: Thank you.

2
3 CROSS-EXAMINATION

4 BY MS. WILSON:

5 Q Good morning, Detective.

6 A Good morning.

7 Q Detective, at the time, that being February 9th,
8 1992, how long had you been in Robbery-Homicide?

9 A I would have been there about two to three, four
10 months.

11 Q Okay. And you have special training before you
12 are permitted to be a Robbery-Homicide detective?

13 A Not necessarily.

14 Q No?

15 A No.

16 Q Okay.

17 A It's basically time in the Department and then
18 competitive testing--

19 Q Okay.

20 A --to get into that.

21 Q So you had to pass tests to get to be a
22 detective; right?

23 A That's correct.

24 Q Now, when you went to the home, basically it

2
1 was considered a suspicious death and you were merely
2 investigating any possibility, but everything was open at
3 the time with regard to what type of death that was. Isn't
4 that true?

5 A That's-- That's true.

6 Q And basically when you arrived, your primary
7 concern is trying to determine whether there has been in fact
8 a homicide or an accident or a natural death; right?

9 A Correct.

10 Q Now, even though you do have some experience and
11 so forth, you're not a forensic pathologist?

12 A No, I'm not.

13 Q And you don't have forensic pathology training?

14 A True.

15 Q Now, when you spoke with Mr. Sokolik, the
16 white-haired gentleman, Officer Flores was present?

17 A No, he was not.

18 Q He wasn't?

19 A Hum-um.

20 Q Okay. Did Mr. Sokolik tell you that you ought
21 to go talk to John Bell?

22 MR. HALL: Objection. Calls for hearsay.

23 THE COURT: Ms. Wilson?

24 MS. WILSON: Well, your Honor, I believe

12 1 Mr. Sokolik has testified, so I think I can indicate that
2 Mr. Sokolik has so testified and ask him if he's made that
3 representation to him.

4 THE COURT: I think that if it's a hearsay
5 objection, you have to offer that this is not in fact hearsay
6 or that there is a recognized exception to the hearsay rule.

7 MS. WILSON: Well, I would just ask then if he
8 contacted John Bell through his investigation.

9 THE COURT: All right. The objection will be
10 sustained and you can rephrase the question.

11 BY MS. WILSON:

12 Q Did you contact John Bell through your
13 investigation?

14 A Yes, we did.

15 Q And was that because you had information leading
16 to Mr. Bell?

17 A Yes.

18 Q Okay.

19 MS. WILSON: I'm not done yet, your Honor.
20 I'm just switching gears.

21 THE COURT: All right.

22 BY MS. WILSON:

23 Q Detective Wood, were you present at autopsy?

24 A Yes, I was. And let me qualify that by saying

1 that I-- I tried to recall before I came in here if I was or
2 not, and I believe I was. I-- I don't have that-- I don't
3 have that indication in my report.

4 I go to a lot of autopsies, and it's not that
5 I want to dismiss one not as important as another, but I
6 believe I was. I can't say for sure.

7 Q Okay. Then if you believe you were, do you
8 recall telling the doctor that this particular lady died in
9 her residence?

10 A No, I don't.

11 Q Don't recall that?

12 A No.

13 Q That there were no lower garments on the person
14 when found?

15 A Did I tell the doctor that?

16 Q Yes.

17 A No, I don't recall if I did.

18 Q That she had been threatened by a prior
19 boyfriend?

20 A I didn't tell the doctor that.

21 Q That she had no car?

22 A Not that I recall.

23 Q No checkbook?

24 A No.

1 Q No jewelry?

2 A I don't recall talking to the doctor regarding
3 this.

4 Q Maybe you weren't there?

5 A I don't know.

6 Q You don't know for sure?

7 A I believe I was. And if I was there, I believe
8 I was with Detective Jenkins, and I was kind of apprentice--
9 I had apprenticed myself to him, going through one of--
10 a few of many autopsies to follow. And I was kind of just
11 following his lead.

12 Q Okay.

13 MS. WILSON: Thank you. That's all I have.

14 THE COURT: Any redirect?

15 MR. HALL: No redirect.

16 THE COURT: Thank you very much for your
17 testimony, Detective Wood. You're free to go.

18 Would counsel approach for a moment, please.

19 (Discussion at the bench.)

20 THE COURT: Ladies and gentlemen, we're at an
21 impasse at this time. We've gone a little quicker than we
22 had anticipated, and the next scheduled witness is not in
23 the hallway and ready to go at this moment, which probably
24 is just as well because we don't really have much time left

1 before the noon hour. So I will excuse you momentarily.

2 You're instructed not to discuss this case
3 amongst yourselves or with anyone else, or to form any
4 conclusions as to any issue in this case until such time
5 as it is submitted to you as a jury. You are not to read,
6 look at or listen to any news media accounts of this event,
7 should there be any.

8 I thank you once again for your attentive nature
9 this morning. We will be able to reconvene a little bit
10 earlier than the norm, and we will reconvene at 1:45 this
11 afternoon. So with that, I hope you have an enjoyable lunch.
12 I'll see you at 1:45 this afternoon.

13 (Noon recess.)
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1 RENO, NEVADA; THURSDAY, MARCH 4, 1993; 1:55 P.M.

2 -oOo-

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

5 We return to CR92-1048, State of Nevada versus
6 William Branham. Mr. Branham is present in court, along
7 with Ms. Wilson. Mr. Hall is present, as is the jury.

8 Ready with your next witness?

9 MR. HALL: Yes, your Honor.

10 (Witness sworn.)

11
12 TRACY HOYT,

13 called as a witness by the plaintiff herein,
14 being first duly sworn, was examined and
15 testified as follows:

16
17 DIRECT EXAMINATION

18 BY MR. HALL:

19 Q Would you please state your name, and spell
20 your last name.

21 A Tracy Hoyt. H-o-y-t.

22 Q And where did you work in February of 1992?

23 A Valley Bank of Nevada.

24 Q And how long did you work at Valley Bank?

13 1 A Since May of 1988.

2 Q And what did you do at Valley Bank?

3 A I was a teller.

4 Q And what were your duties as a teller?

5 A To accept transactions, deposits, cash checks.

6 Q What was your check-cashing procedure at Valley

7 Bank in February of 1992?

8 A If we were presented with a check and it was

9 not the person who wrote the check was there, was to get

10 identification. And if the check is under a hundred dollars,

11 we're not required to check the signature of the person who

12 wrote it. We are not required to check the signature.

13 Q Are you required to see photo identification?

14 A Yes.

15 Q You do that in every case that you cash a check?

16 A Yes, unless we know the person.

17 Q Do you follow that procedure in every case,

18 every time you cash a check?

19 A Yes.

20 Q Showing you State's Exhibit-- excuse me, State's

21 WW and UU, checks number 226 and 230. Do you recognize those

22 two documents?

23 A Yes, I do.

24 Q How do you recognize those two documents?

1 A I cashed both of these checks.
2 Q How do you know that?
3 A My teller number is on the back. And I also--
4 Q Your hand--
5 A Yes, my handwriting is also on it. I got
6 identification from the person cashing the check-- I mean
7 from the person presenting these checks.
8 Q Who cashed the checks?
9 A I cashed them, but it was presented by William
10 Branham.
11 Q How do you know that?
12 A Because his signature's on here, and I got his
13 identification which I indicated on the back of the check.
14 Q What kind of identification did you have; do
15 you know?
16 A Yes. It's a Nevada ID.
17 Q Did you provide the number of the identification
18 card on the checks?
19 A Yes, I did.
20 Q And what's that number?
21 A 372944658348.
22 Q And do you remember that person who cashed those
23 checks?
24 A No, I don't.

1 Q Do you know whether or not he's here in the
2 courtroom today?

3 A I've been told that this is William Branham.

4 Q And when were you told that?

5 A At the preliminary hearing.

6 Q Okay. Do you recall Mr. Branham coming into
7 the bank on February 6th of 1992?

8 A I'm not sure.

9 Q Do you work with-- Did you work with a girl
10 at that time by the name of Jennifer Seago?

11 A Yes, I did.

12 Q Do you remember whether or not she had an
13 altercation or discussion with an individual on February 6th
14 regarding reorder of any checks?

15 A Yes. I'm not aware of the date. I do recall
16 there was a customer that came in and there was a problem
17 with him. He was discussing reordering checks for a
18 customer. This customer, Beverly Fetherston. And I just
19 remember that there was a problem with it and he wanted to
20 know why she'd not received her checks.

21 And I worked directly next to Jennifer. And I
22 am in a supervisory type position, and whenever there's a
23 problem I usually try to find out what's going on, if I can
24 help. And she was going to reorder checks, and I talked to

1 her about it, and we wanted to find out whether or not he
2 was a signer on the account, which he was not.

3 And we did decide to go ahead and reorder the
4 checks since it would be sent to her address for her, because
5 he indicated she had reordered and had not received the
6 checks.

7 Q Did you ever verify that with Beverly
8 Fetherston?

9 A No, we didn't. I don't know if Jennifer called
10 her or not. I-- I didn't, no.

11 Q What branch were you working at when you cashed
12 those checks?

13 A Wells Avenue.

14 Q Where is that located?

15 A On 201 South Wells in Reno.

16 Q Thank you.

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

18 THE COURT: Miss Wilson?

19 MS. WILSON: Thank you.

20
21 CROSS-EXAMINATION

22 BY MS. WILSON:

23 Q Now, Miss Hoyt, you did make a police written
24 report in this case; did you not?

1 A Yes, I did.

2 Q And at the time that you made that report, that
3 was February 20th?

4 A I believe so, yes.

5 Q Okay. And at that time you indicated that you
6 didn't remember cashing those two checks specifically?

7 A No, I don't.

8 Q Okay. And the only way that you have any
9 reference is your particular number on the check itself?

10 A My handwriting, yes-- My handwriting and the
11 teller number on the back.

12 Q Okay. And those two dates in question of those
13 checks are January 17th; is that right?

14 A I believe so, yes.

15 Q And January 9th?

16 A I'm not positive as to the dates, but I believe
17 that's correct.

18 Q Would you like to take a look at the checks
19 again?

20 A Yes, please.

21 Q Okay. Showing you State's VV and WW, ask you
22 to refresh your recollection of the dates of both of those
23 checks.

24 A Yes, January 17th and January 10th.

1 Q Okay. And the dates of the actual checks
2 themselves are?

3 A Okay. January 17th and January 9th.

4 Q And what are the two sums on those?

5 A \$20 on check number 230, and \$40 on check number
6 226.

7 Q Okay. Thank you.

8 A Um-hum.

9 Q Now, the branch that you're speaking of, that's
10 a busy branch; isn't it?

11 A Yes, it is.

12 Q Okay.

13 MS. WILSON: Thank you.

14 THE COURT: Mr. Hall?

15
16 REDIRECT EXAMINATION

17 BY MR. HALL:

18 Q Any question that you cashed those checks?

19 A No.

20 Q Any question that you cashed them for
21 Mr. Branham?

22 A No.

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

24 THE COURT: Anything else?

1 MS. WILSON: No.

2 THE COURT: You may step down. Thank you.
3 You're excused.

4 (Witness sworn.)

5
6 KEITH KOSSOL,
7 called as a witness by the plaintiff herein,
8 being first duly sworn, was examined and
9 testified as follows:

10
11 DIRECT EXAMINATION

12 BY MR. HALL:

13 Q Sir, would you state your name, and spell your
14 last name.

15 A My name is Keith Kossol. Last name is
16 K-o-s-s-o-l.

17 Q What was your occupation in February of 1992?

18 A I was a retail teller at Valley Bank of Nevada.

19 Q And which branch did you work at?

20 A The Wells Avenue branch.

21 Q Where is that located?

22 A It's off Ryland and Wells Avenue.

23 Q Okay. And how long did you work there as a
24 teller?

1 A I've worked there for about two years and eight
2 months. Prior to that, about a year and a half.

3 Q All right. And what were your duties in terms
4 of a teller?

5 A As a teller, I would cash-- cash checks, make
6 deposits, and basically handle the daily chores of the bank.
7 You know, deposits, cashing checks, withdrawals from savings,
8 things like that.

9 Q What was your procedure for cashing a check at
10 Valley Bank?

11 A Cashing a check-- There's two different
12 procedures. One for customers, and one for noncustomers
13 cashing a Valley Bank check. Would you want me to go for
14 both sides?

15 Q No, let's talk about a noncustomer.

16 A Okay. A noncustomer come into a bank and
17 cash a check, you check their identification, write the
18 identification on the back of the check, the Social Security,
19 the numbers on the back of the check, and also an expiration
20 date if there is one.

21 Q Do you do that in every transaction involving a
22 noncustomer?

23 A Yes.

24 Q Okay. Let me show you State's YY, check number

1 232. Do you recognize that document?

2 A Yes, I do.

3 Q And how do you recognize that document, sir?

4 A On the back of the check there's my-- this is my
5 handwriting, writing the numbers down of the identification.

6 And--

7 Q Does Valley Bank require photo identification--

8 A Yes, they do.

9 Q --in every transaction involving a noncustomer?

10 A Yes, they do.

11 Q Did you check the photo identification when you
12 cashed that particular check, check number 232?

13 A Yes, I did.

14 Q How do you know that?

15 A Well, I wrote down the Social Security number
16 and also the State identification number on the back of the
17 check.

18 Q What was the State identification number?

19 A It's a long like 14. It's 372944658348.

20 Q When did you cash that check?

21 A I cashed this check on the 3rd of February,
22 1992.

23 Q What was the amount of that check?

24 A The amount of the check is for \$350.

15 1 Q And who was the payee?
2 A The payee was William Branham.
3 Q Is that the man who presented the check?
4 A Yes, it is.
5 Q Are you sure of that?
6 A Yes.
7 Q Do you know whether or not he's in the courtroom
8 today?
9 A I believe he's sitting over there on the-- on
10 your right-hand side.
11 Q On my left?
12 A Your left. Excuse me.
13 Q Your right?
14 A Yeah.
15 Q What is your identifier number? Do you have
16 one?
17 A Yes, I do. It's 3505.
18 Q What do those numbers stand for?
19 A 35 stands for the branch. Each branch has a
20 particular two-set number. And then I'm teller number 5.
21 Q Do those numbers appear on that check?
22 A Yes, they do. They're on the back.
23 MR. HALL: That's it.
24 THE COURT: Ms. Wilson?

1 MS. WILSON: Yes. Thanks.

2

3

CROSS-EXAMINATION

4

BY MS. WILSON:

5

6

Q Now, Mr. Kossol, you don't have any independent
recollection of this transaction; do you?

7

A No, I don't.

8

MS. WILSON: Thank you.

9

THE COURT: Anything else, Mr. Hall?

10

MR. HALL: No further questions, your Honor.

11

THE COURT: Thank you for your testimony,

12

Mr. Kossol. You're excused, sir.

13

THE WITNESS: Thank you.

14

15

THE COURT: Good afternoon. If you'd approach
the lady to my right, please, raise your right hand, be sworn
in.

16

17

(Witness sworn.)

18

19

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

20

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21

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22

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23

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24

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1 TAMMY BRUNSON,
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 Miss Brunson, would you please state your name,
9 and spell your last name.

10 A Oh, my name is Tammy Brunson. It's
11 B-r-u-n-s-o-n.

12 Q Have you just recently been married?

13 A Yes.

14 Q And your maiden name?

15 A Is Tucker. T-u-c-k-e-r.

16 Q Were you working with Valley Bank in February
17 of 1992?

18 A Yes.

19 Q And what were you doing for Valley Bank?

20 A I was a merchant teller.

21 Q What were your duties?

22 A Check cashing and out for-- Cashing checks,
23 making deposits.

24 Q How long did you work for Valley Bank at that

1 time?

2 A Oh, three years.

3 Q Which branch did you work at?

4 A At the time?

5 Q Yes.

6 A South Reno.

7 Q Where is that located?

8 A It's on Virginia and Plumb.

9 Q Okay. What was your check-cashing procedure
10 back in February of 1992 for a noncustomer?

11 A Okay. If a noncustomer presents a check, he has
12 to endorse it in front of you, and then you have to ask them
13 for a piece of ID with a picture and a signature. And it
14 must be copied on the back with the expiration.

15 And then what you have to do is to make sure
16 the check is valid, you have to-- in the back we have
17 microfiche where all the signatures are kept, and you have
18 to look up and compare the signature.

19 And if the signature looks like the same as on
20 the microfiche, you have to document the date the account was
21 opened and then initial next to it.

22 Q Do you do that for checks under a hundred
23 dollars?

24 A No.

1 Q So that procedure is-- checking the signature
2 card would apply only to checks over a hundred dollars?

3 A Yes.

4 Q Do you recall whether or not--

5 Well, let me show you State's XX.

6 A Okay.

7 Q Do you follow that procedure in-- Every time
8 you cash a check for a noncustomer over \$350, would you
9 follow that check-cashing procedure you've just described?

10 A Yes.

11 Q Showing you State's XX. Do you recognize that
12 document?

13 A Yes, I do.

14 Q How do you recognize that document?

15 A Well, it's got my handwriting on it, and my
16 initials at the time.

17 Q You recognize your own handwriting?

18 A Oh, definitely.

19 Q Did you make any writings on the back of that
20 check?

21 A Yes. What I did is I put Nevada driver's
22 license, his driver's license number, and then a Social
23 Security number on it. And then I also documented on the
24 back the location of the signature fiche. And then on the

1 front, I got the date that the account was opened and my
2 initials.

3 Q Do you know whether or not you see a driver's
4 license or an identification card?

5 A It's a Nevada ID.

6 Q What was the number of that identification card?

7 A Do you want the Social or the new Nevada number?

8 Q The Nevada number, please.

9 A 372946658348.

10 Q And do you have a teller identification number?

11 A Um-hum, yes.

12 Q Is that on the check?

13 A Yes, it is.

14 Q Did you put it on the check?

15 A The computer does.

16 Q And what was that number?

17 A 6801.

18 Q Okay. What do those numbers stand for?

19 A 68 is the branch, South Reno. 01 was my teller
20 number.

21 Q What date was that check cashed?

22 A February 4th, 1992.

23 Q What was the amount of that check?

24 A \$350.

1 Q Who was the payee?

2 A William Branham.

3 Q Now, do you recall whether or not you checked
4 the signature card on the date that you cashed that check?

5 A Yes, I did.

6 Q And how do you know that?

7 A Again by the date the account was opened, and
8 documented right here with my initials.

9 Q That would be the bottom left-hand corner of the
10 front of the check?

11 A Yes.

12 Q Were you able to determine whether or not that
13 check was a forgery?

14 A No, I wasn't.

15 Q Showing you State's Exhibit QQ. Do you
16 recognize that document?

17 A It must be her signature card.

18 Q Now, when you compared the signature on the
19 check, did you have the actual signature card in front of
20 you?

21 A Not this card, no. It's a microfilmed copy
22 that you have to put through a viewer to look at.

23 Q Were you satisfied when comparing the signature
24 that you saw on the viewer of the signature card that it was

1 similar to the check that you cashed?

2 A Yes, 'cause signatures change. You have to, you
3 know, give your best comparison.

4 Q Okay. Who did you cash check number 231 for on
5 February 4th?

6 A Mr. Branham.

7 Q Do you see him here in the courtroom today?

8 A Yes, it is.

9 Q Would you point to him and describe what he's
10 wearing, please?

11 A He's over there. He has a blue V-neck sweater
12 on with a white T-shirt.

13 Q Are you sure that's the man you cashed the check
14 for?

15 A Um-hum.

16 Q How do you recall that specific transaction?

17 A How do I recall it?

18 Q Yes.

19 A I have a difficult time recalling it from being
20 a year ago. But I can recall it from the teller numbers.
21 Is that what you're looking for?

22 Q Well, do you recall it from any writings on the
23 check?

24 A Yes.

1 Q And those would be your handwriting on the
2 check?
3 A Yeah, that's my handwriting.
4 Q Okay. And did you match the identification card
5 presented to you to the person that presented the check?
6 A Yes.
7 Q That was the same person?
8 A Um-hum.
9 MR. HALL: That's all I have, your Honor.
10 THE COURT: Okay. Your witness.
11 MS. WILSON: Thank you.

12
13 CROSS-EXAMINATION

14 BY MS. WILSON:

15 Q Now, ma'am, you don't have any independent
16 recollection of this transaction; do you?

17 A No.

18 Q So when you're indicating that Mr. Branham did
19 this, that's not from your memory of the transaction itself;
20 correct?

21 A It's from the-- Yes.

22 Q From the writing--

23 A --the writing on the check.

24 Q Okay. Now, when you had this check before you,

1 because of the amount, you went back and determined that the
2 checking account had been opened in 1990?

3 A Yes.

4 Q November 28th, 1990?

5 A Yes.

6 Q And when you compared the signatures, you
7 believe that the woman's signature appeared to match the
8 signature before you?

9 A Yes.

10 Q Okay. And that's all you're required to do.
11 When they match in your opinion, you pay the money; right?

12 A Well, and as long as his ID matches his
13 signature, too.

14 Q And you were satisfied with that?

15 A Yes, I was.

16 Q Okay. But again, you don't remember Mr. Branham
17 in particular on that occasion?

18 A No. It's very difficult, yes.

19 Q Okay.

20 MS. WILSON: Thank you.

21 THE COURT: Redirect?

22 MR. HALL: No redirect.

23 THE COURT: Thank you very much for your
24 testimony. You're excused.

1 THE WITNESS: Thank you.

2 (Witness sworn.)

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

5
6 JENNIFER SEAGO,
7 called as a witness by the plaintiff herein,
8 being first duly sworn, was examined and
9 testified as follows:

10
11 DIRECT EXAMINATION

12 BY MR. HALL:

13 Q Ma'am, would you state your name, and spell
14 your last name.

15 A Jennifer Seago. S-e-a-g-o.

16 Q And what was your occupation in February of
17 1992?

18 A I was a merchant teller for Valley Bank.

19 Q Which branch?

20 A Wells Avenue.

21 Q How long had you been a merchant teller?

22 A Six months.

23 Q Can you describe the procedure for cashing a
24 check for a noncustomer at Valley Bank at that time?

1 A Get a picture ID, write the expiration date
2 if there is one, and the Social Security number, and have
3 the person sign it.

4 Q Okay. Showing you check number 233, which has
5 been marked State's Exhibit ZZ, do you recognize that
6 document?

7 A Yes, I do.

8 Q How do you recognize that document?

9 A My handwriting is on the back.

10 Q What have you written on the back of the check?

11 A I wrote that it's a Nevada identification card
12 and the Social Security number.

13 Q What was the identification card number on that
14 check?

15 A

16 Q What was the Social Security number?

17 A That's the Social Security number.

18 Q What was the identification card number?

19 A All it says is it's "NIC", which means Nevada
20 identification card.

21 Q Okay. You just put the Social Security number
22 down?

23 A Right.

24 Q Does your teller number appear on that check?

1 A Yes, it does.

2 Q And where does it appear on that check?

3 A On the back. Right-- Second line.

4 Q What was that number?

5 A 3504.

6 Q Do you know when you cashed that check?

7 A Yes.

8 Q When was that?

9 A On the 6th of February of '92.

10 Q Do you know what time?

11 A No, I don't.

12 Q And who is the payee on that check?

13 A William Branham.

14 Q And do you know whether or not you checked

15 Mr. Branham's identification when you cashed that check on

16 February 6th of 1992?

17 A Yes, I did.

18 Q And how do you know that?

19 A I wrote the information on the back of the

20 check.

21 Q Do you know whether or not it was a photo

22 identification card?

23 A Yes, it was.

24 Q All right. Are you required to have photo

1 identification cards in order to cash a check?

2 A Yes.

3 Q What was the amount of that check?

4 A \$250.

5 Q Do you remember that specific transaction?

6 A Yes.

7 Q And you have an independent recollection of
8 that transaction?

9 A Yes.

10 Q Why is that?

11 A He wasn't very nice when he was at my window,
12 and you remember people like that.

13 Q Can you go into detail as to what he was doing,
14 what he was saying on that occasion?

15 A Well, he was upset that Beverly had not received
16 her checks that she had ordered yet, and if I could check on
17 them.

18 Q Did you?

19 A Yes, I did.

20 Q What did you do in order to check on the reorder
21 of the checks?

22 A I called the check printing company and asked
23 if there was an order on file, and they said there wasn't,
24 so I put the order through.

1 Q Why did you put the order through?

2 A There was-- It was implied that they were
3 supposed to be ordered.

4 Q Who implied that they were supposed to be
5 ordered?

6 A William.

7 Q Mr. Branham?

8 A Yes.

9 Q William Branham?

10 A Yes.

11 Q Same guy who cashed that check?

12 A Yes.

13 Q Did you have any discussion with anybody else
14 at the bank as to whether or not you should reorder those
15 checks?

16 A Tracy.

17 Q Tracy Hoyt?

18 A Um-hum.

19 Q And she testified here earlier today?

20 A Yes.

21 Q Did you ever have any other transactions with
22 Mr. Branham?

23 A Not that I remember.

24 Q Do you remember him coming back to the bank

1 after you cashed check number 233?

2 A I remember him coming into the bank afterwards.

3 Q When was that?

4 A That was the day the cops came in.

5 Q Okay. If I told you that was February 11th,
6 1992, would that sound about right?

7 A I think it was a Tuesday. I don't know what
8 exactly the date was.

9 Q Well, we have a calendar here. February 11th is
10 a Tuesday.

11 A Okay.

12 Q You remember that it was a Tuesday?

13 A Yes, I do.

14 Q What happened on that occasion?

15 A Well, I was working with another customer and I
16 was at the typewriter, and we were informed of the situation
17 and to watch for any-- anything happening.

18 My supervisor stepped next to me 'cause she was
19 informed that Mr. Branham was at another teller's window,
20 asked me if I recognized him, and I said, "Yes, that's who
21 was at my window on the 6th."

22 Q Do you recall what time he came into the bank
23 on the 11th?

24 A No, I don't.

1 Q Which branch was this?
2 A Wells Avenue.
3 Q How long do you recall Mr. Branham was there at
4 the branch on February 11th before the police came?
5 A Not-- Well, no.
6 Q It was a long time?
7 A No.
8 Q Who was your supervisor on February 11th, 1992?
9 A Shelly Skender.
10 Q Do you know whether or not a log search was done
11 on that particular check?
12 A Yes, there was.
13 Q What is a log search?
14 A It's our back files in the computer so that
15 we can trace all of the transactions that happened on a
16 particular day.
17 Q And who did the log search; do you know?
18 A A supervisor has to do the log search. I'm not
19 sure who exactly.
20 Q Would that be Shelly Skender?
21 A Yes.
22 Q Are you sure that William Branham cashed this
23 check, check number 233, on February 6th?
24 A Yes.

1 Q Any question about that?

2 A No.

3 Q And is he here in the courtroom?

4 A Yes.

5 Q The man in the blue?

6 A Yes.

7 MR. HALL: Record reflect the identification of
8 the defendant?

9 MS. WILSON: Stipulated.

10 THE COURT: Thank you.

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

12 THE COURT: Your witness.

13 MS. WILSON: Thank you.

14

15 CROSS-EXAMINATION

16 BY MS. WILSON:

17 Q Miss Seago?

18 A Yes.

19 Q Now, the check that was presented to you that
20 was dated February 6th for \$250--that's a Thursday--that
21 check was cashed right before closing; right?

22 A I don't remember. I was informed later that
23 it was. When we did the log search, it showed the time.

24 Q Right before closing?

1 A Yeah.

2 Q You close at 5:00?

3 A We close at 6:00.

4 Q And that log showed 4:50?

5 A I think so.

6 MS. WILSON: May I approach?

7 THE COURT: You may.

8 BY MS. WILSON:

9 Q Showing you a document that has-- it's a
10 photocopy of check 233, the back, and perhaps a way to
11 refresh your memory.

12 A Okay. Okay, yeah. Okay, yeah.

13 Q Cashed at 4:50 p.m.?

14 A Yes.

15 Q Okay. And that is the 6th?

16 A Yes.

17 Q Now, the time that you saw Mr. Branham again,
18 that was the 11th; right?

19 A Yes.

20 Q You didn't have any dealings with him on the
21 11th?

22 A No.

23 Q And Carmen Cruces was the one that had a direct
24 transaction with him. Isn't that true?

1 A Yes.

2 Q However, you were able to observe him?

3 A Yes.

4 Q And you noted that he didn't run away when the
5 police came?

6 A Right.

7 Q And you couldn't really tell if he was
8 intoxicated. Isn't that true?

9 A True.

10 Q But you believe that he had bloodshot eyes?

11 A True.

12 Q And you were about 10 feet away from him?

13 A Yeah.

14 Q And you couldn't smell any alcohol?

15 A No.

16 Q And he appeared cooperative?

17 A Yes.

18 Q Okay. Now, I didn't hear you. Did you give
19 an estimation of how long Mr. Branham was in the bank on
20 the 11th before the police came?

21 A I'd say 10, 15 minutes. At the most.

22 Q Okay. And that 10- to 15-minute period of time
23 before the police came, he didn't run out of the bank?

24 A No.

1 MS. WILSON: Thank you.

2 THE COURT: Redirect?

3

4 REDIRECT EXAMINATION

5 BY MR. HALL:

6 Q Could it have been less than 15 minutes?

7 A Yes.

8 Q Could it have been less than 10?

9 A Yes.

10 Q Could it have been around five?

11 A More than five.

12 Q Okay. Did you time it?

13 A No.

14 Q Have you ever had any training as to how people
15 act when they forge and cash checks?

16 A No.

17 Q Have you ever had anybody pass a forged check
18 at your booth or your counter on a previous occasion?

19 A No.

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

21 THE COURT: Anything else?

22 MS. WILSON: No.

23 THE COURT: You may step down. Thank you very
24 much.

1 THE WITNESS: Thank you.

2 THE COURT: Ms. Seago, you're excused.

3 MR. HALL: Please step forward, raise your
4 right hand and be sworn.

5 (Witness sworn.)

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

8 MR. HALL: Your Honor, may we approach?

9 THE COURT: Of course.

10 (Discussion at the bench.)

11 THE COURT: Did you want me to address this
12 prior to your examination of this witness?

13 MR. HALL: I think it will be appropriate.

14 THE COURT: Okay.

15 Ladies and gentlemen, as you might imagine,
16 sometimes people who are anticipated witnesses in trials have
17 things happen in their lives that preclude their attendance
18 at a particular trial. We have such a witness in this case,
19 whose name is Carmen Cruces.

20 Carmen Cruces was an employee of Valley Bank,
21 similar to those which you have heard this afternoon.
22 Ms. Cruces is having a personal crisis in her life. Her
23 mother is terminally ill. Her mother lives outside of this
24 country.

1 And it was the agreement of both Mr. Hall and
2 Ms. Wilson that rather than require Ms. Cruces to attend this
3 trial, that we would accept as her testimony a preliminary-
4 hearing transcript whereat a representative of the District
5 Attorney's Office--it didn't happen to be Mr. Hall, but one
6 of Mr. Hall's colleagues--was present and able to examine
7 Miss Cruces. Ms. Wilson was present and able to examine
8 Ms. Cruces.

9 So we are going to accept this by way of
10 stipulation as the testimony Miss Cruces would have given,
11 had she been present in court. You are to accept this
12 testimony, which is State's Exhibit 00, as the same testimony
13 you would accept if Miss Cruces was seated in that witness
14 box and saying these exact words.

15 As I say, sometimes there's things that happen
16 in people's lives and we can reach a reasonable agreement as
17 to how to deal with that. So we have a preliminary-hearing
18 transcript.

19 And additionally, on February 24th, Mr. Hall,
20 Ms. Wilson and I along with a-- my court clerk, had a
21 telephone deposition, for lack of a better word, with
22 Miss Cruces. There was some brief examination. Both counsel
23 were given an opportunity to ask whatever questions they felt
24 appropriate, and it was transcribed by a court reporter from

2
1 my chambers, so that Miss Cruces could be on her way to
2 Spain, where her mother is unfortunately ill to the point of
3 no recovery.

4 So we do have, and I will admit, if not already
5 admitted, State's Exhibit 00, the testimony of Carmen Cruces,
6 both at preliminary examination as well as by telephonic
7 deposition on February 24, 1983.

8 And I believe both counsel will stipulate to the
9 introduction of these documents; would you not?

10 MR. HALL: State would so stipulate.

11 MS. WILSON: Yes, your Honor.

12 THE COURT: All right.

13 (State's Exhibit 00 was admitted into evidence.)

14 THE COURT: As background, I think it's
15 important for you to know that.

16 Additionally, as a corollary, these checks were
17 received by Miss Cruces, Mr. Hall?

18 MR. HALL: Yes, your Honor.

19 THE COURT: Those would be check 208, written
20 on the account of Beverly A. Fetherston, which has been
21 marked as State's Exhibit BBB, as in boy; and check number
22 229, written on the account of Beverly Fetherston, noted as
23 State's Exhibit VV, as in Victor.

24 Ms. Cruces apparently was the person in receipt

1 of these checks. So you should bear that in mind when you
2 have an opportunity to hear the testimony of Miss Cruces.
3 (State's Exhibits VV and BBB were admitted into evidence.)
4

5 SHELLEY SKENDER,
6 called as a witness by the plaintiff herein,
7 being first duly sworn, was examined and
8 testified as follows:
9

10 DIRECT EXAMINATION

11 BY MR. HALL:

12 Q Miss Skender, would you please state your name,
13 and spell your last name.

14 A Shelly Skender. S-k-e-n-d-e-r.

15 Q And what is your occupation?

16 A I'm a branch service manager.

17 Q How long have you worked for the bank in this
18 area?

19 A Fourteen and a half years.

20 Q And what were you doing for Valley Bank--
21 Were you employed for Valley Bank in February
22 of 1992?

23 A Yes, I was.

24 Q What was your position at that time with Valley

1 Bank?

2 A Branch service manager.

3 Q And what are your duties as a branch service
4 manager?

5 A Basically, to ensure good customer service to
6 our customers. I'm in charge of the tellers and our daily
7 operations at the branch.

8 Q Do you know what the standard check-cashing
9 policy was at Valley Bank in February of 1992 for
10 noncustomers?

11 A Yes.

12 Q What was that policy?

13 A When a nondepositor came in and wanted to cash
14 a check-- We cash checks drawn only on our own financial
15 institution. We require identification, the teller verifies
16 the signature, depending on the dollar amount, and as long
17 as everything was okay, we could verify, we cash the check.

18 Q I'm going to show you State's Exhibit QQ.
19 Do you recognize that document?

20 A Yes, I do.

21 Q And what is it?

22 A It's our signature card.

23 Q And whose account does that signature card
24 belong to?

1 A Beverly A. Fetherston.
2 Q Have you seen that signature card before?
3 A Yes, I have.
4 Q When was that?
5 A 11-28 of '90.
6 Q And how do you know that you saw it on that
7 date?
8 A Because I was the officer that initialed the
9 card when it was opened.
10 Q Do your initials appear on that card?
11 A Yes, they do.
12 Q Where?
13 A In the right-hand corner.
14 Q Upper right-hand corner?
15 A Middle.
16 Q Middle?
17 A Yes.
18 Q Blue ink?
19 A Yes.
20 Q What is the account number on that account?
21 A 356096941.
22 Q I'm showing you State's Exhibit LL. Do you
23 recognize the account number of that checkbook-- of the
24 checks in that checkbook?

1 A Yes, I do. It's the same as on the signature
2 card.

3 Q Who does that account belong to?

4 A Beverly A. Fetherston.

5 Q Okay. Would you flip back to the register part
6 of that checkbook.

7 Are you familiar with the register part--

8 A Yes, I am.

9 Q How are you familiar with the register of that
10 checkbook?

11 A Because we went over it prior to this date.

12 Q You and I went over it?

13 A Yes.

14 Q Okay. Does the register appear to be in the
15 same or similar condition as it was when you and I went over
16 the register?

17 A Yes, it is.

18 Q Did you bring with you any documents from the
19 bank on this account, Beverly Fetherston's account?

20 A Yes, I did.

21 Q What did you bring with you today?

22 A I brought copies of the checks, front and back;
23 I brought copies of two months' statements; and I brought
24 some papers that are what we call our log searches on our

1 computer system. When a transaction is done at our branch,
2 we can go back and do a log search and print the transaction.

3 Q Do you have a log search for check number 233?

4 A Yes, I do.

5 Q How do you know that that log search belongs to
6 check number 233?

7 A Because it has the customer's account number,
8 the customer's name, the check number, and the amount of the
9 item.

10 Q And how is that log search generated? Where
11 does it come from?

12 A It comes from our computer diskettes. Our
13 computer diskettes.

14 Q Who's responsible for retrieving that
15 information from your computers?

16 A I am.

17 Q Did you do the log searches in these three
18 transaction?

19 A Yes, I did.

20 Q There's two other log searches there. On what
21 checks were those done for?

22 A Check number 230 and check number 229.

23 Q I'm giving you a black pen. Can you write the
24 check numbers on those log searches, please.

1 Thank you.

2 MR. HALL: Miss Clerk, may I have these marked
3 as State's next in order.

4 THE COURT CLERK: State's UUU. State's VVV.
5 And State's WWW.

6 (State's Exhibits UUU, VVV and WWW were marked
7 for identification.)

8 MR. HALL: For the record, State's UUU would be
9 the log search of check number 229; State's VVV would be the
10 log search of check number 230; and State's Number WWW would
11 be the log search of check number 233.

12 BY MR. HALL:

13 Q What were the dates of the bank statements that
14 you had on Miss Fetherston's account?

15 A I have two bank statements. One bank statement
16 cut off on February 5th, 1992; and one bank statement cut off
17 on 3-4 of '92. February and March.

18 Q What do those bank statements document?

19 A The bank statement for February 5th will
20 document from the prior statement which cut off on 1-7. So
21 any transactions, deposits, checks cleared, credits or debits
22 from 1-7 of '92 go-- The beginning was 1-8 of '92 to 2-5 of
23 '92; and the next one will have every transaction from 2-6 of
24 '92 up to 3-4 of '92.

1 Q May I have that, please?

2 MR. HALL: Going to mark both statements as
3 State's XXX.

4 (State's Exhibit XXX was marked for identification.)

5 MR. HALL: Move for the admission of State's
6 XXX.

7 MS. WILSON: No objection.

8 THE COURT: All right. XXX is admitted.

9 (State's Exhibit XXX was admitted into evidence.)

10 BY MR. HALL:

11 Q Do you recall February 6th of 1992?

12 A Yes, I do.

13 Q And how do you recall that date?

14 A One of my tellers cashed a check, and the
15 gentleman cashing the check requested my teller to call on
16 Beverly's check order because she hadn't received her check
17 order.

18 So my teller called on the check order. The
19 check-printing company hadn't received the order, so she
20 went ahead and placed that order over the telephone.

21 Q Are you sure that was February 6th, or was
22 that before February 6th? No, that was February 6?

23 A Yeah, I believe it was on February 6th.

24 Q Okay. And did you become involved in that?

1 A Only after the fact when I explained to her
2 that it's not our policy to order checks for a nonsigner
3 on any account.

4 Q Who is the teller that handled that transaction?

5 A Jennifer Seago.

6 Q Showing you State's Exhibit CCC, which has been
7 marked for identification. Do you recognize that Exhibit?

8 A Yes, I do.

9 Q And how do you recognize that Exhibit?

10 A These checks were returned back to me, and I
11 don't recall the date. But these checks were returned back
12 to us undeliverable.

13 Q And what account are those checks for?

14 A Beverly Fetherston.

15 Q What was the day that those checks were returned
16 to you; do you know?

17 A No, I'm not exactly sure on the date they were
18 returned back to me.

19 Q Is there any date marking on the package?

20 A The Post Office date is 2-17 of '92.

21 Q Now, do you know about approximately how long
22 it takes for checks to be delivered once ordered?

23 A Normally, seven to ten days.

24 Q Would that be-- the delivery of those checks,

1 the date on that package, would that be consistent with
2 Mr. Branham ordering checks on February 6th of 1992?

3 A Yes, it would.

4 MR. HALL: Move for admission of State's CCC.

5 MS. WILSON: I think they're admitted, your
6 Honor.

7 MR. HALL: Thank you.

8 BY MR. HALL:

9 Q Do you recall February 11th of 1992?

10 A Yes, I do.

11 Q Were you working at Valley Bank on that date?

12 A Yes, I was.

13 Q I show you State's Exhibit BBB. Do you
14 recognize that check?

15 A Yes, I do.

16 Q How do you recognize that check?

17 A This was the check presented for payment on
18 that day by Mr. Branham.

19 Q Can you tell the jury about that transaction?
20 What happened on that date?

21 A We were informed by our security department the
22 prior day that they believed that one of our customers had
23 been murdered, and that we were not to transact any business
24 on this account. If there was any business that was trying

1 to call 911 immediately.

2 So on February 11th, I was on the telephone
3 and my teller, Miss Cruces, brought this check and a Nevada
4 identification card and put it under my face when I was on
5 the phone.

6 At that time I was talking to a fellow branch
7 service manager who I had already talked to in our
8 conversation about what was happening at our branch, and
9 told him that the gentleman was here, please call 911 for
10 us.

11 At that time I told Carmen that, "Let's go
12 check the signature on the sig fiche." And all of our
13 signature cards are on the sig fiche. So we went back to
14 the sig fiche, we checked the signature. It was irregular.

15 I walked with Carmen back up to the teller
16 window and I explained to the gentleman that this signature
17 was irregular and that we would have to call Beverly for
18 approval to cash the check. He told me that her signature
19 probably was a little shaky because they had been out
20 drinking all night long.

21 So I went back to the teller terminal, or to
22 our screen that we can pull up accounts and get a phone
23 number, and I got a phone number for Beverly Fetherston.
24 I went back to my desk, I called the phone number, and the

1 phone number that I called was disconnected.

2 So I told him that-- He asked me, "Do you
3 need the phone number?" He read off the phone number to me.
4 I said, "Yes, that's the phone number I'm calling, but nobody
5 seems to be home."

6 He said, "Well, she may be out shopping."

7 I said, "Okay. Let me reverify the phone
8 number." And in order to stall for more time, I went back
9 to the terminal again, repulled up her account, got the same
10 phone number, went back to my desk, called the phone number
11 again, and this time just stayed on the phone listening to
12 the recording until the police arrived at our branch.

13 Q How long did it take for the police to arrive
14 after Mr. Branham had first come into your branch?

15 A Anywhere from maybe 3 to 7 minutes.

16 From the time he walked in the branch, or from
17 the time he called?

18 Q From the time he walked into the branch.

19 A Maybe 7 to 10 minutes then.

20 Q Did he act nervous at all while he was there?

21 A No.

22 Q Have you ever had other people cashing checks--
23 cashing forged checks at your branch?

24 A Yes, I have.

1 Q Have you observed them?

2 A Pardon me?

3 Q Have you watched them do it? Have you ever seen

4 anybody cash a forged check and you know that they're cashing

5 a forged check?

6 A Attempting. If we know, we don't cash the

7 check. But yes, I have been in my branch, we have had people

8 come in and attempt to cash forged checks.

9 Q How did they act?

10 A The last person that we had was-- he was drunk,

11 so he was getting a little loud. But--

12 Q How did Mr. Branham act?

13 A He just looked around and waited until we got

14 done. I believe-- The times that I was trying to get the

15 phone number and stuff, Carmen was up at the teller window

16 carrying on a conversation with him and watched him the

17 whole time, because I was over stalling for time doing

18 other things.

19 Q Now, have you had an opportunity to try and

20 reconcile the checkbook of Beverly Fetherston with the

21 statement that you have?

22 A Yes, I have.

23 Q Can you see these?

24 A Um-hum. I've got another copy here, also.

1 Q Showing you State's Exhibit RRR, SSS, DDD, EEE
2 and FFF. Now, DDD, -E and -F, what are they?

3 A That's the check register.

4 Q And the other Exhibits?

5 A Statements. Monthly statements.

6 Q Have you had an opportunity to look at these
7 very closely?

8 A Yes, I have.

9 Q Okay. And are they true and accurate copies
10 of the bank statements and the check register?

11 A Yes, they are.

12 Q Miss Skender, can I ask you to step down.
13 What I'd like to do, if we could, is try and
14 reconcile the checkbook of Beverly Fetherston on the
15 blow-ups that I have--

16 A Okay.

17 Q --between the checks Miss Fetherston wrote and
18 the checks that Mr. Branham wrote.

19 Let me start with the last entries that were
20 made. And the only indication we have is 2-4. Is that
21 correct?

22 A Um-hum.

23 Q That would be State's Exhibit EEE. And also
24 State's Exhibit RRR.

1 Can you start with the last entry at the Swiss
2 Chalet and tell me what the check numbers were, and back on
3 up? Let's start with the--

4 A The check for the Swiss Chalet probably was
5 check number 205 for \$20. This \$20 probably went with this
6 check here for \$20. The check above it for cash for \$20
7 here.

8 Q Okay. If I can ask you to hold up a sec.

9 A Okay.

10 Q I have a blue marker there. Can you write the
11 check number next to those entries. And would it assist you
12 to see the checks so that you can match up the dates on those
13 checks?

14 A Yeah, because the dates that she writes them in
15 the book isn't necessarily the date that they clear the bank.

16 Q Check number 207.

17 A Okay. Made payable to the Swiss Chalet for \$20.

18 Q What was the date on that?

19 A And the date it cleared was on 2-10. So that
20 would be on our next statement.

21 That's right. Right here. That's the check
22 here. So do you want me to write "207" here?

23 Q Yes. Please. Match it up on State's FFF, the--

24 A Right.

1 Q Do you know what the entry on 2-4 was?

2 A On 2-4 is a check for cash for \$20.

3 MS. WILSON: Your Honor, I think I'm going to
4 object on this, because I don't know that Miss Skender has
5 personal knowledge that these relate the way she indicated.

6 THE COURT: Well, the objection would be that
7 it's beyond the personal knowledge of this witness?

8 MS. WILSON: Yes.

9 THE COURT: Why would you say that? She's not
10 familiar--

11 MS. WILSON: Because she's saying it probably
12 was.

13 THE COURT: Well, I think it's clear that she
14 was in charge of the tellers and the bank transactions at
15 this branch.

16 MS. WILSON: I don't know that she's indicating
17 that it was. She's saying it probably was, and I'm
18 suggesting that there's a lack of personal knowledge on
19 her part.

20 THE COURT: Well, that can be the subject of
21 your cross-examination. I think her qualification as being
22 basically in charge of the tellers and the transactions that
23 go on in the bank would allow her to testify from her own
24 personal knowledge as to what she sees with regard to these

2 1 bank documents. And you may cross-examine this witness at
2 the appropriate time.

3 Go ahead, Mr. Hall.

4 MR. HALL: Thank you, your Honor.

5 BY MR. HALL:

6 Q Go to the next transaction.

7 A Okay. She wrote a date 2-4, for cash for \$20.

8 Q Okay. And--

9 A She wrote this check on 2-4. This check will
10 probably be on the following statement, as well, since this
11 statement cut off on 2-5, if she cashed it at another place
12 besides the bank. It's not on this statement, so then she
13 cashed it at the bank.

14 Okay. This is the one check for \$20. Okay.
15 So it would probably be check number 205 that she cashed at
16 the bank on 2-4 for \$20.

17 Q Okay. Now, I'm going to show you check number
18 205.

19 A Okay. And it was cashed on 2-4 for \$20.

20 Q Write that check number.

21 Now, the deposits.

22 A We can see that on 2-3, she made a deposit for
23 \$545. She's listed it in her deposit here, \$545. So that
24 was put through on 2-3 of '92.

1 Q Okay. The next entry?

2 A The next entry is check made payable to the
3 Hideout for \$20.

4 Q What check number would that be?

5 A It would be prior to 2-3, so it could be check
6 204.

7 Q Okay. Showing you check number 204.

8 A 204 made payable to the Hideout, cleared our
9 bank on 1-27 of '92. So that was check number--

10 Can we mark them off here, so I know which ones
11 I've got?

12 Q Yes, please do.

13 A Okay. So we've got check number 204 and--

14 Did I put the wrong check number on this one?
15 Because that was the Hideout Lounge. What check number was
16 that?

17 Q The Hideout was check number 204.

18 A Right. Okay. Then the check made payable to
19 cash, I think I put the wrong check number there. I'm sorry.
20 Check number 205. Sorry.

21 Okay. The next check is for \$20, also made to
22 Inn-Ca-Hoots, which is probably check number 203.

23 Q Showing you check number 203.

24 A Check number 203 was left blank, but it was paid

2 1 on 1-28-92. So 203 was made payable to Inn-Ca-Hoots.

2 The next check is made to Sak-N-Save for \$15.

3 It would be check number 202.

4 Q And the next entry?

5 A The next entry--

6 Q Showing you check number 202.

7 A Okay.

8 \$14 to Osco would be check number 201. Yes.

9 Q Does that match up?

10 A Um-hum.

11 The next entry she shows is a deposit for \$280.

12 Q Is that reflected on the statement?

13 A She doesn't have a deposit reflecting on her
14 statement of \$280. She has one for \$2,780 on 1-23.

15 Q Okay. We can go to the next page back in
16 Miss Fetherston's checkbook.

17 A Okay. Check for \$86, check number 300, on 1-13.

18 Q Okay.

19 A It says, "Insurance."

20 Q Check number 300?

21 A Interstate Insurance Services, um-hum.

22 Next check \$50.08 to Mervyn's. Check number
23 299. Uh-huh.

24 Q Showing you check number 299, made out to

1 Mervyn's.

2 A \$40, rent,-- it says, "Rent, Guardian Management
3 rent, December and January", for \$40. That check could have
4 been-- Since it's not on this statement and the dates of
5 these checks are the beginning of January, that check was
6 probably on her previous statement.

7 Q Okay.

8 A If we can see the check, we'd know what date it
9 cleared.

10 Q Okay. Let's go to the next--

11 A Nevada Bell for 29.68. That check isn't on the
12 statement.

13 Q Okay. Showing you check number 297.

14 A 297. Yes, it cleared on 1-7. So it was on her
15 statement previous to this.

16 Q Okay. Is there an entry on her check register?

17 A Yes, there is.

18 Q Okay. Mark that entry 297. Would you write--
19 Is that next one 298,--

20 A Yes.

21 Q --Guardian Management?

22 A Um-hum.

23 Q All right. Above that?

24 A Check number-- She wrote this check number in

1 296 for 84.03.

2 Q Is that check number 296?

3 A Yes. She's got that written in.

4 Q Okay. Above that?

5 A Check for \$2. I can't read what she has that
6 written to. U.S. Sprint. Check 295.

7 And check to rent for January for \$395.

8 Q Okay.

9 A Check number 294 is on here.

10 Q Okay. And above that?

11 A Above that is the deposit for \$900 that will
12 reflect on her January statement.

13 Q Okay. Now, do you see any entries for check
14 number 226?

15 A Yes, I do. In here, no. Not on her check
16 register.

17 Q Okay. And is that reflected on her bank
18 statement?

19 A Yes, it is.

20 Q When would Miss Fetherston have received her
21 bank statement?

22 A If her statement cut off on 2-5, normally
23 there's one to two days' delay to prepare the statement and
24 mail it out. Probably five to seven days from that date,

3 1 including mailing time.

2 Q That would have been in the middle of February?

3 A Um-hum.

4 Q Now, 229, is there an entry for check number
5 229 in the check register?

6 A No.

7 Q Do you know when 229 was written by virtue of
8 the bank statement?

9 A It cleared our bank on 1-14.

10 Q How about check number 230?

11 A Cleared our bank on 1-17.

12 Q How about check number 231?

13 A 2-4-92.

14 Q Check number 233?

15 A 2-3-92.

16 Q Check number 233?

17 A Check number 233 didn't clear our bank.

18 Q Could it have been on the subsequent statement?

19 A Yeah. 2-6.

20 Q 2-6?

21 A Um-hum.

22 Q Do you see any entries-- And I'd like you to
23 go through the checkbook and see if you see any entries for
24 the checks listed to Bill Branham, check number 226, 229, 230

1 through 233.

2 A No.

3 Q Now, if you could go to the beginning of the
4 checkbook. Does this match up to the beginning of the
5 checkbook?

6 A Yes, it does.

7 Q That would be the first page, Savings Deposit
8 Record?

9 A That's right.

10 Q That would be a blow-up which has been marked
11 as State's Exhibit BBB?

12 A Right. Now, do you know what the ending balance
13 of Miss Fetherston's account was in March of 1992?

14 A Yes. Her ending balance was \$2,215.32.

15 Q Okay. And what was Miss Fetherston's balance
16 as reflected in the check register?

17 A She had \$1,005, and there was one check for
18 \$20 she hadn't deducted.

19 Q \$1,005, State's Exhibit EEE?

20 A Yes.

21 Q Were you able to reconcile or figure out how
22 Miss Fetherston got \$1,005?

23 A What Miss Fetherston does in her checkbook is
24 she rounds off all of her checks. She doesn't subtract for

3 1 the exact amount. She builds herself--a lot of customers
4 2 build themselves--a cushion.

3 What also she does it looks like when she puts
4 her deposits in, she doesn't put her deposit in for the full
5 amount she listed in the back of her checkbook, so that she
6 has a cushion in her account.

7 Q And is that what she has done--

8 Is that reflected here on State's DDD?

9 A Yes, it is.

10 Q And what does this amount stand for here?

11 A This deposit-- She sent the deposit for \$2500.
12 Doesn't have a deposit for \$2500. Nor does she have a
13 deposit for 280. But if we add those two together, actually
14 she made a deposit for 2,780.

15 This is 280 in her check register that she's
16 writing checks, but in here listed the \$2500 for her cushion.

17 Q Do you know what the total amount of the checks
18 were from the 1st-- excuse me, the 2nd of February to the
19 6th of February, the amounts of the checks written to
20 Mr. Branham?

21 A Do I know the total amount of all the checks?

22 Q Yes.

23 A No, but we could add them up.

24 Q Check number 231.

1 A For \$350.

2 Q 232.

3 A 350.

4 Q And 233.

5 A 233 is on the other statement. \$250.

6 \$950.

7 Q Did Miss Beverly Fetherston's checkbook, did it
8 reconcile pretty much to this statement?

9 A No.

10 Q Why not?

11 A Because there's-- there was more checks written
12 out of her checkbook that she didn't have deducted in her
13 register.

14 Q What checks were those?

15 A Check number-- Didn't have-- Check numbers
16 230, 231, 232 and 233 weren't listed in her checkbook.

17 Q Now, directing your attention to check numbers
18 226, 229, 231, 232 and 233.

19 A Right.

20 Q Were those in sequence out of her checkbook?

21 A Yes.

22 Q 232, 233?

23 A Oh, they were out of sequence--

24 You mean they weren't written in her checkbook,

4 1 so they weren't in there.

2 Q What was the last check in the checkbook? What
3 is the next check in the checkbook?

4 A 205. The next check in the checkbook is 209.

5 Q What was the check that Mr. Branham presented
6 on February 11th?

7 A It was check-- I don't remember the check
8 number off the top of my head.

9 Q Okay. Showing you State's BBB.

10 A 208.

11 Q I'm showing you the checks that were contained
12 in State's Exhibit FF. There are two checkbooks in there.
13 What's the number of that check?

14 A 251.

15 Q And handing you the second checkbook. What's
16 the next check in order in that checkbook?

17 A 234.

18 Q Do you know where these checks came from?

19 A Out of that checkbook.

20 Q When the checkbook where the checks are missing
21 starts with 234, do you know what the beginning check number
22 on this would be, this checkbook?

23 A 226. Twenty-five checks in each.

24 Q That would be 226, one that was made payable to

1 Mr. Branham?

2 A Right.

3 Q Thank you.

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

5 THE COURT: All right. Miss Wilson?

6 MR. HALL: I'd move for admission of all my
7 Exhibits at this time.

8 MS. WILSON: Same objection, your Honor.

9 THE COURT: That there was no personal
10 knowledge? Is that what you mean?

11 MS. WILSON: Correct.

12 THE COURT: Overruled. Admitted.

13 (Exhibits UUU through WWW were admitted into evidence.)
14

15 CROSS-EXAMINATION

16 BY MS. WILSON:

17 Q Good afternoon.

18 A Good afternoon.

19 Q Now, Miss Skender, you received a box of checks
20 returned for more postage on Beverly Fetherston; right?

21 A That's correct.

22 Q And that was received by you on February 20th.
23 Isn't that true?

24 A I don't recall the date. But with the date

1 being February 27th-- excuse me, February 17th, that could
2 be a possibility.

3 Q Okay. So you made a statement in this case,
4 a written statement. Do you recall that?

5 A Yes, I do.

6 Q That was made on February 20th?

7 A I didn't recall the date.

8 Q Okay.

9 MS. WILSON: May I approach?

10 THE COURT: Yes.

11 BY MS. WILSON:

12 Q Would this refresh your memory?

13 A Yes.

14 Q And that is made February 20th?

15 A That's correct.

16 Q Okay. And you indicated that you received the
17 checks "Return For More Postage" on February 20th. Isn't
18 that true?

19 A Yes, it is.

20 Q So that would again be within the range that
21 you believe checks come back or checks get to the customer?

22 A Yes, it is.

23 Q Seven to ten days?

24 A Seven to ten days.

4 1 Q This would be slightly over that; wouldn't it?

 2 A Yes.

 3 Q So depending on mail or whatever, can be up to
5 4 two weeks?

 5 A Yes, it can.

 6 Q Can be up to three weeks?

 7 A Not normally, but it's always a possibility.

 8 Depending when the check-printing company prints the checks
 9 and mails them, I guess it could be a possibility.

 10 Q Now, the situation of you receiving information
 11 regarding Beverly Fetherston's account, that was notified
 12 to you that Beverly was a deceased person. Isn't that true?

 13 A That's true.

 14 Q And you testified at the preliminary hearing
 15 that you-- when a customer dies, that that is common that
 16 you are notified of their deceased nature, and then typically
 17 you put a hold on the account. Isn't that true?

 18 A Yes, that is true. Normally, we get it through
 19 the obituary. This particular incident, my security
 20 department contacted me verbally over the phone.

 21 Q Well, at the preliminary hearing you never
 22 indicated that you had information that she may have been
 23 murdered. You indicated that your security department let
 24 you know that Beverly Fetherston was deceased.

1 A That's true. But he did tell me that it could
2 be possible murder.

3 Q Okay. Now, when Carmen Cruces approached you,
4 you were talking on the telephone; right?

5 A That's correct.

6 Q So the person that would have the best knowledge
7 of the transaction with Mr. Branham would be Carmen Cruces.
8 Isn't that true?

9 A We worked together with it, yes. But Carmen
10 was-- Carmen was the teller handling the transaction.

11 Q Right. And then Carmen left Mr. Branham and
12 came to you and showed you check 208?

13 A That's correct.

14 Q And Mr. Branham at the time was left alone?

15 A Yes.

16 Q And at that time you recognized Beverly
17 Fetherston as the deceased person, that you were to call
18 911, and contacted the person on the telephone and told him,
19 "Call the police"?

20 A Yes.

21 Q Now, you also had Mr. Branham's identification
22 at the time?

23 A Yes, I did.

24 Q And you checked the signature with the signature

1 card?

2 A Carmen and I checked the signature together,
3 yes.

4 Q And you noted that the signature did not verify
5 close enough to negotiate the item?

6 A Yes.

7 Q That's not unusual to compare the two; is it?
8 Signature card with the check?

9 A No.

10 Q And at that time you went up to Bill Branham
11 and explained to him that the signature was irregular?

12 A That's correct.

13 Q And that you needed to contact Beverly
14 Fetherston to verify that she had written the check?

15 A That's right.

16 Q And at the time you knew Beverly Fetherston to
17 be deceased?

18 A That's right.

19 Q Now, when you told that to Mr. Branham, he
20 didn't run out of the bank?

21 A No, he did not.

22 Q And his reaction was that that was fine with
23 him?

24 A His reaction was that they had been out drinking

5

1 all night and that her signature was probably a little shaky.

2 Q When you went up to him and indicated that you
3 were going to have to contact Beverly Fetherston, he
4 indicated to you that that was fine?

5 A That's right.

6 Q And then you looked up the phone number and
7 tried to call?

8 A Yes.

9 Q And it had been disconnected?

10 A Yes.

11 Q And then you went back to him again and said
12 you must have dialed the wrong number?

13 A I went back to him and I said, "I need to
14 reverify the phone number. I may have dialed the wrong
15 phone number. There is no answer."

16 Q And then he gave you the phone number?

17 A The phone number he gave me was the same phone
18 number I was calling, yes.

19 Q He gave it to you?

20 A Yes.

21 Q He told you the number for the phone?

22 A Yes, he did.

23 Q Now, you went back to the phone, dialed it again
24 and pretended--

1 A To let it ring.

2 Q You let it ring because you were stalling so
3 the police could come?

4 A That's right.

5 Q And then you went back to him again and told
6 him, "No answer"?

7 A No. I never went back-- I never went back to
8 him again. The last time that I went back to him and told
9 him I was going to try and call again, there was no answer.
10 I never went back to the--

11 I was at my desk, and the teller's window was
12 like from here to this table. And when I told him the first
13 time that there was no answer, he told me that she may be
14 out shopping.

15 Q Okay.

16 A And then that's when I called again. And that
17 time I just sat down at my desk and I didn't say anything
18 else, I just called the number.

19 Q And Carmen was with him at that time?

20 A That's correct.

21 Q Okay. Now, when you determined the time factor
22 of how long he was there from when he entered until the
23 police came, that's your best guesstimate?

24 A That's right.

5

1 Q Seven to 10 minutes?

2 A That's right. That was just a guess.

6

3 Q And at the time he didn't appear nervous to you?

4 A No. But to be totally honest with you, I was
5 pretty nervous, so I wasn't staring at him either, because
6 I didn't want him to get suspicious.

7 Q Do you recall testifying that he did not appear
8 nervous?

9 A In the preliminary hearing?

10 Q Yes.

11 A I don't remember.

12 Q Okay. Now, you were present when the police
13 arrived?

14 A That's correct.

15 Q And at that time he didn't run away?

16 A He was standing at the teller window, and I
17 saw the police come in from the door and they were behind
18 him. He didn't-- He hadn't seen the police. I got up
19 from my desk with the check and identification card, walked
20 out around behind the teller line, and it wasn't until I
21 handed the check and the identification card over to the
22 police when he turned around, and then they approached him
23 at that time.

24 Q Did he try to run at that time?

1 A No.

2 Q Now, when you talk about these particular
3 Exhibits and explaining the correlation, and so forth, you
4 are again using your best correlation with the checks and
5 the checkbook, et cetera?

6 A She doesn't have all of her check numbers and
7 everything listed in there. Therefore, when there's several
8 20-dollar checks and you don't know the dates, you have to
9 verify them through the check before you can just know what
10 check number they would be.

11 That's why I was having a little trouble at the
12 beginning. She had four or five different checks for \$20
13 there.

14 Q And that's your correlation?

15 A That's right. But when I saw the checks I can
16 verify, because I see the check number and I see the date
17 that they cleared the bank on the back of the check, that I
18 could verify to the statements.

19 Q Okay. And in this checkbook, there are no check
20 numbers?

21 A There are some, not-- They do not all have
22 check numbers.

23 Q Not on the last page, except for 2-4?

24 A Right. That's right.

6 1 Q And the previous, except for 1-1, 1-1, and check
2 number 296?

3 A That's correct.

4 Q And there's no date except for those we've
5 talked about?

6 A That's correct.

7 Q Now, the indication of the deposit of \$2500,
8 that is within this checkbook; is it not?

9 A I don't understand.

10 Q The listed 2500-dollar deposit is in this
11 checkbook? It's listed here?

12 A Right. That's right.

13 Q Okay. And when you indicate that
14 Miss Fetherston kept a cushion, that is from your experience
15 in banking?

16 A That's correct.

17 MS. WILSON: Thank you.

18 THE COURT: Redirect?

19 MR. HALL: Yes, your Honor.

20 May I approach the clerk for one second?

21 THE COURT: All right.

22 MR. HALL: Your Honor, I'd move admission of
23 State's III through IIII in court and the checks that were
24 discussed with Miss Skender during the reconciliation between

6 1 the checkbook and the bank statement.

2 MS. WILSON: No objection.

3 THE COURT: Admitted.

4 (State's Exhibits were marked
5 and entered in evidence.)

6 MR. HALL: I don't have any redirect.

7 THE COURT: Thank you very much. You may step
8 down. If you have any Exhibits, I don't know if that's--

9 THE WITNESS: No, this is mine.

10 THE COURT: Well, you can sure take that.

11 THE WITNESS: Okay. Thank you.

12 THE COURT: We just don't want to lose any
13 Exhibits.

14 THE WITNESS: I wouldn't want you to.

15 THE COURT: All right.

16 MR. HALL: Your Honor, my next witness would
17 be Floyd Whiting. And I have an overhead that I want to set
18 up, so I'd like just a brief recess to get it set up so we
19 don't have the jury--

20 THE COURT: All right. That seems the most
21 efficient use of time. We'll reconvene at 20 minutes to
22 4:00. Please do not discuss this case amongst yourselves or
23 with anyone else, or form any conclusion as to any issue in
24 dispute until such time as you are asked to do so. You are

6 1 not to read, look at or listen to any news accounts of this
2 event, should there be any.

3 We'll stand in recess until 20 to 4:00.

4 (Recess.)

5
6 THE COURT: Thank you. Be seated, please.

7 We're back to CR92-1048, State of Nevada
8 versus William Branham. Mr. Branham is present, along with
9 Ms. Wilson. Mr. Hall is representing the State and present.
10 And thank you, ladies and gentlemen of the jury, for your
11 return to the courtroom.

12 Are you ready to proceed, Mr. Hall?

13 MR. HALL: Yes, your Honor.

14 THE COURT: Go ahead.

15 MR. HALL: Call Floyd Whiting.

16 THE COURT: If you would approach the lady to
17 my right, please, Mr. Whiting, raise your right hand and be
18 sworn.

19 (Witness sworn.)

20 THE COURT: If you'd have a seat in the witness
21 box, please.

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FLOYD WHITING,
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 please state your name, and spell
your last name.

A Yes. My name is Floyd Whiting. My last name
is spelled W-h-i-t-i-n-g.

Q What is your occupation, sir?

A I'm employed as a forensic documents examiner
with the Washoe County Sheriff's Department Crime Lab.

Q Can you explain to the jury your educational
background?

A Yes. I have a Bachelor's degree in natural
science, in biology, with a minor in chemistry, and also a
second Bachelor's degree in social science.

Q What is your background and training with
respect to document examination?

A I worked in a Crime Laboratory for over 20
years. I started out as a forensic chemist in a laboratory,
eventually became interested in the field of forensic

7 1 document examination, and went through an apprenticeship
2 training program with the Crime Laboratory of the State
3 Patrol.

4 Worked there for three years, then moved to
5 Nevada, where I set up the Crime Lab forensic document
6 section which we now have. And I've worked as the document
7 examiner in that laboratory since 1979 when I moved here.

8 Q Have you attended any special classes?

9 A Yes, I have. I belong to several professional
10 societies that deal with the various areas document examiners
11 are involved with, and I attend classes regularly.

12 I've attended several courses sponsored by the
13 FBI Academy. I have attended also courses by the
14 professional societies themselves, and also other scientific
15 groups that put on special training programs I've attended.

16 Q Have you authored any articles regarding
17 questioned documents?

18 A Yes, I've presented several articles to the
19 national societies that I belong to. I've had one article
20 published in the Journal of Forensic Sciences, which is the
21 representative journal for our field.

22 Q Now, directing your attention to the case at
23 hand, did you have an opportunity to review any documents
24 with respect to the State's case versus William Edward

7 1 Branham?

2 A Yes, I have.

3 Q Can you give the jury some background
4 information as to how you go about making a document
5 comparison on a questioned document?

6 A Yes. If a person is going to compare the
7 handwriting on a document, it's necessary to have known
8 writing standards of the person who is under scrutiny to
9 determine what the characteristics of that writing is.

10 Then I have to go through all the features of
11 the writing, not just the shape of the letters, though that
12 is important, but connecting strokes between letters, the
13 placement of the words on a page, spacing between letters,
14 the line quality, which is the smoothness or degree of
15 artistic control that the person has when they're doing the
16 writing, and all the other features that may be present in
17 the writing itself.

18 I study both the questioned samples, which are
19 the ones that are under investigation, and then I look at
20 the known samples of individuals, compare these with the
21 questioned samples.

22 It's necessary to have enough uniqueness to that
23 person's writing in order to arrive at a conclusion. For
24 example, if everybody wrote like the copy-book form that

7 1 they learn from, then we wouldn't be able to identify who
2 the writer was.

3 It's also necessary to establish with the range
4 of variation that an individual is, because everybody does
5 have some range in their writing. So it's necessary to
6 establish what that range is.

7 I will then look at the questioned writing and
8 see whether it fits within the range of the samples that
9 I'm looking at, and also if it has enough uniqueness to be
10 identifiable. In doing this, it's also necessary to exclude
11 the possibility somebody may have forged another person's
12 writing.

13 If there is forgery involved, it can be tracing,
14 or something like this. When a person does trace another
15 person's name, they're going to do it much more slowly.
16 It's not going to be written rapidly with the same period of
17 control as the individual himself would write it.

18 Also, a person can just simulate another
19 person's writing, or in other words, they will just look at
20 the letter forms and try to reproduce them. In doing this,
21 again the person that's simulating the other writing is
22 actually drawing the letter forms that that person has
23 produced. They're not writing as an actual representation
24 of their own writing characteristics.

7 1 And in doing this, they slow down their speed,
2 usually there will be tremor present, you can see some
3 shakiness to the lines, the quality typically isn't as good.
4 Very often there will be retracing over a portion of the
5 letters. Blunt ending strokes are not uncommon. The person
8 6 will come to an end of a letter form he's completing, and
7 then stop and look at the next form and continue on through
8 that.

9 There are certain characteristics that do
10 indicate that a writing is not a genuine writing of the
11 person under-- person who is being examined.

12 Then by doing all this, then I can compare the
13 two sets of writing that I may be working with, or in some
14 cases numerous sets of writing, and in many cases I'm able
15 to arrive at a conclusion they were all written by the same
16 person, sometimes I'm able to exclude the fact that they--
17 in other words, exclude a writer as being a potential author
18 of a questioned writing, or sometimes I'm just simply not
19 able to resolve the question.

20 If there is not enough standards available,
21 or if the quality is so poor, or if there are signs of
22 alteration, or something like that.

23 Q On this particular case, were you able to reach
24 an opinion as to who the author was of the questioned checks?

8 1 A Yes. There was a series of checks presented
2 to me to determine who the writer was of those checks, and
3 I was able to arrive at a conclusion.

4 Q And what questioned checks are we talking about
5 here?

6 A I received seven checks that were written to a
7 patient by the name of William Branham, and they were
8 endorsed with the name William Branham, and they were signed
9 with the authorized signature of Beverly Fetherston.

10 Q Did you have a known handwriting for
11 Mr. Branham?

12 A Yes. I received a packet, it's called an
13 exemplar packet, which were samples taken of Mr. Branham
14 by a police officer. These were presented to me as known
15 samples of his handwriting.

16 Q State's Number AAA, do you recognize that
17 document, sir?

18 A Yes. This packet that's just been handed to
19 me, State's Exhibit AAA, is an envelope that contains two
20 pieces of paper inside which are the handwriting exemplar
21 form.

22 A handwriting exemplar form is simply space
23 to fill in a series of responses which provide samples of a
24 person's writing. And it's-- there's some blank spaces then

8 1 where dictated material, such as the name of-- names being
2 used on a check or something like that can be written in.

3 These were submitted to me as containing known
4 handwriting of Mr. Branham.

5 MR. HALL: Move for admission of State's AAA.

6 MS. WILSON: No objection.

7 THE COURT: AAA is admitted.

8 (State's Exhibit AAA was admitted into evidence.)

9 BY MR. HALL:

10 Q Now, did you have some known handwriting from
11 the victim in this case, Beverly Fetherston?

12 A Yes. In addition to the known handwriting of
13 Mr. Branham, which I've just described to you, I did receive
14 14 checks that were written-- were submitted to me as having
15 been written by Beverly Fetherston.

16 And in addition to that, there was one bank
17 signature card that was also submitted as being examples of
18 her known writing.

19 Q Showing you State's QQ. Is this the signature
20 card that you used for known handwriting of Beverly
21 Fetherston?

22 A Yes, that's correct. This is the card.

23 Q Okay. And the known checks that you used--
24 or the checks that you used with Beverly Fetherston's

8 1 handwriting, can you look at these checks and see if those
2 were the ones that you reviewed for known handwriting?

3 A Yes. These are check number 201, 202, 203, 204,
4 205, 206 and 207. And these were submitted as a portion of
5 the checks that were containing known handwriting of Beverly
6 Fetherston.

7 Q Handing you another packet of checks, would you
8 look at those and tell me if you reviewed those, as well?

9 A Yes. These additional checks were the
10 additional checks that were submitted also as containing
11 known handwriting of Beverly Fetherston. These are check
12 number 292, 294, 295, 296, 297, 299 and 300.

13 Q Did you compare the signature on the checks of
14 known handwriting of Beverly Fetherston to her signature
15 card?

16 A Yes, I did.

17 Q Were you able to reach an opinion as to whether
18 or not the signature on those checks you've just described
19 match the signature on the signature card?

20 A Yes. There is obviously some variation among
21 the writing characteristics that were present, but I was
22 able to conclude they were all written by the same person.

23 Q Did you reach an opinion as to whether or not
24 the questioned documents which we've talked about were

8 1 authored by Beverly Fetherston?

2 A My conclusion was that the questioned documents
3 which did contain the authorizing signature of the name
4 "Beverly Fetherston" were not written by Beverly Fetherston.

5 Q Do you have an opinion as to who wrote those
6 checks?

7 A Yes. Based on a comparison of the writing on
8 the questioned documents with the handwriting exemplar that
9 was submitted containing known writing of Mr. Branham, my
10 conclusion was that the questioned checks, including the
11 "Beverly Fetherston" authorizing signature, was written by
12 Mr. Branham.

13 Q Now, did you prepare in preparation for trial
14 any evidence that would aid the jury in understanding how
15 you made your comparison?

16 A Yes, I did. I've made two Exhibits which will
17 illustrate some of the features that are present in the
18 writing. And by looking at these, perhaps the jury will
19 follow with me the basis that I used in arriving at the
20 conclusion that I've arrived at.

21 MR. HALL: Your Honor, I'd ask permission to
22 allow Mr. Whiting to use the overhead and his Exhibits to
23 explain to the jury how he reached his conclusion.

24 THE COURT: Sounds like a good idea,

9 1 Mr. Whiting.

2 MR. HALL: Your Honor, I believe that it would
3 be easier for the jury to see if we dim the lights a little
4 bit. Move for permission to do that.

5 THE COURT: All right.

6 THE WITNESS: What I've prepared to illustrate
7 to you the basis for my conclusion are two Exhibits. They're
8 transparencies that include enlargements of segments that I
9 took from the questioned checks and then also of the known
10 writing of both Mr. Branham and of Beverly Fetherston.

11 And obviously you must realize that each person
12 does have a range of variation in the writing that they
13 write, and these are just representative examples. This
14 does not include every characteristic of the people that
15 were present. But I do feel that these do show enough of
16 the similarities that were present in there that you can
17 understand the basis for the conclusion that I've expressed
18 to you.

19 I'll start with the first Exhibit, which
20 includes signatures of the name "Beverly Fetherston". Can
21 everybody in the jury see that okay?

22 Do you have a pointer that I can use?

23 BY MR. HALL:

24 Q We do. Let me get that for you.

9 1 A Now, again, these are just a sample. I had
2 fourteen checks that contain the known writing of Beverly
3 Fetherston. I had several examples of the known writing of
4 William Branham where he wrote the name "Beverly Fetherston",
5 and these were taken off the exemplar of his. And then I
6 had seven checks that were the questioned checks that were
7 submitted in this case.

8 Now, these are the known writings here-- This
9 is Beverly Fetherston, William Branham, and this is the
10 questioned writings here.

11 After examining all the characteristics that
12 were present on this writing, I did feel that perhaps
13 Mr. Branham had made an attempt to simulate the writing of
14 Beverly Fetherston. I'm not certain of this, because so many
15 of his characteristics were still present in the questioned
16 writing.

17 Many times on a simulation it's not possible to
18 identify the writer of that, because they do not have their
19 own writing characteristics expressed. They're just drawing
20 the other person's writing style. In this case, that did not
21 happen. I was still able to make an identification.

22 However, when we look at the known writing of
23 Beverly Fetherston, which is represented down here, you will
24 notice that it's a fairly smoothly executed writing. She

9 1 has a fairly decent artistic control, and had what we call
2 good line quality. Also, she did use a single crossbar
3 across the top of her name, so that both -t's in the name
4 "Fetherston" were crossed with a single crossbar.

5 Now, I did observe that the same single crossbar
6 was represented in the questioned signatures that we have
7 up here, and that's one of the reasons that I feel perhaps
8 there was an attempt to simulate her writing style.

9 However, in Mr. Fetherston's own writing, the
10 samples that we had in his exemplar, we see that he uses a
11 separate crossbar on each t. But with the exception of that,
12 so many other features of his writing were present that I
13 really felt that there was no difficulty in identifying
14 Mr. Branham as the person who had written the questioned
15 checks.

16 For example, in addition to the fact that we
17 have very smooth writing characteristics present here, you
18 can see that Mr. Branham's writing is not as smooth. It's
19 a little more-- It doesn't have as good a control. And we
20 see that that same lack of control is also present here.

21 Now, we do have a letter B here in "Beverly"
22 that's very, very poorly executed. And it does appear that
23 the person may have gone over this several times. This does
24 not represent the natural writing flow that is usually

9 1 illustrated.

2 We have a little bit perhaps retracing up here
3 on the other example, too, but most of the writing he was
4 able to complete the execution of the writing all the way
5 through, but it just did not have as uniform a production
6 of the letters as represented in the known writings of
7 Beverly Fetherston.

10 8 Some of the features that I find that were
9 interesting in the comparison here, Miss-- Miss Fetherston
10 typically when she used a letter r, as we see in both first
11 and the last name, she produced it in the manner we call a
12 running r, where it's struck, comes over and then goes down
13 to the baseline and then retraced. It does not have a flat
14 top or rounded top. We can see many cases just a retrace of
15 a letter form there. And all her instances, this is
16 represented.

17 Mr. Branham does not very that style of writing.
18 He flattened out or rounded off the top of the letter forms
19 that he produced. And we can see that that was present in
20 his known writing, and also in the comparison standards that
21 we have here.

22 Also the letter B, though it's quite similar
23 between his writing and Beverly Fetherston's writing, in
24 the angle in the portion of the B that we call the buckle,

1 Miss Fetherston typically would have an upward slant to
2 that portion right here, and Mr. Branham typically did not.
3 Either his would be flat, or it would be an open gap in that
4 portion there.

5 And we can see again that we have either
6 slanting somewhat downward or an open gap there, so that
7 did not represent the genuine writing of Fetherston.

8 Also, the e-v combination of the genuine writing
9 of Fetherston is a little different than
10 Mr. Branham's. If you look at the two letters combined,
11 almost looks like we have a letter w represented here.
12 And it was interesting that we were able to detect that
13 same formation on the known-- excuse me, on the questioned
14 samples on the check. They almost also look like a w.

15 Also, Miss Fetherston typically did not include
16 the letter l when she signed her name in "Beverly".
17 Occasionally it would come up, as we have in this
18 illustration here, but usually it didn't show up. And yet
19 in all the questioned samples, we always did have the l
20 show up, just as we have in the known writing of Mr. Branham.

21 Also the curve of the y, such as we have here,
22 very similar to the curve of Mr. Branham's writing, but it's
23 different than the straight-down stroke that we had on
24 Fetherston's writing.

1 And the same similarities exist in the F. Very
2 straight-down stroke on the main portion of the letter in
3 the genuine signatures, but there is a bit of a curve on
4 the questioned writing, and a bit of a curve on the control
5 standards of Mr. Branham.

6 We also had the letter i as an example.
7 Typically, Fetherston would have a wider opening for the loop
8 there. You can see it forms an e rather than looking like an
9 i. But in the comparison standards, occasionally it would
10 open up some, but typically it was more like an i. And then
11 we also have that feature present in the questioned writing.

12 And the terminal portion of the letter-- of the
13 name itself, Mr. Branham typically did not produce it quite
14 as well as Miss Fetherston did. Here we can clearly see that
15 we have an o-n and then a long terminal stroke. Here the
16 strokes are a little shorter, though sometimes stretch out.
17 We have the longer strokes at the end here, which again may
18 be an attempt at simulation, but he does detail in the
19 writing that he produced here.

20 And we also can find the spacing between the
21 "Beverly" and the "Fetherston". These two names are quite
22 close together in the genuine writing. But typically they're
23 a little bit further apart in the questioned sample and also
24 in the known writing of Mr. Branham.

0 1 Taking these characteristics, as well as the
2 other features that I observed, I was able to arrive at
3 the conclusion that the known writing of Mr. Branham was
4 consistent and he was the author of the questioned writing
5 on the checks.

6 Now, this is just the writing of the name
7 "Fetherston". Just to illustrate some of the other writing
8 that was present on the check, you can see here I'm just
9 comparing these against the known writing of Mr. Branham.
10 These are the known samples of his writing taken from the
11 exemplar. And this is additional questioned writing from
12 a selected portion of the checks that were submitted.

13 This is the endorsement on the back of check
14 number 229. You can see that on reproduction, we've lost
15 some of the detail here. This is just with the pen where
16 his pen was skipping a little bit.

17 These are the payee names that were present on
18 check 208 and 232, and this is just some other portions of
19 some of the other writing that were present on the check.
20 The dollar amounts and the dates.

21 Now, as you go through this, there's a great
22 deal of similarities present. Again the quality, the
23 spacing, the proportions of the letter all fall within the
24 same pattern. And I can believe that most people would

1 agree there does not seem to be much dissimilarity in the
2 characteristics that are represented there.

3 As we look at the printing here, the slant of
4 the a represents the same angle as we have here. The small
5 curve on the j with the crossbar at the top. The formation
6 of the 350 with the period before we go to the zeros. We
7 have that. The shape of the word "dollars".

8 Look at the "fifty". The second f is not as
9 long as the first f. The same difference there. The curve
10 on the y that we discussed in the Fetherston writing. The
11 formation of the letters in the 20. The initial stroke
12 leading into the d on "dollars". The flat curve on the r's.

13 Now, again, he's varied from a rounded curve to
14 a flat curve on the top of the r's surface, but we can see we
15 have those same variations in the known standards and the
16 questioned writing. And even the formation of the dollar
17 amounts.

18 Now, he did have variable ways that he did this,
19 but these examples do represent that the questioned samples
20 and the known samples did have the same pattern. So again
21 I was able to conclude that additional face writing and the
22 additional endorsement on those checks were written by
23 Mr. Branham.

24 Q Showing you Exhibit RR, what is RR?

1 A RR is an Exhibit containing a piece of paper.
2 It's got the name "Beverly Fetherston" typed at the--
3 underneath a line like a signature line, and then the name
4 "Beverly Fetherston" is written on the top of that line.

5 Q Did you use that in your comparison?

6 A Well, this signature was a little more
7 interesting. It had a different characteristic than some of
8 the others, in that in addition to the "Beverly Fetherston"
9 signature that's present on the check originally, it's been
10 traced over with a different colored ink so that there's
11 actually the original signature that was present on that,
12 and then a tracing of her name right on top of the same
13 letters that were present on the original.

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

15 THE COURT: Miss Wilson?

16 MS. WILSON: Yes, thank you.

17

18 CROSS-EXAMINATION

19 BY MS. WILSON:

20 Q Good afternoon.

21 Mr. Whiting, the opinions that you're rendering
22 today, those are your opinions; right?

23 A Yes, that's correct.

24 Q And you did not use another person to verify

1 your opinion?

2 A That's typically the case. I have been trained
3 and thoroughly tested in my profession, and my opinions are
4 representative of my own conclusions.

5 Q Okay. And the fourteen checks that you used
6 to compare with the other checks, the six questioned checks,
7 none of those were made to Mr. Branham; correct?

8 A That's correct. I don't believe that any of
9 them did have his name on them.

10 Q Okay.

11 MS. WILSON: Court's indulgence?

12 BY MS. WILSON:

13 Q Did you have seven questioned checks?

14 A Yes, that's correct. I might explain. In terms
15 of my report, I stated there were six questioned checks,
16 plus an additional check which was check number 207.

17 At the time it was submitted to me, it was
18 stated that it had been observed to have been signed by
19 Mr. Branham, and I did not know at the time whether that was
20 considered a known sample of his writing or if it was still
21 a questioned one. So I did compare it with the other
22 questioned checks, just to confirm that it was written by
23 the same person.

24 Q Okay.

1 MS. WILSON: May I approach?

2 THE COURT: Sure.

3 BY MS. WILSON:

4 Q These are the checks that you compared against
5 the questioned checks?

6 A Right. These are-- The checks that you have
7 in your hand now are the ones that contain the known writing
8 of Beverly Fetherston.

9 Q Okay.

10 MS. WILSON: Just to make sure, I'd ask that
11 all of those are admitted.

12 That's all I have.

13 THE COURT: Any redirect?

14 MR. HALL: I have one question.

15

16 REDIRECT EXAMINATION

17 BY MR. HALL:

18 Q Mr. Whiting, I understood you just to say that
19 the last-- you had six questioned documents and then check
20 number 208 or 207?

21 A Let me make sure. Check number 208. I'm sorry.
22 It was check number 208 which was the one that I wasn't sure
23 whether it was a questioned or known, so I considered it to
24 be one that was not confirmed as being writing of his. So

1 I still confirmed that he did write that by comparison
2 against the exemplar.

3 So essentially we ended up with seven checks
4 submitted, including check number 208 rather than 207 as the
5 one that may have been known writing.

6 Q Just so I'm perfectly clear. What checks were
7 written by Mr. Branham?

8 A Okay. The ones that were submitted as
9 questioned checks, but I have concluded that he was the
10 author of those checks, check number 208, 226, 229, 230,
11 231, 232 and 233.

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

13 THE COURT: Anything else, Miss Wilson?

14
15 RECROSS-EXAMINATION

16 BY MS. WILSON:

17 Q And all of those checks were made out to William
18 Branham?

19 A That's correct. I believe one of them may have
20 been Bill Branham, but it was the name Branham on each of
21 them.

22 Q And the other fourteen that were presented to
23 you, none of which have Mr. Branham's name on it--

24 A That's correct.

1 Q --as the payee?

2 A Correct.

3 MS. WILSON: That's all I have.

4 THE COURT: Thank you very much, Mr. Whiting,
5 for your testimony.

6 Mr. Hall, may I just ask for a matter of
7 clarification. Before you leave, Mr. Whiting, hold on just
8 a second. We've used the overhead for Mr. Whiting. Did you
9 want to include those in this record?

10 MR. HALL: Yes.

11 THE COURT: There's been testimony about it.

12 THE COURT CLERK: I don't have--

13 THE COURT: I think it would be helpful to
14 preserve our record.

15 MR. HALL: May I ask Mr. Whiting one additional
16 question then?

17

18 FURTHER REDIRECT EXAMINATION

19 BY MR. HALL:

20 Q Mr. Whiting, do you have regular paper copies of
21 these two Exhibits that you used--

22 A Yes, I do have paper copies, your Honor, that
23 represent exactly the same thing. Instead of being
24 transparent, those are opaque.

1 THE COURT: All right. Why don't you let
2 Miss Wilson review those and satisfy herself that that's
3 exactly--

4 THE WITNESS: Your Honor, I have enough copies
5 for each member of the jury, or I could just present one
6 copy--

7 THE COURT: I think one copy will suffice,
8 Mr. Whiting. Thank you.

9 Would you object to this process, Miss Wilson?

10 MS. WILSON: No, your Honor.

11 THE COURT: All right. I think it enhances the
12 thoroughness of our record.

13 Why don't we mark these State's next in order
14 as hard-copy representations of the overheads that were used
15 during Mr. Whiting's testimony.

16 (State's Exhibit YYY was marked for identification
17 and admitted into evidence.)

18 THE WITNESS: May I be excused, your Honor?

19 THE COURT: Yes, sir. Thank you very much.

20 MR. HALL: Your Honor, may I have just a minute
21 to move this out of the middle of the courtroom?

22 THE COURT: Yes.

23 Good afternoon, sir. If you would approach
24 the lady to my right, please, raise your right hand, be

12 1 sworn in.

2 (Witness sworn.)

3 THE COURT: If you'd have a seat in the chair
4 by the microphone, we'll be ready for you in just one second,
5 please.

6 Mr. Hall, may I ask you to move this back, too?

7 MR. HALL: Yes.

8
9 DEAN MARSHALL KATELEY,
10 called as a witness by the plaintiff herein,
11 being first duly sworn, was examined and
12 testified as follows:

13
14 DIRECT EXAMINATION

15 BY MR. HALL:

16 Q Sir, would you state your name, and spell your
17 last name.

18 A My name is Dean Marshall Kateley. My last name
19 is spelled K-a-t-e-l-e-y.

20 Q And where do you live?

21 A Molalla, Oregon.

22 Q What's your occupation?

23 A I'm a mechanic.

24 Q How old are you, sir?

1 A 36.

2 Q And do you know Beverly Fetherston?

3 A She's my mother. Was my mother.

4 Q And what kind of a woman was Beverly Fetherston?

5 A Oh, she was kind, she was giving, she was a good
6 mother. She was fairly forgiving of most people. She was
7 real good about collecting lost people. Bring them into her
8 house and help them out.

9 We did that a lot when we were kids. I can't
10 remember a Christmas going by when we didn't have somebody
11 that didn't have somewhere else to-- didn't have anywhere
12 else to go, so they'd spend Christmas with us.

13 MS. WILSON: Your Honor, may Mr. Hall and I
14 approach, please?

15 (Discussion at the bench.)

16 BY MR. HALL:

17 Q When was the last time you saw your mother?

18 A The last time I saw my mother was just after
19 Thanksgiving two years ago.

20 Q That would have been 1991?

21 A '91.

22 Q Was anybody else with your mother--

23 Well, who did you come down here with?

24 A Came down with my brother Tracy.

2 1 Q And who was with your mother at that time?
2 A William Branham.
3 Q Is he here in court today?
4 A Yes, he is.
5 Q Did you have an opportunity to spend any time
6 with Mr. Branham and your mother at that Thanksgiving?
7 A Well, it was after Thanksgiving. Yeah, they--
8 they met us for breakfast and we spent, oh, approximately
9 half a day with Mr. Branham present.
10 Q And how was Mr. Branham acting?
11 A My first-- My first impression of Mr. Branham
12 was he's a drunk, and went steadily downhill from there.
13 Q Well, did you see Mr. Branham on another
14 occasion after that first--
15 A Yeah, we saw him the-- was it the next evening,
16 I believe. We were going to have dinner with my mother at
17 her house. She wanted to fix her sons dinner at her house.
18 Q And did you see Mr. Branham after that?
19 A I don't believe so.
20 Q Had Mr. Branham been drinking on those
21 occasions?
22 A Yeah, always.
23 Q How did he treat your mother?
24 A While we were there, he didn't really have too

3 1 much to say. The one evening that we spent with Mom before
2 we left, he came to the house, he was drunk, we told him to
3 go to bed, heard enough of his shit. Excuse my language.

4 Q What did he do?

5 A He went to bed on the couch.

6 Q Did you ever have any conversation with your
7 mother regarding Mr. Branham?

8 A Yeah, I had several.

9 Q When did these conversations take place?

10 A When Mr. Branham was on the couch or when he
11 wasn't around us.

12 Q Was this during that Thanksgiving--

13 A Yeah, it was the same time we were there.

14 Q What did your mom tell you about Mr. Branham?

15 A That she was going to have him out of her
16 house after Christmas. She couldn't kick anyone out during
17 Christmas season.

18 Q Did she tell you anything else about her
19 relationship with Mr. Branham?

20 A That he was her roommate. That was it. He was
21 supposed to help share with the rent. But he hadn't helped
22 share with the rent for quite some time because he's out of
23 work.

24 Q Did she discuss with you any of her finances at

1 that time?

2 A No, not really. We didn't get into her
3 finances. She seemed to be making it. She wasn't rich,
4 but she was making it. Making ends meet.

5 Q Now, had she had any problem either healthwise
6 or financialwise, who would she contact?

7 A Me.

8 Q Are you-- How many children did your mother--

9 A She had the three of us. My brother and my
10 sister.

11 Q Are you the oldest?

12 A I'm the oldest.

13 Q Did she contact you during the early months of--
14 well, January and February of 1992?

15 A Yeah, she did. We talked. She apparently had
16 gotten a new boyfriend, and part of her reasoning for getting
17 this new boyfriend I think was to get Mr. Branham out of her
18 house. And if she didn't--

19 Mom was kind of a survivor type of person, and
20 if she couldn't handle something herself, she would find
21 somebody to help her out with it. And apparently she felt
22 a male live-in boyfriend or whatever would maybe convince
23 Mr. Branham to leave and leave her alone.

24 Q When did you have this last conversation with

3
1 your mother?

2 A It was just before she was-- the Washoe County
3 coroner called me. Maybe a week or so. I'm not real sure
4 of the date.

5 Q When you talked to her that last time, did she
6 complain of any health problems?

7 A No.

8 Q Have you ever known your mother to be ill?

9 A No.

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

11 THE COURT: Any questions?

12 MS. WILSON: Yes.

13 Court's indulgence?
14

15 CROSS-EXAMINATION

16 BY MS. WILSON:

17 Q Now, Mr. Kateley, your dad was Michael?

18 A No. My father's name was Tommy Hayne Kateley.
19 Michael Fetherston-- My mother married Michael Fetherston
20 after my father had died.

21 Q Okay. So Michael Fetherston was her second
22 husband?

23 A Yes.

24 Q Did you know Mr. Branham when she lived with

3 1 Michael?

2 A No, I did not.

3 Q And did you visit that residence on Crampton
4 Street?

5 A No, I did not.

6 Q And so the first time that you saw your mom
7 after her husband Michael died was at the Wells Avenue
8 address?

9 A Yes, ma'am.

10 Q And as far as you knew, Mr. Branham slept on
11 the couch?

12 A That is my understanding.

13 Q Did you see him go to sleep on the couch--

14 A Yes, ma'am.

15 Q --the night you're talking about?

16 A Yes.

17 Q Now, to your knowledge, Mr. Branham was
18 unemployed at the time--

19 A To my knowledge.

20 Q Did you know that he received Unemployment?

21 A I did not get into Mr. Branham's financial
22 situation.

23 Q Okay. Now, as far as your mom's health goes,
24 did you know that she was a chronic drinker?

3 1 A I knew she drank.

2 Q Did you advise Officer Wood that she did have

3 an excessive alcohol problem?

4 A In my opinion, yes.

5 Q Did you know her to be a chronic smoker?

6 A Yes.

7 Q And what type of cigarettes do you know that

8 she smoked?

9 A I believe she smoked Mores.

10 Q N-o-o-r-e?

11 A M-o-r-e. Something like that.

12 Q Oh, M-o-r-e?

13 A Yeah, More. They're-- They're a low-tar,

14 nicotine cigarette.

15 Q Have you seen her on occasion smoke those type

16 cigarettes?

17 A Yes.

18 MS. WILSON: Thank you, sir.

19 THE COURT: Any redirect, Mr. Hall?

20 ///

21 ///

22 ///

23 REDIRECT EXAMINATION

24 BY MR. HALL:

1.4 1 Q Mr. Kateley, do you know whether or not your
2 mother ever smoked Montclairs?

3 A Not to my knowledge.

4 Q Did you monitor her smoking habits?

5 A Not particularly.

6 MR. HALL: That's all I have, your Honor.

7 THE COURT: Anything else along that line?

8 MS. WILSON: No.

9 THE COURT: You may step down, sir. Thank you
10 very much.

11 MR. HALL: May this witness remain in court?

12 THE COURT: With the full understanding that
13 you would not be able to recall this witness under any
14 circumstances if he remains in the courtroom.

15 MR. HALL: I understand that.

16 THE COURT: If that's your decision, I think--
17 Would that be acceptable with you, Miss Wilson?

18 MS. WILSON: May we approach?

19 THE COURT: Yes, you may.

20 (Discussion at the bench.)

21 THE COURT: Okay. You can return Mr. Kateley
22 to the courtroom if he'd like to sit in the audience.

23 Approach the clerk, if you would, so that you
24 can hear carefully what she says. Listen carefully to the

14 1 oath.

2 (Witness sworn.)

3 THE COURT: If you'd have a seat in the chair
4 by the microphone, please. There's water if you'd like to
5 relax and have some water up there.

6 MS. WILSON: Your Honor, I hate to do this
7 again, but may we approach again?

8 THE COURT: All right.

9 (Discussion at the bench.)

10
11 JUANITA SUE DRAPER,
12 called as a witness by the plaintiff herein,
13 being first duly sworn, was examined and
14 testified as follows:

15
16 DIRECT EXAMINATION

17 BY MR. HALL:

18 Q Ma'am, would you state your name, and spell your
19 last name.

20 A Juanita Sue Draper. D-r-a-p-e-r.

21 Q What's your first name?

22 A Juanita.

23 Q Where do you live?

24 A 1220 Monument Boulevard--

4 1 Q You're going to have to slow down a little bit
2 and speak a little louder.
3 A 1220 Monument Boulevard, Concord, California,
4 Apartment C-9.
5 Q Where did you live back in February, February
6 7th of 1992?
7 A 1860 Oak Meade Drive, Concord, California.
8 Q Do you know William Edward Branham?
9 A Yes.
10 Q How do you know William Edward Branham?
11 A Through the family. My mom, my dad.
12 Q When did you first meet Mr. Branham?
13 A Probably about 30 years ago.
14 Q How many years ago?
15 A Thirty.
16 Q Thirty?
17 A Yeah.
18 Q Did you ever have any kind of a romantic
19 relationship with Mr. Branham?
20 A Yes.
21 Q And when was that?
22 A About 12 years ago.
23 Q Did you live together with Mr. Branham?
24 A Yes.

1 Q Where did you live with Mr. Branham?

2 A We lived on Allen Street, Martinez, and in
3 Clyde.

4 Q How long were you with Mr. Branham?

5 A About three years.

6 Q Do you have any children together?

7 A No.

8 Q Now, do you know where Mr. Branham went after
9 you broke up?

10 A No.

11 Q Did you see Mr. Branham back in February of
12 1992?

13 A Yes.

14 Q And when did you see Mr. Branham?

15 A Saturday in February. The 8th or the 9th.

16 Q Okay. Let me show you a calendar real quick.
17 February, 1992. Do you recall what date you
18 saw him?

19 A The 8th.

20 Q Okay. That would have been Saturday?

21 A Right.

22 Q Okay. How is it that you came in contact with
23 Mr. Branham?

24 A He was over my mom and dad's house on Friday,

1 and he was still in town and came by on Saturday.

2 Q When was the last time that you saw Mr. Branham
3 prior to Saturday, February 8th, 1992?

4 A About 12 years ago.

5 Q Twelve years before that?

6 A Yes.

7 Q Did you know Mr. Branham was coming down to see
8 you?

9 A No.

10 Q Did he call you?

11 A No.

12 Q Did he write you?

13 A No.

14 Q Did you have any contact with Mr. Branham in
15 those 12 years after he left?

16 A No.

17 Q Did you know where he lived?

18 A No.

19 Q Did you ever talk to any of Mr. Branham's
20 family?

21 A No.

22 Q Did your family-- your mother, did she ever
23 talk to Mr. Branham?

24 A I think she seen him probably about ten years

1 ago, he came down.

2 Q That would still have been 10, 12 years ago?

3 A Yeah, I-- Yeah.

4 Q Now, what happened when Mr. Branham came over--

5 Well, can you describe the circumstances where
6 you first met Mr. Branham back in February?

7 A Okay. I got a call, it was my mom, and she
8 told me that Bill was at her house, and she wanted to know
9 if it was okay if she gave him the phone number to give me
10 a call. I told her yes. And he gave me a call.

11 Q What did he tell you when he called you that
12 day?

13 A On Friday?

14 Q Yes.

15 A He asked, "How are you doing?" and everything.
16 He says, "You like to come by?" And he heard that maybe
17 I knew where he could locate his daughter at.

18 Q What time Friday did he call you?

19 A Oh, probably about 6:30.

20 Q And did you see Mr. Branham that night?

21 A No.

22 Q Were you under the impression that Mr. Branham
23 was going to come over to your house that night, Friday?

24 A Yes.

1 Q Is that what he told you?

2 A Yes.

3 Q Did he come by?

4 A No.

5 Q When did you see Mr. Branham?

6 A I seen him Saturday morning probably about
7 11:00, 11:30.

8 Q And was he with anybody?

9 A Yes. He was--

10 Q Who was he with?

11 A The guy's name was Ed.

12 Q Can you describe what Ed looks like?

13 A Medium height, older man, gray hair.

14 Q Do you know Ed, or did you know Ed?

15 A Not that I know of.

16 Q Do you recall meeting Ed prior to the date that
17 he came over on the 9th of February, 1992?

18 A No.

19 Q What did Mr. Branham tell you or what did he
20 say when he got over to your house on Saturday?

21 A We said "Hello" and everything, and he said he
22 didn't make it by Friday night. He went by, seen Jerry
23 Tackett and some other friends of his.

24 Q And you know Jerry Tackett?

1 A Yes.

2 Q And was he drinking that day?

3 A Yes.

4 Q What was he drinking that day?

5 A Beer.

6 Q Was he drinking a bottle?

7 A No.

8 Q Did you see him drink out of a bottle that
9 weekend?

10 A No.

11 Q Do you remember a conversation that you had
12 with me earlier today?

13 A Yes.

14 Q Do you remember telling me that you saw him
15 drinking out of a bottle, drinking bourbon?

16 A Ed was, yes.

17 Q Ed was?

18 A Yes. Bill wasn't, no.

19 Q Mr. Branham was drinking beer?

20 A Right.

21 Q Ed was drinking out of the bottle?

22 A Right.

23 Q And how long did Mr. Branham stay over at your
24 house?

1 A Probably about-- till about 2:30, 3:00.

2 Q Who lives over at your house?

3 A Me and my three kids and my boyfriend.

4 Q So they were all living there back in February
5 of '92?

6 A Yes.

7 Q What did you guys talk about during those three
8 hours that Mr. Branham was over at your apartment?

9 A We talked about my mom, my dad, rest of the
10 family. Knowing where his daughter was at. If I had seen
11 anybody from the neighborhood, you know. Just basic old-time
12 talk about friends and family.

13 Q What did Mr. Branham tell you, if anything,
14 about his daughter?

15 A That she had called and she was trying to get--
16 that she wanted to get in contact with him.

17 Q Did he have her address?

18 A No.

19 Q Did he have her phone number?

20 A Yes.

21 Q What did you do, if anything, to attempt to
22 assist Mr. Branham in getting ahold of his daughter?

23 A I told him where his-- where his daughter's
24 grandmother lived.

15 1 Q What's her name?

 2 A Mrs. Kale.

 3 Q K-a-l-e?

 4 A Yes.

 5 Q And what's his daughter's name?

 6 A Linda.

 7 Q And the mother of Linda, what's her name?

 8 A Toni Kale.

 9 Q Do you socialize with Toni Kale or Linda or

10 Miss Kale?

 11 A No.

 12 Q You don't see them on a regular basis?

 13 A No.

 14 Q How did you know how to get ahold of Miss Kale?

 15 A They live over by my sister in-- And when my

16 sister told me that when she was going to her house that she

17 seen them. That's where they were at. Living there.

 18 Q Did you contact the sister?

 19 A I called her on the phone, yes.

 20 Q Did you call her on Saturday?

 21 A I called her on Sunday.

 22 Q Now, you said that Mr. Branham left Saturday

23 afternoon?

 24 A Yes.

1 Q What time did he leave?

2 A About 2:30.

3 Q Did you walk him out to the car?

4 A Yes.

5 Q What kind of a car was he driving?

6 A A brown Firebird.

7 Q And do you know whose Firebird that was?

8 A His, I guess.

9 Q Did he tell you that it was his?

10 A I guess the next day, yeah.

11 Q Did he tell you anything about his employment?

12 A Yes.

13 Q What did Mr. Branham tell you about his
14 employment?

15 A He was a dwell-digger.

16 Q A well-digger?

17 A Dwell-- "Well", yeah.

18 Q How long had he been doing that; did he tell
19 you?

20 A No.

21 Q Did he tell you anything about his shift?

22 A That he worked like ten days on and four days
23 off. Something like that.

24 Q Did he tell you whether or not he was on or

15 1 off when he was down there visiting you?

2 A I really don't remember.

3 Q Now, what did Mr. Branham say when he left your

4 residence at 2:30 on Saturday?

5 A He was going to take his friend Ed home, and

6 if it was all right, he'd like to maybe come back later.

16 7 And I said that would be fine.

8 Q Did you see Mr. Branham that night, Saturday

9 night?

10 A No.

11 Q Do you know where he went?

12 A No.

13 Q Did he call you on the phone Saturday night?

14 A No.

15 Q When was the next time you saw Mr. Branham?

16 A Sunday.

17 Q What time did you see him on Sunday?

18 A Oh, it was probably about 12:30, 1:00.

19 Q Was he with anybody when he came over at 12:30,

20 1 o'clock?

21 A No.

22 Q Was he driving the same car?

23 A Yes.

24 Q Okay. What happened when he got over to your

1 house that day?

2 A We sat around, we talked. Just basic talk about
3 family stuff again.

4 Q About the same things that you talked about the
5 day before?

6 A Basically, yeah.

7 Q Did he talk about his daughter?

8 A Yes.

9 Q And did you make any attempt to contact his
10 daughter on Sunday?

11 A I told him that I could-- that I could show
12 him--

13 Q That's okay. Just take your time. Want some
14 water or something?

15 A No, that's all right.

16 I was trying to give him directions, and the
17 directions weren't working out. And so I told him yes, I
18 would show him where she lived, where Mrs. Kale lived.

19 Q And when was that? When did you tell him that?

20 A Oh, I don't know. Probably about 5:00 or so.

21 Q And did you show him where Mrs. Kale lived?

22 A Yes.

23 Q When did you do that?

24 A Pardon?

1 Q When did you do that? When did you show
2 Mr. Branham where Miss Kale lived?

3 A It was about 6:30, 7:00 that evening.

4 Q Did you get in Mr. Branham's car?

5 A Yes.

6 Q And then you drove somewhere?

7 A Yes.

8 Q Where did you drive to?

9 A When we first left my house?

10 Q Yes.

11 A To Mrs.-- To Mrs. Kale's house.

12 Q And do you have any children?

13 A Yes, I do.

14 Q What did you do with your children?

15 A My boyfriend Clint, he watched the boys.

16 Q Okay. Now,--

17 A I have three boys.

18 Q And their ages?

19 A 8, 4 and 3.

20 Q So you took off at 6:30 with Mr. Branham in his
21 brown car--

22 A Yes.

23 Q --looking for Mrs. Kale?

24 A Right.

1 Q Did you go over to Mrs. Kale's house?

2 A Yes.

3 Q What did you do when you got over there?

4 A Went in and talked to Miss Kale. She made a
5 phone call, Bill talked on the phone. He left, we left.
6 Went to Pittsburg, I think, to meet his daughter.

7 Q Okay. Did you meet his daughter over in
8 Pittsburg?

9 A No.

10 Q How far is Pittsburg from Mrs. Kale's?

11 A It's probably about 25, 35 minutes.

12 Q Okay. And did you know where you were going
13 when you went over to Pittsburg?

14 A No.

15 Q Did you meet anybody over in Pittsburg?

16 A No.

17 Q What did you do after you went to Pittsburg?

18 A He went back to Mrs. Kale's house.

19 Q What happened then?

20 A Miss Kale called-- I think there was a phone
21 call made back, and he went back out to Pittsburg again.

22 Q Did you go with him?

23 A Yes.

24 Q What time did you go back out there the second

1 time?

2 A Oh, probably about 10:30.

3 Q And did you meet anybody when you went out there
4 the second time?

5 A No.

6 Q Did you go to the same place that you had gone
7 the first time?

8 A Yes.

9 Q And what was that, a house, an apartment?

10 A House.

11 Q Was anybody there?

12 A No.

13 Q So what did you do when you got there the
14 second time, nobody was there?

15 A Just left.

16 Q And where'd you go from there?

17 A Well, driving around.

18 Q Anywhere in particular?

19 A No.

20 Q What did you do the rest of the evening?

21 A Talked, driving around.

22 Q Okay. Did you go home that night?

23 A No.

24 Q Did you stay in the car that night?

1 A Yes.

2 Q End up sleeping in the car?

3 A Yes.

4 Q That night did you ever meet Mr. Branham's
5 daughter?

6 A No.

7 Q Did you meet anybody besides Mrs. Kale?

8 A No.

9 Q What's the relationship between Miss Kale and
10 Mr. Branham?

11 A It's his daughter's grandmother.

12 Q Do they get along pretty well?

13 A No, not to the best of my knowledge.

14 Q What happened the next day when you woke up?

15 A He went back over to Miss Kale's house.

16 Q Did you go with him?

17 A Yes.

18 Q What time did you go back over to Miss Kale's?

19 A Probably about 11:30.

20 Q What happened when you got to Miss Kale's?

21 A There was no answer to the door.

22 Q What did you do?

23 A Went back out to Pittsburg to where we were at
24 the night before at his daughter's, and there was no answer.

16

1 And we drove around and talked for a little while and went
2 home.

3 Q What happened when you went home?

4 A Well, Clint was not happy.

5 Q Okay. Well, did you ask Mr. Branham whether
6 or not he wanted to come in?

7 A Yes.

8 Q What did he tell you?

9 A He said, "No."

10 Q Did he--

11 A He said he had-- he was running a little behind
12 and he had to get back up to Reno.

13 Q Did Mr. Branham ever say anything else about
14 the car he was driving?

15 A Yes.

16 Q How did that come about?

17 A My friend called-- My friend Lori called and
18 she was selling a Granada, and Clint was just getting up,
19 and I told Clint-- I told Lori to talk to Clint about the
20 car, because I knew nothing about a car.

21 And Bill goes, "Are you looking for a car to
22 buy?"

23 And I said, "No, not really."

24 He says, "Well, I have a Firebird out there

17

1 that I'll sell you."

2 I said, "No, thank you."

3 Q Why did you say, "No, thank you"?

4 A Because, "Bill, if you've been drivin' and
5 workin' on it, I don't want another piece of shit. I
6 already have one."

7 Q Do you recall whether or not Mr. Branham asked
8 you about any banks?

9 A Yes.

10 Q What did he ask you?

11 A He asked me was there a Valley Bank in town.
12 I told him no.

13 Q When did he ask you this?

14 A Monday.

15 Q A Valley Bank?

16 A Yes.

17 Q Do you know whether or not they have Valley
18 Banks in California?

19 A Not that I know of. I've never heard of Valley
20 Bank.

21 Q Why did he ask you that? Did you know?

22 A Not really, no.

23 Q Now, after Mr. Branham left, what day was that
24 that he left?

1 A Monday.

2 Q What time was that?

3 A About 2:30.

4 Q Did you have any contact with him after that?

5 A Yes.

6 Q That was up here in Reno?

7 A Right.

8 Q But no contact after he left your house before
9 you came up for the preliminary hearing?

10 A No.

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

12 THE COURT: Thank you. Miss Wilson?

13 MS. WILSON: Your Honor, I believe this cross
14 may take 20 minutes, 30 minutes, if that's all right.

15 THE COURT: Why don't you approach the bench for
16 a moment, please.

17 (Discussion at the bench.)

18 THE COURT: Okay. Ladies and gentlemen, I've
19 had a chance to confer with counsel, and it appears that
20 there may be several questions posed to Miss Draper both by
21 Ms. Wilson and Mr. Hall. I'd rather not keep you for what I
22 anticipate based on their calculations, which would be about
23 10 to 6:00. So I'd just as soon you leave early than keep
24 you a few minutes late.

1 Once again, you're instructed not to discuss
2 the case amongst yourselves or with anyone else, or to form
3 any conclusions concerning any issue in this case until such
4 time as it is delivered to you as a jury. You are not to
5 read, look at or listen to any media accounts of this event,
6 should there be any.

7 We thank you again, as always, for your patience
8 and your attention throughout this trial. And I look forward
9 to seeing you at 10:00 a.m. tomorrow morning. We'll stand in
10 recess.

11 (Proceedings Continued to March 5, 1993, at 10:00 a.m.)

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1 STATE OF NEVADA)
2) ss.
3 COUNTY OF WASHOE)

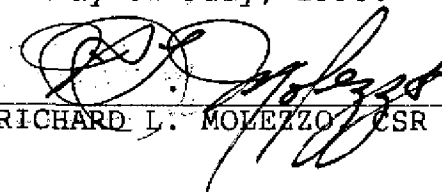
4 I, RICHARD L. MOLEZZO, official reporter of the
5 Second Judicial District Court of the State of Nevada, in and
6 for the County of Washoe, do hereby certify:

7 That as such reporter I was present in
8 Department No. 5 of the above court on Thursday, March 4,
9 1993, at the hour of 10:35 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 187, 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

ORIGINAL

No. CR92-1408 ¹⁰⁴⁸

Dept. No. 5

FILED

March 8, 1993
JUDI BAILEY, Clerk

By

DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

THE HONORABLE MARK HANDELSMAN, DISTRICT JUDGE

- 000 -

THE STATE OF NEVADA,

Plaintiff,

vs.

WILLIAM EDWARD BRANHAM,

Defendant.

PARTIAL

TRANSCRIPT OF PROCEEDINGS

Testimony of Dr. Ellen Clark

March 5, 1993

Reno, Nevada

APPEARANCES:

For the Plaintiff:

KARL S. HALL, ESQ.
Deputy District Attorney
Washoe County Courthouse
Reno, Nevada

For the Defendant:

MARY LOU WILSON, ESQ.
Deputy Public Defender
195 South Sierra Street
Reno, Nevada

The Defendant:

WILLIAM EDWARD BRANHAM

Reported by:

RICHARD L. MOLEZZO, CSR40, CP, CM, RPR
Computer-Aided Transcription

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I N D E X

WITNESSES:

Direct Cross Redirect Recross

FOR THE DEFENDANT:

CLARK, Ellen 2 48

1 1 RENO, NEVADA; FRIDAY, MARCH 5, 1993; 10:00 A.M.

2 --oOo--

3
4 * * * * *

5
6 (The following is a partial transcript of proceedings:)

7 THE COURT: Good afternoon, Dr. Clark. If you
8 would approach the clerk, be sworn in, please.

9 (Witness sworn.)

10
11 ELLEN CLARK,
12 called as a witness by the defendant herein,
13 being first duly sworn, was examined and
14 testified as follows:

15
16 DIRECT EXAMINATION

17 BY MS. WILSON:

18 Q Dr. Clark, would you please state your name, and
19 spell your last name.

20 A Ellen Clark, C-l-a-r-k.

21 Q And Dr. Clark, where do you work?

22 A I work here in Reno. I am a member of a nine-man
23 pathology group, Sierra Pathology Associates.

24 Q And give us an idea of your educational

2

1 background.

2 A In 1977, I received my undergraduate degree in
3 biology from the University of Texas in Austin.

4 In 1984, I completed medical school at Texas Tech
5 University and received my Doctorate of Medicine Degree from
6 that school.

7 In 1984 through 1987, I participated in an
8 accredited residency program in combined anatomic and clinical
9 pathology at the University of Texas in San Antonio.

10 From 1987 through a portion of 1988 and into
11 1989, I participated in specialty training in forensic
12 pathology in a fellowship at University of New Mexico in
13 Albuquerque.

14 From 1988 and also into 1989, I participated in
15 an additional year of training in the specialties of anatomic
16 and clinical pathology.

17 I've been employed in my current position since
18 1989.

19 Q Thank you.

20 And are you familiar with a Dr. O'Donnell?

21 A Yes.

22 Q And how are you familiar with him?

23 A Dr. O'Donnell is also a pathologist within the
24 group, Sierra Pathology Associates here in Reno.

2

1 Q And do you share a location together?

2 A Yes. We both have offices in Washoe Medical
3 Center. In my practice, I spend approximately 25 to 50
4 percent of my time as a hospital-based pathologist, and the
5 remainder of my time is as a forensic pathologist working both
6 as a consultant and as a forensic pathologist for Washoe
7 County Coroner.

8 Q Now, in your capacity as a pathologist, do you
9 have an opportunity to testify in court?

10 A Yes.

11 Q Could you give us an idea of how many times you
12 have testified in court?

13 A I do not know exactly how many times. I would
14 estimate between 75 and a hundred times.

15 Q Do you work with the District Attorney's Office?

16 A Yes, I work with the District Attorney's Office,
17 and with many lawyers not associated with the District
18 Attorney's Office.

19 Q Now, has the District Attorney's Office-- In
20 this case?

21 A Yes.

22 Q Have you had an opportunity to review material
23 associated with the case of State versus Branham?

24 A Yes.

1 Q When did you review that material?

2 A I've reviewed it at various times and different
3 aspects of this case, commencing as long ago as last winter.

4 Q And have you ever discussed this case with me?

5 A Not in depth. Just brief informal discussions.
6 We have not met formally and discussed this case.

7 Q Okay. And would it be fair to say that we've not
8 gone into the details of this case?

9 A That's correct.

10 Q Okay. Now, what was the reason for us not being
11 able to talk about this case?

12 A I was first contacted to make an appointment for
13 a meeting with Miss Wilson approximately three weeks ago. In
14 the interim, I've had several court dates. I've also been out
15 of town for a week in a meeting in Boston, and there was just
16 no time.

17 Q Now, directing your attention to the materials
18 that you reviewed, could you give us an idea of what you have
19 reviewed?

20 A I've reviewed the autopsy protocol which was
21 drafted by Dr. O'Donnell. I've also read various documents on
22 file with this case at the Coroner's Office. I've reviewed
23 photographs deriving from the autopsy and taken at the scene
24 where the body was discovered. And I have also read some

2 1 materials which were submitted to Miss Wilson by another
2 expert.

3 Q And do you recall if that expert was Dr. Masters,
4 from California?

5 A Yes.

6 Q Okay. Did you have an opportunity to review that
7 literature?

8 A I have looked at some of the literature. I've
9 not reviewed it in-depth, and I have not recently read the
10 bulk of the literature.

11 Q Okay. Now, could you give us an idea of what
12 standard procedure is for conducting an autopsy?

13 A An autopsy in general exists in two basic forms.
14 There is a medical autopsy, which is typically conducted in a
15 hospital and is directed at identifying disease processes and
16 very often answering questions which are posed by physicians
17 or persons involved in the treatment of a deceased person.

18 A forensic autopsy is somewhat different, in
19 that it is a medicolegal autopsy which is directed at
20 identifying a cause, mechanism and manner of death. This
21 involves investigation above and beyond what is often done in
22 a hospital autopsy. And first--

23 Would you like me to go through the procedure for
24 the autopsy?

3 1 Q Yes, I would.

2 A First, the body is usually presented to the
3 Coroner's Office in as near undisturbed condition as possible.
4 That is reflective of how the body was discovered dead. It is
5 often accompanied by a brief report of what the circumstances
6 of death were or the circumstances of the discovery of the
7 body. That is briefly reviewed or reported to the pathologist
8 at the outset of the autopsy.

9 The body is often sealed within a bag so that it
10 remains undisturbed until the pathologist has an opportunity
11 to examine it.

12 When the body bag is opened, the body is
13 initially evaluated as it appears at the outset of the
14 autopsy. The clothing are intact, and items of evidence which
15 might be on the body are optimally undisturbed. There are
16 various notations and observations made at that point. That
17 is the first external examination.

18 The body is then undressed and reexamined
19 externally, usually without cleaning the body; and then the
20 body is then examined externally after things have been
21 cleaned from the body, such as trace evidence or blood or
22 debris which might be present.

23 After the external examination is completed, an
24 internal examination is conducted, and that is basically a

3 1 surgical procedure which involves completely opening the body,
2 exposing the body cavities, and individually dissecting and
3 examining all the organs.

4 All these procedures are directed at identifying
5 the things I've already referred to; that is, the cause of
6 death, the mechanism of death, and the manner of death.

7 Q Thank you.

8 Now, Dr. Clark, how many homicide cases have you
9 testified in court regarding?

10 A I do not know. The majority of the cases that
11 I've testified in when I say 75 to a hundred would be homicide
12 cases. Probably greater than 90 percent.

13 Q And in those cases, how many would you say
14 involve asphyxia?

15 A Well, very basically, every case which is a death
16 involves asphyxia. Asphyxia is a very broad term which simply
17 refers to cell or tissue death due to lack of oxygen or lack
18 of adequate aeration. So virtually everything that dies
19 asphyxiates ultimately.

20 Q How many cases have you been involved in
21 regarding testifying in court had to do with manual
22 strangulation?

23 A Off the top of my head, I would recall perhaps
24 half a dozen cases. But that's a very crude estimate, and I

3 1 don't know exactly.

2 Q Okay. And how many of the cases have you
3 testified in court involved suffocation?

4 A I don't know. Many of the cases which would
5 involve manual strangulation may also involve suffocation, and
6 I really can't put a number on that.

7 Q Would it be around the same number, which would
8 be six?

9 A Perhaps the same number.

10 Q Now, you were also provided photographs. Did you
11 view those?

12 A Yes, I reviewed the autopsy photos.

13 Q What would be your description of the body's
14 level of decomposition?

15 A The description or the determination of
16 decomposition is subjective. In my opinion, this case would
17 represent a moderate degree of decomposition, perhaps a mild
18 to moderate degree of decomposition, based on the fact that
19 I've seen many bodies which are far more decomposed or rotted
20 or putrified than this body was.

21 Q When an autopsy is conducted, is there a tape
22 that memorializes what's going on?

23 A There may be. Many pathologists, most of the
24 pathologists within my group, dictate a tape which records

3 1 their findings at the autopsy during the course of performing
2 the autopsy. Others dictate after the autopsy's conducted.
3 Still others use no tape whatsoever, and record their findings
4 in written form.

5 Q Dr. Clark, if Dr. O'Donnell testified that his
6 impression of the body was early decomposition, would you
7 agree with him or disagree with him?

8 A I can't even really say, because I don't know
9 what he means as early decomposition. There are many features
10 which one looks for in decomposition, and there is not an
4 11 absolute scale which defines what is early or mild
12 decomposition versus what is moderate versus what is advanced
13 decomposition. I can address the specific findings in this
14 case,--

15 Q Very well.

16 A --if you wish.

17 Q Go ahead.

18 A The case had changes which happened as the body
19 decomposes which are due to bacteria changing the body and
20 metabolizing and creating waste products. So as the body
21 putrifies, gas may accumulate from bacteria.

22 There may be changes in the skin which involve
23 bubbling of the skin or blistering of the skin, accumulation
24 of putrifaction fluids in the skin. There are many color

4 1 changes that occur in the skin and in the organs in the body.

2 And many of those changes were present in an
3 early degree in this case, or in a mild to moderate degree.
4 Some of these decomposition changes, including the skin
5 discoloration, may be considered to be in excess of some of
6 the other findings, such as the amount of blistering of the
7 skin or the slippage of the skin.

8 Q Okay. Now, regarding procedure for actually
9 cutting into the body internally, is there any set rules
10 regarding where a pathologist should start?

11 A Characteristically, the autopsy begins with a
12 Y-shaped incision. This is an incision that extends from the
13 shoulders to the top of the stomach and then down to the pubic
14 area.

15 Q Now, have you heard of the term "Prinsloo-Gordon"
16 through the materials that were provided to you?

17 A Yes.

18 Q Could you explain your understanding of that?

19 A Some of the materials provided by Dr. Masters
20 referred to Prinsloo-Gordon artifact, which as recorded in
21 those materials is an artifact which may be encountered at
22 autopsy. This is a change in the appearance of the tissue
23 which is created by manipulation of the blood vessels in the
24 tissue at the outset of the autopsy examination.

4 1 Specifically, it refers to areas of bleeding over
2 2 the spine, in this case the neck portion of the spine, or the
3 3 cervical spine, and also at the back of the esophagus, the
4 4 swallowing tube which leads from the mouth in the back of the
5 5 neck down into the stomach.

6 Q Now, under that theory, is there a specific way
7 7 that is preferred to start an autopsy?

8 A Can you-- I'm not sure what you're referring to.

9 Q Under the Prinsloo-Gordon theory, is there a way
10 10 that they indicate is preferable to start an autopsy?

11 A Some authors have indicated that in order to
12 12 avoid this artifact, a couple of things can be done. First of
13 13 all, they recommend that when the initial Y-shaped incision is
14 14 made and the skin is reflected up, that some of the large
15 15 vessels of the neck should be drained of blood so that they
16 16 don't potentially leak into the tissue at the neck.

17 Other authors prefer to open the head and expose
18 18 the head and cut the vessels within the head so that blood is
19 19 allowed to drain out of the head rather than into the neck.

20 Q Why do they believe that that is important and
21 21 the preferable method?

22 A Well, the theory is that that drains blood out of
23 23 the area of the neck so that one cannot create these Prinsloo-
24 24 Gordon artifacts, or the presumed-- or the appearance of

4 1 bleeding within the neck.

2 Q And would the Prinsloo-Gordon artifact, would
3 that be in laymen's term, hemorrhage or blood extravasation?

4 A In my opinion, that is not hemorrhage.
5 Hemorrhage, as I refer to it, is forced bleeding into tissue.
6 It is active bleeding which dissects into and is forceful in
7 tissue.

8 The Prinsloo-Gordon artifact is dripping and
9 leaking of blood into tissue areas. So it does not imply an
10 active, functioning heart, or beating heart, or forced
11 pressure bleeding.

12 Q Okay. Now, you mentioned that there were
13 different decompositional changes at different areas of the
14 body. Do you have an independent recollection of the most
15 serious areas of decomposition?

16 A The most serious areas as recorded in the autopsy
17 report, based on my interpretation of that report, would be in
18 the vicinity of the vagina and the rectum, where Dr. O'Donnell
19 describes distinctive discoloration of the skin and skin
20 slippage and blister formation.

21 In examining the photographs, there are several
22 little blisters filled with putrifacted fluid on different
23 portions of the body. Some are present in pictures of the
24 upper chest. Others are present in the area of the face. I

4 1 could more accurately describe them perhaps with pictures.

2 Q Okay. That's fine.

3 When you talk about the vaginal and anal area, is
5 4 it typical to have swabs taken of the vaginal area?

5 A Yes. As a part of a protocol to evaluate a case
6 for sexual assault, vaginal swabs are often taken.

7 Q Now, would it be common that there would be semen
8 in the vagina and able to be tested if the body was in the
9 state of decomposition that it was in this case?

10 A There may be detectable semen, or sperm more
11 specifically, in the vaginal area, had it been deposited. But
12 putrifaction or decomposition also obscures that and breaks
13 down that evidence. So although it may be there, it may not
14 be detectable after decomposition occurs, even decomposition
15 of this extent.

16 Q Do you believe that given the body and its
17 decompositional nature, that semen would be able to be
18 detected, or would it be likely that it would be dissipated?

19 A I really don't know. The person more apt to be
20 able to answer that question would be the serologist, or the
21 forensic specialist who on a regular basis examines swabs and
22 vaginal fluid. They would know more specifically what
23 decompositional changes would affect as far as their ability
24 to detect.

5 1 There are many ways one can look for enzymes and
2 many different substances in semen to make the determination
3 that semen is present. I know that microscopically, the sperm
4 decay very quickly.

5 Q Now, why is it that circumstances of death are
6 presented to a forensic pathologist?

7 A As I said at the outset, one of our charges is to
8 determine in addition to the cause of death, the manner of
9 death. The manner of death is the way in which a death
10 occurs. And that is defined as a homicide, an accident, a
11 suicide, a natural death. And occasionally that cannot be
12 determined.

13 And in order to identify one of the manners of
14 death, it is essential that one know how the body is
15 discovered. For example, a gunshot wound can very easily have
16 the same appearance in a suicide as it would in a homicide or
17 an accidental shooting. So one needs to consider the
18 circumstances of death before making a determination based
19 only on the cause-of-death findings.

20 Q Would it be relevant to know circumstances of
21 death that would include a missing checkbook, a missing car,
22 missing jewelry and a threat with a boyfriend?

23 A Yes, those would be relevant.

24 Q Why is that?

5 1 A Well, it describes the circumstances or things
2 which preceded death and perhaps led up to death and even
3 contributed to death.

4 Q Does it aid in your autopsy protocol?

5 A Yes, to some extent it does. Very often
6 pathologists include a brief scenario of the circumstances of
7 death within their autopsy protocol. I do not personally do
8 that.

9 Q Okay. And why don't you personally do that?

10 A Because the circumstances of death are an entity
11 which is separate from the physical findings identified at the
12 autopsy examination. Although the circumstances of death are
13 integral in making a determination related to conclusions in
14 the autopsy, they're not actual physical findings which occur
15 at the autopsy exam.

16 Q Are you in agreement with Dr. O'Donnell when he
17 indicated that there was no traumatic injury to the vaginal
18 and anal area from your review?

19 A Yes. Based on his description and based on
20 examination of the microscopic slides from this case, I agree
21 that there's none depicted in what is present.

22 Q And do you have the same opinion regarding the
23 hands?

24 A Yes, there's no description of injury to the

5 1 hands.

2 Q Why would it be important to determine whether
3 there was any injury to the hands?

4 A It may be important because in cases which
5 involve a violent struggle or a fight or fisticuffs, there may
6 be bruises on the hands, there may be knife wounds on the
7 hands, there may be any number of injuries that we sometimes
8 refer to as defense injuries. The person has died and has
9 these present.

10 Q Would your answer be the same regarding
11 contusions to the face?

12 A No.

13 Q Okay. Would you explain that?

14 A First of all, what would be the question
15 regarding contusions to the face?

16 Q Oh, I'm sorry. You mentioned it would be
17 important to know if there were injuries to the hand. Would
18 your same answer be that it would be important to know if
19 there were any injuries to the face?

20 A It is important to know whether or not there are
21 injuries to the face. But they do not carry the same
22 implications as injuries on the hands. For example, one does
23 not characteristically defend himself with his face, and he
24 does with his hands.

5 1 Q How about fingernails?

 2 A I don't understand your question.

6 3 Q Would the fingernails be as important in an

 4 autopsy as the hands with regard to this particular case?

 5 A Okay. Fingernails can be important in an autopsy

 6 because there may be evidence retained or contained underneath

 7 the fingernails. And so that is why they are examined. There

 8 may also be injuries of the fingernails.

 9 Q Okay. Now, hypothetically, if a person was being

 10 manually strangled, would you expect to see some form of

 11 defensive wounds to the body?

 12 A There may be wounds. There may not be defensive

 13 wounds.

 14 Q And if-- hypothetically, if a person was being

 15 smothered with a pillow, would you expect to see defensive

 16 wounds?

 17 A Once again, there may or may not be wounds. I

 18 would not necessarily expect to see them, nor would I

 19 necessarily expect that they couldn't be present.

 20 Q In the six strangulation homicides that you

 21 viewed, were there defensive wounds to the face?

 22 A First of all, I don't know what defensive wounds

 23 to the face are. That is not--

 24 Q I'm sorry. Contusions to the face or abrasions

6 1 or anything regarding cuts to the face.

2 A In--

3 Q In those six strangulation homicides that you
4 did.

5 A In some of those cases, the face was too badly
6 decomposed or mutilated to make that determination. In other
7 cases, there were injuries. And in still other cases,
8 strangulation has occurred in the absence of other facial
9 injuries.

10 Q How many of those six strangulation cases were
11 there no injuries to the face?

12 A First of all, I don't specifically recall every
13 strangulation case that I've done. In the ones that I
14 specifically recall, two of them were too putrified to make a
15 determination about the presence or absence of injuries to the
16 face. In another one, there were indirect injuries in the
17 form of petechial hemorrhages, rupture hemorrhages in the
18 face. In another one, there were not substantial injuries to
19 the face, but there were injuries to the back of the head.

20 Q And I would ask you: In the six suffocation
21 homicides that you did, how many of those cases did not have
22 any contusions to the face?

23 A In the suffocation cases that I've done, the
24 deceased has typically been a child. They have often not

6 1 had substantial injury to the face. But that is particularly
2 characteristic of suffocation in children.

3 Q Okay. Now, in the six homicides that you did
4 regarding manual strangulation, how many of those had no
5 defensive wounds? By that, I mean defensive wounds to the
6 hands or fingernails.

7 A First of all, again I don't know that it's
8 specifically six homicides that I've done. I would say that I
9 have done more homicides which involved strangulation possibly
10 than six, but I believe the question was how many had I
11 testified on.

12 Q Right.

13 A Of the cases again that I remember, there were
14 defensive wounds in some of the cases because the defendant
15 had also been assaulted with a knife, so there were knife
16 wounds on the hands. In the children, there are
17 characteristically not defensive wounds present. And if there
18 has not been a struggle or a substantial struggle from the
19 deceased, there have not been defensive wounds present.

20 Q Have you ever done-- Of those six homicides that
21 you testified to, have there been no defensive wounds to the
22 hands or the fingernails?

23 A Yes. I have done strangulation homicides which
24 have lacked defensive wounds to the hands and fingernails.

6 1 Q And that would involve children?

2 A No. One was an adult female.

3 Q And do you recall the name of that case?

4 A The name of the deceased was Ray. The last name

5 was Ray.

6 Q Okay. And in that particular case, there were no

7 defensive wounds to the hands?

8 A Not to my recollection.

9 Q And there was nothing underneath the fingernails

10 to indicate scratching the alleged defendant?

11 A I don't specifically-- There was not grossly

12 identifiable residue beneath the fingernails. I don't

13 specifically know what the serology and laboratory studies

14 would have shown in that case.

15 Q Do you recall what courtroom you testified to in

16 the Ray case?

17 A This would have been in Albuquerque.

18 Q New Mexico?

19 A Yes.

20 Q Do you recall the female's blood-alcohol level?

21 A No.

22 Q Do you recall if there was anything unique about

23 that case?

24 A Yes.

6 1 Q What would that be?

2 A There were other injuries on the body, including
3 lacerations and incised wounds and bleeding present.

4 Q Was there internal injury such that the person
5 would have had a hard time to defend themselves?

6 A There was internal injury present. Whether or
7 not this impeded the ability for defense, I don't-- I can't
8 say.

9 Q Now, reviewing the photographs that you've seen,
10 and specifically these two, is there anything about either of
11 these photographs that lead you to believe that the deceased
12 was unable to struggle?

13 A Yes.

7 14 Q What is that?

15 A Well, there are several things about the
16 photograph which suggests that there may have been an
17 inability to struggle. Primarily, there is obviously an
18 afghan which appears to be wrapped or at least laid over one
19 of the arms and hands of the deceased. There is also a beer
20 can present in one of the hands, which may have presented an
21 impedance to struggling or using the hand as a defense object.

22 Q Okay. And in a death that you believe to be a
23 homicide, would this typically be the positioning of the body,
24 that being the legs in a flexed position?

7

1 A Please repeat your question.

2 Q In a homicide death, would the legs typically be
3 in this situation if there was a struggle?

4 A I don't think there is a defined typical position
5 for the legs in a homicidal death.

6 Q Okay. Do the legs indicate struggle to you?

7 A They may indicate struggle. In my opinion,
8 they're in an unnatural position.

9 Q By "unnatural", they're not outstretched;
10 correct?

11 A By "unnatural", they're splayed apart at the
12 pelvis, the knees are open, and they're both flexed tightly at
13 the knees.

14 Q What would be a more typical position for the
15 legs?

16 A There are many typical positions for the legs.
17 The ankles crossed, the legs extended, the knees crossed.

18 Q Okay. Now, you determined that the decedent had
19 a blood alcohol in this case?

20 A I didn't specifically make that determination,
21 but there is a report included with the autopsy that reflects
22 that.

23 Q In your opinion, was alcohol a part of the death?

24 A That's a vague question. I can't answer that as

7 1 it's posed.

2 Q In your opinion, was alcohol a part of this
3 person's death?

4 A Once again, that's a vague question. Is there
5 sufficient alcohol to in and of itself have killed this
6 person? No. Is the alcohol which is present perhaps
7 pertinent to the circumstances, to some of the things which
8 preceded and followed death? Yes.

9 Q Okay. Now, with regard to the neck area of the
10 decedent, did you review Dr. O'Donnell's autopsy protocol and
11 the areas that he found to be important?

12 A Yes.

13 Q Would you agree with his interpretation that
14 those areas did in fact have blood extravasation? I'm not
15 pronouncing it right.

16 A Yes. Based again on his record of how the
17 bruises appeared and the microscopic examination, there was
18 extravasation or bleeding into the tissues involved.

19 Q The first area of concern, that being the bruise-
20 like area to the anterior neck, did you see a microscopic
21 section of that particular area?

22 A No, there was not a specific section of the skin
23 of the neck.

24 Q Would you have taken a microscopic section of

7 1 that area?

2 A I can't specifically say if I would have, given
3 the circumstances. Sometimes it can be so extraordinarily
4 detailed one can take sections of everything, and that is not
5 realistic. I may have taken a section, but I can't absolutely
6 say I would have taken a section.

7 Q What is the practice when you see something that
8 is questionable in your opinion?

9 A The practice would be, as in this case, to take
10 representative sections. As I said, it is often not possible
11 to realistically section everything.

12 Q Why is it important to take sections?

13 A For a couple of reasons. In this case, the areas
14 were examined presumably to identify the presence or absence
15 of hemorrhage in the tissue. There also is a possibility that
16 one might be able to date or age injuries based upon a
17 microscopic examination of the injuries.

18 Q Did you review and determine the aging of the
19 areas that Dr. O'Donnell had specified?

20 A Yes, I reviewed them, and I would have an opinion
21 on the age.

22 Q Go ahead.

23 A Based on the fact that there was no healing of
24 the tissue or even early healing, I would call them acute

7 1 injuries, or injuries which occurred at or very near the time
2 of death.

3 Q Did you rule out the Prinsloo-Gordon artifact
4 that we had talked about?

5 A Yes.

6 Q Okay. Why did you rule that particular artifact
7 out in your interpretation?

8 A Once again, the Prinsloo-Gordon artifact refers
9 to leakage of blood from engorged or congested vessels in the
10 neck. It specifically accounts for hemorrhage which is at the
11 spine, would be the area at the back of the neck, the bony
12 part, and hemorrhage that occurs behind or around the
13 esophagus, which is in roughly the mid portion of the neck, if
14 we look at the neck from the side.

15 Dr. O'Donnell's description of injuries and
16 depiction of injuries in his autopsy protocol refers to
17 injuries occurring at the front of the neck and within
18 structures not specifically identified to have injury in the
19 Prinsloo-Gordon artifact.

8 20 Q In the manual strangulations that you've
21 testified to, how many of those have had the hyoid bone
22 fractured?

23 A I don't specifically recall. In fact, again
24 you're asking me to recall cases that are very old and that I

8 1 do not remember in detail.

2 I have seen hyoid bone fractures in very elderly
3 people. I don't know whether or not I've testified in those
4 cases. And those have been manual strangulation cases. But I
5 have also had young people who died of strangulation where
6 I've not seen fractures. I cannot assign numbers and can't
7 even specifically recall all the cases.

8 Q Is it your experience that in a manual
9 strangulation typically the hyoid bone area is fractured?

10 A No, that is not my experience. Once again, in
11 very elderly individuals, the hyoid, which is more brittle,
12 may be fractured. In very young individuals, when the hyoid
13 bone is flexible, it may not be fractured even with great
14 force. And obviously, in a strangulation which takes place
15 well below the hyoid bone, which is up right at the base of
16 the neck, there wouldn't be trauma to the hyoid bone, and so
17 it follows that it would not necessarily fracture.

18 Q And my same question to you regarding the
19 thyroid cartilage. Would that be typically damaged in a
20 manual strangulation?

21 A It may be; it may not be.

22 Q Okay. And how about the pharynx itself?

23 A The pharynx may be damaged. The pharynx is sort
24 of a nebulous saclike structure that runs from the nose and

8 1 the mouth toward the esophagus and into the esophagus. It's
2 an anatomic area within this whole part of the neck. And the
3 pharynx, because it involves soft tissue, may have injuries
4 that occur as a result of manual strangulation.

5 Q And how about the epiglottis?

6 A I don't consider the epiglottis to be a structure
7 which is typically involved in manual strangulation. The
8 epiglottis is that flap that moves up and down to protect you
9 from aspirating food. It covers your breathing tube that runs
10 from the mouth into the lungs, as opposed to the swallowing
11 tube or the esophagus that runs from the mouth into the
12 stomach.

13 The epiglottis is relatively well protected. It
14 may have in-depth hemorrhages, and it may have injury, but it
15 not specifically is typically involved in manual
16 strangulations in my experience.

17 Q And is the interior of the larynx typically
18 damaged in manual strangulation?

19 A It may be, and it may not be.

20 Q Okay. And the same question regarding vocal
21 cords.

22 A Once again, the vocal cords are part of this
23 whole complex of structures, and because it is in the neck can
24 be subjected to blunt trauma in strangulations. And it may

8 1 have injuries, but not necessarily must it have injuries.

2 Q And inside the trachea?

3 A The same answer.

4 Q May or may not?

5 A Correct.

6 Q Is it your opinion that there are no hard, fast
7 rules regarding manual strangulation and injuries?

8 A It is my opinion that there are a constellation
9 of injuries which may be seen in manual strangulation.

10 Obviously, in the absence of any kind of injury, it is
11 difficult to presume a diagnosis of manual strangulation. And
12 in the presence of certain kinds of injuries, it follows that
13 manual strangulation is a diagnosis which one would consider.

14 Q And my same question with regard to suffocation.
15 Would there be typical signs that you would see, classic
16 signs, in suffocation?

17 A There may be classic signs in suffocation. As I
18 said, suffocation, particularly smothering with a pillow or
19 bed clothing or clothing or plastic bag, is notorious for
20 leaving no signs on the body that would speak to that being
21 the cause of death. It requires circumstance review and
22 investigation.

23 Q Do you know approximately the size of the areas
24 that Dr. O'Donnell speaks to regarding hemorrhage that he's

8 1 seen?

2 A Yes. Referring to the protocol, I can tell you
3 the exact sizes. That injury which was on the front of the
4 neck, this was the-- what he describes as "bruise-like
5 injury", I would call it an abraded or a scraped contusion or
6 bruise, was 3.5 centimeters in maximum dimension, roughly an
7 inch and a half, or about as long and as wide as the tip of my
8 thumb shown here.

9 Q Now, let's talk about that for a minute. Is
10 there any way that you can determine that that area was caused
11 by a thumb?

12 A No, no. In fact, not to be misleading, that is
13 just a gross measurement of how-- approximately how big that
14 injury would have been. Most people do not understand when
15 one speaks in terms of centimeters or even inches.

16 Q Okay. Now, do you believe there was any damage
17 underneath that anterior neck skin?

18 A There was damage beneath that to the extent that
19 there was also bleeding or bruising of the trachea within the
20 vicinity of where that outer injury occurs.

21 Q Was there any damage to the soft tissue
22 underneath the skin of the anterior neck?

23 A Dr. O'Donnell has described that the tissue
24 directly underneath the outer neck injury did not have grossly

9 1 recognizable damage to it, or bleeding specifically.

2 Q Now, when you hit something, blunt-force trauma,
3 what is created after that blunt-force trauma?

4 A Blunt-force trauma in general causes a crushing
5 or tearing of the tissues. It can cause any number of
6 injuries. In this case it causes abrasion or actually injury
7 to the-- damage to the surface of the skin, and also causes
8 bleeding in the deeper tissue. And that happens as a blunt
9 impact or blunt pressure is applied.

10 There may be damage to the outer tissue, but
11 there very often is indirect damage to the inner tissue, as
12 that tissue might be stretched over something, as in this case
13 the trachea, or a fixed or firm object within the area of the
14 impact.

15 Q Do you have an opinion as to whether this
16 particular case was a homicide or an accidental death or a
17 natural death?

18 A In my opinion, this is a homicide.

19 Q And what do you base your opinion on?

20 A The opinion is based on what the review of
21 records and review of items available in the case would lead
22 me to conclude the cause of death is.

23 Q Okay. Would it have helped you to have been to
24 the autopsy itself?

9 1 A Yes, it may have helped me. I could have seen
2 things at the outset before any fixation and seen things in
3 greater detail.

4 Q What does "etiology unknown" mean?

5 A That means that one cannot describe in detail
6 exactly what accounts for whatever it is that you're
7 describing.

8 Q Would you be able to determine the mechanism of
9 death in this case, being hands, a hammer--I'm throwing out
10 things to you--the edge of a couch?

11 A In my opinion, the cause of death in this case is
12 asphyxia due to blunt trauma to the neck. I cannot tell you
13 precisely how the blunt trauma to the neck occurred.

14 Q Hypothetically, if this decedent were to fall on
15 the edge of the couch, if she was intoxicated, and fall on her
16 neck, would you see the injuries that you see in this case?

17 A It is possible with a fall of that nature and a
18 very forceful impact to the neck that injuries similar to
19 these could occur.

20 Q Is it your job as a forensic pathologist to
21 attempt to put pieces together in a scene like this?

22 A Yes.

23 Q Okay. And you base that on experience and your
24 knowledge and your educational background?

9

1 A Yes. Sometimes common sense.

2 Q Okay. Now, looking at the scene itself, do you
3 have an opinion as to whether sexual activity took place?

4 A In my opinion, one can't determine that based on
5 just looking at the scene. There are several features which
6 suggest that sexual activity may have occurred, but I cannot
7 dogmatically say it did or it did not.

8 Q Okay. What does it mean to have the blood-
9 alcohol level change into putrification so that the blood
10 alcohol is raised?

11 A Alcohol which is measured in autopsy blood or
12 blood which is exposed to rotting or putrifying can have an
13 elevated alcohol or an alcohol that is really untruly re--
14 not reflective of what the alcohol would be if no putrification
15 occurred.

16 That is because bacteria which are present
17 produce alcohol in their metabolism, and so they create what
18 we call de novo, or new alcohol that is not present before
19 putrification occurs.

20 Q Do you have an opinion as to the level of
21 increased alcohol, blood alcohol, in this case with
22 putrification?

23 A First of all, I have an opinion that certainly
24 some of the alcohol present at the autopsy assay may be de

9 1 novo alcohol, and in fact based on the fact there was
2 decomposition would be alcohol because of decomposition.

3 Relative to exactly how much alcohol is produced
4 by the decomposition present in this case, I cannot say
5 precisely. Usually, according to literature and many studies,
6 alcohol is not produced in excess of .1, in this case grams
7 per deciliter.

8 So perhaps as much as .1 grams per deciliter of
9 the .167 which was present in this case could be as a result
10 of putrification. It could be as little as half of that. It
11 could be more than that. I don't know specifically.

12 Q Thank you.

13 Do you have an opinion as to how long the
14 deceased was deceased?

15 A Based on the degree of decomposition, one could
16 make this statement. There are changes which take place after
17 death that occur over some fairly predictable time span, but
18 that changes dramatically based on how warm the body is when
19 it dies, how warm the room is where the body is stored, and
20 different-- how much bacteria is present in the body, whether
21 the person is sick.

22 But generally a person loses their rigor, or the
23 muscle fixation, the cramping of death that occurs after
24 death, within 24 to 48 hours after death. That was absent in

0 1 this case. So based on that alone, I would believe the body
2 had been dead at least 24 hours. Probably more like 48 hours,
3 and even much longer than that.

4 Based on the amount of skin change, I would
5 extend that to 48 hours and possibly beyond that. But there
6 are many variables that can alter those determinations.

7 Q What is your most comfortable number? You've
8 given us 24 and 48. What is your most comfortable number?

9 A Greater than 48 hours.

10 Q Do you know how much greater?

11 A No, I don't. And that is a broad estimate, just
12 based on the complete absence of rigor.

13 Q If Dr. O'Donnell were comfortable with 20 or 24,
14 would you disagree with him?

15 A Without knowing more about the details of how the
16 body died and what the conditions of storage were, I can't
17 really disagree with that.

18 Q Okay. Now, the area that Dr. O'Donnell talks
19 about which is deep inside the larynx area, how deep inside
20 the neck is that area of hemorrhage?

21 A Well, it would vary from one person to the next.
22 But it's easy to think of the neck as occurring in layers. At
23 the very front of the neck, the area that people call the
24 Adam's apple is representative of the larynx, or the cartilage

0 1 that we talk about in that area.

2 And so if you want to put your hands about
3 one-third of the way behind that toward the back of the neck,
4 that's roughly internally where the larynx might end. About a
5 third of the way back behind that would be where many of the
6 other structures we're talking about, the esophagus and the
7 posterior pharynx, might end. And then behind that would be
8 the spine and the soft tissues beside the spine.

9 Q And in specifically where you have a side-view
10 picture would that area be on the larynx? Would that be
11 halfway into the neck or a third?

12 A Which area on the larynx?

13 Q The area that he believes to have exsanguinated
14 blood or hemorrhage.

15 A I think he describes an area in the pharynx.

16 Q I'm sorry, the pharynx. I think I said larynx.

17 A I cannot tell you exactly where that occurs in
18 terms of how deep, inches measured from the front of the neck.
19 But roughly if you'd take your hands and feel the front of the
20 neck, it would be at the back of where your thumbs would be,
21 behind the fairly firm structure at that front of the neck.
22 You can actually wiggle it back and forth.

23 Q And the area that he describes on the trachea,
24 where would that be, you know, as a side section, if you will?

0 1 A That would be fairly superficial. If you picked
2 up and moved the skin, it would be beneath the depth of that
3 fatty, movable part of the skin overlying the bony-- or
4 actually cartilaginous, firm part of the neck.

5 Q Did you note that Dr. O'Donnell's first word was,
6 "Cause of death: Undetermined"?

7 A Yes.

8 Q And what is your opinion with regard to that
9 first word that was used?

10 A In my opinion, he may have-- I cannot describe
11 why he used that word or I cannot analyze what his thinking
12 was at that time. In my opinion in this case, there is
13 sufficient evidence based on the bruising and injury of the
14 neck to call this an asphyxial death due to blunt trauma to
15 the neck.

16 Q Would it be your opinion that that word used,
17 "undetermined", would not be used by yourself?

18 A I probably would not have used that word in my
19 drafting or sign-out of the cause of death.

11 20 Another possibility is that based on the scene
21 and the way the body was discovered and other things which
22 we've already discussed here today, there is the possibility
23 that there was also a component of smothering or overlaying of
24 the pillow which may have contributed to the asphyxia, and so

1 there may have been other mechanisms that he was considering.

2 Q Now, do you have an opinion as to whether your
3 particular opinion would change with regard to a chronic
4 alcoholic?

5 A Would my opinion relative to the cause of death
6 change?

7 Q Yes.

8 A No.

9 Q Would your opinion change as to the cause of
10 death if you were told that the decedent was a chain smoker?

11 A No.

12 Q Okay.

13 MS. WILSON: Court's indulgence?

14 BY MS. WILSON:

15 Q Do you know the classic signs of asphyxia?

16 A I'm not sure I can recite them off the top of my
17 head, but I know they're referred to many times in the
18 literature provided by Dr. Masters.

19 Q Okay. And would you like to look at that
20 specifically to refresh your memory?

21 A If you wish.

22 Q Do you have an independent recollection of the
23 classic signs?

24 A I have an independent recollection of some of

1 1 them, but may not be able to cover all of them.

2 Q Okay.

3 MR. HALL: Your Honor, if Miss Wilson would like
4 to lead the witness in terms of telling her what the classic
5 signs of asphyxiation are, I have no objection to that.

6 THE COURT: All right. I think what I would
7 prefer to do at this time is give the jury an opportunity to
8 catch a breath of fresh air and grab a drink of water. Let's
9 make it about a ten-minute recess, and then we'll reconvene.

10 I don't expect we'll go far beyond 5 o'clock, if
11 at all beyond 5 o'clock today, because I know several of us
12 are committed at 5 o'clock today. So you aren't in for an
13 extraordinarily long day. But I would like to give you a
14 couple minutes to stretch.

15 It's a little warm in here, and I want to make
16 sure you're attentive and able to see and hear everything that
17 goes on. We'll stand in recess for about ten minutes.

18 (Recess.)

19
20 THE COURT: Thank you. Be seated, please.

21 We're back with CR92-1408, State of Nevada versus
22 William Edward Branham. Mr. Branham is present in court, as
23 are both counsel. The jury is present and in its place.
24 Dr. Clark is back on the stand, still under oath.

1 1 Go ahead, Miss Wilson.

2 2 MS. WILSON: Thank you.

3
4 DIRECT EXAMINATION RESUMED

5 BY MS. WILSON:

6 Q Dr. Clark, would you agree that the five classic
7 signs of asphyxia are visceral congestion, cyanosis, petechial
8 hemorrhages, fluidity of blood, and engorgement of the right
9 side of the heart?

10 A These are referred to in some portions of the
11 literature that Dr. Masters has supplied as the classic signs
12 of asphyxia. Other authors have indicated that those are very
13 vague and nonspecific signs and are not necessarily either
14 present in cases of asphyxia, nor does their presence diagnose
15 asphyxia.

16 Q Do you know if there was visceral congestion in
17 this case?

18 A There was congestion of the lungs. The lungs
19 were about twice what they should weigh in this case. As far
20 as congestion of the other organs, it would be very difficult
21 to determine that since the body had begun to putrify, because
22 the blood leaks out, diffuses out, and congestion and
23 accumulation in the organs is not retained or maintained.

24 Q Was there cyanosis in this case?

1 A I don't know whether or not there was cyanosis in
2 this case. In the broadest definition or in the technical
3 definition of cyanosis, it refers to the amount of unsaturated
4 hemoglobin or unoxygenated hemoglobin in the blood. I don't
5 know there's a way to measure whether or not that was present
6 in this case.

7 In a cruder sense, cyanosis often refers to a
8 blue, or unoxygenated appearance to the skin that may occur.
9 In this case, in my opinion that is indeterminate because the
10 putrifactive or decomposition changes would obscure or tend to
11 alter that appearance.

12 Q Was there petechial hemorrhages?

13 A There are not petechial hemorrhages described.
14 Again, those again may be obscured by putrifactive changes.

15 Q Was there fluidity of blood?

16 A Presumably, yes, there would be fluidity of
17 blood. That is a natural change which occurs after death.

18 Q Was there engorgement of the right side of the
19 heart?

20 A That is not specific indication that there was
21 engorgement of the right side of the heart. But again, I
22 would not anticipate finding that in a decomposing body, nor
23 do I consider that to be a specific finding of asphyxia.

24 Q Now, as to classic signs of manual strangulation,

2 1 would you agree that cyanosis, petechiae of the conjunctivae
2 and sclerae, abrasions, scratches, claw or fingernail marks on
3 the skin of the neck, fractures of the hyoid bone and
4 fractures of the thyroid cartilage are classic signs of manual
5 strangulation?

6 A Those are all signs which may be present with
7 manual strangulation. I would object to the terminology
8 "classic findings", because in numerable cases one may find
9 some of those features but not others, and vice versa.

10 Q You've addressed cyanosis. Is there a
11 distinction in the petechiae of conjunctivae and sclerae to
12 the petechial hemorrhage that you talked about in the classic
13 signs of asphyxia? Is there a difference between those?

14 A I'm not sure that I understand your question.

15 Q Is there a distinction between petechial
16 hemorrhage and petechiae of conjunctivae and sclerae?

17 A They're essentially the same thing. Petechiae
18 are little burst capillaries which bleed. They're very often
19 seen on the sclera or the white part of the eye and the
20 mucosal membranes of the eye because, number one, they are
21 small vessels, and number two, are very white, and the
22 contrast of the hemorrhage to the white color of the eye makes
23 them very obvious.

24 Q Would your answer be the same, there was no

2 1 petechiae in this case?

2 A Again, there are no petechiae described, but
3 Dr. O'Donnell's described the eyes as being reddened and
4 discolored from decomposition. So whether or not that might
5 obscure petechiae or make them difficult to identify, I can't
6 specifically say.

7 Q Were there abrasions, scratches, claw or
8 fingernail marks on the skin of the neck?

9 A Yes. There was a large abrasion, which we've
10 addressed, over the front of the neck.

11 Q Was there a fracture of the hyoid bone?

12 A No. The injuries were well below the level of
13 the hyoid bone.

14 Q Were there fractures of the thyroid cartilage?

15 A No.

16 Q Almost done.

17 In your opinion, would mishandling of the body
18 have anything to do with the injuries that Dr. O'Donnell
19 believed he saw?

20 A By "mishandling of the body", can you please
21 elaborate?

22 Q Mishandling by transport, or moving the body to
23 photograph, or lifting the head to photograph the back,
24 anything that-- after death that would damage the body and the

2 1 neck in either transportation or in photographing or changing
2 positioning of the neck.

3 A In my opinion, for reasons I'd like to give, no,
4 those things that occurred after death did not contribute to
5 or cause injuries in this case.

6 And that's based on the fact that I've discussed
7 with the Coroner investigator, Steve Woods, what transpired
8 during the transport and after the body was discovered; and
9 he assured me that the body was not roughly handled or
10 mishandled, and that it was his opinion that the injuries
11 could not have been created in that way. He was there during
12 those processes.

13 And secondarily, the injuries which occurred are
14 in relatively protected, concealed portions of the body which
15 are not characteristically subjected to trauma in the
16 processes that you've described; that is, moving the body onto
17 a gurney and various things.

18 Q And lifting it for photographing the back, et
19 cetera?

20 A Correct. I would not anticipate that that would
21 create the trauma in the neck.

22 Q How about removing a sweatshirt that had a tight
23 collar and the head was swollen and decomposed?

24 A Again, I would not anticipate the trauma in the

2 1 distribution that it was. There may be trauma to the
2 undersurface of the chin or an area which would be traumatized
3 in pulling the shirt over, and I don't specifically recall
4 whether or not that was reflected in the photographs.

5 Q The shirt itself?

6 A The undersurface of the chin. Again, the area
7 that I would be concerned with that may be involved in that
8 would be the face, the undersurface of the chin, the
9 protuberant parts of the body that would be scraped in
10 pulling the shirt over the head.

11 Q What is sudden cardiac death?

12 A Sudden cardiac death is a vague term. It refers
13 to death which occurs suddenly--and that is a vague term--
14 because of changes in the heart function.

15 Q Do you believe, or is it your opinion, that the
16 decedent died of sudden cardiac death?

17 A There may have been a component of sudden cardiac
18 death. It is well established that in manipulating or
19 traumatizing the neck, there are vital structures in the neck
20 which regulate the heartbeat, specifically the mechanical
21 signals to the heart and to the brain, that can be disturbed
22 quite easily in manipulating or applying trauma to the neck.
23 And so that may be a component of this case.

24 Q Now, would that change your opinions that the

3 1 death was consistent with asphyxia, believing that it may have
2 the contributing factor of sudden cardiac death?

3 A It would not change my opinion to the extent that
4 it is my opinion that this death resulted from blunt trauma to
5 the neck. As I've explained, all deaths ultimately are the
6 result of asphyxia. Usually blunt trauma involves-- blunt
7 neck trauma involves some component of asphyxia; that is,
8 reduction of blood flow to the head. There may well be other
9 factors in compressing the neck that contribute to death.

10 Q Have you considered as a possible cause of death
11 the sexual activity and the vagal restriction or constriction
12 of the blood to the head and neck area? I don't know if I'm
13 saying that right. Do you know what I'm talking about, the
14 vagal nerve?

15 A Not specifically.

16 Q Okay.

17 A As related to sexual activity, I'm at a--

18 Q Yes. Did you read anything in the material
19 regarding death following sexual activity, like a sudden
20 death following sexual activity because the vagal nerve was
21 stimulated?

22 A Okay. There was in some portion of that
23 literature reference to the possibility that testicle or
24 cervical stimulation can be associated with sudden cardiac

3 1 death. In my experience, that is not a cause of death which
2 is characteristically invoked.

3 And when I have seen sudden deaths associated
4 with sexual activity, it has been in a person with established
5 heart disease or vascular disease, and also has occurred in
6 people in autoerotic deaths as related to asphyxia. These are
7 self-stimulation, elaborate scenarios, where often there are
8 ligatures around the necks and gags and things involved which
9 contribute to death due to asphyxia during sexual stimulation.

10 Q If a ligature was removed from the neck by
11 another person besides the deceased, would that change your
12 opinion regarding that form of death?

13 A No. I would still consider the cause of death to
14 be blunt trauma to the neck. I cannot tell you precisely how
15 the trauma occurred, whether it was impact trauma, whether it
16 was continuous pressure trauma, whether there may have been a
17 ligature involved or an afghan placed over the neck or a
18 pillow placed over the neck. But it still does not alter my
19 conclusion that the cause of death is blunt trauma to the
20 neck.

21 MS. WILSON: Thank you. That's all I have.

22 THE COURT: Mr. Hall. Any questions at this
23 time?

24 MR. HALL: Yes, your Honor.

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CROSS-EXAMINATION

BY MR. HALL:

Q Dr. Clark, looking at the photographs which Miss Wilson has shown you--and they're identified as State's AA, BB, obviously depicting the victim as she was found in the residence--do you see any indications in those photographs that autoeroticism was in any way involved in the death of Miss Fetherston?

A In the classic descriptions of autoerotic death, no. These are not characteristic depictions of what we see in that.

Q In the photos that you saw of Miss Fetherston, did you see any indication that any ligatures were used around her neck or any gags used?

A In the photos in the autopsy, again I cannot exclude the possibility that there may have been at one time a gag or a ligature, an object over the neck. But based on purely physical evidence available when the body was found and at the autopsy, no, there was not evidence of a ligature.

Q So any comment that the death of Miss Fetherston was due to some kind of autoerotic behavior would be mere speculation?

A Yes.

3 1 Q I want to show you State's Exhibit G, as well as
2 another photograph identifying Miss Fetherston with a
3 sweatshirt on after she is deceased.

4 4 Now, comparing those two photographs, State's Z
5 and State's G, is the bruise depicted on State's Z consistent
6 with a bruise that would be caused-- could have been caused by
7 the sweatshirt?

8 A Actually, based on the examination of these
9 photographs alone, I can't say definitively one way or
10 another.

11 I can say that in State's G the sweatshirt
12 resides high up on the neck, if this is the bloated part of
13 the undersurface of the jaw and the chin. Whereas in State's
14 Exhibit Z, the injuries occur well down on the neck towards
15 the triangle part at the clavicle area.

16 So there is a wide space between where it appears
17 the sweatshirt is positioned in G and where the injuries are
18 positioned in Z.

19 Q Isn't it true, Doctor, that you'd expect to see a
20 line across Miss Fetherston's neck, if in fact the sweatshirt
21 was so tight as to cause some type of abrasion or bruise?

22 A Yes. In fact, characteristically, if something
23 is tightly constricted on the body when these decomposition
24 changes occur, there is a groove-like band wherever something

4 1 has been placed, and the tissue bloats and swells above and
2 below that. I do not see that in this case.

3 Q Showing you a couple of diagrams that we utilized
4 during the testimony Dr. O'Donnell, they're identified as
5 State's HHH and State's GGG.

6 Have you had an opportunity to see or look at
7 those diagrams?

8 A Yes. One of them is very dark.

9 Q Let me move that a little closer, if I can.

10 A Okay.

11 Q Do you see where Dr. O'Donnell has identified a
12 part of the bruise--

13 A Yes.

14 Q --on the diagram? That would be State's HHH.

15 A Yes.

16 Q Do you also see where Dr. O'Donnell has
17 identified another area of bruise or hemorrhage on
18 Miss Fetherston's neck?

19 A Yes.

20 Q Okay. Would that be consistent with a person
21 placing their thumb over the neck and their fingers-- the
22 bruising in the areas of these bruises, would that be
23 consistent with somebody's hand causing those abrasions or
24 bruises?

1 A That's one possibility, yes.

2 Q Now, the size of the bruises that you described
3 and that you talked about with reference to Dr. O'Donnell's
4 autopsy protocol--and I'm talking about the internal
5 hemorrhages--are they consistent with what you would expect
6 to see in a manual strangulation situation, the size of those
7 hemorrhages?

8 A Yes, they are consistent with manual--

9 Q And they were fresh. And their freshness, that
10 would be consistent with death by strangulation. Isn't that
11 true?

12 A Yes. As I said, in my opinion, they occurred
13 very near the time of death.

14 Q Now, again in State's Z, you can see a limited
15 amount of decomposition on the lower-- or I guess the upper
16 chest of Miss Fetherston. That is easily distinguished from
17 the hemorrhage depicted in State's Z; is it not?

18 A Yes. The decomposition are little fluid-filled
19 blisters. The injury is purple-red discolorings with abrasion
20 or injury of the skin over the surface.

21 Q Now, Dr. Masters indicated in his report, his
22 consultation report, that there may be other toxins
23 responsible for the demise of Miss Fetherston. And he
24 mentioned arsenic, things of that nature.

4 1 Given this crime scene that you've seen, would
2 you run a chemical check for additional compounds, other
3 compounds that are not covered by the standard protocol done
4 at Sierra Nevada Labs?

5 A I'm going to refer to the protocol.

6 In my experience, this drug screen which was
7 conducted identifies most of the illicit drugs and a good
8 number of the common prescription drugs of abuse, and
9 particularly drugs which account for otherwise unexplained
10 deaths. I have nothing, based on the scene investigation or
11 appearance, which would lead me to specifically suspect any
12 other toxins in this case.

13 Q And therefore, you wouldn't run a drug screen to
14 search for any other toxins. Isn't that true?

15 A Based on the evidence present, I would not have.

16 Q Now, you had an opportunity to look at some of
17 the microscopic slides of the vital organs; is that correct?

18 A Yes.

19 Q Did you see any evidence of disease in any of
20 those vital organs of Miss Fetherston?

21 A Yes.

22 Q Okay. What did you view?

23 A I would agree that within the liver there was
24 mild fatty change. That is, accumulation of fat globules in

1 the cells of the liver.

2 I would agree that there were many autolytic, or
3 putrifactive changes in the tissues.

4 I would agree that there is evidence of
5 hemorrhoids, or dilated vessels in the area of the anus.
6 Some of those had thrombosis, or blood clot occlusion of them.

7 I would agree that there is extravasation, or
8 leakage, of blood bleeding into the two areas specifically
9 identified as the pharynx and paratracheal soft tissues.

10 I consider those all to be abnormalities or
11 disease processes.

12 Q But isn't it your opinion that none of those
13 abnormalities can be used as a reason for Miss Fetherston's
14 death?

15 A In my opinion, there is no evidence of sufficient
16 disease in any of the organs to have caused death in this
17 case. But it is my opinion that the presence of the bleeding
18 within the pharynx and the paratracheal soft tissue account
19 for the cause of death in this case.

20 Q Doesn't a liver weigh approximately a thousand
21 grams?

22 A Yes.

23 Q Isn't it normal, in your experience, if the fatty
24 liver is going to be attributable to a person's death, that

15

1 the liver is going to weigh approximately 2,000 grams, or
2 twice what Miss Fetherston's weighed?

3 A I don't know that I'd say specifically twice what
4 the liver weighed in this case, but characteristically very
5 severe fatty change of the liver is associated with increased
6 weights of the liver. The fat causes the liver to be heavier.

7 There are cases where the liver can be very
8 scarred and very small and also have fatty change. That was
9 not present in Miss Fetherston's liver.

10 Q How do you characterize the fatty changes in
11 Miss Fetherston's liver?

12 A I would call it mild. Again, that is subjective.

13 Q Let's now talk about death by accident. In
14 other words, you were asked a hypothetical: Couldn't have
15 Miss Fetherston fallen on the couch and struck her neck? I
16 mean on the edge of the couch. You said that is true.

17 Wouldn't you expect to see, if somebody had
18 struck their neck on something which was sufficient to cause
19 their death, that they would be in a different position other
20 than laying on the couch with an afghan over them and a beer
21 can in their hand and a pillow over their face?

22 A Yes. A blow to the neck fairly specifically
23 associated with death is associated with a sudden, almost
24 immediate collapse which occurs because of this nerve

15 1 stimulation and suppression of the heartbeat.

2 And obviously, if the body is in the position on
3 the couch and you speculate that it fell against the heart
4 structure, it is not in a position which would allow for that
5 to have preceded immediately the position the body is in at
6 the time she's discovered.

7 Q Switching gears again: If Miss Fetherston were
8 having sex prior to her death, wouldn't you expect that the
9 amount of pressure that would be needed to cause a bruise to
10 Miss Fetherston's neck as depicted in State's Exhibit Z would
11 be much more than you would see during a normal sex act? Do
12 you follow my question?

13 A My answer would be that in my experience a bruise
14 on the outer surface of the neck and an abrasion and bleeding
15 into the deep soft tissues of the neck is not characteristic
16 of normal sexual activity.

17 Q In other words, I'm trying to talk about an
18 accident during the sex act. If somebody were to be having
19 sex-- I guess you'd use your common sense. I mean it would
20 be ludicrous to think somebody would put their thumb right
21 over somebody's neck like that to the point they would cause
22 a bruise and not know it. Would you agree with that? I
23 mean--

24 A I don't think I can answer your question as it's

15 1 posed.

2 Q That wasn't very well phrased.

3 How much force do you think would be needed to
4 cause a bruise to Miss Fetherston's neck as depicted in
5 State's Exhibit Z?

6 A I don't know how much force would be needed. I
7 can simply say that in the daily activities we all participate
8 in, and in normal sexual activity, and most everything that a
9 person does during the course of his lifetime, you don't
10 characteristically incur bruises and abrasions to the surface
11 of the neck and the deep soft tissue of the neck.

12 Q You've had an opportunity to review Dr. Masters'
13 report regarding what he describes as possibilities of death
14 for Miss Fetherston; is that correct?

15 A Yes.

16 Q Do you give any credence to any of the
17 possibilities described in Dr. Masters' report?

18 A None, except for the possibility that we already
19 covered on direct examination, that there may be a component
20 of heart malfunction associated with stimulation or trauma to
21 the structures in the neck which regulate the brain and the
22 heart synchronization and function.

23 Q With respect to that functioning, direct
24 causation of death would then be application of pressure to

15 1 the neck. Isn't that true?

2 A It would still be that blunt trauma to the neck
3 is responsible for the cause of death.

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

5 THE COURT: Redirect?

6 MS. WILSON: No.

16 7 THE COURT: Thank you very much, Dr. Clark,--

8 THE WITNESS: Thank you.

9 THE COURT: --for your testimony.

10 (End of partial transcript of proceedings.)

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STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)


I, RICHARD L. MOLEZZO, official reporter of the
Second Judicial District Court of the State of Nevada, in and
for the County of Washoe, do hereby certify:

That as such reporter I was present in Department
No. 5 of the above court on Friday, March 5, 1993, at the hour
of 10:00 a.m. of said day, and I then and there took verbatim
stenotype notes of the proceedings had and testimony given
therein upon the Trial of the case of THE STATE OF NEVADA,
Plaintiff, vs. WILLIAM EDWARD BRANHAM, Defendant, Case No.
CR92-1408.

That the foregoing transcript, consisting of
pages numbered 1 to 57, both inclusive, is a full, true and
correct partial transcript of my said stenotype notes, so
taken as aforesaid, and is a full, true and correct partial
statement of the proceedings had and testimony given upon the
Trial of the above-entitled action to the best of my
knowledge, skill and ability.

DATED: At Reno, Nevada, this 6th day of March, 1993.

/bb


RICHARD L. MOLEZZO, CSR #40