

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 V OF VII**

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	Dated December 5, 2017	
27.	Notice of Appeal, Case No. CR92-1048	1295
	Dated December 15, 2017	

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

/s/ Adam Dunn

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Federal Public Defender, District of Nevada

93 JUL 30 08:14
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BY *[Signature]*
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No. CR92-0546 and CR92-1048

Dept. No. 5

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

--oOo--

ORIGINAL

THE STATE OF NEVADA,)	
)	
Plaintiff,)	TRANSCRIPT ON APPEAL
)	
vs.)	Trial
)	
WILLIAM EDWARD BRANHAM,)	March 5, 1993
)	
Defendant.)	Reno, Nevada
)	

APPEARANCES:

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The Defendant: WILLIAM EDWARD BRANHAM

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

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1 1 RENO, NEVADA; FRIDAY, MARCH 5, 1993; 10:10 A.M.

2 --oOo--

13 3
4 THE COURT: Thank you. Be seated, please.

5 We are back with CR92-1048, State of Nevada
6 versus William Edward Branham. Mr. Branham is present this
7 morning along with Miss Wilson; as is Mr. Hall, representing
8 the State. And the jury is complete and in place.

9 Are you ready to proceed?

10 MS. WILSON: Ready, your Honor. We're in
11 cross-examination of Juanita Draper.

12 THE COURT: That's right. Juanita Draper.

13 Would counsel approach the bench, please.

14 (Discussion at the bench.)

15 THE COURT: Ladies and gentlemen, I'd like to
16 try to figure out where Miss Draper is, or what the problem
17 is. Apparently she's not in the hallway at least. She may
18 be delayed somewhere. But I'd like to ask you to return to
19 the jury room for just a couple of moments so that I can
20 discuss this matter outside of your presence.

21 We'll have you back in just a few minutes. It
22 shouldn't take more than five to ten minutes at the most.
23 So we'll conduct some business and I'll ask you to please
24 relax, and we'll have you back in a few minutes.

1 (Whereupon, the jury left the courtroom and the
2 following proceedings were had:)

3 THE COURT: Good morning. Are you Betty Draper?

4 MRS. DRAPER: Yes, I am.

5 THE COURT: Would you approach the lady to my
6 right, please, and be sworn in.

7 MRS. DRAPER: Sure will.

8 (Witness sworn.)

9 THE COURT: If you'd have a seat in the darker-
10 colored chair for a moment, please.

11 Would you state your name, please.

12 MRS. DRAPER: Betty Draper.

13 THE COURT: Are you Juanita Draper's mother?

14 MRS. DRAPER: Yes.

15 THE COURT: Were you present yesterday during
16 Miss Draper's testimony?

17 MRS. DRAPER: In this room?

18 THE COURT: Present in the Courthouse?

19 MRS. DRAPER: Oh, yes. Outside.

20 THE COURT: Did you leave the Courthouse with
21 Miss Draper?

22 MRS. DRAPER: Yes.

23 THE COURT: When is the last time you saw
24 Juanita Draper?

1 MRS. DRAPER: This morning about 9 o'clock.
2 In her room at the hotel, Pioneer Inn.

3 THE COURT: All right. When you saw her at
4 9 o'clock, was she awake?

5 MRS. DRAPER: Yes.

6 THE COURT: Was she aware that she was to be
7 here today?

8 MRS. DRAPER: Yes.

9 THE COURT: Do you have any idea where she is?

10 MRS. DRAPER: I'm not sure. I just tried to
11 call her room and the line was busy, and that's when I came
12 in here.

13 THE COURT: Okay. The telephone line to her
14 room was busy?

15 MRS. DRAPER: Yes.

16 THE COURT: All right. We'll stand in recess.
17 I'm going to send my bailiff with you over to the Pioneer Inn
18 to locate Miss Draper. We'll stand in recess until further
19 notice of the Court.

20 MR. HALL: Your Honor, I'd also like to indicate
21 an associate of Miss Draper's has already been sent over to
22 the room to try and collect Juanita Sue Draper. So we've
23 already got somebody on the way over.

24 THE COURT: All right. I'm going to send Deputy

13 1 Engelmann. I think his presence may be a little more
2 official.

3 MR. HALL: I agree.

4 THE COURT: We will stand in recess.

5 (Recess.)

6
7 (Whereupon, the jury returned to the courtroom
8 and the following proceedings were had:)

9 THE COURT: Thanks. Be seated, please.

10 We're back with CR92-1048, State of Nevada
11 versus William Branham. The parties and counsel are present.
12 Miss Draper, Miss Juanita Draper,--

13 THE WITNESS: Yes.

14 THE COURT: --is now on the witness stand.

15 You were sworn in yesterday, Miss Draper. Your
16 oath stays with you today.

17 I'd like to ask a couple of questions before
18 we proceed.

19 I've been advised that you're not feeling well.
20 Is that true?

21 THE WITNESS: Yes.

22 THE COURT: Are you intoxicated?

23 THE WITNESS: No.

24 THE COURT: Okay. Anything bothering your

4 1 mental faculties? Can you think and understand the questions
2 that are being asked?

3 THE WITNESS: I think so.

4 THE COURT: Do you understand what I've asked
5 you?

6 THE WITNESS: Yes.

7 THE COURT: You've had a chance to speak with
8 Ms. Wilson for a couple of moments when you came in the
9 courtroom? This is Ms. Wilson in the purple.

10 THE WITNESS: Yes.

11 THE COURT: I'm sorry?

12 THE WITNESS: Yes.

13 THE COURT: And have you had a chance to speak
14 very briefly with Mr. Hall when you came in the courtroom?
15 He's the gentleman with the mustache and the gray suit.

16 THE WITNESS: Yeah.

17 THE COURT: Okay.

18 Would counsel stipulate that this witness is
19 fully able to testify at this time?

20 MR. HALL: State will so stipulate, your Honor.

21 MS. WILSON: Yes, your Honor.

22 THE COURT: All right. With that stipulation,
23 you may proceed.

24 ///

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

6 CROSS-EXAMINATION

7 BY MS. WILSON:

8 Q Miss Draper, if you do not feel well, please
9 stop your answer and let us know.

10 A Okay.

11 Q Do you believe you had food poisoning this
12 morning?

13 A Yes.

14 Q What did you eat this morning?

15 A A Spanish omelette, hash browns and English
16 muffin.

17 Q There's water in front of you. And you let us
18 know. Okay?

19 A Thank you.

20 Q You testified yesterday under oath,--

21 A Yes.

22 Q --and we're going to review a little bit of what
23 you talked about yesterday. Okay?

24 A (Nods head affirmatively.) Yes.

1 Q You spoke with the police on February 12th.
2 Is that correct?

3 A Yes.

4 Q And at that time you talked with Detective
5 Jenkins and Detective Duncan; correct?

6 A Yes.

7 Q Okay. And they came to your home at 1860
8 Oak Meade Drive; right?

9 A Yes.

10 Q That's where you were living at the time?

11 A (Nods head affirmatively.)

12 Q And you told them that you'd known Bill Branham
13 for all your childhood and adult life; right?

14 A Yes.

15 Q Excuse me?

16 A Yes.

17 Q Would you like me to move that microphone down
18 a little? Maybe it will make it easier for you.

19 Okay. Now, I'm going to direct your attention
20 to this chart, which is Defendant's 4. Can you see that
21 chart?

22 A No.

23 Q You cannot?

24 A (Shakes head negatively.)

1 Q Better?

2 A Yes.

3 Q And I show you--

4 MS. WILSON: Is this marked, counsel?

5 MR. HALL: No.

6 MS. WILSON: Okay.

7 BY MS. WILSON:

8 Q I show you a map of February, 1992.

9 A Yes.

10 Q Can you see that this chart correlates with the
11 dates on this calendar? For example, Sunday, February 2
12 is Sunday, February 2nd here.

13 A Yes.

14 Q Right?

15 A (Nods head affirmatively.)

16 Q Okay. Now, the first time that you saw
17 Mr. Branham was on a Saturday; right?

18 A Yes.

19 Q And that was the 8th?

20 A Yes.

21 Q Is that the first time you saw him?

22 A Yes.

23 Q Because you talked to him on the phone on
24 Friday?

4 1 A Right.

2 Q But the first time you saw him was Saturday?

3 A (Nods head affirmatively.)

4 Q May I put that you saw him on that date?

5 A On Saturday?

6 Q Yes.

7 A Yes.

8 MS. WILSON: The record should reflect that

9 I'm placing the name "Juanita" on February 8th, Saturday.

10 BY MS. WILSON:

11 Q Do you recall what time?

12 A It was about 10:30, 11:30. Morning.

13 Q 10:00 to 11:30 a.m.?

14 A Yeah, about-- Yes.

15 Q Okay. Approximately 10:00 to 11:30 a.m.?

16 A Yes.

17 MS. WILSON: The record should reflect that

18 I'm placing that on the chart.

19 BY MS. WILSON:

20 Q Now, when you spoke to him on the telephone,

21 do you know what time that was?

22 A It was about 5:30, 6:00.

23 Q Would that be February the 7th?

24 A Yes.

4 1 Q May I place your name here?

2 A Yes.

3 MS. WILSON: Record should reflect I'm putting

4 "Juanita, phone".

5 BY MS. WILSON:

6 Q And the times, ma'am?

7 A About 5:30, 6:00.

8 Q P.m.?

9 A Yes.

10 Q Now, you didn't see him this evening;--

11 A No.

12 Q --right?

13 A Right.

14 Q Okay. And then Saturday you saw him?

15 A Yes.

16 Q And he was with a man by the name of Ed;

17 correct?

18 A Yes.

19 Q Was Ed with him at 11:30 in the morning?

20 A Yes.

21 Q May I place "With Ed" at that time?

22 A Yes.

23 Q Had you ever seen Ed before?

24 A Not to the best of my knowledge.

1 Q Excuse me?

2 A Not to the best of my knowledge.

3 Q Okay. You may have, but you don't remember?

4 A Yeah, right.

5 Q Okay. Now, how long did they stay with you that
6 day?

7 A Till about 2:30 in the afternoon.

8 Q Till 2:30 p.m.?

9 A Yes.

10 Q May I place that on the chart?

11 A Yes.

12 MS. WILSON: The record should reflect that I'm
13 placing "2:30 p.m." on that particular date on the chart.

14 BY MS. WILSON:

15 Q To your knowledge, they left your home?

16 A Yes.

17 Q You don't know where they went?

18 A No.

19 Q The next time that you saw Bill Branham was
20 when?

21 A Sunday.

22 Q Sunday?

23 A February the 9th.

24 Q This date right here?

1 A Yes.

2 Q What time?

3 A It was about 1:30-- probably about 12:30, 1:30
4 in the afternoon.

5 Q Okay. May I place that here?

6 A Yes.

7 MS. WILSON: Record should reflect that I'm
8 placing "Juanita" on Sunday, February 9th.

9 BY MS. WILSON:

10 Q 1:30, you say?

11 A Yes.

12 Q P.m.?

13 A Yes.

14 Q Now, was he with Ed at that time?

15 A No.

16 Q No. Okay.

17 How long did he stay at that time?

18 A Till about 6:00, 6:30 that after-- that evening.

19 Q P.m.?

20 A (Nods head affirmatively.)

21 Q May I place that here?

22 A Yes.

23 Q "6:00 or 6:30 p.m."?

24 A Yeah.

.5

1 Q And that would reflect on Sunday, the 9th?

2 A Right.

3 Q Are you sure that he left at 6:30, or did you
4 spend the night with him?

5 A Yes, I'm sure he left at 6:30. And yes, I spent
6 the night with him.

7 Q Did he come back to your home?

8 A On Sunday?

9 Q Yes.

10 A No.

11 Q How did you spend the night with him on Sunday?

12 A In his car.

13 Q Oh, I'm sorry.

14 So he left your home at 6:00 or 6:30, but you
15 left with him?

16 A Right.

17 Q Okay. May I place on here that you left with
18 him?

19 A Yes.

20 MS. WILSON: Record should reflect that I am
21 writing "With Juanita" after 6:30 p.m. on Sunday, February
22 9th.

23 BY MS. WILSON:

24 Q And you slept in the car?

1 A Yes.

2 Q Okay. And the next time that--

3 I should place, "Slept in car there", too.

4 May I do that?

5 A Sure.

6 MS. WILSON: Record should reflect I'm placing

7 "Slept in car", Sunday, February 9th.

8 BY MS. WILSON:

9 Q The next time that you went back to your home
10 was what time?

11 A Monday.

12 Q Monday, February 10th?

13 A Right.

14 Q What time?

15 A About 2:30 in the afternoon.

16 Q May I place that here?

17 A Yes.

18 Q "Juanita arrived 2:30", did you say?

19 A Yes.

20 Q P.m.?

21 A Yes.

22 Q Okay. Was that the last time you saw him?

23 A Yes.

24 Q Okay. Now, the reason that he found out where

15

1 you lived is because he went to your parents' home; right?

2 A Yes.

3 Q And your mother's name is Betty Draper?

4 A Yes.

5 Q And when he showed up on Saturday, he was
6 looking for his daughter; right?

7 A Yes.

8 Q And he drove a brown Firebird?

9 A Yes.

10 Q Now, you had a conversation Saturday and you
11 were talking about your car not running right;--

12 A Yes.

13 Q --correct?

14 A Yes.

15 Q And then Bill indicated that he would sell the
16 car that he had outside, a Firebird; right?

17 A Yes.

18 Q You were also asked about a Valley Bank; right?

19 A Yes.

20 Q And that was Monday?

21 A Yes.

22 Q Okay. And you went to go with him to find his
23 daughter; right?

24 A Yes.

1 Q And your sister is Dorothy Keller?

2 A No.

3 Q Your sister is not Dorothy Keller?

4 A (Shakes head negatively.) No.

5 Q Who is Dorothy Keller?

6 A You may be thinking about Dorothy Kale, but--

7 Q Dorothy Kale? Is that your sister?

8 A No.

9 Q Who is Dorothy Kale?

10 A It's Linda's grandmother.

11 Q Excuse me?

12 A It's Linda's grandmother.

13 Q Is Linda Bill's daughter?

14 A Yes.

15 Q You went to Pittsburg, California to see Linda?

16 A (Nods head affirmatively.)

17 Q And as far as you know, he used the telephone
18 and you stayed in the car to try to locate his daughter, or
19 did you go inside, too?

20 A No, I didn't go in.

21 Q You didn't go inside?

22 A (Shakes head negatively.)

23 Q Okay. Now, you noticed that there was a blanket
24 in the car; right?

1 A Yes.

2 Q Did you also notice this green bag in the car?

3 That would be State's II.

4 A There was a green bag in the car, yes.

5 Q Does this look similar?

6 A Yes.

7 Q Where was this located?

8 A Way in the back.

9 Q Did you see anything inside the bag?

10 A No.

11 Q Okay. Did you see any clothes inside the car?

12 A No.

13 Q Now, Sunday evening when you spent the night in

14 the car, did you have a sexual relationship with Mr. Branham?

15 A Yes.

16 Q At that time that you had a sexual relationship

17 with him, did he grab you by the neck?

18 A No.

19 Q Now, when he dropped you off Monday afternoon,

20 you indicated to him that he should come in and he said, "No,

21 I'm already running behind, and I have to go back to Reno"?

22 A Yes, I did ask him.

23 Q And did he say that to you, that he was running

24 behind and he had to get back to Reno?

1 A Yes.

2 Q Is that a "Yes"?

3 A Yes.

4 Q Okay. Now, you had a romantic relationship
5 with him about ten years ago; right?

6 A Yes.

7 Q And then you actually lived with him for four
8 years. Isn't that true?

9 A Yes.

10 Q And during that time he was quite friendly with
11 your parents?

12 A Yes.

13 Q Now, Bill Branham knew that you were living
14 with someone, but that person wasn't there when he came to
15 visit on Saturday. Isn't that true?

16 A Yes.

17 Q Now, you recall Mr. Branham drinking Coors beer
18 during the time that he was with you. Isn't that true?

19 A Yeah, I guess it was-- Yeah.

20 Q Do you remember, or would you like to see
21 something to refresh your memory?

22 A I guess it was Coors. Yeah.

23 Q Do you have a direct-- Do you remember that?

24 A Yes.

1 Q And Bill said, "There's a Firebird out there
2 that's for sale." Isn't that what he said?

3 A He said, "I have-- I have a Firebird out there
4 for sale."

5 Q Okay. Did he say, "This is my Firebird that's
6 for sale"?

7 A Not that I remember.

8 Q Okay.

9 MS. WILSON: May I approach?

10 THE COURT: Yes.

11 BY MS. WILSON:

12 Q I'm showing you preliminary-hearing transcript
13 page 124, and ask you to read this to yourself.

14 MR. HALL: What lines are you referring to,
15 counselor?

16 MS. WILSON: That would be lines 2 through 16.

17 BY MS. WILSON:

18 Q Can you read that? Are you able to read that?

19 A Yes.

20 Q Okay. After reviewing page 124, does it refresh
21 your memory of what Mr. Branham said?

22 A Yes.

23 Q What did he say?

24 Isn't it true that he said, "There's a Firebird

16 1 that's out there for sale?

2 A Yeah, I don't know. Can I--

3 Q Would you like a moment to compose yourself?

4 A (Nods head affirmatively.)

5 THE COURT: We'll take a brief recess. We'll
6 reconvene in a few moments.

7 (Recess.)

8
9 THE COURT: Please be seated. Go ahead, ladies
10 and gentlemen. Be seated as you come in, please.

11 All right. We're back on the record with
12 CR92-1048, State of Nevada versus William Branham.
13 Mr. Branham and counsel are present. The jury is in place.
14 The witness is back on the witness stand.

15 Ready to proceed, Miss Wilson?

16 MS. WILSON: Yes, I am, your Honor.

17 THE COURT: All right. Go ahead, please.

18
19 CROSS-EXAMINATION RESUMED

20 BY MS. WILSON:

21 Q Miss Draper, during your relationship with
22 Mr. Branham, approximately that lasted for four years; right?

23 A Yes.

24 Q And during that time did you have an opportunity

6 1 to fight with him?

2 A Deliberately, you mean?

3 Q Well, any way.

4 A Not deliberately, but yeah.

5 Q Did he ever strike you?

6 MR. HALL: Objection, your Honor, relevance.

7 48.035.

8 THE COURT: Miss Wilson?

9 MS. WILSON: Your Honor, we've heard about
10 Mr. Branham's reaction with Miss Fetherston. It's the
11 defense's view that Miss Fetherston is not alive. We must
12 focus our attention on his behavior with other women that
13 he's had relationships with, how he reacts during those
14 fights. And it is relevant so that the jury can determine
15 whether he is the kind of person that is a violent person.

16 We've heard the State talk about his violent
17 nature, and I think that the defense is certainly allowed to
18 rebut any inference of violence with women.

19 THE COURT: NRS 48.015 would indicate that
20 "relative evidence" means evidence having any tendency to
21 make the existence of any fact that is of consequence to the
22 determination of the action more probable than less probable
23 than it would be without the evidence.

24 I do not believe that actions taking place ten

1 years prior in time with different individuals under a
2 variety of different circumstances would in fact make an
3 issue in dispute in this case more probable or less probable
4 of proof.

5 Additionally, there is a 48.035 provision which
6 says, "Although relevant and real, though this evidence may
7 be marginally relevant at best in my view, evidence must be
8 excluded if its probative value is substantially outweighed
9 by the danger of unfair prejudice, confusion of the issues,
10 or by consideration of undue delay, wasted time or needless
11 presentation of cumulative evidence."

12 For you to be able to sustain a 48.035
13 objection, you must be able to establish to me that the
14 probative value is so high that whatever prejudicial impact
15 or chance of confusion of issues that may exist would be
16 outweighed by the significance of the probative value.

17 I do not share that opinion, so I will sustain
18 the objection.

19 MS. WILSON: Very well, your Honor.

20 BY MS. WILSON:

21 Q Miss Draper, have you been subpoenaed by the
22 defense?

23 A Yes.

24 Q Is that a "Yes"?

6

1 A Yes.

2 Q Miss Draper, you drove over to this area; did
3 you not?

4 A Yes.

7

5 Q How long did it take you to drive?

6 A Took about four hours.

7 Q Do you recall what time you left?

8 A About 2:00.

9 Q And you arrived?

10 A Say quarter after 6:00.

11 Q Quarter after 6:00?

12 A (Nods head affirmatively.)

13 Q And that would be from 2 o'clock to 6:15?

14 A Yes.

15 Q Was there any stops on the way?

16 A One. There was.

17 Q How long was that stop?

18 A About five minutes.

19 Q Sorry?

20 A About five minutes.

21 Q Five minutes. Okay.

22 And were the roads open and clear?

23 A Yes.

24 Q Do you know Jerry Tackett?

1 A Yes.

2 Q How do you know him?

3 A From my mom and dad.

4 Q Pardon me?

5 A From my mom and dad.

6 Q How long have you known him?

7 A All my life.

8 Q And do you know his son, Donny Tackett?

9 A Yes.

10 Q And have you known him for a while?

11 A I known Donny all of his life, yes.

12 Q Okay.

13 MS. WILSON: Thank you.

14 THE COURT: Mr. Hall, redirect?

15 MR. HALL: I have no redirect, your Honor.

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

18 May this witness be excused?

19 MR. HALL: Yes, your Honor.

20 MS. WILSON: She's under subpoena by us, your
21 Honor. And at this time we're not going to excuse her.

22 THE COURT: Okay. You may return to your room,
23 if you'd like, and we'll contact you there if we need further
24 testimony from you.

7

1 THE WITNESS: Thank you.

2 MR. HALL: Betty Draper.

3 THE COURT: Ms. Draper, approach the lady to
4 my right, please, raise your right hand and be sworn in.

5 THE COURT CLERK: She's already been sworn.

6 THE COURT: I want her sworn in, please.

7 (Witness sworn.)

8 MS. WILSON: Thank you.

9 THE COURT: Thank you. If you'd have a seat
10 in this dark-colored chair by the microphone, please.

11

12 BETTY DRAPER,
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 Mrs. Draper, would you state your name, and
20 spell your last name, please.

21 A Betty Draper. D-r-a-p-e-r.

22 Q And where do you live.

23 A Pacheco, California.

24 Q How long have you lived there?

1 A Since 1977.

2 Q Do you know Bill Branham?

3 A Yes, I do.

4 Q And his true and correct name would be William
5 Edward Branham?

6 A Yes.

7 Q And what was your relationship with Mr. Branham
8 say 10, 12 years ago?

9 A Ten years ago, I hadn't seen him. Twelve years
10 ago, 13 years ago, he used to live with my daughter.

11 Q What was your relationship with Mr. Branham at
12 that time?

13 A It was good.

14 Q And was there a breakup between Mr. Branham and
15 your daughter?

16 A Yes.

17 Q After that breakup, did you have any contact
18 with Mr. Branham?

19 A For a short time, till he left the area.

20 Q When did he leave the area; do you recall?

21 A Not exactly. Within months after they broke
22 up, he left the area. I don't know where he went exactly,
23 but I was told he went to the Clear Lake area.

24 Q Did you have continued contact with Mr. Branham

1 after he left the Pacheco area?

2 A No.

3 Q How far is Pacheco from Reno?

4 A 210 miles, approximately.

5 Q Okay. Have you had any contact with
6 Mr. Branham-- or had you had any contact with Mr. Branham
7 from the time he left Pacheco until the time he arrived at
8 your door on or about Friday, February 7th, 1992?

9 A No.

10 Q Can you explain the circumstances surrounding
11 when Mr. Branham arrived at your house at Pacheco?

12 A You mean what time he came, or just--

13 Q What time? Who was there?

14 A He knocked on the door. A knock came on the
15 door. It was sometime between 4:30 and 5 o'clock. My
16 husband was there sleeping, and Andy Mehalpoulos was there,
17 and I was in the house.

18 The knock came, and he answered the door, and
19 I heard him say, "Guess who. I got here." And I went and
20 looked, and it was Bill.

21 Q You saw him at 4:30, 5 o'clock in the afternoon?

22 A Yes, yes.

23 Q Is that on Friday, the 7th?

24 A Yes.

1 Q Did you have any forewarning Mr. Branham was
2 going to show up at your doorstep?

3 A No. He said he just thought he'd drop by, see
4 if the folks-- Said, "I thought I'd drop by, see if you
5 folks still live in the same place."

6 Q Do you know whether or not Mr. Branham had been
7 drinking when he was at your house?

8 A Yes. He had a beer or more. I don't know what
9 he'd been drinking, but it-- it was on the breath, yeah.

10 Q And once Mr. Branham arrived at your door, did
11 you invite him in?

12 A Of course.

13 Q And what happened when Mr. Branham came into
14 your house?

15 A Well, I talked to him for a little bit, Andy
16 did, and then I went in and woke my husband, who was sleeping
17 because he worked the night before, and told him Bill was
18 there, and he got up, came in, sat down in the family room
19 and talked about since-- like who was where, you know,
20 children, previous neighbors.

21 He said that he was down here trying to get
22 in touch with his daughter, that he had went to the
23 grandmother's, but she had moved and he didn't know where
24 she was, that he had been-- that he had received a phone

8 1 call from the daughter and hadn't been able to get back in
2 touch with her.

3 Q Okay. Well, when he first came to the house,
4 your house, did Mr. Branham indicate why he was down there?

5 A Yes, to locate his daughter.

6 Q Do you know whether or not Mr. Branham had his
7 daughter's address or phone number?

8 A They had moved. He said they had moved.

9 Q Did he indicate when the last time was that he
10 had contact with his daughter?

11 A No. He said that she had called while he was
12 out at work or in the field, or something to that order, and
13 that when he came back in and tried to contact her, he
14 couldn't reach her. So he came down there to see why and
15 what was wrong, because he felt something might be wrong.

16 Q And did he try and contact his daughter Linda--
17 Is Linda his daughter's name?

18 A Yeah.

19 Q Did he try and contact Linda that night?

20 A I don't know. I contacted my daughter Juanita,
21 because I have several daughters. Four. And I knew that
22 his daughter's mother Toni lived in my daughter Shelly's
23 neighborhood. I didn't know which house, but I knew it was
24 her neighborhood. And I knew Mrs. Kale was someplace in the

8 1 area, because the girls had told me they saw her at the
2 supermarket.

3 So I went into my room and called Juanita and
4 told her that Bill was here looking for his daughter, and
5 could Shelly or Sue or one of them put him in touch with
6 the daughter.

7 And so I asked Sue for permission to give her
8 phone number out, and she told me to go ahead and give it
9 to him. And he called her from my house.

10 Q How long did Mr. Branham stay at your house that
11 night?

12 A Well, I'm not exactly sure on the time. I know
13 that my son Richard was at work, and he got off at 5:00. He
14 works about a mile from home. He has a 10-speed. So that
15 made it maybe five after 5:00 or 10 after 5:00 when he came
16 in and talked to Bill.

17 After that, Richard brought up the subject of
18 dinner, and said why didn't I go down to the Colonel Sanders
19 and get something, which I did. And so I think maybe enough
20 time passed that it might have been 6 o'clock or so when Bill
21 left.

22 Q Okay. Do you remember talking to me the other
23 day?

24 A Yes.

8 1 Q Do you recall whether or not you indicated
2 that time that Mr. Branham had stayed at your house until
3 approximately 8 o'clock?

4 A Could have been 8 o'clock. The reason I'm so
5 sure of it up front is because of-- of what occurred before
6 he got there, and I knew the time.

7 And the reason I became unsure after is my
8 husband doesn't leave for work until 9 o'clock when he works
9 the night shift, and I knew Bill was gone by that time. And
10 I had went to Colonel Sanders and these different things in
11 the meantime. So it could have been 8 o'clock, yes.

12 Q What did you talk about with Mr. Branham while
13 he was at your house?

14 A Previous neighbors from the neighborhood we both
15 used to be in. Where they were, what they were doing, you
16 know, who was doing what, and where they moved to.

17 Where my children were, each of them. He knows
18 all six of my children. And what they were doing. Things
19 like that.

20 Q Did he drink any beer while he was at your house
21 after he first got there?

22 A Yes. He went out to his car and got a beer and
23 brought it in.

24 Q Can you describe that car?

8 1 A I'm not good at cars. I can't describe makes
2 and models, and so forth. But when I was leaving to go to
3 Colonel Sanders is when he went outside and I commented that,
4 "You have a nice car, Bill."

5 And he said, "Yeah." But women didn't drive it.

6 I said, "Why?" to that.

7 He said, "Because they dent it."

8 Q Did Mr. Branham indicate that he was employed?

9 A Yes. He said he worked out in the field, so
10 many days on and so many days off.

11 Q What kind of a field?

12 A I took that to mean oil fields. But they tell
13 me you guys don't have any up here. We do down there. And
14 so when he said he worked in the fields, I thought he was
15 working in oil fields, drilling or-- He told us drilling
16 or-- Drilling, I think he said.

19 17 Q Did the defendant show a lot of concern for his
18 daughter while he was there at your house?

19 A Other than getting in touch with her, nothing
20 undue.

21 Q Did Mr. Branham-- Do you know whether or not
22 Mr. Branham had any money?

23 A Yes, because-- he had some money, because when
24 Richard brought up the subject of the Colonel, he'd asked me

9 1 what we were going to do about dinner, and I definitely told
2 him I hadn't planned to do anything. And he said, "Well,
3 why don't we all go in together and you go down to the
4 Colonel and pick up dinner." And so Bill did give me some
5 money for that.

6 Q Is that normal for Mr. Branham?

7 A Well, I'd never received money from him before,
8 so, you know, I was a little surprised. And when in the
9 house, you know, Richard said, "Let's go in together", I just
10 assumed it meant Richard and Andy and Jack, you know.

11 Q What happened after you came back from running
12 errands and getting chicken?

13 A He was leaving the house, going out to his car,
14 and I-- I just assumed that he was going out there for
15 another beer. I-- I can't remember if it's the first time
16 or second time I mentioned we had some beer in the house,
17 but, you know, Bill often kept his own beer, you know,
18 separate and did--

19 So it didn't seem strange to me or anything.
20 And I just assumed he was going out for another beer, but
21 he left.

22 Q Did he say, "Good-bye"?

23 A No.

24 Q Did he say anything?

9 1 A No. I-- I thought he was just going to go out
2 there and come back in, but he never came back in.

3 Q Did he ever indicate where he was going after
4 he left your place?

5 A Well, I think he-- when he called Sue, he was
6 going to go to her house. Juanita Sue. I'm sorry. Her name
7 is Juanita. That he was going to her house. He talked to
8 her and was going to her house.

9 Q Juanita Sue is your daughter who just finished
10 testifying?

11 A Yes.

12 Q Who was sick and vomiting this morning?

13 A Um-hum.

14 Q Did you have an opportunity to see Mr. Branham
15 after he left your house on Friday?

16 A No. I didn't see him anymore that-- that
17 weekend. I heard from different people, my daughter Shelly,
18 that he'd been to her house. I heard from my daughter
19 Juanita that he'd been to her house. Juanita's neighbors,
20 different people, you know. So actually I knew his
21 whereabouts.

22 And I know that I spoke to Jerry Tackett. He'd
23 been there. And, you know, I know who he saw, but I didn't
24 see him anymore.

9 1 Q Now, Mrs. Kale--
2 A Um-hum.
3 Q --is Toni's mother; is that right?
4 A That's right.
5 Q And Toni is Linda's mother?
6 A Right.
7 Q And Linda, of course, is Mr. Branham's daughter?
8 A Yes.
9 Q Did you ever have any contact with any of these
10 people on a regular basis over the last ten years?
11 A No. Mrs. Kale and I lived in the same
12 neighborhood from about 1962 to 1977. We didn't stay in
13 close touch. It was a matter you see them at the marketplace
14 or in a restaurant or something, you know. And you speak and
15 say, "How are the kids?" and this stuff.
16 But my daughter Shelly, who lives in that
17 neighborhood, purposely avoided seeing them. And when she
18 saw Toni in the store, Toni said, "Well, I don't think you
19 remember who I am", he was so drunk.
20 She said, "I know exactly who you are", and
21 just walked off. They didn't stay in touch.
22 Q Were you surprised when Mr. Branham showed up
23 at your house--
24 A Shocked to death. Somebody told me he went up

9 1 to Clear Lake and had died of cancer. We-- We didn't know
2 he was still living.

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

4 THE COURT: Miss Wilson?

5 MS. WILSON: Thank you.

6
7 CROSS-EXAMINATION

8 BY MS. WILSON:

9 Q I hate to lug this up for one question, so I'm
10 going to bring this to you and ask if I can write on it.

11 A Certainly.

12 Q This is a chart of the days in February,--

13 A Yes.

14 Q --and it will reflect on this calendar of 1992.

15 A Yes.

16 Q Can you see that they correlate, Sunday,
17 February 2nd is Sunday, February 2nd?

18 A Um-hum.

19 Q May I write on this chart that you saw
20 Mr. Branham for the first time Friday, February 7th, from
21 what time did you say?

22 A He arrived between 4:30 and 5:00. Like I said,
23 I can't given you an exact time that he left, but I do know
24 it was before 9:00 p.m. Probably about 8 o'clock.

9
0

1 Q So 4:30 to 8:00?

2 A Approximately. I do not know that last time.

3 MS. WILSON: The record should reflect that I'm

4 placing "Betty--"

5 BY MS. WILSON:

6 Q 4:30, ma'am?

7 A Between 4:30 and 5:00.

8 MS. WILSON: "4:30, 5:00 dash--"

9 THE WITNESS: I know it was after 6:00, and

10 maybe up until 8:00. I'm not sure of the exact time. Like

11 I say, my husband leaves for work at 9 o'clock, and he has

12 to have his dinner, and it takes about an hour for him to

13 get ready, and that all occurred after he left.

14 BY MS. WILSON:

15 Q So say 8:00 p.m.?

16 A That's good.

17 Q Okay. Now, you don't know the contact that

18 Mr. Branham had with his daughter?

19 A I don't understand what you're saying to me.

20 Q You don't know what contact he's had with his

21 daughter?

22 A You mean after I saw him or before I saw him?

23 Q Before or after.

24 A No, I don't know. I just know that he told me

0 1 he was seeking his daughter.

2 Q Okay. And as far as you know, he was asking
3 you because his daughter had moved; right?

4 A Yes. Mrs. Kale is always the standby to get
5 in touch with that family, the grandmother, and she calls
6 out and gets them when somebody needs to speak to them.

7 Q Now, you indicated that drilling and oil is in
8 your area?

9 A In my area. He said he'd been working drilling.

10 Q Okay.

11 A Okay.

12 Q When you--

13 A Go ahead.

14 Q I'm sorry.

15 A He said he had been working, and I forget the
16 number of days that he said he was on, but he would be on so
17 many days and off so many days, that he was drilling.

18 I think he said oil, but I could have thought
19 oil because oil is in my area, and up here you have a
20 different kind of drilling going on in mines and things.

21 Q And when he was in your area, that's what he
22 did for a living; right?

23 A He worked-- No, he didn't drill, I don't think.
24 He worked in maintenance, plant maintenance of the oil

0 1 refineries.

2 Q Was it in the oil refinery business?

3 A Yes.

4 Q And do you recall the beer that he drank being
5 Coors?

6 A I don't pay attention to the brands of alcohol
7 that people drink, only that they're in a can and they're
8 drinking them.

9 Q Okay. Would you recall if you saw a Coors can
10 by chance?

11 A Well, I know what a Coors can looks like, and
12 I know that's the brand he used to drink, and so forth.

13 Q Okay.

14 A But--

15 Q You can't be sure?

16 A I don't drink, so I don't pay attention to the
17 alcohol that other people are drinking, what brand it might
18 be.

19 Q When you saw him, he was alone?

20 A Yes.

21 Q Did he tell you where he was going to go after
22 he left?

23 A He told me where he'd been before he came to our
24 house.

0

1 Q What did he say?

2 A That he had been to Bella Roma Pizza Parlor on
3 Alhambra. It used to be a local person that owned it, all
4 locals worked in it, everybody knew everybody. And he knew
5 the person that owned it and the people that worked there
6 when he lived in that area.

7 And he had stopped there and that the same
8 people were no longer there, nobody knew him. He asked, you
9 know, about different persons, and he said they treated him
10 with suspicion, so he left.

11 Q Okay. And is that a neighborhood bar or
12 neighborhood pizza hangout?

13 A Not in my neighborhood, but within a short
14 distance. About three miles from us, yeah.

15 Q What is the population of your area? Is it a
16 small town or a big city?

17 A My-- My town is a very small town. I live in
18 the town of Pacheco. It's a township, not a city. But I
19 live two blocks from the city of Martinez, which has got a
20 larger population.

21 Q Would both places be about Reno size?

22 A No. Pacheco is a very small community. It's
23 a little township between the cities of Concord, Pleasant
24 Hill and Martinez, an unincorporated area. It's a very small

0 1 community.

2 Martinez is a larger community, but not as big
3 as Reno, no. And Martinez was the community that we had all
4 lived in previously, Mrs. Kale, Bill, myself, Toni, you know,
5 all the people that we knew.

6 MS. WILSON: Very well. Thank you.

7
8 REDIRECT EXAMINATION

9 BY MR. HALL:

10 Q I have a couple of questions. Would you bear
11 with me for a couple of minutes here?

12 A Um-hum.

13 Q You indicated earlier that you had an
14 opportunity to talk with Mr. Branham regarding the old people
15 in the neighborhood that you knew, and--

16 A Um-hum.

17 Q --so forth.

18 Do you recall whether or not when Mr. Branham
19 got over to your house and was talking about where he had
20 been, did he mention that he had seen anybody that he knew
21 when he was over at your house?

22 A No. He said he went-- "Before I came here,
23 I stopped at Bella Roma's, and none of the old crowd was
24 there, under new ownership and new employees, and so forth."

1 So he didn't know them.

2 Q Did he mention he had seen his old friend Ed
3 Lee?

4 A No.

5 Q Did he mention he had seen his old friend Jerry
6 Tackett?

7 A No. At that point I don't think he had seen
8 Jerry Tackett.

9 Q Did he mention he had seen Donny Tackett,
10 Jerry's son?

11 A I don't think so. Donny and Jerry told me it
12 was on a Saturday that they saw him. Donny I think saw him
13 on Friday night after he was at our house. I think that's
14 what Donny told me and Jerry.

15 Q How about Jack Lee? Do you know Jack Lee?

16 A No, I don't. I've been told that I know both of
17 these Lee persons, and I could by sight and not by name,
18 because I've lived in that County for-- since 19 and 42,
19 mostly in the Martinez-Pacheco area, and I know a lot of
20 people by sight that I don't know by name.

21 Q Did Mr. Branham, the defendant, indicate that
22 he had seen anybody prior to getting over to your house?

23 A Not to me. Just that he went to Bella Roma's.

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

1

1 THE COURT: Any recross?

2 MS. WILSON: No.

3 THE COURT: You may step down. Thank you very
4 much.

5 MR. HALL: Next witness will be Detective
6 Jenkins.

7 THE COURT: Okay.

8 Good morning.

9 THE WITNESS: Good morning, your Honor.

10 THE COURT: If you would step forward, raise
11 your right hand and be sworn in, please.

12 (Witness sworn.)

13

14 DAVID PHILIP JENKINS,
15 called as a witness by the plaintiff herein,
16 being first duly sworn, was examined and
17 testified as follows:

18

19 DIRECT EXAMINATION

20 BY MR. HALL:

21 Q Sir, would you state your name, and spell your
22 last name.

23 A David Philip Jenkins. J-e-n-k-i-n-s.

24 Q What is your occupation, sir?

1 A I'm a police officer for the City of Reno.

2 Q And how long have you been employed as a police
3 officer with Reno?

4 A Almost 17 years.

5 Q And what are your duties at the present time?

6 A I'm currently assigned to the Major Crimes/
7 Homicide Unit of the Detective Division at the Reno Police
8 Department.

9 Q How long have you worked in the Homicide Unit?

10 A I think this summer will be five years in
11 Homicide.

12 Q Do you have any special training or experience
13 that has prepared you to become a Homicide detective?

14 A During my tenure with the Reno Police
15 Department, I've attended several in-service training
16 seminars and classes.

17 Most recently I've attended in the last two
18 years a 40-hour death-investigation seminar conducted right
19 here in Reno and hosted by the Washoe County Sheriff's
20 Office. A 40-hour instructional block.

21 And prior to that I received a 40-hour
22 specialized block of training in homicide investigation
23 hosted by Los Angeles Police Department in Los Angeles,
24 California.

1 Q How many homicide investigations have you
2 personally been involved in?

3 A During the entire time of my career, I can only
4 estimate a ballpark figure. It would be perhaps between 80
5 and a hundred that I've been actively involved in.

6 Q Were you involved in the investigation of the
7 death of Beverly Fetherston?

8 A Yes, sir.

9 Q And did you respond to Miss Fetherston's
10 residence on or about February 9th of 1992?

11 A Yes, sir, I did.

12 Q And in what capacity did you respond to
13 Miss Fetherston's residence?

14 A I was called from home that evening by Detective
15 Jim Duncan. I was directed to assist in the investigation of
16 a suspicious death.

17 Q What did you observe when you arrived on the
18 scene?

19 A The residence I went to, Miss Fetherston's
20 residence, is a small single-family dwelling or an apartment
21 located in an alleyway near the 100 block of South Wells
22 Avenue, just outside of the downtown core. It's an older
23 home. The front entrance to that home is on the south side
24 of the residence, off the alleyway.

1 1 When I initially approached-- Other officers
2 2 had been in the home prior to my arrival, so I-- I don't
3 3 personally know what condition the home had been in prior
4 4 to my arrival. But it was represented to me that the
5 5 positioning of items inside the home was essentially the
6 6 same as it had been when the first officers arrived.

7 Q And the home you're talking about was located
8 8 at 129 and a half Wells Street here in Washoe County, Nevada?

9 A South Wells, that's correct, sir.

10 Q Did you go inside the home and inspect it?

11 A Yes, sir, I did.

12 Q And what was your opinion after you had an
13 13 opportunity to look at Miss Fetherston?

14 A That the death had occurred inside that
15 15 residence of Miss Fetherston, and that in my opinion,
16 16 the death was most likely a homicide.

17 Q All right. What I'd like to do, Detective
18 18 Jenkins, is show you a photograph.

19 The positioning of the body of Miss Fetherston,
20 20 did that give rise to any suspicion on your behalf as to
21 21 whether or not this was a homicide?

22 A Yes. Miss Fetherston's body itself in the
23 23 positioning of the body caused me considerable concern for
24 24 a variety of reasons. Items in and about her hands and on

2 1 her face all caused me a great deal of suspicion that this
2 was not a natural death.

3 Q If I showed you the photographs of
4 Miss Fetherston in the position she was found in, would
5 that aid you in assisting the jury on why you thought her
6 positioning was suspicious?

7 A Yes, sir.

8 Q What I would like to ask you to do, Detective
9 Jenkins, is step down from the witness chair, put these two
10 photographs AA and BB on the easel, and if we could go over--
11 if you could explain to the jury why you thought the
12 positioning of the body was suspicious. And I have a
13 pointer, if you need that.

14 A I guess I would begin by pointing out this green
15 afghan at the back of the couch is clumped at one end. What
16 isn't visible in this photograph, though, is the fact that
17 the back of the afghan is pressed hard against the wall of
18 the apartment and the back of the couch.

19 Being clumped like this suggests to me that
20 there may have possibly been a struggle or some disturbance
21 on that couch. It's not in a manner or typical to other
22 items in the house, which I would have described as generally
23 being neat and well-organized. And I'm specifically
24 referring to this line of clumping at the top of the afghan.

1 Q You're referring to State's AA?

2 A Yes, sir. And perhaps in this photograph it's
3 more plainly seen. This area right here.

4 Q That would be State's BB.

5 A Secondarily, perhaps as great a concern to me,
6 is the placement of this second afghan over Miss Fetherston's
7 torso. The photograph shows here how her left arm and hand
8 is underneath the afghan and her right hand contains a beer
9 can.

10 This clumping near the center suggests in my
11 experience that it's unlikely that Miss Fetherston could have
12 covered herself with the afghan.

13 Third, the beer can itself. I looked at it
14 closely and noticed several things that I felt were very
15 irregular and unusual.

16 First of all, this is the first time I had ever
17 in the hundreds of death scenes that I've been at, not
18 counting the homicides, I've ever found a decedent actually
19 with a container of alcohol in their hand at the time of
20 death.

21 Unusual is that this container was empty and I
22 could not observe any staining, spatter staining below the
23 can to indicate the contents of the beer can had spilled out
24 onto the pillow.

2 1 Furthermore, a closer inspection of this beer
2 can revealed to me that it was not in a position which I
3 would have expected someone to have held it if they were
4 drinking from a can.

5 You can't see it in this photograph, but the
6 hole or opening to the beer can is actually located closer
7 to her fingers. In other words, it would have been opposite
8 from what you would expect if someone were drinking from the
9 can.

10 The pillow itself is unusual in that it covers
11 Miss Fetherston's head. I think obviously that is unusual,
12 that most people do not cover themselves with pillows in that
13 manner.

14 Then the positioning of the legs and the overall
15 positioning of the torso is unusual for someone in what I
16 would term as a natural death.

17 Q Okay. Thank you.

18 Now, with respect to the overall appearance of
19 the house, is there anything about the house that would lead
20 you to believe-- or lead you to the identity of a person who
21 may be responsible for the homicide of Beverly Fetherston?

22 A Well, I think there are several general things
23 that would suggest that the person responsible for the death
24 had some familiarity with the house. There was no evidence

2 1 of ransacking or obvious disarray.

2 There was one thing in the kitchen which caught
3 my attention. The kitchen was generally tidy and well-
4 organized. However, one drawer in the kitchen area was left
5 open. That drawer contained bags, both paper and plastic
3 6 bags. There were some sandwich bags, as I recall, some paper
7 grocery bags, and some larger plastic garbage bags all within
8 that drawer. It was striking in that that was the only
9 drawer in the home which was open and standing ajar.

10 Additionally, there was no evidence or
11 suggestion that the home had been entered into forcibly.
12 All of the windows were intact. There was no evidence or
13 suggestion that an attempt had been made to enter the home
14 forcibly. The lock on the front door was intact, and my
15 understanding is that the lock had initially been in place
16 and functioning when the first Reno police officer responded
17 to the home that afternoon.

18 Q Detective Jenkins, I'm going to show you
19 State's O, State's P.

20 You made reference to a drawer that was open.
21 Do those photographs depict the drawer that you were talking
22 about in the kitchen that was open?

23 A Yes, sir, they do.

24 Q Can you draw any correlation between O and P

3 1 and State's II?

2 A Yes, sir, I can.

3 Q What is that, please?

4 A You'll see shown in the photograph at this
5 corner in the drawer what appear to be large plastic garbage
6 bags that are generally of the same appearance of the item
7 you just showed me.

8 Q Now, with respect to the ransacking, do you know
9 whether or not there was anything of value in the home when
10 you went in on the 9th?

11 A Well, yes, sir, there were several items. There
12 was an older stereo or-- or radio equipment. There was a
13 television. There was jewelry and furniture. Certainly not
14 expensive jewelry, but there were some rings and a bracelet
15 and some things in the home. There were dishes and the sort
16 of things that you would expect to find in most anyone's
17 home.

18 Q The fact that you had--

19 Well, let me ask you this: Did you see any
20 obvious signs when you first arrived on the scene of trauma
21 to Miss Fetherston's body?

22 A I wouldn't characterize them as overt or gross
23 signs of trauma, but some of those observations could be
24 clouded by the fact that Miss Fetherston's body at the time

3

1 I observed it had already begun to decompose. So what might
2 have otherwise been apparent may well have been concealed by
3 the fact that her body decomposed substantially.

4 Q Now, the fact that you had a lack of ransacking,
5 a lack of apparent theft of some of the valuable items, the
6 viewing of the body, did that give rise to you to any belief
7 as to who might be involved in Miss Fetherston's homicide?

8 A Typically, those factors that you have discussed
9 would lead me to conclude that there was a good likelihood of
10 this being an associate, or acquaintance murder.

11 Q Now, did your investigation continue from there?

12 A Yes, sir, it did.

13 Q Did you have an opportunity to interview a
14 number of subjects in this case?

15 A Several.

16 Q Did you interview Richard Sokolik?

17 A Yes.

18 Q Ikie Woody?

19 A Yes.

20 Q Gary Swinehart?

21 A Yes.

22 Q John Bell?

23 A Yes.

24 Q Dudley Poorman?

1 A Yes.

2 Q Do you recall during your conversation with
3 John Bell whether or not he indicated that Gary Swinehart was
4 "sparking" Beverly?

5 A I beg your pardon? What?

6 Q Do you recall Mr. Bell saying that Gary
7 Swinehart was "sparking" Beverly Fetherston?

8 A No. I'm not familiar with that term.

9 Q All right. Did you have an opportunity to be in
10 my office last week when we reviewed a tape which purportedly
11 was a tape recording of the interview that you did with
12 Mr. Bell?

13 A You played a very brief portion of that tape for
14 me, and I listened to that.

15 Q Was that a true and accurate tape recording of
16 the conversation that you had with Mr. Bell?

17 A I believe so, yes. The portion I listened to.

18 Q And do you recall what Mr. Bell's comment was
19 regarding that particular statement?

20 A Not verbatim, no.

21 Q If I played that tape recording, would that
22 refresh your recollection?

23 A I can sure try.

24 MS. WILSON: Your Honor, may we approach?

3

1 THE COURT: You may.

2 (Discussion at the bench.)

3 (Playing tape recording.)

4 BY MR. HALL:

5 Q I believe it's before this. Let me rewind it
6 briefly.

7 (Playing tape recording.)

8 BY MR. HALL:

9 Q Did that sound like Mr. Bell said that Gary was
10 "sparking"?

11 A I thought he said, "Gary was a bartender."

12 Q Would it help to hear that one more time?

13 (Playing tape recording.)

14 THE WITNESS: "He's bartending now."

15 BY MR. HALL:

16 Q Do you recall what was said now?

17 A "He's bartending."

4

18 And to put that in context, Mr. Hall, if I may,
19 Gary Swinehart had been the bartender when I had been called
20 to be informed that Mr. Bell was at the bar. I had asked
21 several people to contact me if they had come in contact with
22 Mr. Bell, as he was an individual that I was trying to talk
23 to.

24 Q What I'm getting at so painstakingly is: The

4 1 transcriptions of the audio tapes during interviews, are they
2 always completely accurate?

3 A Well, it's dependent upon a third person. These
4 tapes in particular were transcribed by our secretarial pool,
5 and usually there are several little inconsistencies or
6 errors in the course of every transcription that have to be
7 gone through and corrected.

8 Q Did you sit down and edit any of these tapes?

9 A No, sir.

10 Q Now, what information did you gain from Ikie
11 Woody and Richard Sokolik regarding the possible identity
12 of anybody who may be an associate of Beverly Fetherston's?

13 A Well, we discussed several individuals, one
14 of whom came to light early in the investigation was an
15 individual who according to Mr. and Mrs. Sokolik had
16 previously been living with Miss Fetherston until just before
17 her death.

18 And they identified that individual by name as
19 someone that they were vaguely familiar with after this
20 individual had come into their bar several times.

21 Q Who is that?

22 A Mr. Branham. William Branham.

23 Q Any other individuals that you wanted to contact
24 after talking to Mr. Sokolik and Mrs. Woody?

1 A Well, yes. Mentioned John Bell there, too.
2 There were a number of individuals who we tried to talk to
3 early in the investigation, anyone who we believed had been
4 acquainted with her.

5 I don't remember off the top of my head all
6 the people we talked to initially, or all the people that
7 Mr. and Mrs. Sokolik may have mentioned.

8 Q Do you recall any information regarding
9 Miss Fetherston's bank account which had a bearing on this
10 case?

11 A Quite a bit of information, actually, about her
12 banking account.

13 Q Well, let's talk about any evidence that was
14 retrieved from the residence, 129 and a half Wells. Was
15 there any evidence there regarding Miss Fetherston's bank
16 account; do you recall?

17 A Yes, there was both evidence that was present
18 in the apartment and evidence that was conspicuously absent
19 from the apartment regarding Miss Fetherston's checking
20 account.

21 During our search of her home the night she was
22 initially found, we came across blank or unused checkbooks,
23 which appeared to be unused at first glance, but later we
24 determined that there were in fact some checks missing or

4 1 taken out of order from one of the checkbooks.

2 THE COURT: Excuse me, Mr. Hall. May I ask you
3 and Miss Wilson to approach for just a moment?

4 MR. HALL: Sure.

5 (Discussion at the bench.)

6 THE COURT: Ladies and gentlemen, we're all in
7 agreement, both Mr. Hall and Miss Wilson and I, that this is
8 an area which is going to take a little bit of time. There
9 will be some questioning and some cross-examination. So I
10 see no reason to try to press forward specifically now in
11 the noon hour. I don't think there's really much to be
12 gained from that.

13 So I will instruct you not to discuss this case
14 amongst yourselves or with anyone else, or to form any
15 conclusions as to any issue in this case until such time as
16 it is submitted to you as a jury. You are not to read, look
17 at or listen to any media accounts of this event, should
18 there be any.

19 In the event you come across any media accounts,
20 please advise Deputy Engelmann, who will in turn advise me,
21 and I will take the appropriate action. We will reconvene at
22 this trial at 2:00 p.m. this afternoon.

23 (Noon recess.)
24

4 1 RENO, NEVADA; FRIDAY, MARCH 5, 1993; 2:10 P.M.

2 -ooo-

3
4 THE COURT: Thank you. Please be seated.

5 We're back on the record with CR92-1048, State
6 of Nevada versus William Branham. Mr. Branham is present,
7 represented by Miss Wilson; Mr. Hall is present on behalf of
8 of the State; and the jury is in place in the jury box.

9 Detective Jenkins is back in the courtroom and
10 present and still under oath.

11
12 DIRECT EXAMINATION RESUMED

13 BY MR. HALL:

14 Q Detective Jenkins, I believe when we left off,
15 I had showed you State's Exhibit FF. Do you recognize that
16 Exhibit, sir?

17 A May I open it and inspect the contents?

18 Q Yes.

19 A Yes, sir, I do.

20 Q And when did you first see that Exhibit?

21 A The night Miss Fetherston was found in her
22 apartment, this item was found in the entertainment center
23 in the living room area.

24 Q And is there any significance-- What is the

4 1 significance of those checks?

2 A Well, first of all, the checks appear to have
3 been changed in position. When I initially observed this--
5 4 If I may show the jury?

5 Q Please do.

6 A There are two books contained within this box.
7 The first book containing the series beginning with 234 was
8 underneath the book starting at 301, with the reorder form in
9 this fashion here. What caught our attention was that there
10 were checks missing from this checkbook.

11 In other words, this appeared at first glance
12 to me to be an unused portion of checks, not a working
13 checkbook. And the fact that there were checks missing from
14 this book caught my attention.

15 Q Did you assist in the search of the house?

16 A Yes, sir, I did.

17 Q Did you see any other alcohol containers other
18 than those seen in the living room, the beer cans?

19 A I think there were six MeisterBrau beer cans.
20 Aside from that, there were no other alcohol containers in
21 the house.

22 Q Did you check the refrigerator?

23 A Yes, sir.

24 Q Did you see any wine or any beer in there?

1 A No, sir.

2 Q Did you see any bottles of hard liquor in the
3 house?

4 A No, sir.

5 Q Now, when did you determine the identity of
6 Miss Fetherston's roommate?

7 A Actually, his name had been brought up initially
8 by Mr. Sokolik, I believe, to Officer Flores, and I don't
9 recall who initially mentioned that name to me, but it
10 was early on. In fact, prior to my having even gone to
11 Miss Fetherston's home.

12 MR. HALL: May I have State's JJJJ.

13 BY MR. HALL:

14 Q Showing you State's JJJJ, do you recognize that?

15 A Yes, sir, I do.

16 Q What is it?

17 A This is a Nevada-- State of Nevada Department
18 of Motor Vehicles identification card.

19 Q Who does it belong to?

20 A It was issued to William Edward Branham.

21 Q When was that collected?

22 A I believe the day that I first came in contact
23 with Mr. Branham. That was I believe the 11th of February,
24 '92.

5

1 MR. HALL: Move for admission of JJJJ.

2 MS. WILSON: No objection.

3 THE COURT: Admitted.

4 (State's Exhibit JJJJ was admitted into evidence.)

5 BY MR. HALL:

6 Q Detective Jenkins, are you familiar with
7 autoeroticism?

8 A Yes, sir.

9 Q What is autoeroticism?

10 A It's a form of sexual activity by which
11 participants gain sexual gratification from the restriction
12 of blood or oxygen flow to the brain.

13 Q Okay. When you looked at the crime scene in
14 this particular case, did you see any evidence that
15 autoeroticism may be a factor to be considered in the death
16 of Miss Fetherston?

17 A No, sir.

18 Q Continuing with your search of the residence,
19 did you see any toxins or poisons in the area of
20 Miss Fetherston?

21 A No, sir.

22 Q Did you see any toxins, poisons or other
23 medications which you could attribute to Miss Fetherston's
24 death anywhere in the residence?

1 A None that I could attribute to her death, no.

2 Q Did you see any arsenic or potassium chloride?

3 A No, sir.

4 Q Did you see any syringes?

5 A No, sir.

6 Q Now, you indicated that you came into contact
7 with Mr. Branham on February 11th, 1992?

8 A I believe that's the date, sir.

9 Q Okay. And at that time was he searched incident
10 to arrest?

11 A Yes, sir.

12 Q And what did he have in his possession?

13 A He had several items with him. Not all of
14 them were obtained during the search. Some of them were
15 surrendered to me prior to his being searched. Would you
16 like me to include those items?

17 Q Yes, please.

18 A He had a checkbook with him. He had a set of
19 car keys, and he had a wallet, miscellaneous personal items.
20 I think he had a razor, some change, maybe a small pocket
21 knife, maybe some loose coin.

22 Q Do you remember if he had any money?

23 A I don't remember off the top of my head. If he
24 did have money, it would have been a very minimal amount.

5 1 Q Let me show you a number of items, State's JJ,
2 that are in an envelope containing a wallet. Take a look at
3 that if you would, please.

4 A I recognize this item, sir.

5 Q What is that?

6 A This is Mr. Branham's wallet. I took that from
7 Mr. Branham's pocket myself and placed it into this envelope
8 which has my writing on the front.

9 Q Okay. Place that back in the envelope, if you
10 would, please.

11 Show you what has been marked as State's PP.

12 A Yes, sir.

13 Q Recognize those?

14 A Yes, I do.

15 Q What are they?

16 A These cars-- Or these keys, this key tag, were
17 given to me by Mr. Branham.

18 Q Okay. Do you know what those keys go to?

19 A These two go to a vehicle, Pontiac vehicle,
20 which was registered to Miss Fetherston. And this key went
21 to her house.

22 Q Now, when you searched Miss Fetherston's house,
23 did you find any other house keys?

24 A No, sir. There were none for that house that we

6 1 found.

2 Q Showing you State's LL. Recognize that?

3 A Yes, sir, I do.

4 Q How do you recognize that, sir?

5 A This checkbook is the same checkbook that
6 Mr. Branham gave me on February 11th.

7 Q Showing you State's AAA, do you recognize
8 State's AAA?

9 A May I look at the contents of the envelope?

10 Q Certainly.

11 A Yes, sir, I do recognize this.

12 Q What is it?

13 A This is referred to as a handwriting exemplar.
14 I requested that Mr. Branham complete this in my presence.
15 I watched him.

16 Q Did he?

17 A Yes, sir.

18 Q Did you just tell him what to write? Is that
19 how this was completed?

20 A There are self-explanatory instructions on the
21 forms, and I provided him with the instructions on the form.

22 Q Now, did you ever become aware that
23 Miss Fetherston's car was missing?

24 A Yes, sir.

1 Q When was that?

2 A Actually, again prior to my having even gone
3 to her home on the afternoon that she was discovered. I
4 believe that's February 9th, I believe. Yes.

5 Q Okay. And did you ever come in contact with
6 that vehicle?

7 A Yes, I did.

8 Q When was that?

9 A First time I personally observed the vehicle
10 was at the Washoe County Sheriff's Office, and specifically
11 at the Sheriff's Office in the Crime Lab. It was in a garage
12 bay.

13 Q And did you assist in the search of that
14 vehicle?

15 A Yes, sir, I did.

16 Q What did you find in the effect?

17 A There were miscellaneous items of garbage or
18 trash, a couple of empty beer cans, and a large garbage bag
19 containing men's clothing.

20 Q I show you what has been marked State's II.
21 Recognize State's II and the contents?

22 A Yes, sir.

23 Q What is in the bag?

24 A There are several pairs of socks, men's brief

6 1 underwear, some levis, T-shirts. Miscellaneous clothing
2 items.

3 Q Where were they located in the car?

4 A In the rear deck, or trunk area of the Pontiac.

5 Q And did you have a chance to look at the
6 photographs of the car and see if you can see the bag in
7 the back of the car?

8 A I haven't done that today. I have previously
9 looked.

10 Q And can you?

11 A Yes, sir.

12 Q All right. Now, is this the bag, State's II,
13 that you indicated was similar to the plastic bags contained
14 in the drawer of Miss Fetherston's residence,--

15 A Yes, sir.

16 Q --the open drawer?

17 A That's correct.

18 Q Did you take any of those plastic bags out of
19 the drawer in the kitchen for comparison?

20 A No, sir.

21 Q Why is that?

22 A Initially when we had processed the residence,
23 we had not yet come in contact with Miss Fetherston's
24 vehicle. And because I was not aware of the contents of

6 1 Miss Fetherston's vehicle, the bags at that time had no
2 significance to me.

3 Q You indicated there were several items of
4 personal property belonging to Mr. Branham that you took
5 incident to his arrest. Showing you State's Exhibit MM,--

6 A May I go through the contents?

7 Q --would you please go through and describe the
8 items that you took from Mr. Branham.

9 A There are four coupon books of U.S. Department
10 of Agriculture, food stamps, in the name of Mr. William
11 Branham. There is a pair of men's gloves, a razor, a pocket
12 comb, a pocket lighter, some candies, fingernail clippers,
13 key chain and a very small pocket knife, a room key, and
14 40 cents in coin, a quarter, a dime and five pennies.

15 Q Was there any paper money--

16 A No, sir.

17 Q --in Mr. Branham's possession?

18 Let me show you what has been marked State's
19 Exhibit KK, KK. Recognize that?

20 A Yes, sir, I do.

21 Q How do you recognize that, sir?

22 A I removed this item from Mr. Branham's wallet
23 and had it packaged separately from the other items.

24 Q What is it?

6 1 A It is typewritten "Beverly Fetherston", and then
2 there were in blue-colored ink Beverly Fetherston's name
3 written out and appears to be traced over several times.

4 Q Where was that retrieved?

5 A Out of his wallet.

6 Q Did you obtain any hair samples for comparison
7 purposes in this case?

8 A Yes, sir.

9 Q Who did you obtain hair samples from?

10 A Mr. Branham, Mr. Dudley Poorman, and I'm aware
11 that samples have been collected which I submitted to the lab
12 on Mr. John Bell.

13 Q How is it that you came into contact with
14 Mr. Poorman?

15 A Initially, he came into the Reno Police
16 Department. I had subsequent contacts with him, one of
17 which was at his home.

18 Q Did he voluntarily submit hair samples to you?

19 A Yes, sir, he did.

20 Q And how was it that you came into contact with
21 John Bell?

22 A He had gone into a local bar, the same bar where
23 Miss Fetherston had been employed, and one of the employees
24 of the bar had told Mr. Bell that the police were seeking him

7 1 to talk to him and called me, and I drove to the bar and met
2 with Mr. Bell, and ultimately took him to the police station.

3 Q And is that the subject of the interview of the
4 tape that we heard a few minutes ago?

5 A Yes, sir.

6 MR. HALL: Your Honor, I'd like to have this
7 tape recording marked State's next in order, and I'd move for
8 its admission.

9 MS. WILSON: I'd object.

10 THE COURT: Your grounds?

11 MS. WILSON: He's already testified to it, and
12 there's no need. Mr. Bell has already testified. It's
13 cumulative.

14 THE COURT: Overruled. It will be marked and
15 admitted.

16 (State's Exhibit was marked for identification
17 and admitted into evidence.)

18 BY MR. HALL:

19 Q Why did you arrest Mr. Branham for Murder?
20 What information did you have which led you to believe that
21 he was responsible for Miss Fetherston's demise?

22 A Well, it's a culmination of all of the evidence.
23 Having been collected and reviewed and submitted to the
24 District Attorney's Office and ultimately to a Magistrate

7 1 with a request for a warrant, a warrant in fact did issue,
2 and Mr. Branham was arrested for Murder on the basis of the
3 arrest warrant.

4 Q Did you meet with Juanita Draper and Betty
5 Draper?

6 A Yes, I did.

7 Q Did that information also influence your
8 decision to submit for an arrest warrant?

9 A Yes, it did.

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

11 THE COURT: Your witness.

12 MS. WILSON: Thank you.

13

14 CROSS-EXAMINATION

15 BY MS. WILSON:

16 Q Good afternoon.

17 A Good afternoon.

18 Q Detective, you have been an officer for
19 17 years?

20 A Actually, it will be 17 years April 5th of this
21 year.

22 Q And you've been in Robbery-Homicide how many
23 years?

24 A Five years in July.

7 1 Q And you've never had any other occupation beside
2 an officer and a detective?

3 A Well, I was a grocery clerk in high school.

4 Q Okay. Now, the viewing of the scene that you
5 did on the 9th, and the photographs that you have observed,
6 that was from your training as a detective and a police
7 officer?

8 A I'm not sure I understand your question, ma'am.

9 Q Your analysis of the scene was from your
10 experience as a detective and a police officer?

11 A In part.

12 Q And you've never had any forensic pathology
13 training; have you?

14 A No, ma'am.

15 Q You're not a physician?

16 A No, ma'am, I'm not.

17 Q Okay. Were you present at the scene when
18 photographs were taken?

19 A Yes, ma'am.

20 Q And during that time the body was moved in order
21 to take photographs of the different areas of the body?

22 A Yes, ma'am.

23 Q Now, when you indicate that your feeling was
24 that this was most likely a homicide, that was your

7 1 interpretation before the autopsy?

2 A Yes, ma'am.

3 Q And you were present at the autopsy?

4 A Yes, ma'am, I was.

5 Q Now, at the autopsy you were there as well as
6 another officer?

7 A Actually, there were at least three other
8 officers who come to mind that were present.

9 Q And who were they?

10 A Deputy Chuck Lowe from FIS, Jim Duncan, and
11 Detective Dave Wood, who was brand-new in our unit at that
12 time.

13 Q So you, Detective Duncan and Detective Wood
14 are all Robbery-Homicide detectives?

15 A That's correct.

16 Q And you were so at the time of the autopsy?

17 A That's correct, also.

18 Q Okay. Now, at the time of the autopsy you
19 provided Dr. O'Donnell some circumstantial information.
20 Isn't that true?

21 A Yes.

22 Q And in fact, that information included that
23 Miss Fetherston was found in her residence?

24 A Correct.

1 Q Alone?

2 A Correct.

3 Q And that some jewelry was missing?

4 A I believe I told Dr. O'Donnell that there was
5 a possibility of jewelry being missing.

6 Q Okay. And checks missing?

7 A I don't remember if I talked about checks with
8 Dr. O'Donnell or not. I may have.

9 Q Would it help to refresh your memory if you
10 heard the autopsy tape?

11 A Yes, ma'am. I'm sure if those items or
12 discussions are on the recording.

13 MR. HALL: Your Honor, I would object if there's
14 any plan to play the autopsy tape, as Detective Jenkins was
15 not the individual who dictated the autopsy tape. Obviously,
16 it was Dr. O'Donnell. Again that would be improper
17 impeachment. I'm sure that Detective Jenkins has some
18 police reports that he drafted and that may refresh his
19 recollection.

20 THE COURT: Ms. Wilson?

21 MS. WILSON: I think it's appropriate to refresh
22 his memory. He was there. We did so with Mr. Bell's tape.

23 THE COURT: I believe that that tape was created
24 by Detective Jenkins with respect to Mr. Bell.

8 1 MS. WILSON: Well, he was present at the time
2 of the autopsy and he so testified, and I'm sure that he was
3 present when Dr. O'Donnell was talking into the microphone,
4 because it's done during autopsy.

5 THE COURT: Well, I'm not convinced that your
6 certainty is placed in this record as being fact. So if you
7 can establish a proper foundation, I'll consider your
8 request.

9 MS. WILSON: Thank you.

10 BY MS. WILSON:

11 Q When Dr. O'Donnell was doing the autopsy, was
12 he speaking into a microphone?

13 A There is a microphone hanging from the ceiling
14 in the coroner's examination room. It's a dictaphone. The
15 pathologist typically operates the machine as he goes along.
16 I can't tell you what portions he records and what portions
17 he does not record.

18 Q But when you were present and he was talking
19 about the body, he was talking and it was being recorded.
20 Isn't that true?

21 A I assume it was being recorded. Again, since
22 I wasn't working the dictaphone, I wasn't paying attention
23 to at what points in our conversation he was holding down the
24 pedal, so I can't tell you what portions of the conversations

8 1 that Dr. O'Donnell and I may have had were recorded.

2 Q And you were present during the whole autopsy?

3 A I believe so.

4 MS. WILSON: Does the Court wish anymore
5 foundation?

6 THE COURT: Mr. Hall?

7 MR. HALL: Your Honor, doesn't make any
8 difference to me. If she wants to play the tape, I have
9 no objection.

10 THE COURT: Fair enough. There's no objection--

11 MS. WILSON: I believe we've got the indication
12 of what was said in the front part of the autopsy tape.
13 Maybe it will take a moment to get the original from Mr. Hall
14 and set up the tape recorder.

15 THE COURT: Okay. Rather than sit and wait,
16 let's take a five-minute break, and let's let Miss Wilson
17 do what she needs to do. You can stretch your legs, grab
18 a drink of water, otherwise convenience yourselves.

19 You're instructed not to discuss this case with
20 yourselves or anyone else, or to form any conclusion on any
21 issue in this case until such time as you are specifically
22 asked to do so. You are not to look at or listen to any
23 news media accounts of this event, should there be any.

24 We will stand in recess for five minutes or so.

8 1 After you're prepared, you can advise Officer Engelmann and
2 he can advise us of that fact.

3 (Recess.)
4

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

6 We're back in CR92-1048, State of Nevada versus
7 Branham. Parties and counsel are present, as is the jury.
8 And the witness is on the witness stand, still under oath.

9 Ready to proceed?

10 MS. WILSON: Yes, sir.
11

12 CROSS-EXAMINATION RESUMED

13 BY MS. WILSON:

14 Q Detective, during the break, the record should
15 reflect that Mr. Hall has provided a tape of the autopsy.
16 I would like to play a portion of that and see if this
17 refreshes your memory. And this should be regarding the
18 circumstances of death.

19 (Playing tape recording.)

20 BY MS. WILSON:

21 Q Detective, after listening to that portion of
22 the tape, does that refresh your memory of what was indicated
23 regarding the circumstances of that?

24 A Well, yes and no, ma'am. From what the doctor

8 1 is saying, someone told him that we couldn't find a
2 2 checkbook. I can't tell you whether or not that's something
3 3 I discussed with Dr. O'Donnell or not.

4 Q Okay. And how about the jewelry?

5 A Again, I can't definitively say that's something
6 6 I told him or not. I know there were likely conversations
7 7 had in the presence of Dr. O'Donnell by way of giving him
8 8 some background about the circumstances which resulted in
9 9 the individual being brought to the coroner's office.

10 Q How about the car?

11 A Yes.

12 Q Do you recall telling him about the car being
13 13 missing?

14 A I don't specifically have a recollection.
15 15 I'm saying that it's likely, because it is typical of our
16 16 practice that there is a discussion between the investigators
17 17 providing some brief and limited explanation to the
18 18 pathologist, with the understanding that the circumstances
9 19 regarding the discovery of death may often dictate to the
20 20 pathologist what types of examinations and course of
21 21 examination will follow.

22 In other words, a body found in a body of
23 23 river-- or in a body of water might well be examined in a
24 24 manner different than someone found absent water. As just

9 1 an example.

2 Q And the same question regarding the lack of
3 underclothing and undergarments--

4 A Correct.

5 Q --being told to Dr. O'Donnell?

6 A Correct.

7 Q Now, initially when you viewed this scene and
8 the way that the decedent is positioned, you believed that
9 there was a possibility of sexual activity. Isn't that true?

10 A Yes, ma'am.

11 Q And you believed that because of the missing
12 jewelry and/or checkbook and/or car that there may have been
13 robbery?

14 A No, ma'am, not necessarily.

15 Q Okay. Would it be fair to say that you were
16 open to all possibilities?

17 A Yes, ma'am.

18 Q Even though on direct examination you indicated
19 that you believed it was a homicide?

20 A A homicide, ma'am, for my purpose is the killing
21 of a human being by a human being.

22 Q And that was your belief before autopsy?

23 A That's correct.

24 Q Okay. Now, you have described--

1 MS. WILSON: May I approach, your Honor?

2 THE COURT: Yes, you may.

3 BY MS. WILSON:

4 Q You have described the scene as being one of
5 possible fight or some type of struggle?

6 A Yes, ma'am.

7 Q And that was based on your feeling that the
8 green afghan was pulled slightly in this photograph from the
9 back?

10 A In part.

11 Q Okay. And just this middle area appears to
12 show struggle to you?

13 A No, ma'am. You're asking me to take one item
14 out of context, stand it alone--

15 Q Oh, no. Yes, please take the green afghan
16 alone. Is this just the portion that you believe to be
17 significant of a struggle?

18 A No, ma'am.

19 Q What other area in the green afghan?

20 A Well, how about her stretch pants, the pink
21 pants that are inside out, balled up and appear to be wadded
22 in the corner of the couch would have some influence--

23 Q Detective, I was asking you about the green
24 afghan. We'll get to the stretch pants.

9 1 A I'm sorry. I thought you said other than the
2 green afghan.

3 Q No, just the green afghan. The green afghan
4 being pulled in the middle is the only thing regarding the
5 green afghan that you think is significant of struggle?

6 A I think that--

7 Q Just the green afghan.

8 A --that it supports that possibility, yes.

9 Q Okay. And let's move to the colored afghan.
10 You believe that that appears to indicate struggle the way
11 it's positioned on the body?

12 A I think what it indicates is third-party
13 intervention, or second-party intervention. As my memory
14 serves me, I testified it was unlikely that she would have
15 covered herself in that manner.

16 Q Would it be your testimony that a person would
17 never wrap theirsself or cuddle up in an afghan towards the
18 arm area?

19 A I don't think that's what I said at all,
20 Ms. Wilson.

21 Q You said that there was a lumping portion--

22 A Over the arm. Her arm is not wrapped in the
23 afghan, nor is it grasping the afghan.

24 Q This is a clumping situation?

1 A I beg your pardon?

2 Q Is this clumped?

3 A I don't know. If you want to describe it as
4 clumped, it--

5 Q I was using your word, Detective.

6 A I think I was referring to the green afghan,
7 wasn't I, when I said "clumped"?

8 Q So how would you describe this afghan placement?

9 A Unusual in that it only covers portions of her
10 naked anatomy, her torso; and unusual in that from my
11 perspective it would be very unlikely that a person whose
12 hand is resting underneath a gathered area would have been
13 used if the other hand is occupied by the beer can to pull it
14 up.

15 I-- Just from my perspective and in my
16 experience that is not a natural position, and to me it
17 suggests an involvement by a second party covering the
18 individual.

19 Q How much experience have you had in viewing
20 people that have died of a natural death?

21 A I can't provide you with an exact number. Again
22 I could perhaps arrive at some ballpark figure. During the
23 course of my career?

24 Q Yes.

9

1 A Several hundred, perhaps up to a thousand.

2 Q And you've seen people die in bed--

3 A Yes.

4 Q --or on the couch?

5 A Both.

6 Q Okay. Now, the beer can that you have indicated
7 in the decedent's hand, you stated that there was no liquid
8 on the pillow to your observations?

9 A No liquid staining.

10 Q No liquid staining.

11 Do you have any degree in forensic work, any
12 scientific background?

13 A Only my life's experience with beer and fluids.

14 Q Okay. And you certainly know that liquid
15 evaporates; does it not?

16 A Most liquids do, ma'am, yes.

17 Q And you know that this decedent did not pass
18 away within a day. Isn't that true?

19 A That would be my interpretation of her
20 appearance when I saw her.

21 Q And that was because you saw decomposition of
22 the body. Isn't that true?

23 A That's one of the factors, yes.

24 Q Now, when you gathered evidence at the scene,

0 1 that included cigarettes and an ashtray; did it not?

2 A Yes.

3 Q Do you recall what brand of cigarette butts you
4 saw in the ashtray?

5 A I believe they were Montclair.

6 Q Montclair, M-o-n-t-c-l-a-i-r?

7 A Gosh, I don't know the spelling, ma'am. That
8 sounds right.

9 Q You know they weren't Mores, M-o-r-e?

10 A I don't believe they were, no.

11 Q Okay. Now, you indicated that the beer can was
12 something that made you suspicious because the top was facing
13 toward the fingers; correct?

14 A The opening on the top, yes.

15 Q And this beer can was not upside down; was it?

16 A I beg your pardon?

17 Q The bottom of the beer can was here;--

18 A Correct.

19 Q --correct?

20 And the top was towards the head; correct?

21 A No. The top-- Well, are you referring to the
22 opening or the top of the can?

23 Q The opening.

24 A The opening would have been pointing up, if you

0 1 orient-- if you were using the orientation of the couch as
2 your reference point.

3 Q And the can itself, the top was up here by the
4 fingers?

5 A Correct.

6 Q Okay. We don't have an upside-down can with
7 the opening down here; right?

8 A Well, the opening is on the top, but it's not
9 upside down.

10 Q And by "the top", you mean here and not here?

11 A Right.

12 Q Okay. And you can also see the bottom of the
13 can in this photograph?

14 A Yes, ma'am.

15 Q Now, when you viewed the vehicle of Beverly
16 Fetherston, did you inventory that vehicle?

17 A I searched it.

18 Q Okay. And do you recall seeing any chains that
19 would be used for snow?

20 A Tire chains?

21 Q Yes.

22 A No, ma'am, I don't.

23 Q Okay. And do you recall that the vehicle was
24 empty of gas?

0 1 A Yes, ma'am.

2 Q Now, the drawer that you indicate had plastic
3 bags and so forth in it, you did not take any plastic bags
4 from that drawer?

5 A No, ma'am.

6 Q So there's no way to determine whether the bags
7 in that drawer matched the bag that was found in the vehicle?

8 A Not that I'm aware of.

9 Q Now, the bag that was found in the vehicle that
10 contains clothing, you don't know when that was placed in
11 Miss Fetherston's vehicle?

12 A No, I don't.

13 Q You don't know if she placed it there or someone
14 else?

15 A No, ma'am, I don't.

16 Q And you don't know when it was placed there?

17 A No, ma'am.

18 Q Now, John Bell was intoxicated, was he not, when
19 he spoke with you?

20 A Yes, ma'am.

21 Q And you had gone to the Swiss Chalet to pick him
22 up. Isn't that true?

23 A Correct.

24 MS. WILSON: Court's indulgence?

10 1 BY MS. WILSON:

2 Q Now, directing your attention to Defendant's 30,
3 did you walk around the surrounding area in your
4 investigation?

5 A Yes, I did.

6 Q Does that reflect that area?

7 A Yes, ma'am.

8 Q Okay. Did you note the businesses along Wells
9 and Mill?

10 A I'm sorry?

11 Q Did you note the businesses along Wells and
12 Mill?

13 A By name or--

14 Q Yes.

15 A I'm fairly familiar with that area. I didn't
16 specifically make an inventory of the businesses located in
17 that block, if that's what you're asking.

18 Q Okay. Do you know if that's a high-crime area,
19 a medium-crime area, a light-crime area?

20 A Could you give me some other criteria to use?

21 Q Than what I've presented to you?

22 A High-crime compared to?

23 Q Compared to what you would typically compare
24 it to.

0 1 A To south central Los Angeles? No, ma'am, that
2 would be a very low-crime area.

3 Q How about to Reno?

4 A It's-- I would imagine it's an average
5 business, mixed residential area. I wouldn't describe it
6 as either exceptionally low or exceptionally high.

7 Q Kind of a medium?

8 A Yes, ma'am.

9 Q And that would include the area of the Pink
10 Pussycat?

11 A Yes, ma'am.

12 Q And do you recognize this, showing you
13 Defendant's 28, as an area that you viewed through your
14 investigation?

15 A Yes, ma'am.

16 Q And you talked to Mr. McRunnels from this
17 location?

18 A That's correct.

19 Q Okay. Now, there was also people you spoke
20 with, Detective Jenkins, from the surrounding area; for
21 example, Lester Stiffler? Do you recall that?

22 A Yes, ma'am.

23 Q And do you recall speaking with his girlfriend
24 Pam Kendall?

1 1 A Yes, ma'am.

2 Q Showing you Defense 22. Do you see their home?

3 A This could be the back of their home. I don't

4 have enough familiarity with their home to say with any

5 degree of certainty that it is.

6 Q Where do they reside?

7 A I think the address is 610 Mill Street. In the

8 600 block.

9 Q Okay. And in what direction is it from Beverly

10 Fetherston's home?

11 A It would be northwest, across the alley.

12 Q Okay. Could you see where across the alley

13 would be in that photo?

14 A No, ma'am.

15 Q Not easily? Let me give you some more. That

16 would be 18, 16, 19, 15, 20.

17 A I could reference it by saying that it's on the

18 same side of the alley as the Suds, as the laundromat, and

19 to the west. Whether or not it's the adjoining property or

20 a house down from there or two down, I don't recall.

21 Q Do you recall if it was in relative close

22 proximity to Beverly Fetherston's?

23 MR. HALL: Objection, your Honor, vague.

24 THE COURT: Why don't you define in some other

11 1 way "relative close proximity".

2 BY MS. WILSON:

3 Q How close was it?

4 A It would have been within a hundred yards.

5 Q Thank you.

6 And Mr. McRunnels was next door?

7 A Yes, ma'am, across the driveway.

8 Q Now, also removed from Miss Fetherston's vehicle
9 was two Coors beer cans?

10 A I think they were Coors.

11 Q Would you like to see something that would
12 refresh your memory?

13 A Certainly up to you, ma'am. I mean I think they
14 were Coors.

15 Q Okay.

16 MS. WILSON: Court's indulgence?

17 BY MS. WILSON:

18 Q Now, there were hairs found on the sweatshirt
19 and on the index finger of Beverly Fetherston. Isn't that
20 true?

21 A Yes, ma'am.

22 Q Do you recall seeing that?

23 A Yes, ma'am.

24 Q Did you also interview Robert Stiffler?

11

1 A Yes, ma'am.

2 Q Do you recall where he resided?

3 A I'm at a loss right now to tell you which is
4 which. I think one is the nephew of the other, Robert and
5 Lester. One of them-- One of the Stiffler men lives in the
6 600 block of Mill. The other gentleman lives a couple of
7 blocks away, I believe on either Second or Kuenzli. The
8 other side of Wells.

9 Q And how about interviewing Ken Masterman?

10 A Yes, ma'am.

11 Q And Ken, he is the bartender at the Hideout
12 Lounge?

13 A I believe he's the owner.

14 Q And that's 240 Park Street?

15 A I believe so.

16 Q Now, when you went to the scene, you noted that
17 the thermostat in the house was 78 degrees?

18 A Yes, ma'am.

19 Q And in your opinion, death had not just
20 occurred?

21 A Could you define "just"?

22 Q Well, isn't it true that in your statement you
23 believed that death did not just occur? That there was
24 discoloration and swollen areas of the body that you believe

1 Miss Fetherston had--

2 A Would you like my explanation of "just" then,
3 or-- I just want to make sure we're on the same page.

4 Q Certainly. Certainly.

5 A My initial observations would have led me to
6 conclude that death had occurred in excess of at least 12 to
7 20 hours.

8 Q Okay. And that is from your experience as a
9 detective and a police officer?

10 A That's using the widest possible range regarding
11 the factors that I considered.

12 Q And that was 12 to 20 hours?

13 A At the extreme outside limits, yes, ma'am.

14 Q Okay. Thank you.

15 Now, there was a pair of pink-colored stretch
16 pants on the couch?

17 A Yes, ma'am.

18 Q And those, in your opinion, were balled up and
19 stuffed into the couch; correct?

20 A They were pressed into the corner of the couch,
21 yes, ma'am.

22 Q And they had been turned inside out?

23 A Yes, ma'am.

24 Q Rolled into a ball?

11 1 A I would be careful in saying they were rolled
2 into a ball. I don't know if they were open in the corner
3 of the couch and then pressed in a series of maneuvers into
4 a compact area, or if they had been balled up and then
5 placed.

6 Q And that was located nearest to the decedent's
7 feet; correct?

8 A Yes, ma'am.

9 Q Now, you noted that the beer can in the
10 decedent's hand was the same as that on the table, being
11 MeisterBrau?

12 A Same brand, yes.

13 Q Do you know if any testing was done on the
14 cigarette butts?

15 A What kind of testing, ma'am?

16 Q Forensic testing.

17 A Could you be more specific?

18 Q For saliva.

19 A I don't know if that has been requested or not.

20 Q Now, also there was an empty cardboard container
21 on the coffee table; was there not?

22 A Yes, ma'am.

23 Q Now, there were two ashtrays in the front room,
24 and both, to the best of your knowledge, contained cigarette

12 1 butts of Montclair?

2 A I don't remember specifically that there were
3 two. There may well have been.

4 Q Okay.

5 THE COURT CLERK: Defendant's 31.

6 MS. WILSON: May I approach?

7 THE COURT: You may.

8 BY MS. WILSON:

9 Q I'd like to approach with Defendant's 31, ask
10 you to look at it and see if you recognize the contents?

11 A These are the same items you showed me a moment
12 ago, yes, ma'am.

13 MS. WILSON: Move for admission, your Honor.

14 MR. HALL: No objection.

15 THE COURT: I'm sorry?

16 MR. HALL: No objection, your Honor.

17 THE COURT: Admitted.

18 (Defendant's Exhibit 31 was admitted into evidence.)

19 BY MS. WILSON:

20 Q Now, when checking the bedroom, the bed in
21 that room had been turned down and appeared to have been
22 slept in?

23 A It certainly gives rise to that possibility.
24 We can't definitively say someone slept or not.

1 Q Do you recall writing that in your report?

2 A Yes, ma'am.

3 Q Okay. And the undergarments, being panties,
4 bra and nylon hose with a pair of stretch pants were on a
5 hope chest at the foot of the bed; right?

6 A Correct.

7 Q And there was a ring and bracelet that was
8 placed on the nightstand beside the bed?

9 A Yes, ma'am.

10 Q And there was a purse on the hope chest?

11 A Yes, ma'am.

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

13 THE COURT: Mr. Hall?

14

15 REDIRECT EXAMINATION

16 BY MR. HALL:

17 Q Briefly, Detective Jenkins. With the time of
18 death, I think you said something 14 to 20 hours would be
19 extreme outside limits. Did you mean by that Miss Fetherston
20 had to have been dead for at least 14 to 20 hours?

21 A At least. And in that reference from my
22 training, that would be the extreme, extreme outside limits,
23 factoring in the heat of the apartment and not knowing
24 anymore information about the activity level of the decedent

12

1 just before death.

2 Q Okay. Now, do you recall seeing two ashtrays?

3 A I don't at this point specifically remember
4 more than one. There could have been. I remember having
5 some discussion about an ashtray.

6 Q Do you remember one ashtray?

7 A Yes.

8 Q Did you see any photographs earlier that
9 indicated or depicted a Montclair-- or at least a carton of
10 cigarettes--

11 A Yes.

12 Q Okay. --and a cigarette lighter?

13 A Correct.

14 Q That would be State's Exhibit F, in that
15 photograph?

16 A Yes, sir.

17 Q How many ashtrays do you see in that photograph?

18 A One.

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

20 THE COURT: Any recross?

21 MS. WILSON: Court's indulgence?

22 ///

23 ///

24 RECROSS-EXAMINATION

12 1 BY MS. WILSON:

2 Q Now, Detective--

3 MS. WILSON: Court's indulgence? Thank you.

4 BY MS. WILSON:

5 Q You did a supplementary report in this case;
6 did you not?

7 MR. HALL: Your Honor, I'm going to object at
8 this time because the scope of the recross-examination is
9 limited to the scope of the redirect examination, and this
10 exceeds the scope.

11 MS. WILSON: It has to do with the cigarettes,
12 your Honor.

13 THE COURT: I'm not sure what it is she wants
14 to ask, so it's premature at this time. You may raise the
15 objection at a later time when appropriate.

16 MS. WILSON: You may answer.

17 THE WITNESS: What was the question there?

18 BY MS. WILSON:

19 Q You did an extensive supplementary report dated
20 February 14th through March 10th, 1992?

21 A Yes, ma'am.

22 Q I'm going to direct your attention to page 34.

23 A May I follow with my own copy, or would you
24 prefer me to use yours?

12 1 Q You can use yours. I'm sure it's what I have.
2 I refer you to page 34 at the bottom. Bottom
3 paragraph, three lines up.

4 A Okay.

5 Q Does that refresh your memory that there were
6 two ashtrays in the residence?

7 A Yes, ma'am, it does.

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

9 MR. HALL: Nothing further.

10 THE COURT: Thank you very much for your
11 testimony, Detective Jenkins.

12 THE WITNESS: Thank you, your Honor.

13 MR. HALL: Your Honor, at this time I'd like to
14 inquire of Miss Clerk if there's any evidence that has not
15 been admitted that has been marked?

16 THE COURT: Any evidence marked and not admitted
17 initially offered by the State?

18 THE COURT CLERK: GG, HH, DDD, EEE, FFF, and
19 QQQ.

20 MR. HALL: I would not move for the admission of
21 GG, HH. I'd move for the admission of the rest of the
22 evidence that has not been admitted, save and except for QQQ.

23 THE COURT: Do you know what those items are?

24 MS. WILSON: No.

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THE COURT: Mr. Hall, would you--

DDD, EEE, FFF. And Mr. Hall will show you the clerk's record of what those items of evidence might be.

MS. WILSON: Your Honor, in looking at those Exhibits, I believe those were presented yesterday. Those involved the display and the diagrams with Shelly Skender. The defense objected. The Court overruled and admitted.

THE COURT: Well, my clerk says they're not admitted right now.

MS. WILSON: Okay. Well, I'd make that objection, that--

THE COURT: Are you sure-- I think I'm probably the only one who hasn't seen this list. Are you sure that's what we're talking about?

MS. WILSON: Well, just on Mr. Hall's representation. Let me take a look again.

THE COURT: What is--

MR. HALL: This is the blow-ups, your Honor.

THE COURT CLERK: I wrote the Exhibit Numbers on the bottom.

MR. HALL: R and F--

MS. WILSON: Savings deposit record of victim's checkbook.

MR. HALL: That is the blow-up of the front of

1 the-- the blow-up of this. Is this blown up.

2 THE COURT: Do you have it here?

3 MR. HALL: Yes.

4 (Discussion off the record.)

5 THE COURT: All right. And that is marked as
6 what, please?

7 MS. WILSON: That is marked as DDD. Is that
8 right?

9 MR. HALL: Yes.

10 THE COURT: And you want to voice an objection
11 to that?

12 MS. WILSON: No objection to that.

13 THE COURT: Admitted.

14 (State's Exhibit DDD was admitted into evidence.)

15 MS. WILSON: That's what I did voice an
16 objection to if you recall yesterday. I indicated that even
17 though Miss Skender did not have personal knowledge-- My
18 understanding was that the Court overruled that objection.

19 THE COURT: I did. That will be admitted.

20 MR. HALL: That's EEE.

21 (State's Exhibit EEE was admitted into evidence.)

22 MR. HALL: This is FFF.

23 MS. WILSON: Same objection.

24 THE COURT: Same result. Admitted.

13

1 (State's Exhibit FFF was admitted into evidence.)

2 THE COURT: And that's all you'd wish to offer
3 at this time, Mr. Hall?

4 MR. HALL: That's correct, your Honor.

5 THE COURT CLERK: What about QQQ?

6 MR. HALL: Not going to offer QQQ.

7 That's the State's case-in-chief, your Honor.

8 THE COURT: Thank you, Mr. Hall.

9 Ready to begin with your case, Miss Wilson?

10 MS. WILSON: Yes, your Honor. We'd call
11 Dr. Clark.

12 THE COURT: All right.

13 Good afternoon Dr. Clark. If you would approach
14 the clerk, be sworn in, please.

15 (Witness sworn.)

16 (See transcript of testimony of Ellen Clark,
17 previously prepared.)

7

18 THE COURT: Ladies and gentlemen, I don't think
19 there's much more we can accomplish with it being seven
20 minutes to 5 o'clock, so I would prefer to release you at
21 this time.

22 You're once again instructed not to discuss
23 this case among yourselves or with anyone else, or to form
24 any conclusions concerning any issue in this case until such

7 1 time as all the evidence has been presented and it is
2 submitted to you for your determination as a jury. You are
3 not to read, look at or listen to any media accounts of this
4 event, should there be any.

5 Thank you for your attention throughout this
6 trial to date. I certainly appreciate it, and I know
7 Ms. Wilson and Mr. Hall are most appreciative, as well.

8 We will reconvene Monday at 10:00 a.m. I'll see
9 you Monday at 10:00 a.m.

10 (Proceedings Continued to March 8, 1993, at 10:00 a.m.)

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7 1 STATE OF NEVADA)
2) ss.
3 COUNTY OF WASHOE)

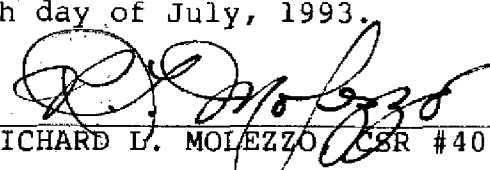
4 I, RICHARD L. MOLEZZO, official reporter of the
5 Second Judicial District Court of the State of Nevada, in and
6 for the County of Washoe, do hereby certify:

7 That as such reporter I was present in
8 Department No. 5 of the above court on Friday, March 5, 1993,
9 at the hour of 10:10 a.m. of said day, and I then and there
10 took verbatim stenotype notes of the proceedings had and
11 testimony given therein upon the Trial of the case of THE
12 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 102, 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

DC-9900051859-090
CR92-1048
STATE VS WILLIAM EDWARD BRANHAM
District Court
Washoe County
March 09/1993 04:36 PM
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ORIGINAL

No. CR92-¹⁰⁴⁸~~1408~~

Dept. No. 5

FILED

March 9, 1993
JUDI BAILEY, Clerk

By B. Wacker
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

--oOo--

THE STATE OF NEVADA,

Plaintiff,

vs.

WILLIAM EDWARD BRANHAM,

Defendant.

PARTIAL

TRANSCRIPT OF PROCEEDINGS

Testimony of Joseph Masters

March 8, 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:

FOR THE DEFENDANT:

MASTERS, Joseph H.

Direct

Cross

Redirect

Recross

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1 1 RENO, NEVADA; MONDAY, MARCH 8, 1993; 2:00 P.M.

2 --oOo--

2 3
4 (The following is a partial transcript of proceedings:)

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

6 We're returned to CR92-1408, State of Nevada
7 versus Branham. Mr. Branham is present, along with
8 Miss Wilson; Mr. Hall is here representing the State. And
9 our jury panel has returned and they are in place.

10 Ready to proceed, Miss Wilson?

11 MS. WILSON: Yes, your Honor.

12 THE COURT: Go ahead, please.

13 MS. WILSON: We would call Dr. Joseph Masters.

14 THE COURT: All right. Dr. Masters, if you'd
15 approach the lady to my right please, raise your right hand
16 and be sworn in.

17 (Witness sworn.)

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

20 ///

21 ///

22 ///

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2

1

JOSEPH H. MASTERS,

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called as a witness by the defendant herein,

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being first duly sworn, was examined and

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testified as follows:

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6

DIRECT EXAMINATION

7

BY MS. WILSON:

8

Q Dr. Masters, would you please state your full

9

name, and spell your last name.

10

A Joseph H. Masters. M-a-s-t-e-r-s.

11

Q And Dr. Masters, where do you reside?

12

A I reside in Fair Oaks, California.

13

Q Okay. And how long have you resided there?

14

A In Fair Oaks since 1961.

15

Q Now, could you tell us a little bit about your

16

educational background?

17

A I had undergraduate school at Drexel Institute at

18

Philadelphia and Johns Hopkins University in Baltimore,

19

Maryland. I went to medical school at the Medical College of

20

Virginia, the Commonwealth University in Richmond, Virginia.

21

I had a one-year internship at Walter Reed Army

22

Hospital. I had four years of residency training at Letterman

23

Army Hospital. I subsequently had practiced pathology in the

24

Army and other parts of the world. And this country since

2 1 19-- I returned from Germany in 1957, and had practiced
2 pathology in Sacramento since 1958.

3 Q And can you tell us a little bit about your work
4 experience in pathology?

5 A I practiced pathology first in the military after
6 completing my residency. I was chief of laboratories at the
7 98th General Hospital in Germany, then at Madigan Army
8 Hospital. I left the Army in 1958.

9 I have been in Sacramento. I have been at
10 Sutter Hospitals. I've been a member of a pathology group
11 in Sacramento that varies from four to twenty pathologists. I
12 was chief of the Department of Pathology at Sutter Hospitals
13 for several years.

14 During the time I was there, I was-- with my
15 pathology group, we became involved with the Sacramento County
16 Coroner's Office about 1964, and I began to use part of my
17 time to do forensic pathology, and did forensic pathology
18 part-time or full-time until I retired in 1983. Since that
19 time, I see an occasional case in consultation.

20 Q Now, are you Board certified in pathology?

21 A I'm Board certified in pathology and anatomic
22 pathology, clinical pathology, radioisotopic pathology and
23 forensic pathology.

24 Q When was your last certification?

2 1 A My last certification was in the subspecialty
2 2 of radioisotopic pathology, and it was sometime in the early
3 3 '70s, and I would have to get out my CV to recall exactly.
4 4 I think it was 1974.

5 5 Q Okay. Now, in the area of forensic pathology,
6 6 have you testified in court?

7 7 A Yes, I have.

8 8 Q And approximately how many times have you
9 9 testified in court?

10 10 A 500 or more.

11 11 Q Of those times that you've testified, how many
12 12 times has it been for the State?

13 13 A 95 percent, plus. Probably closer to 98 percent.

14 14 Q And you have become acquainted with the case of
15 15 State v. Branham?

16 16 A I've become acquainted with certain aspects of
17 17 the case. Certain material was presented to me and I had
18 18 looked at that, yes.

19 19 Q What materials have you reviewed?

20 20 A I've reviewed the autopsy report, including the
21 21 coroner's first-page summary. The-- Reviewed microscopic
22 22 slides. I reviewed an autopsy tape of that autopsy. I've
23 23 reviewed some testimony by a Dr. McDonnell-- O'Donnell, both
24 24 at preliminary and at trial. I've reviewed some testimony of

2 1 a Dr. Clark from trial. I reviewed a report from a
2 criminalist who looked at some hairs. And I believe that
3 is all I have looked at.

4 Q Did you have an opportunity to review the
5 diagrams that are in front of you on this board?

6 A I briefly looked at these diagrams.

7 Also, I do recall I looked at a group of copies
8 of photographs also in the case among the material submitted
9 to me previously.

3 10 Q Would that include this diagram that's on the
11 floor?

12 A I saw that diagram a little while ago, yes.

13 Q And did you see the scene where the body was
14 found, these two photographs, which are marked as AA,
15 State's AA, and State's BB?

16 A I did not see the scene itself. I have seen
17 copies of those pictures, yes.

18 Q Okay. And did you see the photographs which are
19 in the corner here, that would be State's Z and State's G?

20 A I saw those a few minutes ago, yes.

21 Q After reviewing the materials that you have
22 indicated, did there come a time that you submitted a written
23 report to the defense?

24 A I submitted a written report at your request

3 1 some time ago, and I do not know the exact date at this time.

2 Q Would that include--

3 MS. WILSON: May I approach?

4 THE COURT: You may.

5 BY MS. WILSON:

6 Q Would that include these pages, handwritten on
7 your part?

8 A This is-- This is my written report, yes.

9 Q Okay. And did you subsequently submit articles
10 in that package of material that you submitted to the defense?

11 A I did.

12 Q Now, after reviewing all of that material, that
13 being the photographs, the things that you've listed, as well
14 as the articles, did you form an opinion as to the cause of
15 death in this case?

16 A I formed an opinion. I have a little difficulty
17 with the question, because my opinion is that I cannot state
18 the cause of death in this case.

19 Q Okay. Did you note that Dr. O'Donnell had
20 determined that the cause of death was undetermined, but
21 consistent with asphyxia?

22 A I did.

23 Q And what is your feeling with regard to his
24 feeling that it would be consistent with asphyxia?

3 1 A I agree with the determine-- I agree with his
2 determination of "undetermined". I have trouble with
3 "consistent with asphyxia", because "consistent" can mean
4 different things to different people.

5 If he means asphyxia cannot be ruled out with
6 the information available, I would be in agreement with his
7 statement.

8 "Asphyxia" also is a term that one may have
9 trouble with. Actually, the term means in its derivation,
10 "without beat", or "without a heartbeat". So that's the
11 definition of death.

12 And asphyxia as it is currently used and commonly
13 used at the present time, especially in forensic pathology,
14 it means death due to one of a variety of things that
15 interfere with the exchange of oxygen. And I don't find
16 anything in the materials that I have that give any strong
17 support for that determination.

18 The findings that are present, I think, can be
19 explained by other things, by-- by things other than those--
20 those entities that cause asphyxia. And certainly there are
21 many things that are not present in this case that-- of his
22 findings that are often seen in various types of asphyxial
23 deaths.

24 Q What would you determine to be the focal point

3 1 of this case with regard to cause of death?

2 A I have a little trouble with that question,
3 because you look at everything when you're trying to determine
4 a cause of death, especially if it's a case in which homicide
5 is-- is suspected. So everything to a degree is to be
6 considered.

7 I think as far as the report is concerned, as
8 far as Dr. O'Donnell's report, there are three items in the
9 report which apparently represent the substance of the
10 findings that might be considered to-- to be significant in
11 ruling in or ruling out asphyxial death.

12 Q And what are those areas that Dr. O'Donnell
13 believes to be the focal point?

14 A There are only three lesions in the neck, three
15 spots in the neck. Otherwise, everything in the neck is
16 described as either completely normal or unremarkable.

17 The-- One of the areas is in front of the--
18 in front of the neck involving skin. It's a butterfly lesion
19 which he says is in front of the thyroid.

20 A second lesion is deep within the neck behind
21 the larynx in the laryngeal pharynx. He describes that as a
22 blood extravasation.

23 And the third lesion is some hemorrhage, or blood
24 extravasation into some fat in front of the trachea, beneath

3 1 the skin, in the front of the neck.

2 Q Taking those one at a time, the first point
3 that Dr. O'Donnell believes to be significant, how would you
4 describe that area?

5 A He gave the measurements, I think, and again I
6 don't have his report in front of me. My recollection is it
7 was about 3.5 by 1.5 cm in its largest dimension. It's made
8 up of two possibly connected areas of discoloration in the
9 front of the neck. Dr. O'Donnell called it a purple
10 discoloration. He said it was an apparent bruise, and I
4 11 think he also used the term "bruise-like".

12 In his dissection, after reflecting the skin
13 flap, which is part of the normal autopsy procedure, he was--
14 apparently saw no evidence of hemorrhage in the subcutaneous
15 tissue. Asked that a photograph be taken and-- to prove that
16 there-- to document that there was no hemorrhage.

17 So the other--

18 Q What does that mean to you?

19 A Well,---

20 MR. HALL: Objection, your Honor. Calls for
21 speculation.

22 THE COURT: Ms. Wilson?

23 MS. WILSON: I think that's what we've been doing
24 since we've been talking to the doctors. I think he can give

4 1 an opinion as to what it means to him.

2 THE COURT: He can give an opinion based upon
3 ascertainable facts. I'm not sure he can give an opinion as
4 to what is in someone else's mind or what it means to someone
5 else.

6 MS. WILSON: Well, I believe that Dr. Clark had
7 talked about a thumbprint--

8 THE COURT: Well, then, I'll allow you to
9 establish a greater foundation than has been established.
10 Objection is sustained at this time.

11 BY MS. WILSON:

12 Q Do you believe that that was a bruise, from the
13 information that you received?

14 A I don't know whether it's a bruise. When I first
15 read his report, it appeared to me that he was saying that he
16 was not sure that it was a bruise, and it's-- it either is or
17 is not a bruise.

18 From the subsequent testimony that I have read,
19 apparently he is very much convinced that it was a bruise,
20 though he apparently took no microscopic section which could
21 have resolved this issue. If it is a bruise, it clearly is
22 confined to the skin.

23 Q Was that, in your opinion, a life-threatening
24 area of concern?

4 1 A The simple answer is "No". The bruises are not
2 life-threatening. The reason one looks for bruises is to see
3 if there is evidence that there is one of the types of
4 asphyxiation deaths, such as manual strangulation or one of
5 the other types of strangulation, or some other evidence of
6 trauma to the neck.

7 This-- In this case, everything in the neck is
8 completely normal except for the three areas of-- that we have
9 discussed. This particular one in the skin of the anterior
10 neck is confined to the skin. There's nothing deep to this
11 lesion that indicates anything of a threatening nature was
12 going on in the deeper part of the-- of the neck.

13 Q Given the information and the reports that you
14 reviewed, do you have an opinion as to what possibly caused
15 that particular area in the anterior neck?

16 A Accepting the testimony of Dr. O'Donnell that he
17 now states this to be a clear-cut bruise and that he made a
18 poor choice of terms in the autopsy report, if it is a bruise,
19 it is clearly confined to the skin.

20 The configuration, its location in the skin, to
21 me indicates that the far more likely explanation for this is
22 that it is a pinch of the skin, that the two segments of this
23 represent someone pinching skin and causing this injury of
24 this pattern in this location in this strict-- in this

4 1 confined area, confined to skin. If there is no hemorrhage,
2 by definition it's not a bruise.

3 Q Do you have an opinion as to whether that could
4 have been caused by the decomposition of the body?

5 A If it's a bruise, it was not caused by
6 decomposition. It's not the kind of bruise that you would
7 expect with decomposition. If there's no hemorrhage, the only
8 other explanation, unless she had a pre-existing lesion at
9 this site, is decomposition change.

10 Q Is there a way to know whether there was a
11 pre-existing bruise in that area?

12 A I may have trouble deciding whether it was a
13 pre-existing bruise. But whether there was a pre-existing
14 lesion, a pigmented lesion, a hemangioma, a cluster of blood
15 vessels, that would have been decided had a section been taken
16 from that area.

17 Because of decomposition, a bruise may have been
18 difficult to date if a pre-existing bruise was present in that
19 area.

20 MS. WILSON: Court's indulgence?

21 THE COURT: All right.

22 BY MS. WILSON:

23 Q Do you have an opinion as to whether this case
24 was a homicide?

4 1 A I have-- I've seen nothing to support such a
2 conclusion, but I do not know what the cause of death is in
3 this case.

4 Q Now, what is the standard procedure for
5 conducting an autopsy if one is confused or doesn't know the
6 cause of death?

7 A If it is-- In any kind of-- of case that is
8 suspected of being a homicide, or any case that's going to go
9 to court as a suspected felony, one does as complete an
10 examination as they possibly can.

11 If the cause of death is not apparent, one does
12 all-- does all possible procedures to try to determine what
13 the cause of death may have been.

14 Q If you had this body before you, what would be
15 the first thing that you would cut into, and why?

16 A I'm not sure that I can-- I may do-- My first
17 cut may be the standard so-called Y-shaped incision.

18 There-- I may have in this case made an incision
19 through the discoloration in the anterior neck before doing
20 my Y incision, just to help me decide whether this was likely
21 a case in which I must be care-- very careful in looking for
22 evidence of strangulation.

23 I may have made my first incision through that
24 or some other bruise that may have been present.

5 1 But my best answer is I would probably do the
2 2 standard Y-shaped incision.

3 Q What is the Prinsloo-Gordon procedure?

4 A I don't know if it's-- it's-- The Prinsloo-
5 5 Gordon papers have pointed out that where there is a question
6 6 of a traumatic lesion in the neck, one should be very careful
7 7 not to contribute to the-- to any confusion by not relieving
8 8 the pressure in the blood vessels of the neck before removing
9 9 the structures in the neck for more detailed review.

10 It's a-- a report saying and documenting that
11 11 certain hemorrhages occur in the back of the neck, especially
12 12 in decomposing-- I mean especially in bodies that have--
13 13 especially where you're concerned about a strangulation death
14 14 or some other death related to trauma to the neck. That as
15 15 the pressure in these vessels can force blood out into the
16 16 tissue, that you should relieve the pressure in the vessels
17 17 in the back of the neck or in the neck region before
18 18 proceeding with removal of the neck organs for detailed
19 19 review.

20 Q Was that done in this case?

21 A By the sequence of description on the tape and
22 22 by the sequence that was indicated in the typed report, no.

23 Q Is there something regarding the three areas of
24 24 concern that Dr. O'Donnell had which lead you to believe that

5

1 the extravasation could be due to the Prinsloo-Gordon
2 artifact?

3 A The blood extravasation in the posterior
4 pharynx-- in the posterior neck in the region of the laryngeal
5 pharynx is in a location that one might have the Prinsloo-
6 Gordon artifact. The--

7 There is a lesion in the pharynx. It was
8 described by Dr. O'Donnell. It is present in the microscopic
9 slides. I think it is either a hypostatic, which means the
10 settling of blood to the dependent portion of an organ, and
11 the right side is the dependent portion of this organ, with
12 decomposition changes allowing extravasation at this site.
13 Or it is a so-called Prinsloo-Gordon artifact.

14 Q And the area that you're specifically speaking
15 of, that would be where in the neck that we're talking about
16 that may have the Prinsloo-Gordon artifact?

17 A It is the lesion that is present in the laryngeal
18 pharynx. The laryngeal pharynx is that portion of the
19 pharynx--

20 The pharynx is divided into three parts. The
21 nasal pharynx is behind the nose; the oral pharynx is behind
22 the mouth; The laryngeal pharynx is behind the larynx, behind
23 the Adam's apple, the structure here in the neck. It's
24 between the larynx and the vertebral column.

5 1 It's on the right-- This area of blood
2 2 extravasation is on the right side, and it is in the middle
3 3 portion of the neck, deep in the neck.

4 Q Showing you what's been marked as Defense 35,
5 5 can you point to the area that Dr. O'Donnell found the blood
6 6 extravasation?

7 A I can point to the laryngeal-- I can point to
8 8 the laryngeal part of the pharynx, which on this diagram is
9 9 identified by the number 34, and it is that part of the
10 10 pharynx which is behind the larynx. This-- This--

11 Q What would be the size of that blood
12 12 extravasation?

13 A It was 1.0 times 0.7 cm, which is the size but
14 14 not the shape of a very small shirt button. And it would be
15 15 in about this area of the neck. This is a cross section taken
16 16 through the head, and it's taken from the right side. So the
17 17 right side isn't there. This would be the left side where 34
18 18 is, but it would be in this area of the neck.

19 Q Could you circle that area, please.

20 MS. WILSON: Your Honor, I'd move for admission
21 21 of Defendant's 35 and ask that I be permitted to show the
22 22 jury.

23 THE COURT: Mr. Hall?

24 MR. HALL: No objection.

5 1 THE COURT: Admitted. You may.

2 (Defendant's Exhibit 35 was admitted into evidence.)

6 3 BY MS. WILSON:

4 Q Keeping with that area, Doctor, of these two
5 diagrams, where is it that you have just indicated?

6 A With the--

7 Q Would it be better in this chart or this chart?

8 A It would be the upper chart.

9 Q Okay. And given that area which is indicated
10 on this chart, is that a fair representation of that
11 particular area of concern that Dr. O'Donnell had?

12 A Except for the fact that the area according to
13 the description is limited to what is called the submucosa,
14 so that it involves the inside of the larynx, not the entire
15 thickness of the wall, that is a representation.

16 That's a representation of the-- of the laryngeal
17 pharynx, and that is the right side, since this is a section
18 from the back. That would be the right side, that's correct.

19 The relative size is a bit out of proportion,
20 and as I said, the location as far as its location within the
21 wall is limited because it should be only in the submucosa,
22 which is just below the inner lining. The inner lining is
23 that inner white membrane that comes down on each side, and
24 it should be between that and the muscle of the wall.

1 The muscle would be some of the-- I-- I have
2 trouble telling you from here, but--

3 Q You can come down.

4 MR. HALL: Your Honor, may I move this a little
5 bit so I can see what they're looking at here?

6 THE COURT: Of course. Sure.

7 THE WITNESS: This is the wall of the larynx.
8 This is the wall of the pharynx. It is behind the larynx.
9 That portion behind the larynx, and this is a laryngeal
10 structure, the epiglottis, this part of this wall is the
11 laryngeal portion of the pharynx. This is the mucosal
12 lining on this side. This is the mucosal lining on this
13 side. This is muscle.

14 The area of blood extravasation is between this
15 inner lining and the muscle. It is not through the entire
16 thickness of the wall, but it is in the right side, and this
17 is the laryngeal pharynx.

18 BY MS. WILSON:

19 Q Doctor, on the outside of this structure that we
20 see, what is next?

21 A What is next?

22 Q In other words, what is after this structure?

23 A Well, the entire-- the entire anatomy of the neck
24 is the other-- multiple muscles here. The front part is--

6 1 here the larynx, this being part of the larynx. Behind is the
2 vertebral column. There are muscles, so-called strap muscles,
3 there are multiple blood vessels, there's connective tissue,
4 fat, other things that make up the tissues of the neck. And
5 then on the far outside, there's skin on both sides.

6 Q Would you expect to see more damage to
7 the neck area than this area here if there was a manual
8 strangulation?

9 A If this was a bruise due to manual
10 strangulation-- A bruise is a crush, or a blunt-force injury
11 that damages tissue and breaks blood vessels. If there was a
12 force so exerted from the outside of the neck into this area
13 causing a bruise in a hollow tube deep within the middle of
14 the neck, I would expect some damage, some evidence of damage,
15 to tissue in that area between wherever the force was first
16 applied and this area deep within the neck.

17 Q Was there such damage?

18 A In this case, except for the three spots,
19 lesions, blood-- the two blood extravasations and the
20 apparent bruise, everything else in this neck is described
21 as completely normal or unremarkable.

22 Q Would you expect to see semen present in the
23 body at this point of decomposition?

24 A That's quite variable. Sometimes when you know--

6 1 know intercourse has taken place, the evidence of semen, the
2 evidence of spermatozoa-- spermatozoa has disintegrated, and
3 the evidence of any fluid that has alkaline phosphatase, which
4 is usually the test used to test for semen, it may disappear
5 in a very brief period of time. It may be there for long
6 periods of time.

7 There is anecdotal stories in some of the old
8 textbooks, out of the old forensic books out of England, that
9 spermatozoa was found in bodies that had been buried inside
10 of a wall for years. Most people don't believe that now, I
11 think.

12 But spermatozoa may persist for a period of time.
13 They may disappear in a very short period of time. Evidence
14 of acid-- of acid phosphatase-- acid phosphatase may disappear
15 in a short period of time.

7 16 There are now more sophisticated ways to look
17 for fluids within the body cavity, and I don't think we really
18 know how long these things may persist.

19 Q The third area that Dr. O'Donnell was concerned
20 with, the area of the blood extravasation of the tracheal
21 area, showing you State's GGG, is that an accurate account
22 of what you believe was the area of concern?

23 A The picture is an accurate anatomical drawing
24 of the body with certain things cut out. And this only

7 1 represents certain structures within the neck.

2 If you are referring to the ovoid lines that
3 were put on the front of the neck, is that an accurate
4 representation? Was that your question?

5 Q Yes.

6 A That is in front of the trachea. Again, it is
7 accurate from that.

8 Dr. O'Donnell in his report says that this area
9 of blood extravasation began at a .2 centimeters below the
10 level of the larynx, and that would not be an appropriate
11 perspective.

12 This begins-- This is the larynx. This is part
13 of the thyroid cartilage. This is-- The protuberance, the
14 notch, that sticks out in the neck. This is the so-called
15 cricoid cartilage, which is part of the larynx structure.

16 Dr. O'Donnell in his autopsy report says that
17 this area of blood extravasation began 2 centimeters below
18 this. So this should be down, I believe, a bit lower, ovum,
19 in this diagram.

20 Q Is there anything about that area that causes
21 you concern and leads you to believe that this lady was
22 manually strangled?

23 A There is blood extravasation, and something
24 caused it. It was caused-- It is probably a bruise caused

7 1 by a blunt force. It could be caused by a fall. It could
2 be-- I'm not even certain that it was caused before death.

3 There is nothing as it relates to the location,
4 the size, the extent of the bruise, that to me supports in
5 any significant way that there was any manual strangulation
6 in this case.

7 Q Okay. Showing you the Defense 35, is that area
8 clear on that drawing?

9 A The-- The lower portion of this drawing goes
10 down only to about the cricoid, so the trachea is off of the
11 page.

12 Q Okay. Showing you what's marked Defense 32, is
13 there an area that you could point out or circle as the area
14 of concern that Dr. O'Donnell had regarding the trachea in
15 that photograph?

16 A This is a picture, a diagram, as you will, of a
17 body, and it's not head on. It's at a bit of an angle. The
18 bruise is beneath the skin.

19 This is a diagram of the body surface. The
20 bruise, if that's what it is, that's in the fat in front of
21 the trachea would be in this area here, the suprasternal
22 notch-- just above the suprasternal notch.

23 The trachea is part of the breathing tube. It's
24 about 4 inches in length. Ordinarily about 2 inches in the

7 1 neck and 2 inches in the chest.

2 The autopsy report says that the bruise began
3 about 2 centimeters below the larynx, and so that would put
4 the center of this bruise, if its configuration-- the-- the
5 longer axis is up and down, it would put it fairly close in
6 this neck above this suprasternal notch.

7 It would probably be just about in the area of
8 where-- of 13, which they call jugular notch. The same.
9 So it would be about in this area.

10 MS. WILSON: Your Honor, move for admission of
11 32.

12 MR. HALL: No objection.

13 THE COURT: Admitted.

14 (Defendant's Exhibit 32 was admitted into evidence.)

15 MS. WILSON: May I show it to the jury?

16 THE COURT: You may.

17 MS. WILSON: The record should reflect
18 Dr. Masters has circled above number 13.

19 BY MS. WILSON:

20 Q Is there anything about that particular area
21 that leads you to believe that this decedent was manually
22 strangled because of that area of blood extravasation?

23 A No. I know that at some point in time the
24 question was raised as to whether the manual strangulation

7 1 may have involved the trachea, which is not the place that
2 2 manual strangulation is usually involved.

3 If there was any significant manual strangulation
4 4 of the trachea, I would have expected a lot more hemorrhage
5 5 and damage in this site. There's no evidence of any damage at
6 6 all to the tracheal wall. That is very--

8 7 The trachea, while you can feel the front surface
8 8 of it, to be able to grasp it and squeeze it shut or to do any
9 9 damage means pushing very deep into the neck to be able to
10 10 grab it. This is not a place that is easily grabbed.

11 The place that strangulation takes place is one
12 12 grabs the larynx, the Adam's apple. That can be grasped.
13 13 It's hard for the victim to pull-- pull away. And this is
14 14 where almost all manual strangulations cause damage.

15 Q What are the classic signs of manual
16 16 strangulation?

17 A I don't know-- There-- There are some things
18 18 that are called the classic signs of asphyxia, and the
19 19 classic signs of asphyxia may be present in certain kinds of
20 20 asphyxial deaths. In addition to that, specific kinds of
21 21 asphyxia deaths have features that are most commonly seen.

22 The thing that is most commonly seen in manual
23 23 strangulation is some damage to the trachea or the hyoid and
24 24 the regional structures about the trachea, the strap muscles,

8 1 the other tissues in the-- this area of the neck. You may
2 have--

3 If the strangler reaches high enough, he can grab
4 the hyoid. And while that is the thing that many people think
5 of as the area that shows that strangulation has taken place,
6 actually the hyoid is nowhere near as often fractured as is
7 the thyroid.

8 This is the part that one grasps to try to
9 strangle someone, and they can break the back part of the
10 thyroid horns, the surface of the thyroid cartilages
11 themselves, or the cricoid cartilage. Some centers have
12 reported even a 90-percent demonstration of fractures
13 involving either the hyoid or the thyroid. You may consider
14 that one of the classical findings.

15 I don't think anyone says these are classical
16 findings. You look for damage where tissue has been crushed,
17 squeezed, broken in the area where the manual strangulation
18 has taken place and where the tissue has been grabbed.

19 Q Are there any other signs of manual
20 strangulation?

21 A Well, often you will see surface evidence.
22 Sometimes you will see-- Again, one might call this
23 classical; again, there is no listing that says this is a
24 classical finding. But as you grab, you can often leave a

8 1 bruise on one side of the neck caused by the thumb, and maybe
2 2 a series of bruises on the other side of the neck caused by
3 3 pressure of the fingers.

4 Usually it's more than just a single bruise on
5 5 one side and three on the other, because victims don't like
6 6 to be strangled, they fight, and often there is more than one
7 7 grabbing and there are multiple bruises. And the victim often
8 8 scratches at the-- at the hand.

9 And if you see evidence of such a group of
10 10 bruises in the neck, especially if you see evidence that--
11 11 of scratches that appears that maybe the victim has tried to
12 12 resist, this is strong evidence, this makes the diagnosis of
13 13 manual strangulation if the person is dead, and especially if
14 14 you have the classical signs of asphyxia and if you've got
15 15 additional hemorrhages inside the neck.

16 No case-- Rarely do you see all of these in one
17 17 individual. Sometimes you see relatively few bruises.

18 Q Were there fractures of any of the bones here?

19 A In this case, except for the three-- the two
20 20 blood extravasations and the apparent bruise, everything in
21 21 the neck was described as either normal or unremarkable.

22 Q As to asphyxia, are there also classic signs that
23 23 one would expect to see?

24 A There are what I call the so-called classical

8 1 signs, and some books refer to them as the classical signs:
2 petechial hemorrhages; congestion; cyanosis; liquidity of the
3 blood; possible dilatation of the right side of the heart.
4 These are some general findings that indicate that maybe
5 asphyxia has taken place.

6 Q Was any of that present in this case?

7 A None of that was described, except for the lungs
8 were-- in this case were at least two times normal in size.
9 And except for the congestion in the lungs, no other visceral
10 congestion was described. The--

11 There are no petechiae described in the eyes.
12 There was no statement made as to whether the petechiae were
13 present inside of the skull or not. There was no statement
14 made as to whether petechiae were present on the lining
15 membranes of the chest or not. No-- None of the so-called
16 classical signs of asphyxia were present.

9 17 However, this case shows I think a moderate
18 overall decomposition, small amounts of-- limited in some
19 places, more in others. I would call this moderate
20 decomposition in this case, and that would obscure some of
21 the so-called classical signs if they had been present. But
22 since they were not seen, we don't know whether they were
23 ever present or whether they were not present. There is no
24 evidence that they were.

9 1 Q Speaking of the scene--I'm referring to AA and
2 BB, State's Exhibits--have you reviewed photographs of the
3 scene where the deceased was found?

4 A I've reviewed the-- I think it was 19 photographs
5 that were taken at the scene that was included in the package
6 that was sent to me.

7 Q The record mentioned the two Exhibits, that being
8 AA and BB, which are before you. Is there anything about that
9 scene that changes your opinion as to whether or not the cause
10 of death was consistent with asphyxia or blunt-force trauma to
11 the neck?

12 A There's nothing that changes my opinion. It may
13 support or give me some confidence that-- that the right--
14 the correct interpretation has been made of the three areas
15 in the neck.

16 To me, if someone is being strangled, they either
17 fight or run. And there's no evidence in that picture that
18 there has been a fight. There's no evidence in that picture
19 to me that indicates that there has been an attempt at flight.

20 Q Would having a beer can in one's hand in your
21 opinion preclude the possibility of flight?

22 A Preclude it?

23 Q Yes.

24 A I don't think the beer can is a very effective

9 1 weapon against somebody having a hand on your throat. But
2 2 certainly if you were going to resist, if your decision was
3 3 to fight and not to flee, I think the first thing one does is
4 4 drop the beer can and try to remove someone's hand from their
5 5 throat.

6 Q Anything about the positioning of the afghan that
7 7 leads you to believe that this was precluded from fighting?

8 A In a word, no. I'm-- The-- There's nothing to
9 9 indicate that the individual was comatose or stuporous, and
10 10 there's no medication that indicates-- there's none in the
11 11 tests that were done for medications and for call. There's
12 12 nothing to indicate she was at the stuporous level. I don't
13 13 see anything in that picture that would preclude her resisting
14 14 any attempt to strangle her or to smother her.

15 Q How would you describe the scene that is in front
16 16 of you?

17 A In my report to you I used the word "tranquil".
18 18 Apparently "tranquil" isn't a term that some people like.
19 19 To me, it's an undisturbed scene. The afghan at the back of
20 20 the couch is still in place. The rug along the floor is quite
21 21 parallel to the edge of the couch. The feet are up on the
22 22 couch in a flexed position. To me, it is an undisturbed scene
23 23 that does not suggest to me either fight or flight.

24 Q Did you determine whether there were any

9 1 defensive wounds in this case?

2 A I didn't-- I can only go by what is in the
3 autopsy report. There's no evidence of any injury anyplace on
4 this body in the-- none reported, except for the three spots,
5 extravasations, apparent hemorrhage that we have previously
6 discussed.

7 Q Would you expect to see any type of evidence with
8 regard to a pillow if this was a suffocation death?

9 A You'd look for it. I can't say I would expect
10 to find it. I would certainly have looked for it.

11 Q Okay. And why is that?

12 A If-- If it was a question of a smothering death
13 and one thought a pillow was involved, first you look at the
14 victim's-- you look for any evidence on the victim that
15 supports such a conclusion.

16 Sometimes it's been seen that someone has had
17 their tissues of their face pressed down so that you can even
18 see the imprint of their teeth on the inner surface of the
19 gum of the mouth. It's been described that some people have
20 pallor or paleness of the nose and mouth. I think most people
21 sort of discredit that now, because pallor is such a transient
22 situation.

23 But you look for any evidence on the victim of--
24 that would support a determination that there had been

9 1 smothering by a pillow.

2 Then you look for evidence on the pillow. You
3 look for evidence-- If the individual, especially if they
4 have any kind of cosmetics, lipstick, mascara on that may have
5 rubbed off onto the pillow. You look for that evidence.

10 6 You look for saliva and would make a test on the
7 pillow for saliva if you had a serious concern that this was a
8 smothering death.

9 So you would look for evidence of-- that might
10 occur on the-- on the victim and for evidence that may occur--
11 occur on the weapon used, and most often you don't find
12 either.

13 Q Would you change your opinion as to the cause of
14 death if it was presented to you that this was a combination
15 of strangulation and suffocation?

16 A I would have to have some reason as to why that
17 was expected. If you're going to suffocate someone, you don't
18 stick your hand under the pillow and create an airway for
19 them. If you're going to strangle someone, it doesn't make--
20 it's not logical and reasonable to me that you put a pillow
21 on top of your-- It means that you have one less hand to work
22 with. I-- I can't find the logic of that.

23 Q Is there anything about the positioning of the
24 legs that leads you to believe that there was a struggle?

10 1 A Actually, the position of the legs leads me a
2 little bit to believe that there was not a struggle. If there
3 was a struggle taking place, the couch is only so wide, this
4 individual-- if this individual was struggling with someone,
5 I would have expected either for the victim to be off the
6 couch or certainly some of the things that are loosely present
7 on the couch to have fallen off.

8 MS. WILSON: Court's indulgence?

9 BY MS. WILSON:

10 Q Do you have an opinion as to whether the deceased
11 passed away from natural causes?

12 A I don't think there are enough positive findings
13 in this case to have any strong opinion as to the cause of
14 death. I think the cause of death is undetermined. With--
15 With--

16 Q Would your answer be the same with regard to
17 accidents?

18 A "Accident" is a pretty broad and general term.
19 If you-- If you-- Did the deceased ingest some medication
20 other than those that are tested for and take an overdose in
21 an accidental way? That I could not exclude. But that's--
22 that's negative information.

23 I don't have any positive information that
24 suggests that she did that. There's no evidence that she was

10 1 in any kind of an accident that was severely traumatic.

2 Q If you were to do the autopsy in this case and
3 sign the autopsy protocol, what would be your diagnosis?

4 A From the information that is available to me in
5 the material that was submitted to me, I would call this death
6 undetermined, period.

7 Q Why is it important to know the circumstances of
8 death, such as that the decedent was in her residence, that a
9 checkbook was missing, that a boyfriend had threatened, and
10 that jewelry was missing?

11 A One likes to know as much as they can about the
12 circumstances of death. You would like very much in this
13 case before signing it out to get the people who do the scene
14 investigations to do as much of a scene investigation of this
15 residence as you possibly could, and see if you had any
16 additional substantial information that might help.

17 Q Can that influence your decision with regard to
18 the autopsy protocol and the cause of death?

19 A If I had such information-- If I did not have
20 any obvious findings as to the cause of death and I knew that
21 the group of events that you had stated had taken place, I
22 would be very much concerned in trying to make sure that I
23 would do everything I could to rule out or rule in foul play.
24 Because obviously some-- something appears to be a foot.

10 1 And then you look as close as you can for any evidence to
2 support it.

3 And on the other side of that search, to make
4 sure that what you do find is not misrepresented,
5 overinterpreted or underinterpreted.

6 MS. WILSON: Court's indulgence?

7 BY MS. WILSON:

8 Q In your opinion, what are the possibilities for
9 the blood extravasation that was seen?

10 MR. HALL: Objection, your Honor. Calls for
11 speculation.

12 THE COURT: I think it calls for an opinion
13 within the witness's expertise. He may offer the options,
14 possibilities available resulting in this particular
15 condition.

16 You may answer if you're able to, sir.

17 THE WITNESS: We're talking about three areas.
18 I assume your question relates to each of the three, or one
19 in particular?

20 BY MS. WILSON:

21 Q Each of the three.

22 A The-- As answered previously, I think the most
23 likely, by far the most likely explanation for the skin lesion
24 in the front of the neck is that this represents a pinch of

10 1 skin with blood extravasation into the skin. The underlying
2 tissue shows-- is completely normal and shows no hemorrhage.

11 3 That is-- That answer applies with the
4 acceptance that Dr. McDonnell's wording in his autopsy
5 protocol was appropriate and that there is a bruise in the
6 neck. This we can never confirm, if we have no section to
7 make a confirmation.

8 The area in the front-- in the fat tissue in
9 front of the trachea may well be a bruise. It may well be
10 a traumatic, blunt-force injury that may have been caused by
11 the vic-- by the deceased herself. It may have been caused
12 by-- It may have even been caused by some-- something that
13 occurred after death. It may well have been caused by some
14 other person pushing some-- some kind of blunt-force pressure
15 into this area of the neck. It would not take much force to
16 have caused blood extravasation into the fat tissue at this
17 site.

18 The third lesion in the laryngeal pharynx, that
19 is the digestive tube behind the larynx, I think is not a
20 blunt-force injury. I think that represents some kind of a
21 blood extravasation due to something that took place either
22 with the hypostasis or with the so-called Prinsloo-Gordon
23 kind of change.

24 Q Directing your attention to State's Z, the area

11 1 of blood extravasation that is a purplish color, does that
2 relate to the interior injuries or interior blood
3 extravasation that Dr. O'Donnell has elicited in his autopsy
4 protocol?

5 A It is-- It's nearby. It's above-- It's above
6 it. He-- Dr. O'Donnell in his autopsy protocol says that
7 this lesion on the front of the neck is over the thyroid. He
8 does not say whether it's over the upper part of the thyroid
9 or the lower part of the thyroid. If it is-- It appears to
10 be over the lower part of the thyroid. The lower part of the
11 thyroid is present on the upper part of the trachea.

12 The lesion inside on the front of the trachea
13 begins 2 centimeters--that's 2 over 2.54 parts of an inch--
14 below the larynx. The center of that bruise-- That bruise
15 is the size I think 2.5 by 1, is my recollection. So if it
16 began, the center of that bruise would be almost an inch
17 beneath the center of the bruise in the skin.

18 Q In your opinion, could any of these blood
19 extravasations have occurred during sexual intercourse or
20 sexual activity?

21 A I don't know what was taking place. Yes, people
22 during sex activity sometimes do something to their partner's
23 neck. I think the neck could be pinched. It-- A fingertip,
24 a knuckle could have gone down into the jugular notch, the

11 1 suprasternal notch.

2 I think those two areas of change, damage, blood
3 extravasation, apparent bruising, could have taken place
4 during sex. But there's nothing that with any competence I
5 can do to tie the two events together.

6 Q Do you have an opinion as to time of death?

7 A Oh, I think with as much decomposition-- I avoid
8 getting involved with times of death. There's such a large
9 number of variables. I usually limit my evaluation to
10 "consistent with".

11 However, she has no apparent rigidity remaining.
12 This is not described by anybody's examination. I think
13 because of the amount of decomposition that is apparent in
14 the photographs taken at the scene, that she was probably
15 dead more than 24 hours, and maybe much more than 24 hours.

16 MS. WILSON: Thank you.

17 THE COURT: Your witness, Mr. Hall.

18
19 CROSS-EXAMINATION

20 BY MR. HALL:

21 Q With respect to time, Doctor, wouldn't you agree
22 she could have been dead on Thursday, February 6th, if she was
23 found on Sunday, February 9th?

24 A I could not rule that out. I don't know--

11 1 Q Her state of decomposition would be consistent
2 with her dying on Thursday, February 6th; isn't that true?
3 A Dr. O'Donnell apparently insists that it's--
4 that it's early decomposition. I think a good part of this
5 is moderate decomposition. And I-- I repeat my previous
6 statement, I do not try to give any accurate determination
7 as to time of death. I think the findings here are consistent
8 with--
9 There are so many variables, yes, this lady
10 could have been dead much longer than 24 hours.
11 Q Okay. So your answer is "Yes"; is that correct?
12 A I-- I have some-- some continual grasp of the
13 times involved. I think the autopsy was done on February the
14 10th. She was found on February the 9th. Your question is
15 whether she could have been dead on the--
16 Q The night of the 6th.
17 A I could not exclude that.
18 Q Now, with respect to Exhibit 32, isn't it
19 true, Doctor, that that injury is consistent with the
20 tracheal injury described on State's GGG? In other words,
21 approximately in the same location; correct?
22 A I'm not--
23 Q Okay. We have a bruise--
24 A Yes.

12 1 Q --on State's Z.
2 A Yes.
3 Q Would you agree that that is a bruise?
4 A I-- If there is no hemorrhage, it's not a
5 bruise.
6 Q Can you look at this and tell me if that is a
7 bruise?
8 A I cannot look at an autopsy picture on a
9 decomposed body and say that that has to be a bruise. It's
10 consistent with a bruise. If-- If there's hemorrhage
11 present, it most likely is a bruise. It's consistent with
12 a bruise. If there's no hemorrhage present, it is not a
13 bruise.
14 Q Looks like a bruise; doesn't it?
15 A I cannot make such a determination in a
16 decomposed body.
17 MR. HALL: I would publish this photograph to
18 the jury.
19 BY MR. HALL:
20 Q Now, the bruise you saw on State's Exhibit Z is
21 consistent with the bruise depicted in State's Exhibit GGG.
22 Isn't that correct?
23 A I-- I accept this as a bruise because
24 Dr. McDonnell in his preliminary and trial testimony says

12 1 that he is-- he is convinced that it is a bruise and he
2 misspoke in his choice-- or he made a poor choice of words in
3 his autopsy protocol.

4 If that is a bruise--and for the moment I will
5 accept that as a bruise--that is not the bruise that is
6 depicted in that diagram.

7 Q That's not my question, and I probably phrased
8 it poorly.

9 What I'm talking about is the bruise depicted
10 in State's Z is consistent with a bruise depicted in State's
11 GGG? In other words, if I pushed on your neck and--

12 Now, the area of the neck described in State's
13 GGG is right about in here. And I'm pushing with my thumb
14 in the lower part of my neck. Is that about right, Doctor?

15 A You are pushing your thumb in the lower part of
16 your neck. Dr. McDonnell in his autopsy protocol said that
17 this lesion was present over the thyroid. That means that
18 underneath there is the thyroid. He said that that is--

19 And the thyroid is present in the most upper
20 portion of the trachea, the isthmus of the thyroid. The
21 lobes of the thyroid go up high in the neck.

22 But if he's talking about the low part of the
23 thyroid, he's talking about the most upper part of the
24 trachea. Dr. O'Donnell in his autopsy protocol says that

1 the bruise in the fat tissue in front begins 2 centimeters
2 below the larynx.

3 Q Let me see if I can rephrase my question. Okay?

4 A Yes.

5 Q Look at State's GGG.

6 A Yes.

7 Q Can you-- Let me put my thumb on my neck, and
8 you tell me where to stop when we talk about this bruise
9 depicted in State's GGG. Where is that?

10 A About an inch or less above this notch.

11 Q About right here?

12 A I don't know.

13 Q Why don't you use my neck, and why don't you
14 point.

15 A About right there.

16 Q About right here?

17 A Yeah.

18 Q Now, where my finger is on my neck where you
19 described the bruise described in State's GGG, isn't that
20 consistent with State's Z? Isn't that bruise in about the
21 same position, Doctor?

22 A It's higher in the neck. By Dr. O'Donnell's
23 description, it's higher.

24 Q Well, let's use this description and let's use

12 1 the photograph.

2 A I think when I indicated on my previous
3 questioning related to this--

4 Q It was a little lower; isn't that correct?

5 A --that this bruise which-- this outline which
6 depicts the bruise in the front of the trachea, that that is
7 not where the autopsy protocol says that it is. It should be
8 lower.

9 Q Isn't it possible, Doctor that the bruise
10 depicted in State's Exhibit Z, the photograph, could have
11 been caused when somebody pushed their thumb on that part
12 of Miss Fetherston's neck causing both the bruise depicted
13 in Z and the bruise depicted in State's GGG?

14 A Not if I believe the measurements and the
15 location given by Dr. O'Donnell in his autopsy protocol.
16 And if-- if in truth this was over the thyroid, what I would
17 expect is hemorrhage into that part of the underlying thyroid.

18 The underlying thyroid-- Thyroid is a very
19 vascular, well supplied with blood vessels, a very soft
20 tissue. If that is over the thyroid and there is some
21 pressure with the thumb into this area, I would expect
22 damage to the thyroid.

23 There was nothing underlying that bruise.
24 Dr. O'Donnell had somebody take a picture to show there was

13

1 nothing underlying that bruise.

2 Q But Doctor, don't your articles indicate that
3 in many deaths you're not going to have these kinds of
4 injuries present in the neck? Isn't that true, even in
5 strangulation deaths?

6 A The-- We're talking about a complex of things
7 here now. As far as the so-called classical signs of
8 asphyxia, they may or may not be present in asphyxial deaths.
9 Often some are present and some are not.

10 In a manual strangulation, you may have a
11 limited number of bruises. Before you can draw a legitimate
12 conclusion, they should be bruises of a type that you can
13 logically draw a conclusion that this is a significant bruise
14 that indicates that strangulation has taken place.

15 Q Okay. And aren't bruises a classic sign of
16 asphyxiation and/or strangulation, bruises to the neck?

17 A Bruises represent a blunt-force injury to any
18 tissue. They may occur wherever there is a blunt-force
19 injury.

20 One of the things that represents a blunt-force
21 injury may be manual strangulation. Everybody who has a
22 bruise in their neck certainly does not die of strangulation.

23 Q Would you agree that these bruises are consistent
24 with strangulation?

13

1 A I would not agree that these bruises--
2 First of all, I have trouble with "consistent".
3 "Consistent" can mean lots of things to different people.
4 It can mean with the available information, I could not rule
5 it out. It can mean that it all adds up, that the facts--
6 that the-- each of the facts here fits together and is
7 consistent with. It may-- "Consistent" sometimes means yes,
8 that's so.

9 I would not use the term "consistent" here. I
10 think the bruises, or the three lesions present in this case,
11 are not supportive of interpretation as strangulation. I
12 think anything that is supportive, the various things that
13 are-- ordinarily are supportive of strangulation are not
14 present.

15 Q Let's go through a couple of those things;
16 shall we?

17 Now, the bruise on her neck, you said that
18 could have been a pinch. Isn't that right?

19 A I said more than that. I think I said that it--
20 I think it's highly probable that it is. And the reason I
21 said that is because, number one, is the fact that it is
22 confined strictly to the skin. There's no damage underneath
23 it. It's confined strictly to the skin.

24 Q Okay. Well, then, how do you explain

13 1 Dr. O'Donnell's testimony, sworn testimony under oath, that
2 the bruise on the front of Miss Fetherston's neck depicted
3 in State's Exhibit Z is consistent with the bruise underneath
4 her skin on the trachea described in State's Exhibit G?

5 A That's not what he wrote in his autopsy protocol.

6 Q That's what he testified to in court.

7 A I-- I-- I didn't-- I did not--

8 Q You read his testimony in court; didn't you?

9 A I may have read his testimony in court. I
10 didn't--

11 MR. HALL: That's what he said.

12 THE COURT: Mr. Hall. Give the witness a chance
13 to answer, please.

14 MR. HALL: Sorry.

15 THE WITNESS: I didn't interpret it in exactly
16 the same way that you're interpreting it. But I still say
17 he may have said that in court. I-- I don't remember reading
18 that in exactly the specific terms that you are now stating
19 it. It is not-- It does not fit the locations given in his
20 autopsy record.

21 In his autopsy record, if you apply the location
22 of the bruise, accepting it as a bruise, that is overlying
23 the thyroid, and accept the fact that he was talking about
24 the lower portion of the thyroid and not the upper portion,

13 1 and you accept the fact that he measured on the trachea the
2 position of the blood extravasation in the fat in front of
3 the-- of the trachea, he measured that distance and said it's
4 2 centimeters-- it begins 2 centimeters below the trachea,
5 then the center of one bruise is about a-- assuming the bruise
6 is elongated in this direction, it's about an inch below the
7 center of the skin bruise.

8 BY MR. HALL:

9 Q So it's your testimony then that I can't move
10 my thumb around in about an inch to make a bruise underneath
11 the skin. Isn't that your testimony?

12 A My testimony is that you can't--

13 Q That you can't move the skin on the exterior of
14 the neck where we see the bruise in State's Z to correlate to
15 the bruise described in Dr. O'Donnell's autopsy report?

16 A You can bruise your neck with a pressure from
17 your thumb, yes, sir, you can.

18 Q And that-- I'm sorry. Go ahead and finish.

19 A Dr. O'Donnell made a point. He even had someone
20 take a picture of the skin underlying the apparent bruise on
21 the outside of the neck. He had someone take a picture. He
22 said-- I think his term was "completely free of hemorrhage
23 underneath". The autopsy record makes no connection between
24 the two.

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I know that the-- this bruise changed from
apparent to con-- to a bruise-like, to a bruise definite,
from autopsy, to sign-out sheet, to preliminary. The
location of this bruise may have changed, also. I can only
say that I examined the autopsy protocol, and in the autopsy
protocol they don't fit.

Q Okay. You do agree that that the bruise depicted
in State's Exhibit G was due to blunt-force trauma. Isn't
that correct?

A This is G? It's--

Q State's Exhibit GGG. That's the big blow-up
right there in front of you. This here.

A Yes.

Q State's GGG.

This bruise depicted in State's GGG, you would
agree that that was due to blunt-force trauma and that that
is a bruise. Isn't that correct?

A Most probably.

Q Well, are you changing from most probably? You
just stated that that was-- On direct examination you said
that was a bruise caused by blunt-force trauma.

A I said I accept that as being a bruise. It has
the features of a bruise. I think that's a bruise.

Q Didn't you say it was caused by blunt-force

14

1 trauma?

2 A Bruise by definition is blunt-force trauma.

3 Q Okay. Now, let's go to the other bruise on the
4 laryngeal pharynx.

5 Now, you stated that that may have been caused
6 by the Prinsloo-Gordon artifact?

7 A That could be.

8 Q But you don't know; do you?

9 A No, I don't know.

10 Q If Dr. O'Donnell said that was a bruise and he
11 did the autopsy, he would be in a better position to determine
12 whether or not that was a bruise caused by blunt-force injury.
13 Isn't that correct?

14 A All other factors being equal, that should be
15 the fact. But this does not make any sense to me to be a
16 bruise. Dr. O'Donnell did not call it a bruise in his
17 autopsy report. He called it a blood extravasation.

18 MR. HALL: Your Honor, I would ask the witness
19 to be responsive to the question, and I'd like you to instruct
20 him--

21 THE WITNESS: Could you repeat the question,
22 counselor?

23 BY MR. HALL:

24 Q Yes. Wouldn't Dr. O'Donnell be in a better

14 1 position as he did the autopsy to determine whether or not
2 the bruise that he described in State's Exhibit GGG would be
3 either blood caused by-- a bruise caused by blunt-force
4 trauma, extravasated blood or an artifact, the Prinsloo-
5 Gordon artifact?

6 A Since I do not believe that that is a bruise,
7 I have to answer that question, "No."

8 Q He would not be in a better position than you
9 to determine whether or not that was a bruise?

10 A I explained why I think this is not a bruise.
11 Why I definitely believe this is not a bruise. It's too
12 deep in the neck. This-- All the tissues in the neck
13 between this blood extravasation and the skin surface are
14 described as being completely normal. To me this is not a
15 bruise, and so I cannot answer your question, "Yes."

16 Q Well, could you determine whether or not this
17 area as-- described as a bruise by Dr. O'Donnell was caused
18 by extravasated blood?

19 A Was it caused by extravasated-- That's a
20 description; that's not a cause. That's a description.

21 There is extravasated blood. I've looked at
22 the sections. I agree in the sections there is some blood
23 in the submucosa in this section.

24 Q Well, what's the difference between extravasated

14 1 blood and a bruise?

2 A Extravasated blood means blood outside of a
3 blood vessel. It means extravascular. Extravasated is blood
4 outside of a blood vessel. We don't know what the cause
5 might be.

6 In this case, I think it's because-- either is
7 a hypostatic blood extravasation related to the fact that
8 this lady was laying on her right side. Blood settles.
9 There was decomposition. Blood can break out of a blood
10 vessel. And in the so-called again Prinsloo-Gordon effect,
11 this could be the explanation for this blood extravasation.

12 A bruise is a blunt-force injury that breaks
13 blood vessels and causes a hemorrhage. There's blood in the
14 tissue. It is also outside of a blood vessel.

15 But by saying "bruise", we are stating what we
16 think the cause is. By saying "blood extravasation", we're
17 not stating the cause. It is blood outside of a vessel for
18 whatever reason.

19 Q Now, you would agree that if this area of blood
20 extravasation was due to decomposition or the Prinsloo-Gordon
21 artifact, that it would appear different than a bruise.
22 Isn't that correct?

23 A Not necessarily. A bruise is blood outside of
24 a blood vessel caused by a blunt-force injury. Extravasation

15 1 of blood is blood outside of a blood vessel due to whatever
2 cause.

3 Q Well, can't-- aren't you able to determine
4 whether or not bruises are post mortem or ante mortem?

5 A In a goodly-- In most cases. In a decomposition
6 case, it can be very troublesome, very, very difficult to
7 determine. And in certain instances where there is no
8 decomposition, small bruises may have been caused by a
9 post-mortem event.

10 Q Well, Dr. O'Donnell described these bruises,
11 both the bruise on the top of Miss Fetherston's neck, the
12 bruise on the trachea in GGG, and the bruise on the laryngeal
13 larynx as fresh. Dr. Clark described these as acute,
14 occurring at or near time of death. Do you have a problem
15 with that, Doctor?

16 A Do I have a problem with it? No. I think--
17 I have a problem with anybody being able to determine "at or
18 about the time of death" unless I know what they mean by
19 "about".

20 When you look at a microscopic section of a
21 bruise, you cannot determine within a matter of less than a
22 few hours what is the time of that bruise. The only thing
23 that helps you to time a bruise in the first few hours is the
24 begin-- the beginning for the body to react to that bruise.

15 1 So that white cells begin to come into the area of the bruise.
2 That takes place ordinarily within a matter of up to three to
3 four hours. So when you have a fresh bruise, you cannot be
4 certain as to the exact time.

5 I'm sure that this bruise--because I did not see
6 any reaction to it--is less than three hours, the bruise in
7 the front of the trachea.

8 This one, this blood extravasation in the
9 laryngeal pharynx I think is not a bruise. Because to me it
10 is no logic to have a blunt-force injury that deep in the
11 middle of the neck caused by a blunt force. There's some
12 other explanation, since there is no injury between the skin
13 and this blood extravasation.

14 Q Okay. Let's take an example. Let's say I
15 punched you in the liver.

16 A Yes.

17 Q You don't have a bruise on the outside of your
18 back, but you have a bruised liver--

19 A That's correct.

20 Q --and you're urinating blood. Isn't this about
21 the same thing?

22 A No. The liver has nothing to do with urine.
23 But the liver is injured because it is pressed against
24 something. That's the same reason why grabbing something

15 1 here, you're pressing soft tissue against something hard.

2 Here, this blood extravasation is in the surface
3 of an open tube. That tube is inside of a wall made by the
4 pharynx, the spinal cord, all kinds of soft tissue and muscle.
5 On the outside of that there are many, many blood vessels,
6 other structures, and the skin.

7 To get this tiny bruise on the inside of a hollow
8 tube, which is not being pressed against anything, it's not
9 being crushed against anything--

10 Bruise-- That's another-- The word "bruise"
11 originally meant "crush". That's not being crushed against
12 anything hard. So your example of what takes place in the
13 liver is not applicable to what is the situation here in this
14 blood extravasation.

15 Q So there's nothing in this area depicted in
16 State's H that could cause a bruise? You're saying this
17 could not be a bruise? Is that your testimony?

18 A I'm saying this lesion at this site under the
19 circumstances described here, the-- does not add up to be a
20 bruise.

21 Q You can say that this isn't a bruise for sure?

22 A To me, I don't believe it's a bruise. It doesn't
23 make sense being a bruise.

24 Q But you don't know; do you?

15 1 A I-- I've learned a long time ago that anything
2 is possible. The probabilities here I think are so are very,
3 very, very high that this is not a bruise for the reasons that
4 I have previously given.

5 Q When you saw these tranquil photographs of
6 Miss Fetherston-- Correct?

7 A I used the word "tranquil". If that bothers
8 you, I'll be glad to accept that to me there's no evidence
9 of fight, no evidence of flight. There's nothing there that
10 looks like it's been disturbed by any kind of an altercation
11 or anyone trying to run away.

12 Q Okay.

16 13 THE COURT: Mr. Hall? I'm going to give this
14 jury a brief recess right now, give you an opportunity to
15 consider your question for the doctor. And we'll take a
16 15-minute recess.

17 (Recess.)

18
19 THE COURT: Thank you. Be seated, please.

20 This is CR92-1408, State of Nevada versus
21 Branham. Mr. Branham is present along with Miss Wilson,
22 as is Mr. Hall. And our entire jury has returned. The
23 witness is still on the stand and still under oath.

24 Are you ready to proceed, Mr. Hall?

1 MR. HALL: Yes, your Honor.

2 THE COURT: Go head.

3

4

CROSS-EXAMINATION RESUMED

5 BY MR. HALL:

6 Q Doctor, if you recall, we were talking about
7 State's AA and BB, the photographs. Would you agree, Doctor,
8 that the position of Miss Fetherston as depicted in these
9 two photographs does not look natural?

10 A I don't know what "not natural" means. If you
11 would state something specific, I might better respond to it.
12 It looks-- Her face is covered with an afghan, but that's--
13 that to me is not unnatural. It's just something I wouldn't
14 do.

15 Q Doctor, I'm pointing to State's Exhibit AA.
16 This area here that I'm circling with a pointer is
17 Miss Fetherston's head. Would you agree that her head is
18 not covered with an afghan?

19 A Can I--

20 Q Certainly. Step down if you need to get a closer
21 view.

22 A Her head is not covered with an afghan.

23 Q In fact, it's covered with a pillow. Isn't that
24 correct, Doctor?

1 A Partly. I can see part of it, and part of it--
2 Part of the pillow is in front of her face, and part of it
3 appears to be over her head from the direction this photograph
4 has been taken, yes.

5 Q Now, can you explain, Doctor, how a person would
6 get the afghan over her arm, her left arm, a pillow over her
7 face, and a beer can into her hand? Doesn't that seem to be
8 a very difficult thing for one person to do?

9 In other words, she couldn't pull the afghan
10 over her left arm with a beer can in her hand; could she?

11 A I think the afghan is-- As far as I can tell,
12 she could have pulled it up with her left-- with her left arm.
13 She may have put it up there before the beer can was in her
14 hand. I can't draw any definite conclusions that agree with
15 what you've said.

16 Q Would you find it peculiar, Doctor, that the
17 beer can depicted in Miss Fetherston's right hand was empty,
18 and that there was no evidence that the beer had spilled on
19 the pillow depicted in State's AA?

20 A Again, there are too many variables as to what
21 might happen. The beer may have spilled someplace else. I'm
22 sure-- If the entire area was checked for evidence of beer,
23 I'm sure most of the beer may have been consumed. There may
24 have been a few drops left. I cannot draw any meaningful

16 1 conclusions from what you're telling me.

2 Q If I told you that the opening to this beer can
3 was pointing the wrong direction, so that it would not be
4 natural for her to drink from a beer--

5 Perhaps I can demonstrate easily for you.

6 The beer can as depicted in this photograph
7 would indicate that she had the beer can like this.

8 A Um-hum.

9 Q Now, would you agree that that would be an
10 unnatural way to hold a beer can, if you were going to drink
11 beer?

12 A It's not the way I would drink beer. But I
13 learned a long time ago, counselor, not to inject my mores,
14 my habits, my values on somebody else. If somebody else
15 wants to drink it that way, I do not use my values to
16 determine what someone else will do.

17 Q Perhaps I wasn't clear with my question. I
18 wasn't asking about mores and values, about whether or not
19 one should drink beer.

20 My question was: Didn't it seem unnatural to
21 you and peculiar, pointing out specific peculiarities in this
22 photograph, that the beer can in Miss Fetherston's hand has
23 an opening at the top towards her fingers as opposed to down
24 at the bottom by her thumb so she could drink the beer? Does

16 1 that seem peculiar to you, Doctor?

2 A My same answer, counselor. It's not what I
3 would do. What somebody else wants to do with the way they
4 drink beer out of a can, I do not make a judgment that that's
5 peculiar. It's-- It's not the way I would do it, I agree.

17 6 Q Isn't it true, Doctor, that you do not have
7 enough information to form an opinion as to whether or not
8 Miss Fetherston died of natural causes? Isn't that your
9 testimony?

10 A I-- I have agreed that I do not know why this
11 lady died.

12 Q Isn't it true, Doctor, that you agree that
13 Miss Fetherston did not die because of an accident?

14 A Within the limitations of what my previous
15 answer said, there's no evidence that she was in any
16 significant accident that caused any significant traumatic
17 lesion. If she overdosed on a medication that we have not
18 tested for and she overdosed unintentionally, that could be
19 called an accident.

20 "Accident" is a very broad term. And again,
21 I can rule out specific kinds of accidents. There may be
22 other kinds of accidents that I could not rule out. I gave
23 you one example.

24 Q Well, in this particular case, there was no

17 1 evidence that there was any drugs or narcotics found in the
2 house or around the body. Do you understand that?

3 A I think that's the first time that I have been
4 given that specific bit of information, yes.

5 Q Does that help you in your opinion as to
6 whether or not this was an accident due to some ingestion
7 of narcotics or other drugs which may have been causational
8 in terms of her death?

9 A It cuts down the probability, yes.

10 Q And you have ruled out the probability or
11 possibility of her falling on some blunt object and causing
12 the blunt-force trauma to her neck; isn't that correct?

13 A I have not ruled that out, no, sir.

14 Q Okay. Isn't it true, Doctor, that if someone
15 were to fall on an object and cause blunt-force trauma to
16 the neck, typically they would be found in close proximity
17 to that area where this trauma was caused, if in fact it was
18 responsible for their death?

19 A It-- It's a compound, complex question that I
20 cannot give a simple answer to.

21 Someone can fall onto an object and bruise their
22 neck. If it is of enough severity that it causes their death,
23 they may well die at the scene, at the site where the injury
24 was caused.

1 I cannot rule out the possibility that the
2 bruise, especially the bruise over the front of her trachea
3 and the fat in this area, may have been caused by her falling
4 onto some protruding object. I don't think that this lesion
5 caused death.

6 I don't think that any of the three lesions in
7 this case-- There are three minor blood extravasations.
8 They're not in and of themselves fatal injuries.

9 There is nothing in this case that suggests that
10 this was a strangulation death with any damage to the trachea,
11 which is-- This is the-- By far the common site of manual
12 strangulation injuries is in this region. None of these
13 three blood extravasations, apparent bruises, are in this
14 region.

15 She may well have caused the injury in front of
16 her trachea by falling onto something. A fall does not
17 explain to me this injury, this injury confined strictly to
18 the thin layer of the skin, normal underneath. It's-- It's
19 a butterfly or double wing kind of lesion. The thing that
20 makes the most sense to me is that this is a pinch.

21 Q Isn't it possible, Doctor, that Beverly
22 Fetherston could have died as a result of blunt-force trauma
23 to the neck and suffocation, a combination of both the pillow
24 and the blunt-force trauma to the neck? Isn't that possible,

17

1 Doctor?

2 A Pretty much my previous answer, counselor.
3 I've-- I accept the fact that almost anything is possible.
4 I don't see any facts that support that in any way.

5 Q So the pillow on her face isn't a fact that
6 would support that?

7 A I often in the middle of the night end up with
8 a pillow on my face because of the way I twist and turn in
9 bed. It doesn't-- Somebody that has a pillow in the room
10 or somebody that has a pillow partly covering their face to
11 me does not add up to smothering.

12 Q The bruise on her neck doesn't support that
13 possibility?

14 A We accept the fact that with the qualifications
15 that Dr. McDonald has corrected his autopsy protocol, or
16 better clarified his autopsy protocol, that there may be two
17 bruises in the neck, one a pinch and one--

18 You don't like to see this. That's not-- If
19 they were caused by someone else, that's not a nice way to
20 treat them. But they're not fatal injuries, in my opinion.

21 Q So you're saying it's not possible?

22 A No. I started off my answer, counselor, and
23 said that I accept the fact that just about anything is
24 possible.

17 1 Q So that is possible? It's possible that those
2 injuries caused the death; correct?

18 3 A Anything is possible. I see nothing to support
4 such a conclusion.

5 Q Doctor, isn't it also possible that a person
6 could have straddled Miss Fetherston's chest, pinned down her
7 arms, strangled and/or smothered her, and you wouldn't see a
8 scratching scenario, and you wouldn't necessarily see a fight
9 or significant struggle? Isn't that possible?

10 A To smother someone with a pillow, you have to
11 block off the air coming through their nose and mouth.
12 That's what smothering is all about-- smothering with a
13 pillow is all about.

14 With all of the various angles and prefaces, if
15 someone wanted to smother this lady with a pillow, what she
16 should do is lay on a floor, not in a place where she could
17 turn her head and find an air pocket. This to me-- Again,
18 the logic of it eludes me.

19 Again, I accept anything is possible. The logic,
20 the reasoning eludes me. That is not the kind of situation
21 that you would expect to be the site of a smothering death.

22 Q You do agree that scenario would be possible.
23 Isn't that true?

24 A I accept the fact that anything was possible.

1 I don't find anything to support it.

2 Q And Doctor, isn't it true that if you press the
3 thumb on the trachea in the area that's described in State's
4 Exhibit HHH, that that may block the air passage in the
5 throat?

6 A The trachea is very hard to compress. It's--
7 It's so much easier to-- to strangle someone with their--
8 up in this area. You can block off blood vessels. You can--
9 You can break bones. And you can do that with much less
10 pressure than it takes to compress and hold off the trachea.

11 In pressing in this area, first of all, to get
12 a thumb in there, in this area between the two muscles, the
13 sternocleidomastoid muscles, is an area that the thumb does
14 not well fit. To press it back, you've got an esophagus
15 behind it. The trachea is not tied down, it can move, and
16 all the victim has to do is to twist their head and you've
17 lost the effect of the pressure.

18 This is not the way-- This is not the way to
19 manually strangulate someone. When you want to strangulate
20 someone, you've got something in the upper part of the neck
21 that you can grab, you can get a hold on, it's hard for the
22 victim to break loose, and it is effective with less pressure,
23 and the damage that it can cause is--

24 This is the effective way to strangle someone.

1 Q That's the most effective method in your opinion
2 to strangle someone. Is that your testimony?

3 A I try to use my opinion after I've used logic
4 and after I've used the facts. The facts are yes, that that
5 is. That's-- That's well known. It's not my opinion.
6 It's-- It's clear to anybody in the profession generally.
7 The logic is there. And thirdly, yes, my opinion.

8 Q Thank you.

9 You indicated that if someone were to occlude
10 the air passage by putting their thumb in the area of the
11 bruise depicted in State's Exhibit Z and State's Exhibit HHH,
12 that that would take a lot of pressure. Isn't that your
13 testimony?

14 A I don't have these numbers all clear in my mind,
15 counselor. But if you're talking about the bruise in front
16 of the neck, even though that's over the upper part of the
17 trachea, the very tiptop of the trachea, there's a thyroid
18 underneath it. And that's again not an effective way of
19 closing off the trachea and--

20 Q That isn't my question. My question is: Your
21 testimony was that it takes a lot of pressure to block off the
22 airway in the trachea. Isn't that correct?

23 A It takes-- The textbooks say in America
24 33 pounds, and in England 15 kilograms.

18

1 Q That's your testimony; correct?

2 A Huh? "A lot of pressure" is my testimony. I
3 also gave you what--

4 Q Good.

5 A --some of the books say.

6 Q Wouldn't a bruise to that area be indicative of
7 a lot of pressure being exerted on that area?

8 A If you had significant bruising of the trachea,
9 yes. This is-- This is a bruise the size of a dime--
10 different shape than a dime, but the size of a dime--that is
11 present in the fat tissue in front of the trachea. This
12 bruise to me is no indication at all that the trachea was--
13 was damaged or pressed.

14 Q Wouldn't you agree, based upon the materials
15 that you provided to both myself and Miss Wilson, that death
16 by suffocation and/or strangulation can occur almost
17 immediately?

18 A It can.

19 MR. HALL: Thank you. I have no further
20 questions.

21 THE COURT: Ms. Wilson?

22 MS. WILSON: Thank you.

23 ///

24 ///

19

REDIRECT EXAMINATION

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BY MS. WILSON:

Q Was the trachea damaged in any way?

A Not according to the autopsy protocol. It's tissue in front of the trachea which is mostly fat that's been damaged.

Q Was the thyroid damaged?

A There is no mention of any damage to the thyroid in the protocol.

Q Were the tracheal rings damaged in any way?

A There's no mention of any damage to the tracheal rings in the autopsy protocol.

Q Do people that have chronic alcohol problems fall easier than average people?

A Alcoholics fall down and bump into things, yes.

Q What is the most comfortable time that you feel was the time of death?

A I think there's so many variables that I hesitate to put a time. I think this lady was dead more than 24 hours, maybe longer than that, maybe much longer than that.

But I will not give a time of death other than "consistent with". As I said to you before, I may have a problem with this, because I tried to be too accurate in the

19 1 past and I know that's not so with the number of variables
2 that are present.

3 Q So what's the most that you feel comfortable
4 with regarding that?

5 A My-- My gut feeling that comes out, which is
6 again there's so many variables I can't measure with anything
7 scientifically, but having seen tremendous numbers of
8 decomposed bodies, I'd say less than three days.

9 MS. WILSON: Thank you.

10 THE COURT: Mr. Hall, anything else of this
11 witness?

12 MR. HALL: (Shakes head negatively.)

13 THE COURT: You may step down. Thank you for
14 your testimony.

15 (End of partial transcript of proceedings.)

16 -oOo-

19 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 Department
8 No. 5 of the above court on Monday, March 8, 1993, at the hour
9 of 10:00 a.m. of said day, and I then and there took verbatim
10 stenotype notes of the proceedings had and testimony given
11 therein upon the Trial of the case of THE STATE OF NEVADA,
12 Plaintiff, vs. WILLIAM EDWARD BRANHAM, Defendant, Case No.
13 CR92-1408.

14 That the foregoing transcript, consisting of
15 pages numbered 1 to 68, both inclusive, is a full, true and
16 correct partial transcript of my said stenotype notes, so
17 taken as aforesaid, and is a full, true and correct partial
18 statement of the proceedings had and testimony given upon the
19 Trial of the above-entitled action to the best of my
20 knowledge, skill and ability. RLM

21
22 DATED: At Reno, Nevada, this 9th day of March, 1993.

23
24 /bb

RICHARD L. MOLEZZO, CSR #40