

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 VI OF VII**

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Electronically Filed
Apr 04 2018 11:16 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

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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

An Employee of the
Federal Public Defender, District of Nevada

93 JUL 30 10:13
SUMMARY
BY *[Signature]*
DEPUTY

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 8, 1993
)	
Defendant.)	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

I N D E XWITNESSES:DirectCrossRedirectRecross

FOR THE DEFENDANT:

LEE, Edward Leon

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LEE, Jack Leon

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TACKETT, Jerry

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GUGGENBICKLER, Bonnie Jean

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PUCKETT, Sandra Lee

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LINTON, Debra A.

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MASTERS, Joseph H.

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HOLLAND, Pamela Renee

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STIFFLER, Lester Clifford

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1 1 RENO, NEVADA; MONDAY, MARCH 8, 1993; 10:00 A.M.

2 --oOo--

2 3
4 THE COURT: Thank you. Be seated, please,
5 ladies and gentlemen.

6 We're back with CR92-1048, State of Nevada
7 versus William Branham. Mr. Branham is present, as is
8 Miss Wilson and Mr. Hall. The jury is present and in place.

9 Are you ready to proceed, counsel?

10 MS. WILSON: Yes, your Honor.

11 We would call Ed Lee.

12 THE COURT: Good morning, sir.

13 THE WITNESS: Good morning.

14 THE COURT: If you would approach the lady to
15 my right, please, raise your right hand, listen carefully to
16 the oath and be sworn.

17 (Witness sworn.)

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EDWARD LEON LEE,
called as a witness by the defendant herein,
being first duly sworn, was examined and
testified as follows:

DIRECT EXAMINATION

BY MS. WILSON:

Q Good morning.

A Good morning.

Q Mr. Lee, would you please state your full name,
and spell your last name.

A Edward Leon Lee. L-e-e.

Q And Mr. Lee, where do you reside?

A Martinez, California?

Q How long have you so resided there?

A Basically all my life. I was born and raised
there.

Q And how old are you, sir?

A I'll be 55 in March this year.

Q Now, can you tell us specifically your address?

A 2211 Scenic Avenue, Martinez.

Q And sir, what type of work do you do in
Martinez?

A I'm a hod carrier when I'm working.

1 Q What is that?

2 A A hod carrier? Well, bricks, plaster, tile,
3 anything in masonry trade.

4 Q And do you have an occasion to work at a bar?

5 A Yes, I do.

6 Q What bar is that?

7 A Shorty's on Pacheco Boulevard in Martinez.

8 Q And is it called by Shorty's presently?

9 A Yes, it is.

10 Q Okay. Did it used to be called another name?

11 A Del Appeepa's.

12 Q Okay. And what was the name of the bar
13 approximately February, 1992?

14 A It was Shorty's.

15 Q What do you do at Shorty's Bar?

16 A They have a janitor there, and he has Saturday
17 and Sunday off, so I take his place on Saturday and Sunday
18 night.

19 Q Okay. And do you know my client, Mr. Branham?

20 A Really, I don't. That's-- I seen him there,
21 and that's the first time I've ever seen him, as far as I
22 know.

23 Q Directing your attention to the calendar here of
24 February, 1992, can you see that, sir?

1 A Yes.

2 Q Okay. And I would also like to direct your
3 attention to this chart. Can you see that, sir?

4 A Yes.

5 Q I'd like to ask you if you notice that the dates
6 correlate to this chart?

7 A Right. I see that.

8 Q For example, February 2nd is a Sunday.

9 A Right.

10 Q And February 2nd up here is a Sunday. Do you
11 see that?

12 A Yes.

13 Q What was the first time and day that you saw
14 Mr. Branham?

15 A Well, I go to the bar early, because this guy
16 that owns the bar, I work for him when we're doing brickwork.
17 So I go down there early in the morning sometimes if we're
18 not going to work-- Well, I go there anyway to help put in
19 the ice and whatever. And so I have the keys to the place.
20 So I was in there-- probably I got in there about 5:30.

21 Q And what day was that?

22 A That was on a Friday.

23 Q Friday, February 7th?

24 A I would say yes.

2 1 Q Okay. And what bar is that?

2 A Shorty's Bar.

3 Q Did you have occasion to see Mr. Branham at that

4 time?

5 A Yes, I did. When I went in the parking lot, his

6 car was sitting in the parking lot. And then I opened up the

7 door and let him in, and this was right at 6 o'clock.

8 Q Okay.

9 A 'Cause the bar opens at 6:00.

10 Q May I put your name there, and I will list it

11 what you've just said.

12 A Yes, you can.

13 Q Okay. And that would be Friday, February 7th.

14 And your name is Ed?

15 A Right.

16 Q "Ed sees Bill."

17 And the exact time that you saw him first?

18 A 6 o'clock in the morning.

19 Q And where was he located at the time?

20 A Well, his car was in the parking lot.

21 Q Where was he?

22 A Well, he was in his car, as far as I know. I

23 mean I didn't go look and see if he was in there. He came in

24 the bar and told me he just got through sleeping, and so we

2 1 were sitting there talking.
3

2 Q And when was the last time that you saw him on
3 Friday?

4 A Well, Friday, him and I left the bar around
5 11:30, and we went down to a store and bought a bottle and
6 some cigarettes, and then we went to Concord, to Solano
7 Avenue to--

8 Well, the girl, I don't really know her, but he
9 has a daughter. He wanted to either see his daughter or
10 find out where she was at. And we were there for maybe no
11 more than 10 minutes, I would think.

12 Then we left from there, we went in-- further
13 into Concord to this bar called Tiffany's. And we stayed
14 there for-- I don't know how long we were there. But we had
15 some lunch there and a few drinks, and then we went back to
16 Martinez.

17 And I believe we went down to College Lane, too,
18 in Martinez. And then we went back to Shorty's, and that was
19 basically right around 5 o'clock.

20 We went in the bar and had another drink or so,
21 and he told me was going to go outside and lay in his car for
22 a while. So I walked out the bar into the parking lot with
23 him, and I went back in and finished the drink, maybe I had
24 two more, and then I went home.

1 Q What time did you go home?

2 A It was probably 5:30, quarter to 6:00.

3 Q When was the last time you saw Mr. Branham on
4 Friday?

5 A Just about-- I don't know. Just a little after
6 5:00. Like I say, I walked out to the parking lot with him.
7 He got in his car and said he was going to lay down for a
8 while.

9 Q May I write that down on this chart?

10 A Yes, you may.

11 Q And that would be 5 o'clock p.m.?

12 A In the afternoon.

13 Q Okay.

14 Now, you left after 5:00 p.m.?

15 A Yes.

16 Q Where was Mr. Branham after you left?

17 A He was in his car when I left.

18 Q What time was that?

19 A That was probably 5:30, quarter to 6:00 when I
20 left the bar.

21 Q Okay. Did you have occasion to see Mr. Branham
22 after Friday?

23 A Yes.

24 Q When did you see him?

1 A Well, like I said, I clean up the bar, so I go
2 down to the bar early in the morning, Saturday morning. And
3 he came in the bar somewhere between 8:00 and 8:30.

4 Q And that is Saturday, February 8th?

5 A Right.

6 Q May I put, "Ed sees Bill at 8:00, 8:30"?

7 A Right.

8 Q And that was a.m.?

9 A Yes.

10 Q And what happened after that?

11 A Well, we sat there and had a few drinks. And
12 then he left about, I don't know, somewhere around 11:30,
13 said he had to go see some friends.

14 Q Okay. And was that 11:30 a.m.?

15 A Yeah, in the morning.

16 Q May I put that on the chart?

17 A Yes.

18 Q Go ahead. Did you see him him after that time?

19 A That was the last time I seen him.

20 Q Okay. Now, directing your attention to Friday,
21 was there anyone with you and Mr. Branham at the bar in the
22 early part of the morning?

23 A Yes.

24 Q Who was there?

3 1 A My son, Jack Lee.
2 Q What is his name?
3 A Jack Lee.
4 Q Okay. Did he go with you to Juanita Draper's
5 home?
6 A No. He-- We all left the bar at the same time,
7 but my kid had to go pick up his girlfriend's daughter, and
8 then at that time me and Bill drove off by ourselves.
9 Q Did you see Mr. Branham any time after 11:30
10 a.m. on Saturday?
11 A No.
12 Q Okay.
13 MS. WILSON: Court's indulgence?
14 Thank you.
15
16 CROSS-EXAMINATION
17 BY MR. HALL:
18 Q Mr. Lee, I'm obviously the prosecutor in this
19 case. My name's Karl Hall.
20 You indicated that you went over to Juanita
21 Draper's house on Friday; isn't that true?
22 A Yes.
23 Q Okay. You went over to Juanita Draper's house
24 on Friday approximately 11:30. Isn't that true?

3

1 A Yes.

2 Q And that's when you brought your bottle of
3 alcohol that you and Mr. Branham had purchased when you
4 stopped and got your cigarettes?

5 A No. We purchased the bottle on the way.

6 Q Okay. On the way to Juanita Draper's house
7 Friday?

8 A Right.

9 Q First time you heard about this case was a
10 couple weeks ago; isn't that correct?

11 A Yes.

12 Q And your recollection as to the date is pretty
13 clear; isn't that correct?

14 A Well, as far as-- Yes.

15 Q And you don't know the defendant; isn't that
16 correct?

17 A As far as I know, I've never met him before in
18 my life, other than that day. But I probably have, but I
19 don't recall ever meeting him.

4

20 Q And he told you that the vehicle he was driving
21 was his car. Isn't that correct?

22 A Well, I'm pretty sure he did, yes.

23 Q Did he offer to sell it to you?

24 A No.

1 Q Now, the next day, Saturday. You didn't go back
2 over to Juanita Draper's house; did you?

3 A No.

4 Q You only went over to Juanita Draper's house
5 one day; correct?

6 A That one day, yes.

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

8 THE COURT: Any redirect?

9 MS. WILSON: No.

10 THE COURT: You may step down. Thank you,

11 Mr. Lee.

12 THE WITNESS: Thank you.

13 MS. WILSON: We'd call Jack Lee.

14 (Witness sworn.)

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

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JACK LEON LEE,
called as a witness by the defendant herein,
being first duly sworn, was examined and
testified as follows:

DIRECT EXAMINATION

BY MS. WILSON:

Q Good morning.

A Good morning.

Q Mr. Lee, would you please state your name, and
spell your last name.

A Jack Leon Lee. L-e-e.

Q And Mr. Lee, where do you reside?

A 2211 Scenic Avenue, Martinez, California.

Q And how long have you so resided there?

A Oh, about 14 years.

Q Okay. And who is your father?

A Edward Leon Lee.

Q Did he just testify?

A Yes, ma'am.

Q Do you know my client, Bill Branham?

A Yes, ma'am, I met him once.

Q Directing your attention to these charts, may
I indicate to you that this is a chart of February, 1992.

1 A Yes.

2 Q Can you see that?

3 A Yes.

4 Q And directing your attention to this chart,
5 can you see that Sunday, February 2nd correlates with Sunday,
6 February 2nd?

7 A Right.

8 Q Now, Mr. Lee, did you have an occasion to see
9 Mr. Branham in your area?

10 A I seen him one time in my area.

11 Q And where was that?

12 A That was at Shorty's Bar and Patio.

13 Q And what day was that?

14 A That was on Friday, February 7th.

15 Q Okay. And that would be Friday, February 7th?

16 A Right.

17 Q Where did you see him?

18 A I seen him at Shorty's Bar and Patio.

19 Q Where is that located?

20 A That's located in Martinez on Pacheco Boulevard.

21 Q Are you sure that you saw him Friday?

22 A Oh, yes.

23 Q How are you sure?

24 A Well, for one, I had to take my girlfriend's

4 1 daughter to school, and it was also the day that her husband
2 comes and picks up the kids, and we also have us a fight on
3 Fridays.

4 Q Pardon me?

5 A And we also have a fight on Fridays.

6 Q Okay. Did you have a fight that Friday?

7 A Oh, yeah.

8 Q Why did you have a fight?

9 A Just so she can go out at night when the kids go
10 with their father.

11 Q Who else was at the bar at that time?

12 A Well, my father was there and a few regulars.

13 Q Okay. And you're sure that it was Friday,
14 February 7th.

15 You saw Bill Branham at what time?

16 A At 8 o'clock in the morning.

17 Q May I put that here?

18 A Sure.

19 Q And you're Jack?

20 A Right.

21 Q 8:00 a.m.?

22 A Yes, ma'am.

23 Q What was the last time that you saw him?

24 A At precisely 11:30 a.m.

4 1 Q How do you know it was precisely 11:30 a.m.?
2 A Because that is the time I went to go pick up
3 my girlfriend's daughter from school.
4 Q Where does she go to school?
5 A At Los Aunes Elementary at that particular time.
6 Q How old was she?
7 A She was 5 years old.
8 Q Does she go to school on Saturday?
9 A No, ma'am.
10 MS. WILSON: That's all I have. Thank you.
11 THE COURT: Thank you. Any questions, Mr. Hall?
12
13

13 CROSS-EXAMINATION

14 BY MR. HALL:

15 Q That was the first time that you'd ever met--
16 A Yes, sir.
17 Q --Mr. Branham, was that Friday?
18 A Yes, sir.
19 Q Okay. And when were you first contacted about
20 this particular case?
21 A I was first contacted a couple weeks ago. I'm
22 not precise on the date. Probably about two weeks ago.
23 Q Okay. But you can remember precisely the date
24 that--

4

1 A Right. Well, actually I wasn't really
2 contacted. My father was contacted.

3 Q That Friday, was that the date that your dad
4 went over to Juanita Draper's house with Mr. Branham?

5 A Right. I'm not exactly sure where they went.
6 I just know they went to go try and visit Bill's daughter.

7 Q So if Juanita Draper testified that they didn't
8 see your dad Ed Lee and Branham until Saturday, then they'd
9 be mistaken. Isn't that correct?

10 A Yes, sir.

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

12 THE COURT: Anything else?

13 MS. WILSON: No.

14 THE COURT: You may step down. Thank you,
15 Mr. Lee.

16 THE WITNESS: Thank you.

17 MS. WILSON: We'd call Jerry Tackett.

5

18 THE COURT: Good morning, sir. If you would
19 approach the lady right here, raise your right hand, be sworn
20 in, please.

21 (Witness sworn.)

22 ///

23 ///

24 ///

1 JERRY TACKETT,
2 called as a witness by the defendant herein,
3 being first duly sworn, was examined and
4 testified as follows:

5

6 DIRECT EXAMINATION

7 BY MS. WILSON:

8 Q Mr. Tackett, would you please state your name,
9 and spell your last name.

10 A Jerry Tackett. T-a-c-k-e-t-t.

11 Q And Mr. Tackett, where do you reside?

12 A Martinez, California.

13 Q Okay. And what's your exact address?

14 A Excuse me?

15 Q What is your exact address?

16 A 2431 Yell Street.

17 Q Okay. And how long have you resided in
18 Martinez?

19 A I've been at this address since '77. Been in
20 Martinez around 23, '4 years.

21 Q What do you do for a living?

22 A I'm a pipefitter, boilermaker.

23 Q And do you know my client, Mr. Branham?

24 A Yes.

5 1 Q How long have you known him?
2 A Since I was a small boy.
3 Q And when was the last time that you saw him
4 from-- not counting 1992, but before then?
5 A Oh, before that?
6 Q Yes.
7 A He came by the house maybe a couple years ago,
8 or something like that.
9 Q Okay. Two years ago?
10 A Excuse me?
11 Q Two years ago?
12 A Around two years ago. Something like this.
13 Q Okay. Directing your attention to these charts,
14 can you see, Mr. Tackett, that this is February, 1992?
15 A (Nods head affirmatively.) I didn't quite
16 understand the question. I'm hard hearing.
17 Q Can you see that this is a calendar of February,
18 1992?
19 A Yes.
20 Q Can you see that this date, February 2nd,
21 correlates with Sunday?
22 MR. HALL: Your Honor, I'll stipulate that the
23 calendar and her chart are the same dates.
24 MS. WILSON: That's not what my intention is.

5

1 It is to try to obtain the witness's understanding.

2 THE COURT: Go ahead.

3 BY MS. WILSON:

4 Q Can you see that this is Sunday, February 2nd?

5 A Did I see Bill on Sunday?

6 Q Can you see that--

7 A Yeah, I can see it's Sunday.

8 Q Okay. Now, directing your attention to this
9 chart, can you see that this says Sunday, February 2nd?

10 A Yes.

11 Q Okay. Did you see Mr. Branham in February of
12 1992?

13 A Yes.

14 Q When did you see him?

15 A On a Saturday.

16 Q Okay.

17 A Approximately from 11:30 to 12 o'clock, at
18 lunchtime, until around 7:30 to 8 o'clock on the same night.

19 Q Okay. And would that be Saturday, February 8th?

20 A Yes.

21 Q Okay. May I put here when you saw him?

22 A Excuse me?

23 Q May I put here when you saw him?

24 A From around lunchtime on the 8th until around

5 1 7:30, 8:00, that night.

2 Q Okay. And you're Jerry?

3 A Yes.

4 Q "Jerry sees Bill, 7:30, 8:00 a.m."?

5 A No. I saw him from lunchtime till around 7:30,
6 8:00 p.m. That same evening.

7 Q Lunchtime, 12 o'clock?

8 A From 12:00 at lunch to around 7:30, 8:00 p.m. on
9 that evening.

10 Q Okay. Would that be correct how I've listed it
11 there?

12 A Yes.

13 Q Now, are you sure of the dates?

14 A Yes.

15 Q Did you see him after Saturday, February 8th?

16 A No.

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

18 THE COURT: Any questions?

19 MR. HALL: Yes, your Honor.

20

21 CROSS-EXAMINATION

22 BY MR. HALL:

23 Q Did Mr. Branham indicate why he was down--

24 A I can't hear you, sir.

5 1 Q Did Mr. Branham indicate why he was down in
2 Martinez?
3 A Yes. He come to see his daughter.
4 Q And he was very concerned about his daughter;
5 wasn't he?
6 A Yes.
7 Q But you don't know his daughter's address; do
8 you?
9 A No, I don't.
10 Q You don't know her phone number; do you?
11 A No, I don't.
12 Q Where did you meet Mr. Branham?
13 A I've known him since he was a small kid.
14 Q He came over by your house?
15 A Oh, you mean on the 8th he came to my house?
16 Q Came to your house and met your son; isn't that
17 correct? Met with your son; isn't that correct?
18 A Correct.
19 Q You were down at the bar?
20 A Right.
21 Q And then he went down to the bar and you guys
22 had some drinks; isn't that correct?
23 A Right.
24 Q Did Mr. Branham indicate that the car he was

5 1 driving was his car?

2 A I don't really remember, tell you the truth.

3 Q Did he tell you he was a well driller?

4 A Yes, he did.

5 Q Okay. That he was employed; isn't that correct?

6 A Yes, he was working strip mine, or something

7 like that. Well drilling or something.

8 Q Mr. Branham been drinking that day?

9 A Yes, we all went drinking that day.

10 Q Mr. Branham didn't call and say he was coming

11 down; did he?

12 A No.

13 Q Okay. And you hadn't seen him for two years

14 prior to that. Isn't that true?

15 A Approximately that, yes.

6 16 Q And you were first contacted about this case

17 about two years ago-- or about two weeks ago?

18 A Yes.

19 Q All right. That was the first time you heard

20 about this case; isn't that correct?

21 A Yes, yes.

22 Q But you have a clear recollection as to what day

23 you saw Mr. Branham; right?

24 A Yes. Went to the Police Department and picked

1 up my motorcycle on that day. I told them that was the
2 Police Department. If they wanted to, they could verify.

3 Q Did you see Mr. Branham's car?

4 A Yes.

5 Q How long does it take to drive from your house
6 to Reno?

7 A Oh, probably three and a half hours. Something
8 like that.

9 Q Is that how long it took you on this occasion?
10 Is that how long it took you today?

11 A Well, I had a flat on the way up, and I also hit
12 a chuckhole and tore a muffler assembly off my car. So
13 probably took me a little longer.

14 Q How long does it usually take?

15 A I don't know. I don't come that often.

16 Q About three hours?

17 A Probably three, three and a half hours.

18 Q Showing you State's Exhibit S and R, is that
19 the car that you saw Bill driving it?

20 A Looks like it.

21 Q You don't have any idea as to when Mr. Branham
22 got to Martinez; do you?

23 A No, I don't. I just know when I saw him.

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

1 THE COURT: Thank you. Miss Wilson?

2 MS. WILSON: Yes, just a couple of questions.

3

4 REDIRECT EXAMINATION

5 BY MS. WILSON:

6 Q Mr. Tackett, not counting February, 1992, the
7 prior time that you saw Mr. Branham, did he call to tell you
8 that he was coming to town?

9 A No.

10 Q Is it typical of him to call you when he comes
11 to town?

12 A Bill can be in one day and gone the next.

13 Q Okay.

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

15 THE COURT: Anything else?

16

17 RECROSS-EXAMINATION

18 BY MR. HALL:

19 Q When was the last time you saw Mr. Branham
20 before two years ago?

21 A Oh, boy. I believe he was working in Lodi.
22 I'm not sure. He was down south somewhere, and he came by
23 and saw me for a few minutes and then left again.

24 Q How long ago was that?

1 A Oh, four, five years ago. Something like this.
2 I'm really not specific on the time.

3 Q You're specific about the time two years ago.
4 Could it have been longer than that?

5 A It could even be longer than that, too. Like I
6 say, it's nothing for Bill to come in and see me at any time.
7 Like I say, I've knowed him since he's been a small kid.

8 Q Could it be five or ten years since you last
9 saw him?

10 A No, I would say no.

11 Q Could it have been five years?

12 A It could have been, yes.

13 MR. HALL: Thank you. I have nothing further.

14 THE COURT: Thank you very much, Mr. Tackett.
15 You may step down.

16 MS. WILSON: Your Honor, I'm going to have to
17 see if my investigator has Bonnie Guggenbickler here. May
18 I have the Court's indulgence?

19 THE COURT: All right.

20 MS. WILSON: Thanks.

21 I call Bonnie Guggenbickler, your Honor.

22 THE COURT: Okay.

23 If you'd approach the lady to my right, please,
24 raise your right hand, listen to the oath carefully, be sworn

1 in.

2 (Witness sworn.)

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

5 THE WITNESS: You bet.

6
7 BONNIE JEAN GUGGENBICKLER,
8 called as a witness by the defendant herein,
9 being first duly sworn, was examined and
10 testified as follows:

11
12 DIRECT EXAMINATION

13 BY MS. WILSON:

14 Q Miss Guggenbickler, would you please state your
15 full name, and spell your last name.

16 A My name is Bonnie Jean Guggenbickler.
17 G-u-g-g-e-n-b-i-c-k-l-e-r.

18 Q And Miss Guggenbickler, where do you reside?

19 A Here in Reno. The correct full address?

20 Q Please.

21 A 2106 Idlewild.

22 Q And how long have you resided there?

23 A About four months.

24 Q And where do you work?

6 1 A I work over at the Keystone Lounge.
2 Q And where is that located?
3 A On Second and Keystone.
4 Q Okay. How long have you been working there?
5 A Eighteen months.
6 Q Now, are you familiar with my client,
7 Mr. Branham?
8 A Yes, I am.
9 Q How long have you known him?
10 A Approximately seven and a half years.
11 Q Okay. What type of relationship do you have
12 with him?
13 A We're excellent friends.
14 Q Was there a time that you lived with him?
15 A Yes, there was.
16 Q When was that?
17 A We've been away from each other now for four
18 years.
19 Q So was it before then that you lived with him?
20 A Yes, it was.
21 Q Are you familiar with Beverly Fetherston?
22 A Yes, I am.
23 Q How long had you known her?
24 A Approximately three or four years, prior to

6 1 her husband's death.

2 Q Okay. And what was your relationship like with
3 her?

4 A We had a light acquaintance friendship. We did
5 have dinner at each other's homes, and barbecues and stuff,
6 but I knew her mainly through Bill. I had known her prior
7 to that, but I knew her mainly through Bill.

8 Q Okay. Now, have you seen Beverly and Bill
9 together?

10 A Several times.

11 Q Where have you seen them together?

12 A At private homes, at my home, at where I work,
13 at where we used to go shoot pool. Various different places.

14 Q How many times would you say you've seen them
15 together?

16 A Maybe 20, 25 times.

17 Q Okay. Do you know Mr. Branham's daughter?

18 A Yes, I do.

19 Q Do you recall her name?

20 A Linda.

21 Q Excuse me?

22 A Linda.

23 Q When was the last time that you saw Linda?

24 A I would say from today, it's been probably two

7 1 and a half years.

2 Q And from February, 1992, it would have been how
3 long?

4 A About-- About 18 months. It was through the
5 summer months.

6 Q Where did you see Linda?

7 A At my home.

8 Q Where was that?

9 A It was over on Cheney Street.

10 Q Was that Reno?

11 A Yes. In Reno.

12 Q How did she get to your home?

13 A She traveled here with her boyfriend by car.

14 Q Was Mr. Branham with her?

15 A Yes.

16 Q Getting back to Beverly and Bill: Have you
17 seen them together when they were drinking?

18 A Yes, I have.

19 Q Have you seen them together when they were not
20 drinking?

21 A Yes, I have.

22 Q Had you ever been to their home on Wells Avenue?

23 A No, I haven't.

24 Q Have you seen them fighting with each other?

1 A Arguing, yes.

2 Q During the time that they were arguing, did
3 Mr. Branham ever hit Beverly?

4 A Never.

5 Q How would you describe their relationship?

6 A Family orientated, but not as a couple.

7 Q What do you mean, "But not as a couple"?

8 A They both had told me and other people that they
9 didn't have a relationship, but they were tighter than like
10 sister and brother, but not as close as husband and wife.

11 Q Okay. Have you heard him verbally abuse her?

12 A Angry words have been spoken between both of
13 them.

14 Q Would that be her against him, as well?

15 A Yes.

16 Q Have you ever had Mr. Branham physical toward
17 you?

18 A Never.

19 Q Directing your attention to February, 1992.

20 And I'd ask you to look at this calendar and this chart.

21 Can you see that this is a calendar of February,
22 1992?

23 A Yes.

24 Q And that this chart relates to this calendar

7 1 as far as dates go?

2 A Yes.

3 Q Okay. Directing your attention to February,
4 did there come a time when you saw Mr. Branham?

5 A Yes. I'd seen him on the Thursday/Friday to
6 when Beverly's body was discovered.

7 Q Do you know when Beverly was found?

8 A No. I never remembered the date.

9 Q Okay. And you saw him on a Thursday?

10 A Right. That would have been February the 6th.

11 Q Okay. What time did you see him?

12 A It was right towards the end of cocktail hour.
13 I was bartending and I seen him between 6:30, 7 o'clock,
14 in that area.

15 Q May I put your testimony right here, February
16 6th, Thursday?

17 A Yeah.

18 Q And you're Bonnie. I'm not going to do your
19 last name. And "Bonnie sees Bill", did you say 7 o'clock
20 p.m.?

21 A I would say approximately 7 o'clock.

22 Q And where did you see him?

23 A I'd seen him where I worked on Keystone and
24 Second.

1 Q What were you doing at the time?

2 A I was at work. I'm a bartender.

3 Q What was he doing?

4 A He had come in just to talk. He was-- He was
5 in a pretty good mood. He was on his way to California to
6 see his daughter.

7 Q Do you recall what his demeanor was like at
8 the time?

9 A He was in a pretty jovial mood, because he
10 hadn't seen Linda for a while and he was hoping to find her
11 and try to get her to come back to Reno with him.

12 Q Did you have an understanding that you were
13 going to see Linda, as well?

14 A Yes. He said if he could get her to come back
15 to Reno, that they would stop by on their way when they got
16 into town.

17 Q How do you know what time it was when you saw
18 him?

19 A Because it was just towards the end of cocktail
20 hour, and that is the busiest time.

21 Q Would you ever lie to protect Mr. Branham?

22 A No.

23 Q Did Mr. Branham appear nervous when you saw him
24 at your place of employment?

7

1 A No.

2 Q What car was he driving?

3 A He was driving Beverly's car, the beige,
4 whatever it is, Pont-- Isn't it a Firebird or something?

5 Q Was it unusual for him to drive that car?

6 A No, he always was driving it.

7 Q Do you recall where he left after he saw you?

8 A I walked him to the back door where he was
9 parked at at work, and then I walked to the front door and
10 I opened the door and I waved to him, and he was heading
11 towards the freeway. He said he was going to gas up and he
12 was on his way.

8

13 Q When did you hear about Beverly Fetherston's
14 death?

15 A It was Sunday evening.

16 Q At the time, did you call Mr. Branham to advise
17 him of that death?

18 A No, I didn't know where to reach him. I knew
19 he hadn't been back to town yet.

20 MS. WILSON: Court's indulgence?

21 BY MS. WILSON:

22 Q Approximately how many times did you see Beverly
23 drive her car when Bill was with her?

24 A Never.

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

2 THE COURT: Mr. Hall?

3

4 CROSS-EXAMINATION

5 BY MR. HALL:

6 Q Mrs. Guggenbickler, you say you and Mr. Branham
7 were excellent friends; isn't that correct?

8 A Yes.

9 Q Isn't it true that in fact you were engaged to
10 be married?

11 A At one time, yes.

12 Q And he lived with you; isn't that correct?

13 A Yes.

14 Q And you decided that you didn't want to get
15 married because Bill drank too much, and you had been married
16 five times previously and you didn't think that marriage
17 would be appropriate. Isn't that correct?

18 A Partly. It wasn't mainly his drinking. It was
19 more that although I loved Bill, I wasn't in love with him,
20 and we had decided between the two of us that that would end
21 our relation-- I mean that we would become friends, because
22 we do care about each other.

23 Q You still love Bill; isn't that correct?

24 A As a friend, yes.

1 Q Now, you knew Beverly Fetherston; isn't that
2 correct?

3 A Yes, it is.

4 Q Okay. And you knew that Beverly Fetherston and
5 Bill Branham were living together; correct?

6 A Yes, I did.

7 Q And you knew that Bill Branham was unemployed
8 while he was living with Beverly Fetherston; isn't that
9 correct?

10 A Towards the end, yes.

11 Q All right. For approximately the last six
12 months; isn't that correct?

13 A Yes.

14 Q All right. And he didn't have any income to
15 assist in the support of that household; isn't that correct?

16 A I don't know what their financial arrangement
17 was.

18 Q You know Mr. Branham wasn't working; is that
19 correct?

20 A I know he wasn't working.

21 Q And he hadn't been working for approximately
22 six months; isn't that correct?

23 A That sounds about right.

24 Q Now, you say that when Mr. Branham came over

1 to the Keystone Lounge on February 6th, he was in a good
2 mood. Isn't that correct?

3 A Yes.

4 Q Okay. And you would notice if, since you're--
5 you know Bill so well, that you would notice if he'd done
6 anything wrong; is that correct? You'd be able to tell?

7 A Not necessarily.

8 Q So you weren't able to tell that he had forged
9 a check on Beverly Fetherston's account in the amount of
10 \$250 at 5 o'clock that day?

11 A No.

12 Q Now, you said that he was jovial and he was
13 really excited about seeing Linda; isn't that correct?

14 A Yes.

15 Q He didn't call, he didn't tell you that she had
16 called and he was worried about her, that she called and
17 said that she was in trouble and he needed to get down and
18 see her?

19 A No.

20 Q And you don't have Linda's address or phone
21 number; do you?

22 A No. She had called my place a few times, but
23 that was like six months, eight months prior to the time he
24 was going to see her. But I didn't have her number.

1 Q Now, you had seen Beverly Fetherston and Bill
2 Branham on a number of occasions; correct?

3 A Yes.

4 Q All right. And you had seen them arguing; isn't
5 that correct?

6 A Yes.

7 Q But you were unaware that Bill Branham had given
8 Mrs. Fetherston a black eye and a fat lip. Isn't that
9 correct?

10 A I am unaware of that.

11 Q Were you aware that Beverly Fetherston had to
12 go stay with Marilyn Mackay on a number of occasions to stay
13 away from Bill Branham?

14 A No, I wasn't.

15 Q Wouldn't you agree that Bill Branham was
16 drinking a lot more alcohol the last couple of months that
17 he was with Beverly Fetherston than when you two were
18 together?

19 A I didn't see him long enough in duration to be
20 able to judge that.

21 Q You don't know what the relationship was between
22 Beverly Fetherston and Bill Branham in January and February;
23 isn't that correct?

24 A That's correct.

8

1 Q When you say "family oriented, but not as a
2 couple", you don't know if that's necessarily true in
3 January, February?

4 A All I know is what Beverly told me.

5 Q When was that?

6 A Off and on throughout their relationship.

7 Q You said that was a beige car that Bill was
8 driving on that day,--

9 A Yes.

10 Q --Mr. Branham?

11 Showing you State's R and S, does that refresh
12 your recollection as to the color of the vehicle?

13 A To me it's beige, it's copper, or whatever.

14 Q Now, when you saw Mr. Branham head north on
15 Keystone, you didn't see him get on the freeway; did you?

16 A No, I didn't.

17 Q You don't know where he went after that; isn't
18 that correct?

19 A That is correct.

20 Q Now, you stated that you heard of
21 Miss Fetherston's death on Sunday, February 9th, 1992; right?

22 A (Nods head affirmatively.)

23 Q And you were asked whether or not you called
24 Bill Branham to inform him that Miss Fetherston had died.

9

9 1 You said that you knew that he wasn't back in town yet.
 2 How do you know that?
 3 A Because he said he'd stop by to see me when he
 4 got back to town, and he knows I work days on the weekends.
 5 Q As a matter fact, Mr. Branham was trying to get
 6 back together with you at that time; isn't that correct?
 7 A He had put out feelers to see if we could.
 8 Q As a matter of fact, he sent you a note and
 9 asked if you still loved him and inquired as to whether or
 10 not you could get back together; isn't that correct?
 11 A That is correct.
 12 MR. HALL: That's all I have.
 13 THE COURT: Thank you. Redirect?
 14 MS. WILSON: Thank you.

15
16 REDIRECT EXAMINATION

17 BY MS. WILSON:

18 Q Mrs. Guggenbickler, were you able to speak with
19 the District Attorney in this case?

20 A Yes. A couple weeks ago on a Monday night.
21 Or a week ago, I guess it was. Two weeks ago.

22 Q Do you know Mr. Branham was receiving
23 Unemployment?

24 A No, I do not.

1 Q Do you know if he was receiving food stamps?

2 A No, I do not.

3 Q Do you recall seeing Beverly Fetherston and
4 Bill Branham on Halloween?

5 A Yes, because we were all in costumes.

6 Q Do you recall Beverly Fetherston having a black
7 eye?

8 A No, I don't.

9 Q Do you recall if she had a split lip?

10 A No, I don't.

11 Q Did you see them around the Thanksgiving time?

12 A I seen him throughout the holidays, but it was--
13 I'm not sure exactly when it was. I know we seen them at
14 Christmastime and at Thanksgiving time, and in around that
15 area.

16 Q During the holiday time, did you ever see that
17 Beverly had a black eye?

18 A No, I didn't.

19 Q Did you ever see around that holiday time if
20 she had a split lip?

21 A No, I didn't.

22 Q You indicated to Mr. Hall that you only knew
23 what Beverly said their relationship was like.

24 A That is true.

9 1 Q What did she say their relationship was like?

 2 A She said they did not have a physical

 3 relationship, but that she cared very much for Bill and he

 4 was family to her.

 5 Q Now, did you have a sexual relationship with

 6 Mr. Branham?

 7 A Yes, I did.

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

 9 THE COURT: Anything else, Mr. Hall?

 10

 11 RECROSS-EXAMINATION

 12 BY MR. HALL:

 13 Q Miss Guggenbickler, wouldn't you agree that if

 14 Miss Fetherston had a black eye, she would try and cover it

 15 with makeup?

 16 A I would.

 17 Q You don't know that Mr. Branham didn't have any

 18 other girlfriends; did he?

 19 A I don't know.

 20 Q You never saw him with any other women other

 21 than Beverly Fetherston; did you?

 22 A That's true.

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

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

9 1 much for your testimony.

2 THE WITNESS: Thank you.

3 MS. WILSON: Sandra Puckett.

4 THE COURT: If you would step forward, approach
5 the lady to my right, please, raise your right hand, listen
6 carefully to the oath and be sworn in.

7 (Witness sworn.)

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

10
11 SANDRA LEE PUCKETT,
12 called as a witness by the defendant herein,
13 being first duly sworn, was examined and
14 testified as follows:

15
16 DIRECT EXAMINATION

17 BY MS. WILSON:

18 Q Good morning.

19 A Good morning.

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

22 A Sandra Lee Puckett. P-u-c-k-e-t-t.

23 Q Now, Miss Puckett, where do you reside?

24 A In Sparks. 797 Glen Martin Drive.

9 1 Q Okay. And how long have you lived there?
2 A Five years.
3 Q Okay. And where do you work?
4 A I-- I'm on layoff. But I work at the El Cortez
5 Lounge.
6 Q How long have you worked there?
7 A Two years.
8 Q Do you recall the address of that lounge?
9 A 235 East Second.
10 Q Okay. And are you familiar with my client,
11 Mr. Branham?
12 A Yes.
13 Q How long have you known him?
14 A Oh, I'd say two years maybe. Maybe a little
15 bit longer.
16 Q What was your relationship like with him?
17 A I was his bartender.
18 Q Okay. Are you familiar with Beverly Fetherston?
19 A Yes.
20 Q And how long had you known her?
21 A Approximately I'd say I knew her for about three
22 years, because I knew her first husband.
23 Q Okay. And what was your relationship like with
24 her?

9 1 A Well, we were both from Oregon, both craft
2 people, we used to trade patterns, and that type thing.

3 Q Okay. Were you also bartender-customer
4 relationship with her?

5 A Yes.

6 Q Okay. Now, have you seen Bill Branham and
7 Beverly Fetherston together?

8 A Yes.

9 Q Where have you seen them together?

10 A At the Swiss Chalet, at the Phone Booth, at the
11 El Cortez.

12 Q How many times have you seen them together?

13 A I couldn't guess. Quite a few.

14 Q Do you recall Halloween--

15 A Yes, yes.

16 Q How did you see--

17 Did you see them together?

18 A Yes.

19 Q Where did you see them together?

20 A At the Swiss Chalet.

21 Q At the time that you saw them together, did
22 Beverly Fetherston have a black eye?

23 A Not that I recall, no.

24 Q At that time, how was her demeanor towards

1 Mr. Branham?

2 A Everybody was just having a good time. We were
3 shooting pool and everyone was in costume.

4 Q Had you seen them together when they were
5 drinking?

6 A Yes.

7 Q Have you seen them together when they were not
8 drinking?

9 A No.

10 Q Okay. Have they ever been to your home?

11 A No.

12 Q Have you ever been to their home?

13 A No.

14 Q Now, have you ever seen them fighting?

15 A No.

16 Q Would you describe their relationship?

17 A Well, from a bartender's point of view, they
18 were always compatible. I mean they were just having a
19 good time.

20 Q Okay. Have you ever seen Mr. Branham hit
21 Beverly?

22 A No.

23 Q Ever push Beverly?

24 A No.

10 1 Q Have you ever seen Beverly exhibit any fear
2 towards Mr. Branham?

3 A No.

4 Q Would you ever lie to protect Mr. Branham?

5 A No.

6 Q Do you recall him driving Beverly's car?

7 A No.

8 Q Do you know what kind of car Beverly had?

9 A No.

10 Q Do you know whether Mr. Branham was employed?

11 A I-- I assumed that he was employed, but at
12 what, I don't know.

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

14 THE COURT: Mr. Hall?

15
16 CROSS-EXAMINATION

17 BY MR. HALL:

18 Q Isn't it true, Miss Puckett, that you didn't
19 see Beverly Fetherston together with Bill Branham in January
20 and February of 1992?

21 A In January of 1992?

22 Q That's right.

23 A Boy, that's a long ways back. I don't recall.
24 I'm sorry.

10 1 Q So you don't know what their relationship was
2 in January and February of 1992; do you?

3 A No. I-- I can't even recall the last time I
4 saw them together.

5 Q So you didn't see them on a regular basis;
6 isn't that correct?

7 A Oh, no, no, no, no. I never did see them-- I saw
8 them on the bar end of it. I was either serving them or
9 they were serv-- she was serving me.

10 Q So you weren't friends to the extent that
11 Beverly Fetherston would confide in you--

12 A Oh, no, no, no, no. No, not that close.

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

14 MS. WILSON: Nothing further.

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

17 THE WITNESS: Thank you.

18 MS. WILSON: I'd have to go talk to my
19 investigator now.

20 THE COURT: All right. Ladies and gentlemen,
21 let's take a ten-minute recess and Miss Wilson can coordinate
22 the balance of the morning. We'll stand in recess until five
23 after 11:00.

24 (Recess.)

10

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THE COURT: Thank you. Please be seated.

Two apologies. First, I didn't hear the buzz. I'm sorry. I guess you've been waiting and I wasn't aware of that. Secondly, we apologize for the delay. We had to locate a witness so that we could make the best use of your time. I think we're ready to that do.

Mr. Branham is present along with Miss Wilson, as is Mr. Hall. Are you ready to proceed?

MS. WILSON: Yes. We call Debra Linton.

THE COURT: Good morning. If you would approach the lady to my right, please, raise your right hand, listen to the oath and be sworn in.

(Witness sworn.)

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

DEBRA A. LINTON,
called as a witness by the defendant herein,
being first duly sworn, was examined and
testified as follows:

DIRECT EXAMINATION

BY MS. WILSON:

Q Good morning, ma'am. Would you please state

1 your full name, and spell your last name.

2 A Debra A. Linton. L-i-n-t-o-n.

3 Q Miss Linton, where do you reside?

4 A 10084 Zeolite Drive, Reno.

5 Q Washoe County?

6 A Yes, it is.

7 Q Where do you work?

8 A At the Pioneer Hotel-Casino.

9 Q And where is that located?

10 A 221 South Virginia Street.

11 Q Is this the place right across the street here?

12 A Yes, it is.

13 Q What is your job description there?

14 A Assistant hotel manager.

15 Q And how long have you been so employed there?

16 A Three years.

17 Q Did you have an occasion to pull some records

18 regarding the date of February, 1992?

19 A Yes, I did.

20 Q Showing you what's been marked as Defense 5 and

21 6, do you recognize 5 and 6?

22 A Yes, I do.

23 Q Could you tell us what Exhibit 5 is?

24 A Housekeeping reports for Thursday, the 5th.

10
11

1 Q And what month and year?

2 A It's February 6th. I'm sorry. It's a PM
3 report.

4 Q And what year is that?

5 A '92.

6 Q Okay. Is there any other day for Exhibit 5?

7 A Friday, a.m., February 7th, '92.

8 Q Okay. And what about the other Exhibit,
9 Exhibit 6?

10 A Exhibit 6 is a printout of a guest staying
11 at our hotel. It has an arrival date of February 4th,
12 departing on the 7th. But looking further into it, by the
13 days of the payments he actually arrived on February 3rd,
14 sometime between 3:00 and 4:00 a.m. in the morning.

15 Q Okay. Let's look at Exhibit 6 in particular.
16 Do you have a guest name for the person that was checking in?

17 A Bill Branham.

18 Q Do you know my client, the man seated there?

19 A I couldn't-- No.

20 Q And what date and time does it say that he
21 checked in on February, 1992?

22 A Got it at 1:41 a.m.

23 Q Okay. And what day was that?

24 A That's the morning of the 4th.

1 Q Okay. Would that be Tuesday morning?

2 A Yes.

3 Q Okay. And that was a check-in--

4 A Yes, it was.

5 Q --at the Pioneer--

6 A Yes.

7 Q --1:00 a.m.?

8 A Yes, 1:41.

9 Q 1:41 a.m.?

10 A Uh-huh.

11 Q Now, does it indicate what time Mr. Branham
12 actually left the hotel?

13 A By the records, we checked him out at 1:21 on
14 the 7th.

15 Q Okay. And that would be February 7th?

16 A Yes.

17 Q Okay. And when you say you "checked him out",
18 does it mean that the person gives you a key and checks out?

19 A No. Usually by 1:00 in the afternoon is when
20 we get our PM housekeeping report, 'cause it's done at noon.
21 So when they bring it down it's right around 1:00, 1:30.

22 By looking at this, I would have to say that
23 we checked it out because the room was vacant and clean.

24 Q When was the room vacant and clean?

1 A To the earliest of my knowledge, it would be
2 Friday morning at 7:00 a.m.

3 Q Okay. Now, what do you mean by "vacant and
4 clean"?

5 A Well, the bed hadn't been slept in, bathroom
6 not used. Nothing in the room.

7 Q That was 7:00 a.m.?

8 A Yes, ma'am.

9 Q Now, how can you tell if somebody had not slept
10 in the bed?

11 A Well, nothing had been disturbed in it. I mean
12 all maids make the beds the same way, super tight, almost
13 like an Army bed. You know, the sheets have to be tight.

14 Q Now, from those records, is that how it appeared
15 on Friday at 7:00 a.m.?

16 A Yes.

17 Q Was the bed slept in, according to the records,
18 Thursday night, February 6th?

19 A Yes, because the maid had to clean the room,
20 make the bed, vacuum, do the bathroom. And the PM report,
21 which is 12:00 noon on Thursday, the room had been cleaned,
22 but still occupied.

23 Q Okay. That was 12 o'clock noon?

24 A Uh-huh.

11

1 Q It was occupied?

2 A It was occupied, but clean.

3 Q What does that mean, "but clean"?

4 A Well, the maid cleaned the room. In other
5 words, she made the bed, vacuumed, cleaned the bathroom.
6 And when they say that it's occupied means there was
7 something still in the room that belonged to the guest.
8 Whether it be clothes hanging on the rack or luggage in
9 the room somewhere.

10 Q Now, Thursday in the evening, was there any
11 way to tell whether the person was still there?

12 A No.

13 Q Okay.

14 A Not unless you physically check the room.
15 And as long as there's no disturbance, or we don't think
16 anything's wrong, we're not going to check it.

17 Q So the soonest next that we find out whether
18 it's occupied is Friday morning?

19 A That is correct.

20 Q And at that time the bed was still--

21 A Unslept in.

22 Q --unslept in?

23 A And the room still clean.

24 Q Okay.

11

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

2 THE COURT: Mr. Hall?

3

4 CROSS-EXAMINATION

5 BY MR. HALL:

6 Q What room number was that?

7 A Room 111.

8 Q Do you recognize this?

9 A Yes, sir.

10 Q What is it?

11 A It's a room key, our room key.

12 Q And what number-- What room does this key go
13 to?

14 A 111.

15 MR. HALL: The record reflect this room key came
16 out of the defendants, marked State's Exhibit M.

17 That's all the questions I have.

18 THE COURT: Miss Wilson, anything else?

19

20 REDIRECT EXAMINATION

21 BY MS. WILSON:

22 Q Do you have any confusion from the record that
23 the name on the register was William Branham?

24 A No.

11

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

2 THE COURT: You may step down. Thank you very
3 much for your testimony.

4 THE WITNESS: Thank you.

5 MS. WILSON: We would call Johnny Wade.

6 (Witness sworn.)

7

8 JOHNNY WADE,
9 called as a witness by the defendant herein,
10 being first duly sworn, was examined and
11 testified as follows:

12

13 DIRECT EXAMINATION

14 BY MS. WILSON:

15 Q Good morning. Would you please state your name,
16 and spell your last name.

17 A Johnny Wade. W-a-d-e.

18 Q Do you have any trouble hearing me?

19 A No.

20 Q Okay. Now, Mr. Wade, where do you live?

21 A 552 Willow Street.

22 Q And is that in Reno?

23 A Yes.

24 Q Is that Washoe County?

12

1 A Yes.

2 Q How long have you lived there?

3 A Four and a half years.

4 Q Where is that home in comparison to the Hideout

5 Lounge?

6 A Right across the street.

7 Q Are you familiar with the Hideout Lounge?

8 A Yes, I am.

9 Q Now, sir, where do you work?

10 A I'm retired.

11 Q And do you do any work on your own?

12 A Well, little bit. Locksmith.

13 Q Are you familiar with my client, Mr. Branham?

14 A Yes.

15 Q How long have you known him?

16 A Since I retired. About five years. Four and

17 a half, five years. Something like that.

18 Q And what did your relationship entail?

19 A My neighbor.

20 Q Where did he live when he was your neighbor?

21 A It's a duplex that I live in. He lived on the

22 other side, on the back side of me.

23 Q Are you familiar with Beverly Fetherston?

24 A Yes.

1 Q How long had you known her?

2 A Very little. Just down-- I used to go in
3 there and have coffee every morning where she worked.

4 Q Where was that?

5 A Swiss-- Swiss Chalet.

6 Q You say that you used to?

7 A Yeah. Well,--

8 Q Do you go in there now?

9 A No. I quit going in there after this happened,
10 pretty much so.

11 Q Why was that?

12 A Why was that? Well, because I thought I knew
13 everybody in there. I'd go in and have coffee every morning,
14 and they all had him guilty, so I just quit going in there.

15 Q Where do you go to have coffee now?

16 A Oh, I go down to Holiday Inn probably most of
17 the time. Once in a while in the Hideout. Not-- Not too
18 often.

19 Q Okay. Now, when Beverly Fetherston was alive,
20 did you see them together?

21 A Yes, I've seen them together several times.

22 Q Where have you seen them together?

23 A At the Hideout.

24 Q Have you seen them intoxicated together?

1 A Well, what I think is intoxicated, yes.

2 Q How did they behave towards each other when
3 they were intoxicated?

4 A Along about normal like any other couple that's
5 intoxicated.

6 Q Have you seen them fight with each other?

7 A Oh, I've seen them-- I've seen them have
8 arguments, yeah.

9 Q Now, have you seen Beverly Fetherston fight with
10 Mr. Branham?

11 A Yeah, I have. Couple times.

12 Q Have you ever been to their house?

13 A No.

14 Q How would you describe their relationship?

15 A Well, it would be hard for me to say. I thought
16 they were pretty close, but I heard some other rumors that,
17 you know, there just kind of a business thing. I don't know.
18 I really don't know.

19 Q Have you ever seen Mr. Branham hit her?

20 A No.

21 Q Have you ever seen him push her?

22 A No, I never have, no.

23 Q Have you ever seen Beverly afraid of Bill
24 Branham?

1 A No. No, sure hadn't.

2 MS. WILSON: Court's indulgence?

3 BY MS. WILSON:

4 Q When was the first time that you heard about
5 Beverly Fetherston's death?

6 A I saw a little piece in the paper about it.
7 Very small piece in the paper.

8 Q Have you had any contact with the police?

9 A No.

10 Q Have you seen Mr. Branham drive Beverly's car?

11 A All the time.

12 Q Have you seen her drive her car?

13 A Never.

14 Q When Beverly would have a fight with Bill, what
15 was his reaction?

16 A Well, every time I'd be around when they-- I
17 wouldn't call them fights. Every time I've been around when
18 they had an argument, Bill would either shut up or get up and
19 leave. Lot of times he'd get up, and which I didn't see
20 these, but I knew-- you know, but Bill would get up and walk
21 out and come over to my place and play with the dog, or
22 something like that. I've seen him do it.

23 He never told me that they're fighting, but I
24 just assumed that they were. But he'd come over and play

12 1 with my dog and talk for a while and then go back.

2 Q Did you know Mr. Branham when he lived with
3 Bonnie Guggenbickler?

4 A Yes, I did. That's when I met him, yeah.

5 Q How long did he live with Bonnie?

6 A Oh, I don't know. I think he was going with
7 Bonnie when I first retired and came down here.

8 Q Did you know of Bill's employment?

9 A With Resco?

10 Q Yes.

11 Was he employed when you knew him?

12 A Yes, all the time when I knew him he was
13 employed, yeah.

14 Q Did you know his employment status in January
15 or February of 1992?

16 A January, 1992? That's a year ago?

17 Q Yes.

13 18 A Well, I went-- Bill came over and got me around
19 that time one time, and they had lost the keys and stuff to
20 the trucks and their shop and everything and couldn't get
21 any of the vehicles running.

22 So he came over and got me, and I went over and
23 opened some doors and fixed some-- changed some locks and
24 made them some new keys for their vehicles. But I'm not

13 1 sure-- It was about 'round that time somewhere in there.

2 Q Do you know if he was employed during that time?

3 A He was employed then, yeah. He was employed
4 with Resco at that time.

5 Q Okay. And what is Resco?

6 A I think they serviced or sold restaurant
7 equipment, or something like that.

8 Q Okay.

9 MS. WILSON: Thank you.

10 THE COURT: Thank you. Mr. Hall?

11
12 CROSS-EXAMINATION

13 BY MR. HALL:

14 Q You know Mr. Branham pretty well; isn't that
15 true?

16 A Yeah, I know him pretty well, yeah.

17 Q All right. And you know-- you're sure that he
18 was employed with Resco in January and February of 1992.
19 Isn't that correct?

20 A That's what I said, I'm not really sure that
21 he was at that particular time. When I went over and did
22 the keys, he was. You know, since I retired, I don't pay
23 any attention to time. I really don't.

24 Q You didn't know he had been on food stamps and

1 welfare for six months before Miss Fetherston died; did you?

2 A No, I certainly didn't.

3 Q All right. Where did Miss Fetherston live?

4 A Who?

5 Q Beverly Fetherston and Bill Branham. Do you
6 know where they lived?

7 A I have no idea.

8 Q So you don't know them that well; isn't that
9 true?

10 A I know Bill that well, but not her. Like I
11 said, the only time I saw her was sitting in the bar with
12 Bill, and down at the coffee shop where I went and have
13 coffee.

14 Q You didn't know Mr. Branham had forged and
15 passed seven checks on Beverly Fetherston's account; isn't
16 that true?

17 A I don't know anything about him forging no
18 checks on it, no.

19 Q You didn't know that right after he forged one
20 on February 6th, he took her car, car keys and her checkbook
21 and went down to California? You didn't know that either;
22 did you?

23 A No. But what do you call forgery?

24 Q Take a check--

1 Say you have a checking account, sir.

2 A Um-hum.

3 Q Do you have a checking account, sir?

4 A No, I don't. Because-- Because of the IRS.

5 But I got checking accounts in my daughter's name, yeah.

6 Q Okay. Let's say I had a checking account.

7 A Okay.

8 Q And let's say you stole my checkbook, and you
9 wrote a check out to yourself and you went and cashed it.
10 That would be a forgery. Do you understand what a forgery
11 is now, sir?

12 A Yeah, okay. Yeah, well, I-- Then-- Then can
13 I say something?

14 Q No, you can't. I ask the questions--

15 A Well, I can clarify.

16 Q --and you can answer the questions.

17 A Can I ask you a question?

18 Q No, you cannot, sir.

19 A You don't want the truth then.

20 Q I do want the truth.

21 A No, you don't, or you'd let me ask you a
22 question.

23 THE COURT: Okay. It does work this way,

24 Mr. Wade.

1 THE WITNESS: Okay.

2 THE COURT: Mr. Hall has to ask you the
3 questions.

4 THE WITNESS: Okay.

5 THE COURT: If you know the answer, please
6 answer it.

7 THE WITNESS: Yeah.

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

9 THE COURT: Miss Wilson?

10 MS. WILSON: Thank you.

11

12

REDIRECT EXAMINATION

13 BY MS. WILSON:

14 Q Mr. Wade, when was the first time that you heard
15 about Beverly Fetherston's death?

16 A Like I said, in the paper. I read it in the
17 paper.

18 Q Was your relationship with her more of an
19 observer?

20 A My relationship with her was a customer.

21 Q And you knew Mr. Branham better than her?

22 A Oh, yeah, much-- much better. Much better.

23 MR. HALL: Objection, your Honor. All these

24 matters--

Excuse me, sir. When there's an objection--
This has been covered.

THE COURT: I agree, we have covered this ground.

MS. WILSON: Very well, your Honor. Thank you, Mr. Wade.

THE COURT: Thank you very much, Mr. Wade, for your testimony this morning.

MS. WILSON: Your Honor, we have Dr. Masters as our next witness, and he will be here after lunch.

THE COURT: All right. Ladies and gentlemen, we do not have any testimony to be able to provide to you for the balance of this morning. No reason to delay you any longer in that light.

So I will once again instruct you not to discuss this case amongst yourselves or with anyone else, or to form any conclusions concerning any issue in this case until such time as you are specifically asked to do so as a jury. You are not to read, look at or listen to any media accounts of this event, should there be any.

Thank you for your patience and attention this morning. We will reconvene at 2:00 p.m. this afternoon. Court will stand in recess.

(Noon recess.)

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

-oOo-

THE COURT: Thank you. Be seated, please.

We're returned to CR92-1048, State of Nevada
versus Branham. Mr. Branham is present, along with
Miss Wilson; Mr. Hall is here representing the State. And
our jury panel has returned and they are in place.

Ready to proceed, Miss Wilson?

MS. WILSON: Yes, your Honor.

THE COURT: Go ahead, please.

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

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

(Witness sworn.)

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

(See transcript of testimony of Joseph H.
Masters, previously prepared.)

MS. WILSON: Robert Stiffler.

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

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(Witness sworn.)

ROBERT JOSEPH STIFFLER, JR.,
called as a witness by the defendant herein,
being first duly sworn, was examined and
testified as follows:

DIRECT EXAMINATION

BY MS. WILSON:

Q Mr. Stiffler, would you please state your name,
and spell your last name.

A My name is Robert Joseph Stiffler, Junior.
S-t-i-f-f-l-e-r.

Q Mr. Stiffler, where do you live?

A 757 East Second Street in Reno, Nevada.

Q Did there come a time when a police detective
came and talked to you?

A Yes.

Q Do you recall when that was?

A I don't know the exact day. I remember I filled
out a statement.

MS. WILSON: May I approach?

THE COURT: You may.

///

11 1 BY MS. WILSON:

2 Q If I showed you your statement, would that help
3 refresh your memory?

4 Does that refresh your memory on when you spoke
5 with Detective Jenkins, showing you that date?

6 A The 3rd. March 3rd.

7 Q Okay. And what year was that?

8 A 1991.

9 Q Okay.

10 MS. WILSON: May I approach again?

11 THE COURT: Yes.

12 BY MS. WILSON:

13 Q Looking at your statement to refresh your memory
14 of the year, do you recall what year that was?

15 A It was 1992.

16 Q Okay. Could you explain to the ladies and
17 gentlemen of the jury what you told Detective Jenkins
18 regarding what you heard on February the 6th, 1992?

19 A Okay. You mean when we were coming back from
20 the store?

21 Q Right.

22 A Okay. We were coming back from the store down
23 there on the corner, and we walked under the parking
24 structure of the apartment complex behind Les's house.

11

1 Q Okay. Let me stop you there. Who is Les?

2 A That's my uncle.

3 Q Okay. And do you know where Les lived?

4 A Yeah. He lives at 610 Mill Street.

5 Q Okay. And let's see. Do you know the area
6 well?

7 A Just around that area. Not really far as side
8 streets I'm not too sure on, but I know in between my house
9 and his house pretty much.

10 Q Showing you Defense 22 and 18 and 20 and 15.
11 I'm going to show you these Exhibits, Mr. Stiffler, and ask
12 if you recognize Lester's home?

13 A Yeah. This is the back.

14 Q Okay.

15 A Right here.

16 Q And that is Defense 15?

17 A Okay. This is from-- over I think where we
18 talked to the officers the night when they were at the house
19 from behind the laundry place.

20 Q Okay. And that's Defense 20?

21 A This was the same thing, same area.

22 Q Okay. Defense 22?

23 A And that's the building next on the-- next to
24 the house on the right, behind in the alley.

11.

1 Q Okay. And that's Defense 18.

2 Is this the house that Lester lives in?

3 A No. That's-- I think that's their garage of
4 the people that live there in that house next door.

5 Q Okay.

6 MS. WILSON: May I show the jury, your Honor,
7 these three Exhibits that he's identified?

8 THE COURT: All right.

9 BY MS. WILSON:

10 Q Do you know Beverly Fetherston?

11 A Do I?

12 Q Yes.

13 A No, not that I know of.

14 Q Do you know my client, Bill Branham?

15 A No, I don't.

16 Q Okay. Go ahead and explain what happened.

17 A Okay. We were-- We were coming under the
18 parking structure, and we heard some loud noises and yelling
19 and stuff, so we thought someone could have been fighting
20 over at the bar on the corner or maybe down the alley.

21 But then as we came out into the alley, we
22 didn't see anybody, so we just went back to his house.

23 Q What bar is that at the corner?

24 A It's the Pink Pussycat.

12

1 Q Okay. And what happened next?

2 A Okay. We went in the house and we were bored,
3 we couldn't find nothing on TV to watch, so we went out on
4 the front porch. And then we heard the yelling again, and
5 some sounds, you know, breaking glass and banging sounds.

6 I thought somebody's car was being vandalized.
7 We looked over in the alley, but we didn't see anything, so
8 we just passed it on.

9 Q Okay. What time was that?

10 A That was around 1:00, 1:30 in the morning.

11 Q Do you know what day it was?

12 A Thursday, early Friday, I believe.

13 Q Are you sure of that?

14 A Not exactly. Could have been Friday or early
15 Saturday.

16 Q Okay. Do you know what time that was?

17 A The time that--

18 Q That you heard the noises and the crashing
19 sounds.

20 A Yeah. That was at 1:00.

21 Q That was 1:00 a.m.?

22 A Yeah, 1:00 a.m.

23 Q Okay. Do you recall if you heard any of the
24 sayings that was being yelled?

1 A Well, I only picked up stuff like swear words
2 and just, you know, just fighting words, like "wanting to
3 mess with somebody", or, "you want to mess with me", you
4 know, stuff like that.

5 Q Okay. And did you hear another person yell
6 back?

7 A I didn't hear-- I didn't hear any words, but
8 I-- I heard like, you know, crying and stuff like that.
9 Couldn't really make out, you know, what was really going on.

10 Q Okay. Do you recall if it was a man and woman
11 fighting, or a man and man fighting?

12 A I would say it was a man and woman, 'cause the
13 second voice sounded kind of feminine, the crying.

14 Q Okay.

15 A Plus-- Well, never mind. I was going to say
16 that I heard the word "bitch", so I assumed it was a woman.

17 Q Okay. And again do you recall whether that was
18 Thursday/Friday morning or Friday/Saturday morning?

19 A Oh, I'd have to say Thursday, early Friday.

20 Q Okay. Are you sure about that?

21 A I'm not exactly sure. It could-- It could have
22 been either day. It was a pretty boring week.

23 Q Did you spend the night with Lester?

24 A The night I-- The night--

1 Q On that particular occasion.

2 A No, I went home shortly after.

3 Q Do you know-- Showing you Defense 30, do you
4 recognize the top photos? Do you recognize any of these
5 structures?

6 A Okay. That's the apartment complex that we
7 walked under the parking structure.

8 Q Here?

9 A Yeah, this one here.

10 Q Okay.

11 A And those are just-- I've seen those houses
12 before just going by, you know, walking by or going to the
13 store or something.

14 Q And where is the Pink Pussycat?

15 A It's on the far side. I think that might be
16 the wall there.

17 Q This wall right here?

18 A Yeah.

19 Q Okay. Could you step down and show the ladies
20 and gentlemen where the Pink Pussycat is in this top photo?

21 A Okay. It's past this house, and there's a--
22 some kind of shop there, but then it's on the other side
23 where-- where you turn onto the street. I think this is the
24 wall.

12 1 Q Is that the direction that you heard it coming
2 from?

3 A Yeah. Down this way. That's why I thought it
4 could have been a fight at the bar or something.

5 Q Okay.

6 MS. WILSON: That's all questions I have.

7 THE COURT: Any questions?

8 MR. HALL: Just very briefly, your Honor.

9
10 CROSS-EXAMINATION

11 BY MR. HALL:

12 Q Mr. Stiffler, you're not sure which day that
13 you heard these noises. Isn't that correct?

14 A Yeah, that's true.

15 Q When you heard the noises, you heard them in
16 conjunction with some smashing and crashing of something?

17 A Yeah.

18 Q Could have been a baseball bat--

19 A Yeah.

20 Q --or a hammer?

21 A I thought someone was smashing somebody's car
22 with a bat or something, you know, vandalizing something, for
23 I didn't know why.

24 Q It could have very well come from the Pink

12

1 Pussycat; isn't that correct?

2 A Yeah, it could have been anywhere around there.

3 Q You don't know where it--

4 A Because of the echo, you know. It was nighttime
5 and there was no traffic at the time, so--

6 Q You don't even know if it was a man and a woman;
7 do you?

8 A No. And I couldn't say for sure, 'cause I
9 didn't see-- actually see--

10 Q You didn't see anybody; did you?

11 A No.

12 Q You don't know--

13 A I didn't--

14 Q --know the defendant?

15 A I never seen him before.

16 Q You don't know the lady that lived at 129 and
17 a half Wells; do you?

18 A No.

19 Q Never met them; did you?

20 A (Shakes head negatively.)

21 MR. HALL: I have no further questions.

22 MS. WILSON: Nothing further.

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

13

1 MS. WILSON: Pam Holland.

2 THE COURT: This is the lady we're asking you
3 to approach right here. Raise your right hand, be sworn in.

4 (Witness sworn.)

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

7

8 PAMELA RENEE HOLLAND,

9 called as a witness by the defendant herein,

10 being first duly sworn, was examined and

11 testified as follows:

12

13 DIRECT EXAMINATION

14 BY MS. WILSON:

15 Q Would you please state your full name, and spell
16 your last name.

17 A Pamela Renee Holland. H-o-l-l-a-n-d.

18 Q And Miss Holland, where do you reside?

19 A 610 Mill Street, Reno.

20 Q Okay. And how long have you resided there?

21 A Little over two years.

22 Q Who do you live with?

23 A My boyfriend, Lester Stiffler.

24 Q Okay. And what is your relationship with the

1 gentleman that just left the courtroom?

2 A That's Lester Stiffler's nephew.

3 Q Directing your attention to 1992, did you have
4 an occasion to speak with Detective Jenkins?

5 A Yes.

6 Q And regarding that situation, would you tell
7 the ladies and gentlemen of the jury what you told Detective
8 Jenkins?

9 A That I was cleaning-- I was paint-- I was up all
10 night painting. I was standing in my kitchen window, washing
11 out my paint brushes, and I heard a loud car, which if you
12 look out my kitchen window is the alley.

13 I heard a loud car. The car went down the
14 alley. It had like a Mexican-looking like guy in it, just
15 sitting-- sitting real low. He then turned up the street
16 and then went down Mill Street up towards Wells.

17 Q And what color car was that?

18 A Dark brown.

19 Q What type of car?

20 A Trans Am or Camaro. That sort of build.

21 Q How long was the person's hair that you saw?

22 A Real long. I mean, you know, long. About as
23 long as mine, probably.

24 Q And what day was that?

1 A It was-- The sun was coming up, so it was--
2 you could-- you could consider it Sunday morning because the
3 sun was coming up, but yet it was Saturday night, you know.

4 Q What time?

5 A The sun was coming up. That's all I can--
6 You know, it was getting daylight.

7 Q Okay. And is there a red or dark brown Camaro
8 or Firebird in your neighborhood?

9 A Trans Am that sits behind our neighbor's garage,
10 yes. But it has no engine. It does not run. It has not
11 been moved since the time we've moved into that house.

12 Q Miss Holland, looking at Defense 20, 22 and 15,
13 is your home in any of these?

14 A Yes, this one right here.

15 Q Okay.

16 MS. WILSON: The record should reflect she is
17 pointing to Defense 15.

18 THE WITNESS: And this is my house. I guess
19 this is the side of my house. Yeah. Both of these. That's
20 my house.

21 BY MS. WILSON:

22 Q Okay.

23 MS. WILSON: And the witness is pointing to the
24 side of Defense 20 and the side of Defense 22.

1 BY MS. WILSON:

2 Q Do you know my client, Mr. Branham?

3 A No, I don't.

4 Q Do you know Beverly Fetherston?

5 A No, I don't.

6 MS. WILSON: Court's indulgence?

7 BY MS. WILSON:

8 Q Is there a lot of traffic in the alley area?

9 A Not too much. I mean cars that go into that
10 parking lot, parking garage,--

11 Q Okay.

12 A --mostly.

13 Q Was the car coming from that parking garage?

14 A No. It came from the other end of the alley
15 somewhere.

16 Q Okay. Have you had any trouble with people
17 trying to break into your home?

18 A Yes. Someone threw one of our-- We have these
19 big white crystal rocks. Someone threw a rock through our
20 kitchen window, which busted both windows and the whole
21 frame. And Lester had seen that someone has tried to jimmy
22 our deadbolt.

23 Q Okay. You weren't there at that time?

24 A I mean I've seen the marks.

1 Q Okay.

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

3

4 CROSS-EXAMINATION

5 BY MR. HALL:

6 Q This brown car that you saw, you never saw it
7 before?

8 A No.

9 Q Okay. Ever seen it since?

10 A No.

11 Q There's a lot of cars that go up and down that
12 alley; isn't that true? Other loud cars?

13 A No, not that loud.

14 Q You just saw a car. You didn't see it stop
15 anywhere; did you?

16 A No.

17 Q You don't know who that guy was?

18 A No.

19 Q Is this the car you saw?

20 A That's not the side of the car I saw. So I
21 can't be sure.

22 Q Okay.

23 A I saw the side of the car like here's the rear
24 end, here's the front end, driving. So I can't be sure of

13 1 those pictures. I'd need a picture of the way I saw the car.
14

2 Q Are you sure which day you saw the car?

3 A Yes.

4 Q How are you sure about the day you saw the car?

5 A Because I was cleaning for inspection on Monday
6 morning. My housing inspection.

7 Q So you saw it on Sunday?

8 A When the daylight-- It was just beginning to
9 be daylight on Sunday. Saturday-- I-- I considered it
10 Saturday, but yet the date-- the sun was coming up, so it
11 was considered Sunday.

12 Q So when you said it was Saturday, you were
13 mistaken?

14 A When I said it was Saturday?

15 Q Didn't you just say it was Saturday?

16 A I said late Saturday, Sunday morning. To me--
17 I mean, you know, after midnight I'm sure you would consider
18 it Sunday; right?

19 Q Yes.

20 A I'm just saying that to me it was Saturday,
21 but early Sunday.

22 Q Okay.

23 MR. HALL: I don't have any more questions.

24 THE COURT: Anything else?

1 MS. WILSON: No.

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

4 THE WITNESS: Thank you.

5 MS. WILSON: Call Lester Stiffler.

6 THE COURT: Approach the lady to my right,
7 please, raise your right hand, be sworn in, please.

8 (Witness sworn.)

9 THE COURT: If you'd have a seat right over
10 here in this chair by the microphone, please.

11

12 LESTER CLIFFORD STIFFLER,
13 called as a witness by the defendant herein,
14 being first duly sworn, was examined and
15 testified as follows:

16

17 DIRECT EXAMINATION

18 BY MS. WILSON:

19 Q Mr. Stiffler, would you please state your name,
20 and spell your last name.

21 A Lester Clifford Stiffler. And it's
22 S-t-i-f-f-l-e-r.

23 Q Now, Mr. Stiffler, where do you reside?

24 A Huh?

1 Q Where do you live?

2 A Where do I live?

3 Q Yes.

4 A Kittycorner from the alley of-- It's a big
5 giant blue house that's kittycorner from the alley where
6 supposedly the actual incident happened.

7 Q Okay. And would that be 610 Mill Street?

8 A 610 Mill Street, yes, it is.

9 Q Do you have any physical problems, Mr. Stiffler?

10 A Yeah. I have short-term memory loss. I got
11 diabetes. Last night I had a mild heart attack.

12 Q Do you feel competent to testify today?

13 A Yeah. I can remember my statement pretty much,
14 what I made.

15 Q Did you make a statement to Detective Jenkins?

16 A Detective Jenkins? Would that be the defense
17 or-- or the--

18 Q That would be a police officer.

19 A Yeah, yeah. I walked out there after I got my
20 thoughts together and remembered the screaming and yelling.
21 But that's not unusual in that neighborhood.

22 Q Okay. Do you remember when you talked to Mr.--
23 Detective Jenkins?

24 A It was either that night when all the-- all the

1 cop cars showed up, or he came back the next day. I invited
2 him in my home.

3 Q Okay. Now, what is your relationship with Pam
4 Holland?

5 A Pam, my girlfriend. We been together seven and
6 a half, almost eight years.

7 Q And what is your relationship with Robert
8 Stiffler?

9 A That's my nephew, but more like my son, because
10 his dad was never there for him. So--

11 Q Okay. Now, do you remember when you made that
12 statement to Detective Jenkins?

13 A I couldn't go with the exact date.

14 Q Okay.

15 MS. WILSON: May I approach?

16 THE COURT: Yes.

17 THE WITNESS: The statement itself may have been
18 like late Thursday, early Friday morning.

19 BY MS. WILSON:

20 Q I'm going to show you your statement and see if
21 this refreshes your memory when you made it.

22 A Okay.

23 Q Direct your attention to the top part. Do you
24 see the date that you spoke with Detective--

1 A Yeah, March 3rd, 1991.

2 Q Okay. Thank you.

3 A But that could be off as far as-- as long as
4 it's been before this trial came up.

5 Q Could it have been 1992?

6 A It-- It could have been '92.

7 Q Do you know my client, Mr. Branham?

8 A No. I've never seen this man before.

9 Q Do you know Beverly Fetherston?

10 A No.

11 Q Okay.

12 A I don't know many people that drink. I think
13 they're slobs. Excuse my statement, your Honor.

14 THE COURT: Well, do me a favor. It would make
15 me more comfortable if you wouldn't give us your comments
16 about what you think about things like that.

17 THE WITNESS: Okay.

18 THE COURT: Just let Miss Wilson ask you a
19 question and you give us the answer. Okay?

20 THE WITNESS: Yes, sir.

21 THE COURT: Thank you.

22 BY MS. WILSON:

23 Q Directing your attention to February, 1992, do
24 you remember seeing detectives outside investigating

1 something that was going on in a house, and you coming out
2 and talking to them?

3 A Yeah. I went out and talked to them to see
4 what was going on. I mean all those cop cars and undercover
5 cars, and then the mortuary car. I was kind of curious.

6 THE COURT: Your next question, please.

7 BY MS. WILSON:

8 Q Okay.

9 What do you recall telling them that you heard
10 that was on--

11 A Me--

12 Q --that was curious or helpful to the police?

13 A Me and my nephew both, Robert Stiffler, had
14 walked to the Mini Mart and came back and heard some yelling
15 in an alley, which we didn't think much much of because
16 there's some partiers back there, a rock-and-roll band
17 playing in the house next to there. So we didn't think much
18 of it.

19 But then we went out on the front porch maybe
20 prior, half hour or so, and then we heard a lot of screaming
21 and windows crashing, and-- And I don't know if you-- I
22 couldn't be perfectly exact if it was a baseball
23 bat crushing glass and metal. But there was a lot of glass,
24 a lot of glass breaking.

1 Q Okay. Did you see anybody at the time?

2 A No. We looked around the side of my house back
3 towards that house, but we didn't see nothing going on. I
4 don't even recall any lights being on.

5 Q Okay. Do you live in a bad neighborhood?

6 A It's a pretty bad neighborhood if you ask me.
7 I mean there's a lot of vandalism. I've had my house--
8 People tried to break in my house two or three different
9 times. I've had windows smashed. I don't have no enemies
10 really.

11 Q Have you seen a brown Trans Am in your
12 neighborhood?

13 A Yeah, a brown Trans Am that's been sitting there
14 for the whole two years that I've been living there, that
15 belongs to the neighbor's son that has never been moved once.

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

17 THE COURT: Any questions, Mr. Hall?

18 MR. HALL: No questions, your Honor.

19 THE COURT: You may step down, Mr. Stiffler.

20 Thank you.

21 THE WITNESS: Leave the courtroom?

22 THE COURT: Yeah, you sure may.

23 THE WITNESS: Okay.

24 MS. WILSON: Our next witness would take us past

15 1 5 o'clock. If you would wish--

2 THE COURT: Who is that?

3 MS. WILSON: Deputy Partridge.

4 THE COURT: Would counsel approach for a minute?

5 (Discussion at the bench.)

6 THE COURT: We're going to recess now, ladies
7 and gentlemen. We have some-- a little discussing to do,
8 counsel and I. So I will ask you once again not to discuss
9 this case amongst yourselves or with anyone else, or to form
10 any conclusion as to any issue in this case until such time
11 as you are specifically asked to do so as a jury. You are
12 not to read, look at or listen to any media accounts of this
13 event, should there there be any.

14 We will reconvene at 10:00 a.m. tomorrow
15 morning. I thank you again for your patience and look
16 forward to seeing you in the morning. I would like to ask
17 counsel to join me in chambers if they would, please.

18 (Proceedings Continued to March 9, 1993, at 10:00 a.m.)

19 -o0o-
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24

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 Monday, March 8, 1993,
9 at the hour of 10:00 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 89, 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

CR92-1048
STATE VS WILLIAM EDWARD BRANHAM
District Court
Washoe County
DC-9900051859-015
07/30/1993 08:12 AM
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'93 JUL 30 A8:12

JUDICIAL CLERK

BY *[Signature]*
DEPUTY

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,

vs.

WILLIAM EDWARD BRANHAM,

Defendant.

TRANSCRIPT ON APPEAL

Trial

March 9, 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

I N D E X

WITNESSES:

Direct Cross Redirect Recross

FOR THE DEFENDANT:

RODE, Mark Allen 3 16 18

PARTRIDGE, Donald Clarence 21

COOK, Wrell 27 33 34

HOWELL, Robert M. 35

Defense rests - pg 37

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Closing statement by Ms. Wilson - pg 53

Second closing statement by Mr. Hall - pg 73

Verdict - pg 92

EXHIBITS:

Marked for
Identification

Admitted
into
Evidence

36 35 37

1 RENO, NEVADA; TUESDAY, MARCH 9, 1993; 10:05 A.M.

2 --oOo--

3
4 THE COURT: Thank you. Be seated, please,
5 ladies and gentlemen.

6 We're back with CR92-1048, State of Nevada
7 versus William Branham. Mr. Branham is in court along with
8 Ms. Wilson. Mr. Hall is present, representing the State.
9 And the jury is back in place this morning.

10 Ready to proceed, Miss Wilson?

11 MS. WILSON: Yes, your Honor. We'd call Mark
12 Rode.

13 THE COURT: All right.

14 If you would raise your right hand, be sworn
15 in, please.

16 (Witness sworn.)

17 THE COURT: If you'd be kind enough to have a
18 seat in the chair by the microphone, please.

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MARK ALLEN RODE,
called as a witness by the defendant herein,
being first duly sworn, was examined and
testified as follows:

DIRECT EXAMINATION

BY MS. WILSON:

Q Mr. Rode, would you please state your full name,
and spell your last name.

A My name is Mark Allen Rode. R-o-d-e.

Q Mr. Rode, where do you live now?

A I live at 611 West Second Street, at the Midtown
Motel.

Q And what do you do there?

A I am a bar manager and a bartender.

Q Did there come a time when you resided someplace
else besides 611 West Second?

A Yes, that is correct. I used to live at 80 High
Street.

Q And where is that near?

A That is located about 50 yards from the Swiss
Chalet Bar.

Q Okay. And what did you do used to do there?

A At the Swiss Chalet? I used to go there and get

1 intoxicated.

2 Q Okay. Are you familiar with my client,
3 Mr. Branham?

4 A Yes, I am.

5 Q And are you familiar with Beverly Fetherston?

6 A Yes, I am.

7 Q Approximately how long have you known
8 Mr. Branham?

9 A For about a couple of years.

10 Q And my same question regarding Miss Fetherston.

11 A Both of them. I met them both at the same time,
12 more or less.

13 Q Okay. Now, did there come a time when you and
14 Mr. Branham were involved in a pool--

15 A Tournament.

16 Q --organization?

17 A Yes. We used to be on the same pool tournament
18 at the Inn-Ca-Hoots Bar.

19 Q Who was in that pool tournament group?

20 A There was me, Bill, the sheriff and his wife.

21 Q Pardon me?

22 A There was a sheriff and his wife.

23 Q Okay.

24 A I'm not too familiar with their names.

2 1 Q All right. Now, did there come a time when
2 you actually left that pool organization?

3 A Yes. After I had the dispute with the sheriff,
4 I told them that-- I don't want to offend anybody. I kind
5 of called them a couple of names. We had a very big
6 disagreement, and he said that I was off the team. So Bill
7 Branham quit because I got kicked off the team.

8 Q Okay. And how long were you on the team
9 together?

10 A Well, it was about maybe four or five months.

11 Q Okay. Now, how did you get to the pool
12 tournament?

13 A Since I was constantly drinking, Bill was my
14 transportation, because he would use Beverly's car.

15 Q Now, how many times were you together where
16 he used her car?

17 A There was quite a few times. I'd say about
18 18 to 20 times.

19 Q Of those 18 to 20 times, how many times would
20 Bill Branham ask permission to use the car?

21 A To the best of my recollection-- recollection,
22 whatever you call it, I would say about maybe majority of
23 the time. But there were times he would use the car without
24 asking her.

1 Q Do you remember stating that it would be half
2 and half?

3 A Yes.

4 Q Now, do you remember if Beverly was ever with
5 you and Bill for these pool tournaments?

6 A Yes, she did join us a couple of times on her
7 nights off.

8 Q Would you describe their relationship during
9 the time that you were playing pool together?

10 A We would all be drinking beer, and they would--
11 If-- How could I word this? We would all be drunk at the
12 time. And pool tournaments, pool tournament, if they were
13 not happy with each other, they would argue. Most of the
14 time they would pretty much in good nature, I guess you
15 could say.

16 Q Okay. Did you observe any physical or verbal
17 altercations between the two?

18 A A couple times he would grab her by the arm
19 pretty strongly.

20 Q Do you recall stating that you never observed
21 any physical or verbal altercation?

22 A I saw him grab her by the arm one time and use
23 some obscene words.

24 Q When was that?

2 1 A During a pool tournament and just arguments.
3 2 Q Okay. Now, did you ever get into a fight at
3 a pool tournament?
4 A No, I never got to a fight.
5 Q Okay. Did you ever break your cue?
6 A Yes, I did.
7 Q Okay. Did Mr. Branham ever break his cue?
8 A I have only seen him-- He tossed a pool cue--
9 a pool-- cue stick one time.
10 Q What was your opinion as to Mr. Branham's
11 violent nature?
12 A If you're a habitual alcoholic, you can get
13 frustrated and be--
14 Could you repeat the question one time?
15 Q What was Mr. Branham's violent nature?
16 A Pretty much of a rough sort.
17 THE COURT: I'm sorry. Pretty much of what?
18 THE WITNESS: A rough sort.
19 THE COURT: Rough sort. Thank you.
20 BY MS. WILSON:
21 Q Were you a rough sort?
22 A Yes, I am.
23 Q Are you an alcoholic?
24 A Yes, I am.

3 1 Q Now, directing your attention to a time period
2 where Bill and Bev broke up. Do you recall that time period?
3 A About-- I believe about a week before she was
4 declared missing.
5 Q Okay. Did you know of any enemies that Beverly
6 had?
7 A No.
8 Q Did you know about any finances that she would
9 have?
10 A Just that. Just her car.
11 Q Was her car for sale?
12 A Yeah, she was looking to sell her car. She
13 couldn't afford to pay for the damages that were-- to fix
14 it up.
15 Q What was the price she was looking for?
16 A She was looking about 3500.
17 Q Were you going to buy her car?
18 A If I had the financial support at the time, yes,
19 I would.
20 Q Now, do you recall a time when you spent the
21 night with Bev?
22 A Yes.
23 Q When was that?
24 A That was I believe the night before she got off

1 work or the night prior to.

2 Q Okay.

3 A Yeah, it was the night before she got off work.

4 Q Okay. And what month was that?

5 A That, I'm not sure of. I don't remember the
6 month.

7 Q Was Mr. Branham there?

8 A No, he was not.

9 Q Okay. Who else spent the night at that time?

10 A It was I, John Bell and Beverly.

11 Q Okay. How would you describe the people that
12 frequent the Swiss Chalet Bar?

13 A I would consider them all just a very large
14 group of alcoholics.

15 Q Have you been 86'd from the Swiss Chalet?

16 A Yes, I have.

17 Q When was that?

18 A I do not remember the time I was 86'd, but it
19 was about two months or three months or something like that
20 afterwards.

21 Q Do you recall saying that, "It was five months
22 ago"?

23 A It could have been, yes.

24 Q You used to live around in the Swiss Chalet

1 neighborhood?

2 A That's correct.

3 Q Do you have any personal knowledge whether
4 Beverly would walk home after her shift at the Swiss Chalet?

5 A Yes, she would.

6 Q What was the neighborhood like that was around
7 the Swiss Chalet?

8 A It's a very-- very bad neighborhood. Lot of
9 criminals, and no offense to anybody, but a lot of Mexicans
10 and Negro people live there, and there was a lot of theft
11 and damage, and stuff like that.

12 Q Do you have personal knowledge of any theft?

13 A Yes, I do.

14 Q What happened?

15 A Friend of mine's bicycle was stolen off the
16 porch of my brother's house, which is the same house I lived
17 in, while we were sitting in the living room. We never even
18 saw it. That's how fast it happened.

19 Q Okay. Now, the time that you're indicating that
20 you and John Bell spent the night, if I showed you a map--
21 not a map, a calendar, a calendar of February, 1992, and ask
22 you if that refreshes your memory of when you and John Bell
23 spent the night?

24 A I have no recollection of-- of the date. At

3 1 the time it was inappropriate, because we were all pretty
2 intoxicated.

3 Q Do you recall it being around the time of her
4 death?

5 A Yes, it was.

6 MR. HALL: Objection, leading.

7 THE COURT: Sustained.

8 BY MS. WILSON:

9 Q Is there anything that would help aid you in
10 determining when you--

11 A No.

12 Q --spent the night?

13 A No.

14 Q Would knowing when Beverly died help you?

15 A I'm not aware of what day she died on. I know
16 it was within the time of the last time I saw her.

17 Q Okay. And when was the last time you saw her?

18 A The last night at work before her two days off.

19 Q And when was that?

20 A I believe from what I understand was a
21 Wednesday.

22 Q Okay.

23 A And I wouldn't be able to recall that exactly.
24 I'm sorry.

3 1 Q Okay. Now, when you went over to spend the
2 night, what did you do?

3 A We got drunk and had dinner.

4 Q Okay. And where did everyone sleep?

5 A I slept on the couch, 'cause I passed out.
4 6 Mr. John Bell slept on a chair and he passed out. Beverly
7 went to her bedroom and went to bed.

8 Q Okay. Now, have you been to Beverly's home on
9 Crampton Street?

10 A Yes, I have.

11 Q How many times?

12 A About two times.

13 Q And how many times at the Wells Avenue?

14 A The one time I stayed the night, two times prior
15 just to go over.

16 Q Okay. Now, what kind of car did you own at the
17 time of February, 1992?

18 A I owned a 1984 Pontiac Firebird.

19 Q And do you know what Bev's car looked like?

20 A Yes. Her car was identical to mine, only
21 different color. Hers was a 1983 Pontiac Firebird.

22 Q What color was hers?

23 A Hers was brown, mine was black.

24 Q After you had the Firebird, what did you have?

4 1 A Then I bought a 1980 Camaro Z-28.

2 Q Do you know when you bought that?

3 A No.

4 Q Now, when you--

5 Did you go over to the home with Richard Sokolik

6 to determine where Bev was?

7 A Yes, I did.

8 Q Who was with you?

9 A Me, Richard, and there was a gentleman by the

10 name of Ziggy. I believe that's his nickname. I'm unclear

11 of his real name.

12 Q Was there anyone else that was with you?

13 A There was one person showed up, but then they

14 continued and went back to the Swiss Chalet Bar. I don't

15 remember who it was.

16 Q What did you do after that?

17 A Well, we stood around and waited for the manager

18 and the-- the landlord, I believe, and the RPD to show up

19 so we could get inside the house.

20 Q Did anybody go inside the house?

21 A Richard and the Reno Police Department, the

22 officer that showed up, went inside the house and they found

23 the body on the couch.

24 Q Okay. And where were you?

1 A I was standing outside about 20 feet from the
2 door.

3 Q What type of health would you say that Bev had?

4 A She was in-- in good health at the time. But
5 she was previously ill.

6 Q Did she smoke?

7 A Yes.

8 Q How much did she smoke?

9 A She'd smoke about four, five, six cigarettes an
10 hour.

11 Q And what kind of cigarettes did she smoke?

12 A I believe they were Montclairs.

13 Q Okay. How do you know that?

14 A Well, sitting in a bar. But I believe they were
15 Montclairs. I cannot exactly--

16 Q Did you ever see her smoke Mores?

17 A Never.

18 Q How was she in comparison to drinking alcohol?

19 A She was a typical bartender. She was an
20 alcoholic herself.

21 Q Do you recall seeing Bill Branham after he moved
22 out of the residence?

23 A Well, he got 86'd out of the Swiss Chalet, but
24 he would come in just for 30 seconds, more or less pop his

1 head through the door, turn around, then walk out.

2 Q Did you hear him say anything at the time?

3 A No. I'd usually be about mid bar.

4 Q Do you recall Mr. Branham ever bringing Beverly
5 Fetherston cough syrup and aspirin?

6 A Yes.

7 Q When was that?

8 A While she had-- When she was sick. She had a
9 bad cold, and stuff like that. The flu, I guess you could
10 say.

11 Q Did you ever hear Mr. Branham say, "You gotta
12 die first before you get better"?

13 A That I cannot really guarantee.

14 Q Now, did you ever see Mr. Branham give Beverly
15 Fetherston--

16 MR. HALL: Your Honor, I'm going to start to
17 object. She's been leading this witness for about the last
18 five questions, and she's still leading.

19 THE COURT: Sustained. Rephrase it, please.

20 BY MS. WILSON:

21 Q Have you seen Beverly with a black eye?

22 A I was told that she did have a black eye at one
23 time, but I cannot verify that completely.

24 Q Okay. Now, do you know if Beverly was afraid

1 of Bill?

2 A Yeah, I'm sure she had some fear that there
3 might be an altercation or a big argument, or something like
4 that.

5 Q Did you ever see such an altercation or
6 argument?

7 A Like I said, typical bartender. It happens all
8 the time with alcoholics.

9 Q Now, did you ever see Bill hit Marilyn Mackay?

10 A No, I physically did not see it. But from about
11 30 seconds after it happened, I heard about it, and it
12 happened to be in the same building I was in.

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

15 THE WITNESS: You're welcome.

16 THE COURT: Mr. Hall?

17

18 CROSS-EXAMINATION

19 BY MR. HALL:

20 Q You never heard John Bell say anything bad about
21 Beverly Fetherston; did you?

22 A No, I did not.

23 Q And you don't have any reason to believe that
24 John Bell was responsible for Beverly Fetherston's death; do

4 1 you?

2 A No. He does not have the heart.

5 3 Q And you're not sure when you stayed over at
4 Beverly Fetherston's house with John Bell?

5 A That's correct.

6 Q Now, after you saw Beverly Fetherston-- Well,
7 let me rephrase that.

8 The weekend that you went over to Beverly
9 Fetherston's house and she was discovered dead, did you
10 ever see her at the bar on that weekend? That would have
11 been the weekend of Friday, the 7th; Saturday, the 8th;
12 Sunday, the 9th. You didn't--

13 A I saw her the night before she got off work.
14 She was in a hurry to go home to meet Bill.

15 Q Just before she was going to go meet the
16 defendant, Mr. Branham?

17 A Yes, that's correct.

18 Q Isn't it true that Miss Fetherston told you
19 that she was really worried that the defendant Mr. Branham
20 might freak out and hurt her?

21 A That's correct.

22 Q Isn't it also true that you told me that Bill
23 Branham drinks too much, that he's got a couple of screws
24 loose, and he's got a temper?

1 A That's correct.

2 Q And you don't have-- Well, you don't have any
3 knowledge that Bill Branham was ever allowed to, number one,
4 sell Beverly Fetherston's car; do you?

5 A No, none at all.

6 Q And you don't have any information that would
7 lead you to believe that Beverly Fetherston would allow
8 William Branham to take her car to California for four days;
9 do you?

10 A No, none at all.

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

12

13 REDIRECT EXAMINATION

14 BY MS. WILSON:

15 Q Mr. Rode, how long had you known Mr. Bell?

16 A For couple months. I'd say about two or three.

17 Q And when you indicate that the last time you
18 saw Beverly, that was the night before her two days off?

19 A When she got off work, she was in a hurry to
20 go home to meet with Bill. That was the last time I ever
21 saw her.

22 Q And that was the night before her two days off?

23 A The night she got off work, I was at the bar,
24 having a couple of cocktails. She was in a hurry to go home,

5 1 because I guess she was going to try to either patch things
2 up with Bill or something like that is what she told me.
3 Q And was it the night before she had her two
4 days off?
5 A No. It was the night she got off, and then she
6 went home.
7 Q But the next day, did she have a day off?
8 A Yeah.
9 Q And the next day after that, was that a day off?
10 A That is correct.
11 Q Okay. If there has been testimony that her days
12 off--
13 MR. HALL: Objection, leading.
14 MS. WILSON: Well, your Honor, it's sworn
15 testimony.
16 THE COURT: The objection is still sustained.
17 MS. WILSON: Very well.
18 BY MS. WILSON:
19 Q Do you have a temper?
20 A Yes, I do.
21 Q Now, did you talk to me before the District
22 Attorney?
23 A Yes, I did.
24 Q Okay. And you never told me that--

1 MR. HALL: Objection, leading.

2 BY MS. WILSON:

3 Q --you were afraid--

4 Did you ever tell me that Bev was afraid
5 that Mr. Branham was going to have a screw loose and hurt
6 her?

7 A I just-- I told you that she was worried that
8 maybe he might get a little out of hand.

9 Q Okay. That's your testimony?

10 A That is true.

11 MS. WILSON: Thank you.

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

13 THE WITNESS: Thank you.

14 MS. WILSON: We would call Deputy Partridge.

15 (Witness sworn.)

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

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

1 DONALD CLARENCE PARTRIDGE, SR.,
2 called as a witness by the defendant herein,
3 being first duly sworn, was examined and
4 testified as follows:

6 DIRECT EXAMINATION

7 BY MS. WILSON:

8 Q Good morning, Deputy. Would you please state
9 your full name, and spell your last name.

10 A Donald Clarence Partridge, Senior. My last
11 name's P-a-r-t-r-i-d-g-e.

12 Q Now, Deputy, where do you work?

13 A I'm a Deputy Sheriff with the Washoe County
14 Sheriff's Department.

15 Q Are you employed there at this time?

16 A Yes, I am.

17 Q Directing your attention to the time of 1992
18 and October of 1991, did there come a time when you were
19 involved with a pool team?

20 A Yes, there was.

21 Q What was the time period that you first started
22 that?

23 A Approximately October of '91.

24 Q Okay. And when did that end for you?

5

1 A In the month of February of '92.

2 Q Okay. Now, during that time span, who was
3 involved with the pool team?

4 A Myself, the defendant, young man named Mark
5 Rode, and my estranged wife.

6 Q Okay. And did you recognize Mr. Rode here
7 today?

8 A Yes, I did.

9 Q And what bar did you represent in the pool
10 tournament?

11 A Originally we represented the bar on Fourth
12 Street, and then the owner sold that place of business and
13 we went under the name of Inn-Ca-Hoots, which was another bar
14 that she owned.

6

15 Q Now, during the time period, what was the times
16 that you would play?

17 A I believe, if I remember correctly, it was on
18 Wednesday nights between 7:00, sometimes as late as 11:00,
19 11:30 before we would get through.

20 Q Okay. And how would you describe Mark Rode?

21 MR. HALL: Objection, relevance.

22 MS. WILSON: Your Honor, the issue is who killed
23 Beverly Fetherston, if it's a homicide.

24 THE COURT: I'm totally aware of the issue.

1 But how would the question, "How would you describe Mark
2 Rode?" be relevant?

3 MS. WILSON: Okay. Let me rephrase it.

4 THE COURT: All right. Thank you.

5 BY MS. WILSON:

6 Q With regard to Mr. Rode's propensity for
7 violence.

8 A Seemed to me to be hot-tempered.

9 Q And what do you base that opinion on?

10 A I base that opinion on observations of him over
11 the period of time that we were in the pool league. In some
12 cases he would be very calm when he arrived. However, it
13 didn't take him long to start losing control.

14 Q Now, the same question I would ask you with
15 regard to Mr. Branham.

16 A In regard to Mr. Branham, I noticed him to be
17 even-tempered most of the time. However, he did have a
18 tendency to get verbal when he had had a few drinks.

19 Q Did you notice any physical altercation that
20 you observed by Mr. Rode?

21 A He never actually got into any physical
22 altercations during that time period. However, he almost
23 did at one point and Mr. Branham stopped him.

24 Q Now, when did Mr. Rode leave the pool team?

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

2 THE COURT: Ms. Wilson?

3 MS. WILSON: Again it has to do with Mr. Rode's
4 propensity for violence. Maybe I can rephrase it.

5 THE COURT: All right. Why don't you. I'm
6 not sure when he left the pool team would establish any
7 propensity for violence.

8 BY MS. WILSON:

9 Q Was Mr. Rode asked to leave?

10 A Yes, he was.

11 Q Who asked him to leave?

12 A My wife, who was the team captain at that time.

13 Q And why was she-- was he asked to leave?

14 MR. HALL: Objection. Same objection, your
15 Honor.

16 MS. WILSON: It's showing propensity for
17 violence, your Honor.

18 THE COURT: Well, I think we may be-- I'm
19 anticipating the answer. Go ahead. You may answer. Why
20 was he asked to leave?

21 THE WITNESS: He was asked to leave because of
22 his continual outbursts and because of his inability to
23 control his temper.

24 ///

1 BY MS. WILSON:

2 Q Was Mr. Branham so asked to leave?

3 A No, he was not.

4 Q Do you recall a female accompanying Mr. Branham
5 and Mr. Rode to the pool tournaments?

6 A Sometimes, yes.

7 Q Were you able to see a photograph of a woman
8 this morning that I showed you?

9 A Yes, I was.

10 Q Is that the woman that you saw accompany
11 Mr. Branham?

12 A Yes, it was.

13 MS. WILSON: The record should reflect that I
14 showed Deputy Partridge a photograph of Beverly Fetherston,
15 as well as a driver's license photograph from inside her
16 purse.

17 BY MS. WILSON:

18 Q What was her demeanor, in your opinion?

19 A Very pleasant. Did not-- Never had any type
20 of problems with her. She was always involved in some type
21 of pleasant conversation, usually very light conversation.

22 Q How many times did you see her with Mr. Branham
23 and Mr. Rode?

24 A Two or three.

1 Q Did there come a time when you believed there
2 was something different about her demeanor?

3 A Yes. There was one-- one night in particular.
4 I can't remember what the date was. But she and Mr. Branham
5 became involved in an argument.

6 Q Okay. And what did Mr. Branham do?

7 A She and Mr. Branham both continued to escalate
8 the argument. It got into name-calling, bringing out their
9 personal business in a place where I didn't feel it was
10 appropriate. And it ended with her breaking down into tears
11 and him leaving her alone.

12 Q Okay. Was there any other propensity for
13 violence that you saw with regard to Mr. Rode?

14 A Nothing more than I've already stated.

15 Q With regard to a pool cue?

16 A Oh, I did see him out of frustration one night
17 break a pool cue in half.

18 Q And the same question with regard to
19 Mr. Branham.

20 A Yes, I did.

21 Q And was that at the same time?

22 A No, it was not. Two different occasions.

23 Q Was it the same time that Mr. Branham and
24 Miss Fetherston were arguing?

6 1 A I don't believe so.

2 Q Do you recall stating to us that it wasn't?

3 A I believe that's correct.

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

5 MR. HALL: No questions.

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

7 much.

8 MS. WILSON: We would call Wrell Cook.

9 THE COURT: Morning. Raise your right hand,

10 be sworn in, please, sir.

11 (Witness sworn.)

12 THE COURT: If you'd have a seat by the

13 microphone there, sir.

14

15 WRELL COOK,

16 called as a witness by the defendant herein,

17 being first duly sworn, was examined and

18 testified as follows:

19

20 DIRECT EXAMINATION

21 BY MS. WILSON:

22 Q Mr. Cook, would you please state your name, and

23 spell your last name.

24 A Wrell Cook. W-r-e-l-l, C-o-o-k.

1 Q Where do you live?

2 A I live at 1494 Lewis Street, Number 6.

3 Q And is that in Sparks or Reno?

4 A It's in Reno.

5 Q Is that Washoe County?

6 A Yes.

7 Q Were you residing there on-- in the month of
8 February, 1992?

9 A Yes, ma'am.

10 Q Did there come a time in February of 1992 that
11 Mr. Branham asked for your assistance in moving?

12 A Yes, ma'am. He came over on a Sunday morning
13 by the time football games come on, and I told him yes, I'd
14 help him, because I had a pickup.

15 Q And showing you a calendar, February, 1992,
16 what day of the week was that?

17 A It was on Sunday. It would be--

18 Q Do you know what date?

19 A Yeah. It would probably be the 2nd.

20 Q Okay. Are you sure it was Sunday?

21 A Yes, I'm sure it was Sunday, because the
22 football games was on.

23 Q What did you do at the time?

24 A I told him yes, I would help him, and we got

7 1 in my pickup, because he had walked over there, and drove
2 over to where him and Beverly was resided at the time.

3 And we went in, and Beverly and another man was
4 sitting on the couch, and he started to get his personal
5 things together and take them out to my pickup.

6 Q Now, what did your pickup look like?

7 A My pickup is a 1978 maroon and off white Ford
8 with a camper shell on it. That's also maroon and off white.

9 Q Okay. Now, how did Mr. Branham appear to you
10 as far as his demeanor goes at the time that he was going to
11 move?

12 A He appeared to be maybe a little on the sad
13 side.

14 Q Okay. Now, during the move, was there anything
15 said between Beverly, Bill and this other person?

16 A They didn't-- There wasn't anything violent.
17 They-- Beverly asked him something like, "Oh, are you going
18 to take the ceiling hooks, too?"

19 And says, "Yes. They're my hooks."

20 Q Was there any animosity between any party?

21 A Didn't seem to me like-- In fact, Beverly
22 seemed to me like she was kind of sad that he was moving.

23 Q Okay. Did you leave at that time?

24 A Yes. We left, and Beverly asked me if-- beings

7 1 as I was going down to the storage shed, if I would bring
2 back a barrel of dishes that was in a brown paper barrel.

3 Q Did you do that?

4 A Yes, we did.

5 Q Okay. Did you move on Wednesday, February 5th?

6 A No, no. I have to work during the week, and
7 there would have been no way that would happen.

8 Q Now, are you aware of Miss Fetherston's car?

9 A It was kind of a-- like a dark chocolate color,
10 you know, dark-- a dark color. Kind of like a sports car
11 with a-- I don't remember whether it was a hatchback or
12 whatnot. I'd seen it several times because I had-- Bill
13 would have me come over and pull him out and jump it. He
14 had some wiring problems. And he was always working on it.

15 Q Did you work on the car?

16 A I just helped him jumper-- you know, jump it.
17 There was a few times that I rode with him in the car to go
18 get groceries or something, you know, for the house.

19 Q Now, do you recall Christmas Eve, 1991?

20 A Yes, I do.

21 Q What happened at that time?

22 A Me and my wife stopped in at the Swiss Chalet
23 Bar and we had a few cocktails there with Beverly, and I
24 says, "Where's Bill? I haven't seen him around."

7 1 She said, "He's home." And she said, "He's
2 broke. Would you take a six-pack of beer and this carton of
3 cigarettes over to him for me, cheer him up a little bit?"

4 Q Did you do that?

5 A Yes, I did. Me and my wife went in and took
6 the beer and the cigarettes in, and we had a drink with him
7 there at that time.

8 Q Did you notice if Beverly had a black eye at
9 the time?

10 A No, I didn't. In fact, I know she didn't. I
11 never have seen her with a black eye.

12 Q Do you recall Beverly being sick with the flu?

13 A Well, Beverly was a little bit sick all the
14 time, you know. But I think-- I don't know whether it was
15 the flu or just she drank a lot, excessive.

16 Q Did you socialize with Beverly and Bill?

17 A Quite a few times. Me and my wife have met
18 them different places, and we stopped at the Swiss Chalet a
19 lot, and have had cocktails with them at Inn-Ca-Hoots Bar
20 and at Micky's Bar.

21 Q How would you describe their relationship?

22 A They seemed to me to be real good friends.

23 Q In your opinion, was there anything romantic?

24 A No, I don't believe so.

1 Q Why do you--

2 A Just good roommates.

3 Q Pardon me?

4 A Seemed like, you know, just good roommates.

5 'Cause I wondered about-- You know, I asked Beverly, you
6 know, if Bill was her boyfriend, and she says, "No, he's just
7 my roommate."

8 Q Do you ever recall Mr. Branham ever physically
9 fighting with her?

10 A No, I never-- never ever seen anything like that
11 happen.

12 Q Do you recall any verbal fighting between them?

13 A No.

14 Q Where did Mr. Branham stay after you helped him
15 move?

16 A He-- He went back to my place with me. We
17 watched football all that day, because there was three games,
18 I remember. And he had no money, and I told him, I says,
19 "Why don't you just stay here on the couch." Because he
20 expected the check the next day. And my wife said that he
21 got up and left at about 11 o'clock, about mail time.

22 Q 11 o'clock on what day?

23 A Monday morning.

24 Q And what do you know--

1 Do you know what check he was expecting?

2 A No. I'm not sure whether it was an Unemployment
3 check, or a service check of some kind.

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

5 THE WITNESS: Okay.
6

7 CROSS-EXAMINATION

8 BY MS. WILSON:

9 Q You recall the day that you moved Mr. Branham
10 out of Miss Fetherston's house that there was football games
11 on; right?

12 A Yes.

13 Q So that must have been sometime in January;
14 isn't that true? Because there's no football games in
15 February; right?

16 A Well, possibly.

17 Q Well, there aren't any games in February;
18 correct?

19 A I don't know. I guess not unless it's a-- the
20 National League.

21 Q So it was January that you moved Mr. Branham
22 out. Isn't that correct?

23 A I'm pretty sure it was in January. I-- I don't
24 know the date, you know, the-- the date of the day. But I

8 1 know it was on a Sunday.

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

3

4 REDIRECT EXAMINATION

5 BY MS. WILSON:

6 Q If there's been sworn testimony that a maroon
7 and white camper--

8 MR. HALL: Objection, leading.

9 THE COURT: Sustained.

10 BY MS. WILSON:

11 Q Could it have been in February?

12 A All I know, it was the week before she was
13 found dead.

14 MS. WILSON: Thank you.

15 THE WITNESS: Sunday before she was found dead.

16 MS. WILSON: Thank you.

17 THE COURT: Anything else?

18 MR. HALL: (Shakes head negatively.)

19 THE COURT: You may step down. Thank you very
20 much.

21 THE WITNESS: You betcha.

22 MS. WILSON: Mr. Howell.

23 (Witness sworn.)

24 MS. WILSON: Miss Clerk, I'd like to have this

1 marked.

2 (Defendant's Exhibit 36 was marked for identification.)

3
4 ROBERT M. HOWELL,
5 called as a witness by the defendant herein,
6 being first duly sworn, was examined and
7 testified as follows:

8
9 DIRECT EXAMINATION

10 BY MS. WILSON:

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

13 A Robert M. Howell. H-o-w-e-l-l.

14 Q And where do you work, sir?

15 A Washoe County Public Defender's Office.

16 Q What is your position there?

17 A Chief investigator.

18 Q And how long have you been so employed?

19 A With the office 24 years.

20 Q Are you familiar with the case of State v.
21 Branham?

22 A Yes, ma'am.

23 Q In that capacity, what were your duties?

24 A To investigate.

1 Q Did there come a time when you contacted the
2 State of California Department of Transportation?

3 A Yes.

4 Q I'd like to hand you what's been marked Defense
5 36, ask you to identify it.

6 A This is a certified copy of chain requirements
7 for Interstate 80, both east and westbound, for the 10th of
8 February, 1992 and the 11th of February, 1992.

9 Q And what does that so indicate?

10 A It indicates that a storm came into the Sierras
11 at approximately-- I'll say approximately 03-- correction,
12 0233 hours, which is 2:30 in the morning, on 2-10-92. And
13 that R-1 chain controls westbound at the Donner Lake
14 interchange were in effect. Eastbound R-1 controls went
15 into effect at 0240 hours at Cisco on the other side of the
16 hill.

17 Q And what does it say with regard to February
18 11th?

19 A This storm came through from the early morning
20 hours of 2-10-92, and increased and decreased in severity
21 until 11:30 a.m. on 2-11-92.

22 MS. WILSON: Move for admission.

23 MR. HALL: He's already testified to it.

24 THE COURT: Any objection?

8

1 MR. HALL: No objection.

2 THE COURT: Admitted.

3 (Defendant's Exhibit 36 was admitted into evidence.)

4 MS. WILSON: Nothing further.

5 MR. HALL: No questions.

6 THE COURT: Thank you, Mr. Howell. You may
7 step down.

8 MS. WILSON: Defense case, your Honor.

9 THE COURT: Thank you. Any rebuttal?

10 MR. HALL: No rebuttal.

9

11 THE COURT: Okay. Ladies and gentlemen, that's
12 the evidence in this case. The next matter would be for
13 counsel and I to discuss the appropriate instructions of
14 law in this case which I will be privileged to explain to
15 you at a later time.

16 So I would like to release you at this time
17 until 2:00 p.m., at which time I believe I'll be in a
18 position to instruct you on the law in this case and counsel
19 will be given the opportunity to argue their respective sides
20 of this case to you. So we'll stand in recess momentarily
21 until 2:00 p.m.

22 Before you leave, I'd like to instruct you not
23 to discuss this case amongst yourselves or with anyone else,
24 or to decide any issue in dispute in this case until such

9 1 time as it is submitted to you as a jury. You are not to
2 2 read, look at or listen to any news media accounts of this
3 3 event, should there be any.

4 I thank you again for your patience this
5 5 morning, and we'll see you at 2:00 p.m. this afternoon.

6 (Recess.)

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9 1 RENO, NEVADA; TUESDAY, MARCH 9, 1993; 2:10 P.M.

2 -oOo-

3
4 (The following proceedings were had in chambers:)

5 THE COURT: We are in chambers with CR92-1048,
6 which has been consolidated with CR92-0546, State of Nevada
7 versus William Edward Branham.

8 Ms. Wilson, Mr. Hall and I have had a chance to
9 review the proposed jury instructions. And counsel and I
10 have before us a packet of Instructions 1 through 29 to which
11 I believe there are no objections. I'd like to confirm that
12 for the record.

13 Mr. Hall, are you satisfied with Instructions
14 1 through 29?

15 MR. HALL: Yes, I am.

16 THE COURT: Any other instructions which you
17 would offer or which have been rejected?

18 MR. HALL: No.

19 THE COURT: Ms. Wilson, are you satisfied with
20 Instructions 1 through 29?

21 MS. WILSON: Yes.

22 THE COURT: Any other instructions which you
23 would offer or which have been denied?

24 MS. WILSON: No.

1 THE COURT: I also am in receipt of verdict
2 forms: guilty and not-guilty verdict forms addressing the
3 charge of Murder; and guilty and corresponding not-guilty
4 forms addressing the seven counts of Forgery.

5 Are you satisfied with the verdict forms that
6 have been prepared and presented in the case?

7 MS. WILSON: Yes.

8 THE COURT: Mr. Hall?

9 MR. HALL: Yes.

10 THE COURT: Okay. Anything else?

11 MS. WILSON: No.

12 THE COURT: Thank you very much.

13 (Recess.)

14
15 (The following proceedings were had in open court:)

16 THE COURT: Be seated, please.

17 We've returned to CR92-1048, State of Nevada
18 versus William Edward Branham. Mr. Branham is present along
19 with Ms. Wilson; Mr. Hall is present, representing the State.
20 Our jury is also assembled and present in the jury box.

21 Ladies and gentlemen, this is the time in the
22 proceedings that I'm given an opportunity to basically
23 explain to you the applicable law in this particular case.
24 I'd like to offer a couple of preliminary comments which may

9 1 make your understanding of these instructions a little bit
2 easier.

3 These instruction are matters of law, and
4 sometimes they are somewhat technical. For that reason,
5 I am not going to be able to conversationally explain these
6 to you as I'm speaking to you now. I will have to read
7 these instructions verbatim as they have been prepared for
8 your consideration.

9 You should not be concerned about trying to
10 take notes or write down each word of these instructions or
11 try to stay with me word for word as I read these
12 instructions. I would much prefer for you to relax, listen,
13 and try to assimilate this information as it comes to you.

14 The reason that I recommend that to you is that
15 these instructions will go with you into the jury room and
16 they will be made available to you for your review in the
17 jury room. So please just try to listen and pay careful
18 attention to what's being said. I think there's more mileage
19 to be gained that way. And if you have some questions about
20 any particular instruction, then please feel free to refer
21 to the instruction once you're in the jury room.

22 After I have had a chance to explain the
23 applicable law to you, Mr. Hall and Ms. Wilson will be given
24 an opportunity to argue their respective sides of this case.

9 1 So sit back, if you would, relax, and I will endeavor to
2 2 explain the applicable law to you in this case.

3 (Whereupon, the Court began reading the jury
4 instructions.)

5 THE COURT: Ladies and gentlemen, when I say
6 6 "NRS", those letters stand for Nevada Revised Statutes.
7 7 Those are the laws of the State of Nevada. Mr. Branham, as
8 8 you now know, has been charged with Murder. That is a
9 9 felony, and he's been charged in the manner following:

10 (Whereupon, the Court finished reading the
11 jury instructions.)

12 THE COURT: That, ladies and gentlemen,
13 13 completes the jury instructions in this case. Please have
14 14 some comfort in knowing that, as I've indicated, these
15 15 instructions will be made available to you in the jury room
16 16 should you wish to review any or all of these instructions.

17 At this time I'd like to offer the State an
18 18 opportunity to present its opening closing.

19 MR. HALL: Your Honor, counsel. Good afternoon,
20 20 ladies and gentlemen of the jury.

21 We got into this trial committed that it was the
22 22 defendant William Edward Branham who was responsible for the
23 23 murder of Beverly Fetherston. You've heard the evidence that
24 24 we presented today. I'd like to recap the evidence that we

10 1 have presented that supports the conclusion of a guilty
2 verdict in this case as it applies to First Degree Murder and
3 the seven counts of Forgery.

4 As you recall, we started off with Officer
5 Flores, who indicated that on February 9th he was contacted
6 by members of-- or the owner, Ikie Woody and Richard Sokolik
7 to go over to Beverly Fetherston's house.

8 When he arrived in the house, he saw Beverly
9 Fetherston deceased. And that was on February 9th of 1992,
10 late afternoon. Prior to that day, the only person that had
11 seen the victim Beverly Fetherston other than the defendant
12 was Mr. Poorman.

13 Mr. Poorman testified that on a date in
14 question, that being February 6th, that they went over to
15 Beverly Fetherston's house about 1 o'clock in the afternoon.
16 And if you look at State's Exhibit AA and BB, you'll notice
17 that that house and that crime scene where Beverly Fetherston
18 was found is very similar to how Mr. Poorman described that
19 scene.

20 The same afghan that Dudley Poorman testified
21 was placed upon him at approximately 4 o'clock on the 6th was
22 on Beverly Fetherston. The same MeisterBrau beer that they
23 were drinking on February 6th is on the coffee table. There
24 is no evidence of any ransacking or any theft that occurred

10 1 in that house. Doesn't look like anybody stole anything from
2 the house. The televisions were there. Some of her jewelry
3 was there. Nothing was stolen. That indicates that somebody
4 who knew Beverly Fetherston was responsible for her death.

5 You also have the fact that there is no
6 indication of a big fight or a big struggle. This also gives
7 rise to the inference that it was somebody who Beverly
8 Fetherston would allow to get close to her and was able to
9 choke her and suffocate her to the point of dying.

10 All these facts indicate that it was the
11 defendant, Mr. Branham, who was close to her, who was there
12 that day, who wouldn't need to break into the house, who
13 wouldn't need to steal anything, who committed this murder.

14 And it was Mr. Branham who was the last person
15 who saw Beverly Fetherston. Nobody saw her on Friday, nobody
16 saw her on Saturday, nobody saw her on Sunday until, of
17 course, she was found deceased.

18 What did Mr. Branham do? What did Mr. Branham
19 do that fits? As you recall the testimony from the woman we
20 heard from the Pioneer Hotel testified that Mr. Branham had
21 rented a room from approximately the 3rd of February and
22 checked out the 7th of February.

23 Why didn't he stay there Thursday night? Why
24 didn't Mr. Branham stay at the Pioneer Thursday night like

10 1 he had the night previous? Why did he just pick up and
2 leave?

3 It's also curious to note where Mr. Poorman was
4 at the house for some three hours, there was absolutely no
5 conversation about Mr. Branham taking Miss Fetherston's car
6 to California for four days or three days or any conversation
7 about Mr. Branham going to see his daughter.

8 Not because she had called him and he was
9 worried and concerned, as Mr. Branham had told Betty Draper;
10 and not because he wanted to see his daughter and he was
11 happy in going to see if she would move back up to Reno with
12 him as Mr. Branham had told Bonnie Guggenbickler over at the
13 Keystone Lounge. No conversation at all did you hear about
14 Mr. Branham going to California until he talked to Bonnie
15 Guggenbickler the night of February 6th of 1992.

16 Now, they argue we didn't see any rough conduct
17 with Beverly Fetherston on February 6th. You saw Dudley
18 Poorman. You heard Dudley Poorman. He's a big man. And
19 you heard testimony and talk about how Mr. Branham acts.

20 It doesn't stand to reason that Mr. Branham is
21 going to act rough with Beverly Fetherston when Dudley
22 Poorman's there. And that's why you have this relationship
23 or the conduct that you see described by Dudley Poorman on
24 February 6th.

11 1 What happens later on that day on February 6?
2 The defendant passes the last forgery, passes a check for
3 \$250 at approximately 4:50 p.m. at Valley Bank, which is
4 about a block away from Beverly Fetherston's house. Then
5 he takes her car, her car keys with her house key attached,
6 and when he comes back to Reno on the 11th and attempts to
7 pass check 208, he's got her checkbook.

8 Let's talk about the forgeries for a minute.
9 Now, if you look at State's SS and if you recall the
10 testimony of Detective Jenkins, he testified that the full
11 book of checks was on top of the checks with the top one
12 being number 234.

13 If you recall, the first series of checks were
14 numbered-- the ones that were passed, were numbered 226,
15 229, 230, 231, 232 and 233. Taken out of this checkbook,
16 out of this box that was kept in the entertainment center
17 in the living room of Beverly Fetherston's home.

18 That gives rise to a reasonable inference that
19 the defendant was trying to hide his forgery from Beverly
20 Fetherston by stealing the checks out of her supply in the
21 entertainment center and covering them up with the other
22 book.

23 We also have the testimony of Jennifer Seago,
24 the employee of Valley Bank, who indicated that the defendant

11 1 tried to order another box of checks. She indicated that
2 there was no order from Beverly Fetherston, but there was
3 another request for more checks so that the defendant could
4 cover up his prior forgeries.

5 Now, the evidence clearly indicated that it was
6 the defendant that drafted checks number 226, 229, 230
7 through 233. You heard the testimony of Floyd Whiting, who
8 clearly indicated and demonstrated how the writing on all of
9 those checks was done by the defendant. There's no question
10 that it was the defendant who wanted those checks.

11 And another bit of interesting evidence that
12 supports a guilty verdict on the Forgery counts is the piece
13 of paper in State's KK. The tracing over of Beverly
14 Fetherston's signature that was found in Mr. Branham's
15 wallet. That was found, as you recall, by Detective Jenkins
16 after the defendant was arrested.

17 Now, there may be some confusion as to whether
18 or not the checks have to be passed. And the Instructions
19 clearly indicate that an attempt to pass a forged instrument
20 amounts to Forgery. As a matter of fact, the filling out of
21 the check with the intent to defraud satisfies the elements
22 of Forgery.

23 And the attempt on check number 208, the last
24 check that was presented to Valley Bank on February 11th,

11 1 is a forgery by virtue of the fact that it was attempted--
2 that the defendant attempted to pass that check with the
3 intent to defraud Beverly Fetherston. And that check,
4 interestingly enough, came from the victim's checkbook.
5 And if you recall, this checkbook Miss Fetherston always
6 kept in her purse.

7 It was the defendant, when he was arrested on
8 February 11th, 1992, who had Beverly Fetherston's checkbook
9 in his possession. The purse, as you recall, was left in
10 Beverly Fetherston's bedroom. And there was a photograph of
11 her purse in the bedroom where, of course, Officer Flores
12 took Beverly Fetherston's identification.

13 There's also other evidence that indicates that
14 the defendant intended to defraud Beverly Fetherston. And
15 that is the absence of any entry of the checks that were
16 cashed by the defendant. We went through that, as you
17 recall, with Shelly Skender when she reconciled the statement
18 of Beverly Fetherston.

19 All the checks that are written on her account
20 are entered. All the checks in January and February. The
21 checks made out to the defendant are not entered in her
22 checkbook.

23 Now, why did the defendant go to California?
24 Why would he just up and go to California without telling

11 1 anybody he was going? The simple answer to that, ladies and
2 gentlemen, is because he had to separate himself from Beverly
3 Fetherston after she was dead. An alibi. That's why he
4 told Bonnie Guggenbickler he was going to California. That's
5 why he took her car and her car keys and her house key and
6 left.

7 It doesn't stand to reason that Bonnie-- that
8 Beverly Fetherston would give a man that she had just kicked
9 out of her house, that she'd been trying to get rid of for
10 months, she was going to give him the checkbook, her car
11 keys, her house key and her car, and allow them to take off
12 to California for the weekend.

13 Especially in light of the testimony of Marilyn
14 Mackay, who testified that she had talked to Beverly
15 Fetherston earlier and indicated that Beverly Fetherston
16 had indicated that she needed to get out of here, out of
12 17 the Reno area, and thought about coming to Tonopah on the
18 weekend.

19 Ladies and gentlemen, there is no evidence
20 whatsoever that supports any inference that anybody else is
21 responsible for the murder of Beverly Fetherston.

22 You heard the testimony from John Bell. John
23 Bell wanted out of the relationship with Beverly Fetherston
24 because of the friction between the defendant and himself.

12 1 The defendant was mad at John Bell. As a matter of fact,
2 on February 6th he was going to kill John Bell because he was
3 taking his meal ticket, his car, his house, all these things
4 that Beverly Fetherston had been providing the defendant out
5 of the goodness of her heart for months.

6 What was some of the other evidence that points
7 to the defendant? Talk about the testimony of Joyce
8 Whitmore, who the week of February 6th testified that she
9 heard the defendant when arguing for the car keys say, "The
10 best thing for you--" No, excuse me. Quote was, "You're
11 dead, bitch." And the reason he said that is because Beverly
12 Fetherston would not give the defendant the keys to her car.
13 That was the response.

14 You also heard Gary Swinehart testify that,
15 "The best thing for you is dead", in close proximity.

16 You heard the testimony of Dudley Poorman. He
17 stated that Beverly Fetherston wanted-- inquired of him as
18 to how she could get a gun so that she could protect herself
19 from the defendant.

20 You also heard Marilyn Mackay say that she'd
21 seen the victim with a black eye and a fat lip all as a
22 result of the defendant's actions.

23 On top of that, the defendant forced Beverly
24 Fetherston out of her house. She had to go stay with Marilyn

12 1 Mackay on a number of occasions so that she could stay away
2 from the defendant when he was drunk, he was belligerent,
3 he was abusive.

4 All these things support the reasonable
5 inference that it was the defendant who committed the crime
6 in question.

7 Now, if you recall, when we talked at the
8 beginning of this trial, I indicated that circumstantial
9 evidence and direct evidence have the same weight. I asked
10 everybody if you could convict an individual if there was
11 a sufficient amount of circumstantial evidence to point to
12 the defendant as the one who committed the murder and the
13 forgeries in this case.

14 I'm going to ask you to do that in this case.
15 Everything I've talked about is circumstantial. You may
16 want to say, "That's coincidence", but it keeps piling up.
17 One thing after another. And the evidence that I've talked
18 about so far isn't the end of the evidence.

19 Maybe that's-- Maybe that was a coincidence.
20 But what happens when the defendant comes back on February
21 11th? When he comes back on February 11th, does he go over
22 to see how Bev's doing? Does he go over to tell her that
23 he's there but he doesn't have the car?

24 Does he go over there like Richard Sokolik had

12 1 gone over there, like Mark Rode had gone over there, like
2 Gary Swinehart had gone over there, like Dudley Poorman,
3 like all of her friends from the Swiss Chalet had gone over
4 to check on Beverly Fetherston to see how she was doing?

5 But no, he doesn't stop. He goes off to Valley
6 Bank, a block from her house, a block from her house, and
7 tries to forge check number 208, the check out of her
8 checkbook.

9 And what happens when he walks into the bank
10 and the bank tellers obviously are already notified that he
11 is suspected of murdering Beverly Fetherston, and Shelly
12 Skender approaches the defendant, says, "Gee, the signature
13 on this check looks a bit irregular."

14 And the defendant calmly answers, "Well, we
15 were out drinking last night, and that's why her signature
16 appears shaky." Not true. Beverly Fetherston was found
17 deceased in her house two days before that.

18 So Shelly Skender says, "Well, let me make a
19 phone call and see if I can verify the signature."

20 And to that the defendant said, "Well, she
21 may be out shopping." Obviously, she's not out shopping.
22 The defendant cannot know that. Again not true.

23 When you put all this evidence together, combine
24 that with the testimony of Dr. Clark, Dr. O'Donnell and

12 1 Dr. Masters, there is one conclusion. One, that Beverly
2 Fetherston was murdered, number one; and that it was the
3 defendant who committed those murders.

4 There was an issue about premeditation,
5 deliberation, malice. As you heard from the Instructions,
6 that can only be proved by circumstantial evidence. Again
7 we're back at circumstantial evidence. And you have to draw
13 8 reasonable inferences from the facts that you have before
9 you.

10 The reasonable inference to be drawn in this
11 particular case is the fact that Beverly Fetherston has
12 bruising on her neck over her trachea. And as Dr. Masters
13 testified, that would have been great force to cause the
14 bruises over her trachea.

15 Ladies and gentlemen, it's that brute force
16 that is used to suffocate the breath and the life out of
17 Beverly Fetherston which gives rise to an inference that
18 the murder was committed with malice, premeditation and
19 deliberation. Thank you, ladies and gentlemen.

20 THE COURT: Thank you, Mr. Hall.

21 Ms. Wilson?

22 MS. WILSON: Thank you.

23 This is the time that I will be able to talk
24 with you face to face as we did in voir dire. Mr. Hall and

1 I purposely don't look at you, don't talk to you, but this
2 is my last time that I'll have an opportunity to speak with
3 you. Mr. Hall, because he has the higher burden and the
4 total burden of proof, will talk to you again after I'm
5 through.

6 The defense thanks you for your attention and
7 your note-taking and your ability to sit here for a long
8 trial, as I'm sure the State does.

9 Mr. Hall, representing the State, has a
10 different view than the defense. I will attempt to go
11 through what the defense views as the flaws in the case and
12 the facts that the State has not proven to you beyond a
13 reasonable doubt. One, that there was a homicide; and two,
14 if you believe there was a homicide, that my client,
15 Mr. Branham, is responsible for that.

16 The first thing that I'd like to talk to you
17 about is the word "homicide". There are really only three
18 people that can tell you whether this case was a homicide:
19 Dr. O'Donnell, Dr. Clark and Dr. Masters.

20 Now, the State may feel that Detective Jenkins
21 is someone that can tell you whether this was a homicide or
22 not. However, Detective Jenkins is an officer, and he's
23 been an officer for 17 years. His view of this case leans
24 towards a homicide. He's a homicide detective. I submit

13 1 to you that the better approach is to look at this case from
2 the doctors that you've heard testify.

3 Let's think about them. We have Dr. O'Donnell,
4 who is the man that did the autopsy protocol. He's the man
5 that first saw the body; he is the man that cut into the
6 body; he is the man that had first hands-on experience.

7 Let's talk about Dr. Clark. Dr. Clark worked
8 with Dr. O'Donnell. They worked in the same group. Both
9 people work for the Coroner's Office, and both people testify
10 for the State. They have a bias.

11 What about Dr. Masters? Well, Dr. Masters is
12 not from here. He doesn't know Dr. O'Donnell. In fact,
13 he's calling him Dr. McDonald. He doesn't know Dr. Clark.
14 He has no interest in this case. Dr. Masters has been in
15 forensic pathology since 1958. Dr. Masters is a neutral and
16 detached pathologist.

17 Dr. Masters indicated to you through his
18 examination how many times he testifies for the State. He
19 has testified in cases, in homicide cases, 500 times. When
20 asked how many of those occasions were for the State, he
21 tells you 95 to 98 percent.

22 Why is he testifying to you in this case for
23 the defense? I suggest to you that the reason is because
24 Dr. Masters does not agree with the testimony that you heard

13 1 regarding this being a homicide.

2 In his best effort he suggests to you, "What
3 would be the cause of death?" "The best I could do in this
4 case", he says, "is to write, 'Cause of death undetermined.'"

5 Well, I submit to you Dr. O'Donnell wrote,
6 "Undetermined", too. That was his first thought when looking
7 at this body. The level of decomposition was great. You
8 will see just a small portion of the decomposition in the
9 photos that you see.

10 But all of them talked to you about skin
11 slippage, blisters, decompositional changes in the vaginal
12 area, inability to determine what was there, what was not,
13 alcohol in the body actually putrifying. This is a level
14 of decomposition that is great. And yet the State would
15 want you to return a verdict of guilty of Murder based on
16 that level of evidence.

17 Dr. Masters focused on three areas, the three
18 areas that Dr. Clark and Dr. O'Donnell think are so
19 important. The first area is on the outer skin. We heard
20 over and over and over, "Isn't this clear? This is a
21 clear-cut bruise."

22 However, Dr. O'Donnell continually in the tape,
23 in the autopsy tape said "bruise-like". In his autopsy
14 24 protocol said "apparent". These are words that do not

14 1 suggest a bruise. Then when he testified in open court as
2 the case progresses, as the prejudice progresses, he says
3 "clear-cut bruise".

4 I submit to you that is one of two things:
5 It's either a pinch, a pinch on the outer surface. I guess
6 if the State would suggest that there's been sexual activity,
7 one might infer possibility of a hickey or love bite. And
8 Dr. Masters cannot rule out decomposition, and Dr. Masters
9 cannot rule out pre-existing injury. We'll never know,
10 because there wasn't a microscopic section taken.

11 Why is a microscopic section so important?
12 Well, a microscopic section is important to date injury.
13 If you do not know the date of an injury, it's not an injury.
14 And if there's no blood extravasation under the skin, it's
15 not a bruise.

16 Number two, an area that Dr. Masters suggests
17 is deep inside the neck. You'll have a picture. You saw
18 the picture. And even that picture is elusive because it
19 doesn't show the outer skin. It shows muscles. And Number
20 34 was the area of this inside extravasation.

21 He does not call it a bruise. Why not? Because
22 it's not a bruise. Dr. Masters suggests the possibility of
23 two things. In laymen's terms, one is basically leakage,
24 and the other is basically gravity.

1 This deceased was found on her right side,
2 her head on the right side, and this area inside the neck
3 was on the right side. Where was it inside the neck? It
4 was so deep inside the neck that one would expect to see
5 other injury going out towards the outer skin. Was there
6 such injury? No.

7 Leakage. Dr. Masters suggests all the
8 literature tells you if you have a questionable death--
9 which I suggest to you was Dr. O'Donnell's first impression--
10 you cut into the neck so that the blood will drain and not
11 confuse potential extravasation or hemorrhage. Was that
12 done? No.

13 Now, that is the most logical and reasonable
14 inference for that particular area. Look closely at the
15 diagram that he has shown you with the circle of 34. It is
16 so deep in the neck that you would expect to see injury going
17 out towards the outer surface. There is none.

18 The State would have you believe that this
19 injury pressed outward and showed up here. But that's not
20 true. Because during the autopsy protocol, Dr. O'Donnell
21 said this injury is going out towards the thyroid.

22 There's no injury on the thyroid. There's no
23 injury on the thyroid cartilage. There's no injury in the
24 larynx. There's no injury to any areas that you would

1 expect in an asphyxia or strangulation death.

2 The third area in question is the trachea.

3 And Dr. Masters suggests, "Yes, this is a blood extravasation
4 that I believe could be a bruise."

5 What's interesting about this area is again
6 there is no damage. It is right here, as he testified.
7 Half of it is up, half of it is below into the chest.
8 None of the areas around where the blood extravasation is
9 affected. The tube where the trachea is fine. The tracheal
10 rings are fine. They are not damaged.

11 So again you have an area that may impress you
12 as a bruise, but there's no other damage to comport with it.

13 Over and over and over and over again,
14 Dr. O'Donnell, Dr. Clark and Dr. Masters testified there
15 are no classic signs of asphyxia. There are no classic signs
16 of manual strangulation. No hyoid bone fracture, no damage
17 to the neck area. That is outside this area. There are
18 no signs that lend one to say, "I can write on a death
19 certificate, 'This is a homicide', 'This is an asphyxial
20 death', 'This is a blunt-force trauma.'" Rather, this is
21 the most appropriate diagnosis.

22 Court's indulgence?

23 Let's look at the scene. When one looks at
24 this scene, if you are Detective Jenkins or a police officer

14 1 and you're in the Robbery-Homicide Division, you are going
2 to see homicidal death.

3 Detective Jenkins suggests that this area of
4 pull shows homicide. This area of clumping shows homicide.
5 These legs spread show homicide and sexual assault. This
15 6 can being tilted shows homicide. This pillow and its
7 placement shows homicide.

8 However, if you look at a neutral and detached
9 person, a forensic pathologist like Dr. Masters, he's viewed
10 this scene as very tranquil.

11 What are the two things that you look for?
12 You look for flight, and you look for fight. Neither of
13 which are present.

14 You look for skin under fingernails. Was there
15 any? No. Did Mr. Branham cut her nails or lose some skin
16 under her nails?

17 You look for placement of fingers, such as a
18 thumb in one area and four fingers in the other, showing a
19 grasping motion. And Dr. Masters suggests the easiest way
20 to strangle is in this area. The person has a difficult time
21 moving and getting away.

22 You look for spilled beverage, turned-over
23 coffee tables. Certainly this lady could drop a beer can
24 and struggle.

1 This lady's blood alcohol was a .167. We don't
2 know how much is responsible for putrifaction. But she
3 wasn't comatose.

4 Dr. Clark suggested that the six cases that she
5 did, only one woman, adult woman, showed no signs. And then
6 when pressed further, she suggested, "Oh, well, there was a
7 life-threatening injury that probably prevented struggle."
8 All the other cases involved children, infants, that cannot
9 struggle.

10 This was a woman who was a chronic alcoholic
11 and a chronic smoker, but certainly able to defend herself,
12 certainly able to flee or fight. There is no such indication
13 here.

14 Court's indulgence?

15 All doctors would agree that alcoholics
16 hemorrhage easier than your average person. There wasn't
17 one person that took the witness stand that suggested to you
18 that Beverly Fetherston wasn't a chronic alcoholic.

19 Additionally, alcoholics fall down easier and
20 more numerous times than your average person. Additionally,
21 Dr. Clark suggested that yes, this injury could have occurred
22 from a fall, this injury could have occurred when someone
23 falls on a couch or a chair or anything. The number is
24 beyond conception of what one can suggest.

15 1 Your decision cannot be based on speculation
2 and guess. That is what the State will have you do, if you
3 convict Mr. Branham.

4 Now, suggesting that this is a homicide.
5 Everybody at the Swiss Chalet thinks it's a homicide, and
6 everybody at the Police Department must. So let's suggest
7 to you that it is. Now, we've got a homicide. Branham
8 didn't do.

9 What kind of place was the-- the Swiss Chalet?
10 Picture it. Picture it, because you saw one after another
11 after another of people that loved Beverly Fetherston.

12 Beverly Fetherston wasn't a bad person. Beverly
13 Fetherston was a nice person. Beverly Fetherston had a
14 drinking problem and she smoked a lot, and she fought with
15 Mr. Branham.

16 Did she share a romantic relationship with him?
17 Well, all signs point to no, they were roommates, they were
18 pals. According to Bonnie Guggenbickler, they were family.
19 They were family.

20 She was someone who argued with Bill Branham.
21 Bill Branham was someone who argued with her. Not one person
22 came in and told you that they saw him strike her, ever.
23 Not one person.

24 And the State would have you believe that

1 Marilyn Mackay is a person to be believed because she was
2 so intimate with Bev that she would know and Bev would
3 confide in her. Yet she didn't make a police report about
4 that black eye and split lip. And don't you believe that
5 Detective Jenkins, who is the homicide detective on this
6 case, would have had that report if that were true?

7 The other person that we heard about that didn't
8 make a police report was Joyce Whitmore. Joyce Whitmore.
9 And the State would tell you that Joyce was worthy of belief.
10 But Joyce did not make a police report, and she suggested
11 that three or four or five days before her death, Mr. Branham
12 said, "You're dead, bitch." Now, wouldn't you think
13 Detective Jenkins would have that in the police report if
14 that were true?

15 The people from the Swiss Chalet were people
16 that loved Beverly. They've been living with this for a
17 year, over a year.

18 Johnny Wade told you, "I used to to go to the
19 Swiss Chalet, but I don't anymore. They have him guilty."

20 The Swiss Chalet people are human beings. When
21 suggested to Mr. Sokolik, "Well, you've talked about this
22 case; haven't you?"

23 "Oh, no, I didn't talk about it."

24 "Well, did you talk about it at work?"

1 "Oh, well, yeah, I talked about it at work."

2 Of course, they talked about it. These people
3 have a bias. They are interested in Beverly Fetherston, and
4 they believe Mr. Branham did it. I suggest to you that their
5 testimony is slanted.

6 Mr. Hall would have you believe that the last
7 people to see Beverly Fetherston was Dudley Poorman and Bill
8 Branham. And that was on Thursday, the 6th. And that was
9 when Dudley, Bev and Bill were at her residence. And they
10 were drinking until 4 o'clock.

11 But Mr. Hall apparently doesn't recall the
12 testimony of Gary Swinehart and Ted somebody, whatever the
13 last name is. Oh, yes, it is Rice. And both of these people
14 saw Mr. Branham Friday, the 7th.

15 Over and over and over and over, Mr. Hall asked
16 Gary Swinehart, "When was the last time you saw Beverly?"

17 And he said, "Friday."

18 And then the State would suggest to you that
19 he has a memory problem. There was sworn testimony that he
20 had seen her on Friday, February 7th. The only problem Gary
21 Swinehart has is that he's an alcoholic and he's hard of
22 hearing.

23 And then they called Ted Rice. And Ted Rice
24 is the old-timer that took the witness stand and suggested

1 that he had to come in on Saturday to cover his shift.

2 "Are you sure it's Saturday?"

3 "Yeah, I'm sure it's Saturday."

4 "Well, when was the last time you saw Bev?"

5 "Well, the last time I saw Bev was the day
6 before, Friday, February 7th."

7 So the last people to see Beverly Fetherston
8 was not Mr. Poorman and Mr. Branham, it was these two people,
9 two State's witnesses.

10 Let's talk about Dudley. Dudley is there on
11 February 6th. He gets toasted. He's tired from work. He
12 crashes and goes to sleep. And when he wakes up, Bill's in
13 the chair and Bev's on his lap. This is not the scene of
14 someone that is going to murder another human being.

15 Why wouldn't Bill talk to Dudley about going
16 to California? Why should he? Dudley Poorman was quick to
17 point out that he doesn't know Bill Branham very well. And
18 when cross-examined about Bill's belongings, he doesn't know
19 Bill's belongings. Why should that be so unusual? They did
20 not have an intimate friendship or relationship.

21 Let's talk about Gary. Gary on February 6th
22 sees Bev and they're talking friend to friend. And she says,
23 "I want Bill to move back in." And she is desirous of having
24 Bill to move back in. This is not a setting for a murder.

1 Bill took the car. So what? Charles McRunnels
2 called the car "their car" in his testimony. "Their car".

3 Mark Rode would tell you that he was with
4 Mr. Branham and Bev and Bill apart at least 20 times. Half
5 the times he's asked for permission, the other half he won't.
6 It was their car.

7 The State would have you believe that this was
8 a real strange event for Mr. Branham to go to California.
9 That he hadn't seen Juanita and the crowd there for 12 years.
10 Well, he wasn't interested. His primary interest at all
11 times was to see his daughter Linda. It wasn't to see
12 Juanita and the folks there, Ed and Jerry Tackett. His
13 primary concern was to see Linda. And he knew Linda had
14 moved, and he had to track her down.

15 And when was the last time he saw Linda? He
16 saw Linda 18 months before February, 1992. And he saw Linda
17 in Reno with Bonnie at a barbecue. And Bonnie saw him on
18 Thursday, the 6th, at approximately 7:00 p.m.

19 Now, if you had just killed somebody and you
20 split: One, would you come back? And two, if you went to
21 see Bonnie Guggenbickler, wouldn't you tell her, "I'm going
22 to call you in a couple of days", just to see what the
23 newspaper says, or just to see if they found the body?
24 That is the most reasonable thing a person would do if

16 1 they just killed another person.

2 But he doesn't do that. At no time did any
3 witness tell you, "Oh, yeah, Branham called me on Saturday
4 and asked me what was going on", which a murderer would do,
5 would want to know if it hit the paper, if they found the
6 body, things of that nature.

17 7 Why was Bill Branham cutting a check on Tuesday,
8 the 11th, right around the corner? Because the car broke
9 down. It was out of gas up in Colfax. And a reasonable
10 inference would be that he wanted to get it back to town.
11 There's nothing mystical about that.

12 Now, Ed sees him Friday at 6:00 a.m. in the
13 car. And a reasonable inference can be drawn that he left
14 Thursday evening, traveled to that area, slept in the car
15 and waited for Shorty's to open.

16 And then Mr. Lee's son Jack saw him about 8:30.

17 "Well, how do you know it's Friday, Mr. Lee?"

18 "Well, I know it's Friday because I picked up
19 my girlfriend's daughter."

20 "Does she go to school on Saturday?"

21 "No."

22 Might I suggest that you review this chart for
23 specific details of sworn testimony of people that saw him
24 in California.

17 1 Now, the State will suggest that he certainly
2 had an opportunity to go to California, come back to Reno,
3 kill her, and go back. And folks, as Dr. Masters would say,
4 "Anything's possible." But the more logical, reasonable view
5 is that Mr. Branham did not kill her, went to California to
6 see his daughter, and came back to Reno. Would a murderer
7 come back to Reno?

8 Why do we know that Mr. Branham-- or a
9 reasonable inference would be that Mr. Branham would sleep
10 in the car? Because you heard no testimony of him staying
11 in a motel, and because you heard testimony of him sleeping
12 with Juanita Draper in the car, and because you saw Mr. Lee
13 suggest to you that when he opened the bar, he was in his
14 car. And Saturday night, he told them, "I'm going to go
15 crash in the car." The State would have you believe that
16 that's all a scheme to cover up a murder.

17 Let's talk about motive. Motive and the lack
18 thereof. The State is suggesting to you that the motive
19 was money. The motive is money. If Mr. Branham was killing
20 for money, why would he kill the goose that lays the golden
21 egg? If Mr. Branham was killing for money, why not drain
22 the account and leave and stay gone?

23 They will suggest to you that Mr. Branham only
24 knew that there was a thousand dollars. Folks, these people

1 lived together for almost a year. If someone had their
2 checkbook, wouldn't they know how much money was in there?
3 And if the motive was money and he was cutting checks on the
4 account, why wouldn't he go someplace else? Why wouldn't
5 he split and not come back?

6 Oh, and these are-- these are the keys and
7 there's no other key. Well, Gary Swinehart said that these
8 do not look like the keys that she had, that there was a lot
9 more keys on here.

10 If Mr. Branham was killing for money, why would
11 he order checks that are going to come seven to fourteen
12 days later? And if he killed, wouldn't he know that if
13 he's cutting checks with his name, that they would relate
14 back to him? He ordered these checks because he ordered
15 those checks. There's nothing mystical about it.

16 The State would have you believe he ordered
17 these checks after he killed her because he wanted this box
18 of checks so he could just keep cutting checks on her
19 account. That's a fallacy. These checks don't go to
20 Mr. Branham, they go to the residence. Wouldn't he-- If
21 he killed her, wouldn't he figure out that they would find
22 her? This lady had a job.

23 If he killed her for money, why would he kill
24 her if he was going to get back together with her and live

17 1 at the residence and remain friends? Why?

2 Motive. Jealousy. Let's try that one. I don't
3 know if that's spelled right.

4 They were roomies. They were family. This was
5 a man who took aspirin and cough syrup to her at her place
6 of work. This was a woman who said, "Here's a pack of
7 cigarettes, here's some beer." Oh, this is over the holiday
8 season where he's supposed to have hit her in the eye and
9 split her lip.

10 No semen, no fingerprints, no bite marks, no
11 skin under fingernails. Bingo. Hairs on the shirt.

12 Hairs on the shirt. Okay. Okay. We have hairs
13 on the shirt. Mr. Branham slept on the couch, folks. There
14 were hairs all over the place. The one hair that may have
15 linked some definite-- If this is a homicide, mind you, if
16 this is a homicide, the one hair on the index finger could
17 not be tested.

18 The cigarette butts say Montclair. Mr. Rode
19 suggests that she smoked Montclair. Her son suggests Mores.
20 There's no saliva tests on the butts. You don't know whose
21 saliva was on there. Possible DNA was not done.

22 No eyewitness, no smoking gun. No check
23 activity during Mr. Branham's absence. No phone call from
24 Mr. Branham.

1 Detective Jenkins indicated to you there were
2 no snow-tire chains on the vehicle. Mr. Howell told you,
3 and you'll see evidence, storms were coming in and out of
4 that area on Monday and Tuesday.

5 Court's indulgence?

6 In her presence, he went up and used the ATM
7 card, and the PIN number was in his memory. What does that
8 tell you? Well, it tells you that these two people lived
9 together for almost a year, they shared everything, including
10 finances. They knew each other's intimate life and intimate
11 details.

12 There is a song that James Taylor sings that
13 indicates when he was going through divorce, and the song
14 starts out that, "Some of them are her friends, some of them
15 are my friends." This is exactly what kind of case you have
16 before you. Some of them are Bev's friends, some of them
17 are Bill's friends. They don't equate to murder.

18 Other people. If this is a homicide, if this
19 is a homicide, I submit to you Mr. Poorman was near the Pink
20 Pussycat Friday or Saturday night at 1:00 a.m. The same
21 night that Lester Stiffler and Robert Stiffler heard
22 commotion going on. Although they can't say for sure if
23 it was Thursday/Friday or Friday/Saturday.

24 John Bell. Johnny. Well, John Bell admitted

18 1 to a sexual life with Beverly. And he's also an admitted
2 alcoholic. If you believe that this is a homicide, perhaps
3 Mr. Bell in his sexual amorous behavior might have done this.

4 Mark Rode. Mark Rode is a man who admits to
5 having a bad temper, and Deputy Partridge suggests to you
6 that out of the two, Mark Rode and Bill Branham, this guy
7 was more violent.

8 Mark Rode admitted to spending the night the
9 Wednesday night before her two days off. I submit to you
10 that that could be the 5th. Is Mark Rode beyond reproach,
11 if this is a homicide?

12 Mark Rode also had a car which was identical
13 to Bev's, except it was black. And then his other car was a
14 red Camaro. Interesting that we have Pam Holland, who sees
15 such a car Saturday morning or Sunday morning as it passes
16 her alley at approximately 5:00 or 6:00 a.m.

17 Well, is it the defense's job to find these
18 people for you? No. Is this the exhaustive list? No.

19 We can't forget Buddy, who owes her 10 grand.
20 And the fact that the neighborhood, the Swiss Chalet
21 neighborhood where she walked home from work all the time
22 was dangerous, and her Wells Avenue neighborhood was
23 dangerous.

24 The Stiffles told you about two occasions

18 1 where they had someone jimmy the lock. Mr. McRunnels told
2 you about an occasion where someone tried to get in
3 downstairs. Mark Rode suggested to you that the Swiss Chalet
4 neighborhood was not the best. That right before his eyes
5 someone stole his bike. And he suggested people of another
6 nationality, which is exactly what Pam suggested that she
7 saw on Saturday or Sunday morning.

8 This is the last time that I will talk to you.
9 Mr. Hall will get up and attempt to refute what I've said.
10 That is the way this system works. He's the one that has
11 the burden of proof. Might I suggest to you that he hasn't
12 met it. Thank you.

13 THE COURT: Thank you, Miss Wilson.

14 Thank you, Mr. Hall.

15 MR. HALL: Remember the testimony from Ed?
16 Remember his testimony was that he went over to Juanita
17 Draper's on Friday. Ladies and gentlemen, a couple of
18 people were mistaken about their dates.

19 Obviously Juanita Draper and Betty Draper and
20 Mr. Tackett and Ed, no question, they saw the defendant down
21 in California. That's a nonissue. And I don't doubt that
22 they saw him down there on Friday. No problem. But there
23 are some problems and there are some misstatements of the
24 testimony by Miss Wilson.

18 1 First of all, you remember Gary Swinehart. You
2 2 remember his testimony. Do you remember we asked him when
3 3 he next saw Beverly Fetherston? He said that, "After I
4 4 cashed that check."

5 5 Ladies and gentlemen, that happens to be check
6 6 number 207. When he cashed check number 207, he stated the
7 7 6th, and said came back that morning. That was the same
19 8 morning she got the telephone call from the defendant
9 9 Mr. Branham, when she was upset about getting the phone call.

10 10 She didn't want to see him. Dudley Poorman
11 11 said she was upset. Ted Rice said she was upset. That was
12 12 the last day anybody ever saw Beverly Fetherston in the bar.

13 13 You know, it's funny how Miss Wilson wants
14 14 to say all the State's witnesses are biased, but lends
15 15 credibility to Gary Swinehart. And Gary Swinehart you recall
16 16 on cross-examination said, "Yeah, and that was the same day
17 17 that John Bell picked up the phone and said, 'Hi, Buddy.
18 18 You're out and I'm in.'" We all know that's not what
19 19 happened.

20 20 Everybody else testified that the last day that
21 21 Beverly Fetherston was in the house was Thursday-- in the
22 22 house, in the bar, in the Swiss Chalet Bar was Thursday,
23 23 February 6th. There's no question about that. And Ted Rice
24 24 flat did not testify that he saw her on Friday.

1 Now, you want to talk about Masters. Masters
2 is the doctor who is unbiased. I would like to indicate--
3 and it was the testimony from Dr. Masters--that he has been
4 retired since 1983. Probably hasn't done an autopsy since
5 1983. And he certainly didn't come up here for free and
6 testify. And his-- And let me just give you an indication.
7 Here's-- Here's how Dr. Masters' testimony went. And his
8 inability to answer any questions directly.

9 If you recall, I asked him the question about
10 the beer can. That was beer can Number 1 in State's Exhibit
11 DD, beer can right here. State's Exhibit AA. I showed him
12 the photograph, right here. You can see how it is because
13 of the writing. See how the writing-- Well, let me-- The
14 writing on the can. The label, the warning label. Can's
15 pointing the wrong way in her hand.

16 When we were talking about the scene with
17 Dr. Masters, I asked him, "Doesn't that indicate to you
18 that something's out of the ordinary with this scene, as
19 though maybe somebody put the beer can in her hand? It
20 doesn't look right?"

21 What was Dr. Masters' response to that question?
22 Dr. Masters said, "Now, I would agree that would be an
23 unnatural way to hold the beer can if I were going to drink
24 beer." Said, "Now, I would agree--"

1 "Now, would you agree that that would be an
2 unnatural way to hold the beer can if you were going to
3 drink beer?"

4 "It's not the way I would drink beer, but I
5 learned a long time ago, counselor, not to inject my mores,
6 my habits, my values on somebody else. If somebody else
7 wants to drink it that way, I do not use my values to
8 determine what someone else would do."

9 And that was typical of Dr. Masters' answers
10 to questions.

11 A simple question was, "Would somebody hold a
12 beer can this way if they were going to drink beer?" And
13 he started talking about mores and values.

14 Ladies and gentlemen, I would suggest that he
15 couldn't give a straight answer to any of the questions until
16 we got to the end-- until we got to the end of his testimony,
17 and I asked him, "Dr. Masters", and he testified, "it would
18 take great pressure to bruise someone on the neck. Isn't
19 that true?"

20 He said, "Oh, yes, take about 33 pounds of
21 pressure to bruise somebody on the neck."

22 "And the bruise is right over the trachea;
23 isn't it? As is depicted in State's GGG?"

24 "Yes."

19 1 "So could that block off the airway?" That was
2 the suggestion.

3 And he finally had to admit that there was
4 great pressure exerted over the airway, the trachea where
5 the air comes in, which again is consistent with asphyxia,
6 it's consistent with Dr. Clark's testimony that the death
7 of Beverly Fetherston was caused by blunt-force trauma to
8 the neck.

9 Another question I asked of Dr. Masters, talking
10 about the bruising, the blood extravasation to the neck of
11 Beverly Fetherston on the laryngeal pharynx up on the side
12 of the neck and on the trachea area. "Don't you think that
13 Dr. O'Donnell would be in a better position, as the doctor
14 who is at the autopsy, to determine whether or not the bruise
15 on the neck was in fact a bruise or some artifact as
16 attributed by Prinsloo-Gordon?"

17 And his answer was, "No."

18 That doesn't make any sense. How can he say
19 no to a doctor doing an autopsy? Fact of the matter is
20 Dr. O'Donnell indicated that the death was consistent with
21 asphyxia. Undetermined, but consistent with asphyxia.

22 All the doctors indicated that you have to look
23 at all of the facts in the case, all of the facts. The fact
24 that the defendant lived with Beverly Fetherston. The fact

1 that they had arguments. The fact that he had threatened
2 her. The fact that he had been verbally abusive. Physically
3 abusive. Fact that he was forging her checks. The fact that
4 she had kicked him out.

5 When they say there's no motive? She kicked him
6 out. She had a big heart and left him there for longer than
7 she should have, but she in the end had kicked him out, and
8 that's of course why he was staying at the Pioneer.

9 Apparently he wanted back in. Maybe he had to
10 get check number 233 that he cashed that day so he could get
11 some more money. And counsel would have you to believe that
12 our theory is that the defendant-- that the defendant killed
13 Beverly Fetherston that day before he left.

14 That's not necessarily true. Because if he
15 would have killed her before he went to Valley Bank that
16 afternoon and cashed that check approximately 5 o'clock,
17 why didn't he use the checks out of her checkbook?

18 He came back after he cashed that check at
19 Valley Bank. And that's when he got the checkbook, that's
20 when he got the checkbook out of her purse, when he killed
21 her. So it was after 5 o'clock when he killed Beverly
22 Fetherston, after she had a chance to change her clothes.

23 You can-- Speaking of Gary Swinehart, we had
24 three witnesses testify that these were her keys. That

1 coupled with the testimony of Joyce Whitmore indicates that
2 these were Beverly Fetherston's keys, and it also indicates
3 that Gary Swinehart's memory was cloudy. Probably because
4 of his ingestion of alcohol.

5 You saw him on the stand, ladies and gentlemen.
6 You can use your own common sense. Think of how he acted
7 on the stand, think of how he recalled things on the stand.
8 Gary Swinehart's memory, his memory was not that sharp.

9 Another interesting point in the house that I
10 overlooked originally was the fact that the drawer was open
11 in the kitchen. Do you remember that? Photograph depicts
12 drawer in the kitchen that was open with a plastic bag that
13 we believe the plastic bag came from that holds all the
14 defendant's clothes. That's State's Exhibit O. And there's
15 a better photograph of that drawer that I will show you.
16 State's Exhibit P.

17 That is another fact when taken in light of
18 the evidence on the coffee table, the afghan, the fact that
19 these things were not cleaned up, the beer cans weren't
20 cleaned up. This drawer wasn't closed. The house keys were
21 gone. This bag probably came out of this drawer to hold the
22 defendant's nine pairs of underwear, two pairs of levis,
23 six T-shirts.

24 If she wasn't dead that day, Thursday, she would

1 have closed that drawer, she would have picked up those beer
2 cans. Look at the rest of her house. It's a very clean
3 house. She wouldn't leave these things lying around.

4 Ladies and gentlemen, she was killed sometime
5 Thursday night. That's what the evidence shows.

6 Now, what's the argument about he wouldn't have
7 come back? Well, do you recall when he was down in Manteca--
8 or California, he asked Juanita Draper whether or not there
9 was a Valley Bank. He didn't have any money. If you look
10 in his possessions, he doesn't have a cent-- Well, he has a
11 few cents and some food stamps, but he doesn't have any
12 money. There's one reason why he had to come back.

13 The other reason he has to come back is because
14 if he doesn't come back, we have additional evidence that
15 points to the defendant as being the one who killed Juanita
16 Draper. If he goes and never comes back, there's no question
17 that he is the murderer.

18 But if he comes back and says, "Gee, I was down
19 in California for a few days visiting my daughter", then
20 he's got an alibi.

21 And wasn't it funny how, "Gee, I really need
22 to go see my daughter. I really want to see my daughter."
23 But what happens? Where does he go when he gets down to
24 California? First place he goes is Shorty's Bar. And he

20 1 stays there all day until he shows up over at Betty Draper's
2 at 5 o'clock on Friday, and then doesn't even begin to look
3 for his daughter until the following day, Saturday, according
4 to Juanita Draper, when they drive over to somebody's house
5 and stop in there for a couple of times over the weekend.
6 He never does see his daughter.

7 And when he comes back, he's supposed to call
8 Bonnie Guggenbickler. Never calls her. He goes right to the
9 bank to get some more money.

10 That was another point that was brought up by
11 Miss Wilson. Why does he only get \$125? Well, because--
12 we're going to argue because that's all he knew was in the
13 account.

14 Well, if you look at the checkbook, you think
15 the defendant knew how she kept her finances. Look at this
16 portion of the checkbook. You see that there's \$2500 there.
17 Which would suggest that the defendant knew that she had a
18 2500-dollar surplus in the checking account. When in fact
19 when you look at the rest of the register, she has \$1,005
20 listed there. And if you recall the testimony of Shelly
21 Skender, she testified that the defendant averaged
22 everything up.

23 Let's think about this. He cashes three checks
24 on the 3rd, 4th and 6th of February. Total amount of those

1 checks \$950. When he comes back, he cashes a check for 125.
2 It's a round figure. It's off. It's going to overdraft the
3 account if he believes it's only \$1,005. But he's already
4 cashed six checks there.

5 He's already cashed six checks. As a matter of
6 fact, Miss Brunson checked the signature card. He's feeling
7 pretty confident by the time he goes back in there, the
8 branch where he's done business before. The branch that
9 he's ordered checks at. He feels pretty confident going in
10 there and cashing another check. That's why he goes back
11 in there. That's why he cashes another check.

12 And how is anybody going to know? Certainly
13 Beverly Fetherston isn't going to be able to testify that
14 these are forgeries. How is he going to know that the police
15 are on to him, that they found the other checkbook where he's
16 stolen the other checks. He doesn't know that. He came back
17 to the well one time too often. That's how he got caught.

18 Now, what I'd like to do is go over the
19 elements of the forgery just briefly. This is one of your
20 Instructions. We have to prove that the defendant falsely
21 made, altered or forged, counterfeited any check.

22 You have a check. The evidence clearly shows
23 that the defendant filled out his name, the amount of money,
24 and forged Beverly Fetherston's signature on that with the

1 intent to defraud.

2 We've gone over that before, by the absence of
3 the amounts of those checks and the check numbers in her
4 check register. The fact that she had kept good account of
5 all her checks on previous occasions.

6 He uttered a total of six checks, attempted to
7 utter the final seventh check. We've established all the
8 elements contained in the crime of Forgery, ladies and
9 gentlemen.

10 Murder. "In order to establish Murder, the
11 State must show that the unlawful killing must be accompanied
12 with deliberate and clear intent to take the life in order
13 to constitute Murder of the First Degree. The intent to
14 kill must be the result of deliberate premeditation."

15 If you recall, premeditation can be successive
16 thoughts in the mind. Doesn't have to plan it for a week,
17 for a month, for a year. When he put his hand around her
18 neck, thumb over her throat, pillow over her face as the
19 facts suggest, the intent was there. That was deliberate
20 premeditation.

21 There's no other reason for him to take those
22 actions. Clearly when you put your hand over somebody's neck
23 and choke them out, death is a likely result. Deliberate
24 premeditation has been met. Obviously that's a determination

1 to kill.

2 And again, I get back to it doesn't have to be
3 for a day, an hour, or even a minute. As instantaneous as
4 successive thoughts of the mind. You want to keep that in
5 mind, ladies and gentlemen, during your deliberation.

6 Finally, ladies and gentlemen, the reasonable
7 doubt instruction. "Reasonable doubt is one based on reason.
8 It is not mere possible doubt, but is such doubt that would
9 govern or control a person in the more weighty affairs of
10 life. If in the minds of the jurors after the entire
11 comparison and consideration of all the evidence in this
12 case you're in such condition that you can say that you feel
13 an abiding conviction for the truth," that you believe that
14 Mr. Branham is responsible for the murder of Beverly
15 Fetherston based upon all the evidence that we have
16 presented, then you must find him guilty and there is not a
17 reasonable doubt.

18 "A doubt to be reasonable must be actual, and
19 not mere possibility or speculation." Every question that
20 has been raised by Miss Wilson is based on speculation.

21 Stood there and said, "Well, how about Buddy?"
22 Because Buddy owed Beverly Fetherston \$15,000, according to
23 Dudley Poorman. That is pure speculation. Nobody has any
24 evidence that Buddy was anywhere near Beverly Fetherston

1 on February 6th of 1992.

2 How about John Rode? Well, John Rode spent
3 the night there one night. That is pure speculation that
4 John Rode could be responsible for Beverly Fetherston's
5 death. John Rode has no motive. He has no ties to Beverly
6 Fetherston. He said she's a nice lady. He was over there
7 because John Bell was over there.

8 John Bell had a relationship. Likewise, you
9 saw John Bell on the stand. Why would John Bell want to
10 kill Beverly Fetherston? There's no reason for that.

11 There were some hints during the course of the
12 trial that her death may have been accidental during some
13 sex act. Ladies and gentlemen, we're talking about a
14 53-year-old woman, a 53-year-old woman who weighs 103 pounds,
15 who was slightly intoxicated on the date in question. There
16 is nothing to indicate, other than her pants being off and
17 her pants stuffed down in the end of the corner of the couch,
18 that she was having sex. And that the appearance would be
19 that this scene is staged.

20 Bizarre sex act scenario does not fly. Again
21 mere speculation.

22 Dudley Poorman. Was Dudley Poorman responsible
23 for it? Well, back to the hair test. If you recall, the
24 hair on Beverly Fetherston's sweatshirt matched one person,

1 the defendant Mr. Branham. The pubic hair was consistent
2 with John Bell, but it couldn't make any comparison. And it
3 was also consistent with the defendant. And if you recall
4 John Bell's testimony, he hadn't been over there. He hadn't
5 been over there for at least a week.

6 Are there any other issues that can come up or
7 that were brought up? The other issue that was brought up
8 was the doctor issue, whether or not we have proved a
9 homicide, that Beverly Fetherston was killed.

10 You know, it's interesting to note that at one
11 point in time Miss Wilson is arguing, "Well, this was a
12 vibrant woman. If somebody wanted to strangle her, she
13 would have fought and would have run." Then the next moment
14 she's arguing, "Well, this was a frail woman who was sick,
15 was-- she smoked and she drank."

16 Ladies and gentlemen, there's no question she
17 smoked and she drank. There's no question she is 53. And
18 the reason you don't see a lot of struggle and fight in
19 State's AA in the photograph is because she's 53 years old,
20 she smokes, she drinks, she's slightly intoxicated, she knows
21 the defendant, she allowed the defendant to get close to her
22 on that date. And because she had kicked him out, she had
23 taken his car, his money, his meal ticket and he was mad
24 about that, something happened and he took her life.

1 She didn't die. She didn't die of natural
2 causes. It wasn't an accident. It wasn't a suicide.
3 There's one reason for that death. One reason for that
4 death. And those are the bruises on her neck, blunt-force
5 trauma to the neck, death consistent with asphyxia. That's
6 how Beverly Fetherston died, ladies and gentlemen.

7 For those reasons, I would ask you to find
8 the defendant guilty of all counts. Thank you.

9 THE COURT: Thank you, Mr. Hall.

10 Would counsel stipulate to release the alternate
11 juror at this time?

12 MR. HALL: Yes.

13 MS. WILSON: I don't know, Judge.

14 THE COURT: Well, what's your concern? If we
15 keep her, we've got to keep her sequestered from the rest of
16 the jury somewhere, I believe.

17 MS. WILSON: I'll submit it to you.

18 THE COURT: Is there anyone on this jury who
19 feels that you're ill or unable to proceed?

20 All right. I see no response, so I will release
21 our alternate juror Miss Means at this time.

22 Miss Means, I always like to try to analogize
23 this situation to that of flying in a commercial airliner.
24 You have been in the position of a copilot or a navigator.

2 1 You may not have actually been flying, but you have made us
2 all feel far more comfortable by your being there in the
3 event that your direct service was needed.

4 I've had a chance to observe you as well as the
5 rest of the jury in this case, and I know how carefully you
6 paid attention. And I have mixed emotions about you not
7 seeing it all the way through participation in this case
8 where you get a chance to deliberate, but the law simply
9 doesn't-- it doesn't see it that way.

10 You're an alternate, and the jury as comprised
11 is to make this decision unless there's some reason that
12 they cannot proceed. But I feel comfortable that they are
13 all in good health, perhaps a little tired after all the
14 testimony, all the days we've been in trial, but I think
15 everybody can make it through the deliberation process.

16 So I will excuse you at this time. We all
17 thank you, the State, the defense and the Courts of Washoe
18 County thank you for the service you provided to us.

19 Ladies and gentlemen of the jury, the Exhibits
20 in this case, any and all Exhibits, any of the evidence that
21 has been introduced in this case, tangible evidence that you
22 can see and touch, is yours to review should you wish to do
23 so. All of the evidence can and will be made available to
24 you should you wish to view any piece of evidence.

3 1 Additionally, as I've indicated previously,
2 the Instructions which I had an opportunity to read to you
3 earlier this afternoon will be made available to you in the
4 jury room, as well.

5 I would like to at this time submit this case
6 to you as a jury. When you have reached a verdict, I would
7 request that you knock on the door and Deputy Engelmann will
8 be prepared to assist you with that.

9 At this time we will swear in Deputy Engelmann
10 to take charge of you during your deliberations.

11 (The bailiff was sworn by the court clerk.)

12 THE COURT: Ladies and gentlemen, it seems like
13 quite a long time ago when we first met in this room, a week
14 ago last Monday. I told you that Deputy Engelmann would be
15 an important person to you. He will attempt to satisfy any
16 of your reasonable needs. Please don't hesitate to request
17 any-- anything of us that will make your time as a juror more
18 comfortable.

19 At this time I will formally ask you to
20 deliberate this case, and I will discharge you to the jury
21 room. At such time as you have a verdict in this case,
22 please notify Deputy Engelmann. We'll be happy to assemble
23 together for the reading of your verdict.

24 I do not expect to just keep you irrespective

1 of the time. You are not necessarily here forever until you
2 reach a verdict. It is ten minutes after 4:00. We will be
3 here at least until 5 o'clock, at which time I will check
4 with you to see whether you feel you would like to continue
5 a little later tonight, or whether you would like to come
6 back first thing in the morning where the jury room will be
7 made available to you.

8 So we will try to coordinate some reasonable
9 hours of deliberation for you. I don't want you to feel as
10 if you are now formally deliberating this case and you will
11 be out of contact with everyone until you reach a verdict.
12 That's not the way we do it.

13 We'll stand in recess during your deliberations,
14 and we will check with you about 5 o'clock this afternoon.

15 (Recess.)

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3 1 RENO, NEVADA; TUESDAY, MARCH 9, 1993; 5:10 P.M.

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4 THE COURT: This is an addendum to your jury
5 instructions for the following reasons: I have received
6 a call from Deputy District Attorney Karl Hall, who has
7 requested that the Court clearly note for this record that
8 Instruction Number 27 was offered by the defense, that there
9 was no objection voiced by the State, and it was included
10 in the packet of jury instructions to which both counsel
11 had stipulated.

12 Mr. Hall merely wanted it recorded that
13 Instruction 27 had not been prepared by the District
14 Attorney's Office, but rather was an offer from Ms. Wilson.

15 I have spoken with Ms. Wilson, and she has
16 indicated no objections to the preparation of this addendum
17 to the completion of the jury instructions.

18 (Recess.)
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3 1 RENO, NEVADA; TUESDAY, MARCH 9, 1993; 5:30 P.M.

2 -oOo-

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

5 We're back in CR92-1048, State of Nevada versus
6 William Branham. Mr. Branham is present along with Ms.
7 Wilson. Mr. Hall is present, representing the State of
8 Nevada. And our jury is in place. And I'm advised we have
9 a verdict.

10 Would you ladies and gentlemen of the jury
11 please respond when your name is called, and I will ask my
12 clerk to call the roll of the jury.

13 (The court clerk called the roll of the jury.)

14 THE COURT: Will the foreperson of the jury
15 please indicate if the jury has reached a verdict?

16 JUROR SWENSON: We have reached a verdict, your
17 Honor.

18 THE COURT: All right. Would you be kind enough
19 to provide the verdict forms to Deputy Engelmann, please.

20 Miss Clerk, would you please read the verdicts
21 aloud.

22 THE COURT CLERK: "Case Number CR92-1048.
23 Department Number 5. In the Second Judicial District Court
24 of the State of Nevada, In and For the County of Washoe. The

3 1 State of Nevada, Plaintiff, versus William Edward Branham,
2 Defendant.

3 "Verdict: We, the jury in the above-entitled
4 matter, find the defendant William Edward Branham guilty of
5 Murder. Dated this 9th day of March, 1993. Eric J. Swenson,
6 Foreman."

4 7 "Having found the defendant guilty of Murder,
8 you must answer the following question: Was it Murder of the
9 First Degree or Murder of the Second Degree?" They have
10 checked, "Murder of the First Degree. Eric J. Swenson,
11 Foreman."

12 "Case Number CR92-0546. Department Number 5.
13 In the Second Judicial District Court of the State of Nevada,
14 In and For the County of Washoe. State of Nevada, Plaintiff,
15 versus William Edward Branham, Defendant.

16 "Verdict: We, the jury in the above-entitled
17 matter, find the defendant William Edward Branham guilty of
18 Count 1, Forgery. Dated this 9th day of March, 1993. Eric
19 Swenson, Foreman.

20 "Verdict: We, the jury in the above-entitled
21 matter, find the defendant William Edward Branham guilty of
22 Count 2, Forgery. Dated this 9th day of March, 1993. Eric
23 Swenson, Foreman.

24 "Verdict: We the jury in the above-entitled

4 1 matter, find the defendant William Edward Branham guilty of
2 Count 3, Forgery. Dated this 9th day of March, 1993. Eric
3 Swenson, Foreman.

4 "Verdict: We, the jury in the above-entitled
5 matter, find the defendant William Edward Branham guilty of
6 Count 4, Forgery. Dated this 9th day of March, 1993. Eric
7 Swenson, Foreman.

8 "Verdict: We, the jury in the above-entitled
9 matter, find the defendant William Edward Branham guilty of
10 Count 5, Forgery. Dated this 9th day of March, 1993, Eric
11 Swenson, Foreman.

12 "Verdict: We, the jury in the above-entitled
13 matter, find the defendant William Edward Branham guilty of
14 Count 6, Forgery. Dated this 9th day of March, 1993. Eric
15 Swenson, Foreman.

16 "Verdict: We, the jury in the above-entitled
17 matter, find the defendant William Edward Branham guilty of
18 Count 7, Forgery. Dated this 9th day of March, 1993. Eric
19 Swenson, Foreman."

20 THE COURT: Would you wish to have the jury
21 polled?

22 MS. WILSON: Yes.

23 THE COURT: Ladies and gentlemen, my clerk will
24 be asking specifically of you a question. If you'd be kind

4 1 enough to response, please, when asked.

2 THE COURT CLERK: Bernadine S. Delorme, are

3 these your verdicts as read?

4 JUROR DELORME: Yes.

5 THE COURT CLERK: David L. Emmons, are these

6 your verdicts as read?

7 JUROR EMMONS: Yes.

8 THE COURT CLERK: Carole A. Dollarhide, are

9 these your verdicts as read?

10 JUROR DOLLARHIDE: Yes.

11 THE COURT CLERK: David M. Evans, are these your

12 verdicts as read?

13 JUROR EVANS: Yes.

14 THE COURT CLERK: Lesley B. Campbell, are these

15 your verdicts as read?

16 JUROR CAMPBELL: Yes.

17 THE COURT CLERK: Elizabeth A. Mabry, are these

18 your verdicts as read?

19 JUROR MABRY: Yes.

20 THE COURT CLERK: Robert K. Pechnik, are these

21 your verdicts as read?

22 JUROR PECHNIK: Yes.

23 THE COURT CLERK: Deborah K. Ott, are these your

24 verdicts as read?

1 JUROR OTT: Yes.

2 THE COURT CLERK: Eric J. Swenson, are these
3 your verdicts as read?

4 JUROR SWENSON: Yes.

5 THE COURT CLERK: Ronald W. Papka, are these
6 your verdicts as read?

7 JUROR PAPKA: Yes.

8 THE COURT CLERK: Michael W. Pierce, are these
9 your verdicts as read?

10 JUROR PIERCE: Yes.

11 THE COURT CLERK: Janice C. Bowman, are these
12 your verdicts as read?

13 JUROR BOWMAN: Yes.

14 THE COURT: At this time, ladies and gentlemen,
15 I'll order that the verdict be entered and recorded in the
16 minutes of this Court. I will further order a pre-sentence
17 report, and we'll request the Parole & Probation to do that.
18 The matter will be set for sentencing, and my clerk will give
19 you a date in a moment.

20 THE COURT CLERK: April 14th, 1993, at 9:00 a.m.

21 THE COURT: Ladies and gentlemen of the jury,
22 I would like to thank you once again on behalf of everyone
23 involved in this case for the time which you've dedicated
24 out of your normal routines and your lives as they are day

4 1 to day. For service to your community, as indicated
2 previously I think it is one of the most important forms of
3 citizenship to be involved in a matter as serious as this,
4 and to have performed as attentively and conscientiously as
5 I know you have.

6 In a few moments, you will be released. The
7 admonition which I have given to you throughout this trial
8 will no longer be in effect. You will have the right and
9 privilege of discussing this case, should you so desire.

10 It may well be that either the District
11 Attorney's Office or the defense may wish to engage you in
12 conversation concerning this case. You certainly are free
13 to do that, if you wish. And you are under no obligation
14 to speak with anyone about this case, should that be your
15 inclination. You are citizens returned to this community
5 16 without further responsibility with regard to this case.

17 Once again, we thank you for your time and
18 effort and service to your community. I'll remand
19 Mr. Branham to the custody of the Washoe County Sheriff's
20 Department at this time. Court will stand in recess.

21 (Proceedings Continued to April 14, 1993, at 9:00 a.m.)

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5 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 Tuesday, March 9,
9 1993, at the hour of 10:05 a.m. of said day, and I then and
10 there took verbatim stenotype notes of the proceedings had
11 and testimony given therein upon the Trial of the case of
12 THE STATE OF NEVADA, Plaintiff, vs. WILLIAM EDWARD BRANHAM,
13 Defendant, Case No. CR92-0546 and CR92-1048.

14 That the foregoing transcript, consisting of
15 pages numbered 1 to 97, 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.

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22 DATED: At Reno, Nevada, this 28th day of July, 1993.

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24 /bb


RICHARD L. MOLEZZO CSR #40

CERTIFIED ORIGINAL

The record to which this certificate is
attached is the original reported

which was on file and of record in my
office in case number SEP-1048

DATE: July 30, 1993

JUDI BAILEY, Clerk of the Second Judicial
District Court, in and for the County of
Washoe, State of Nevada.

By [Signature] Deputy

CR92-1048
STATE VS WILLIAM EDWARD BRANHAM
District Court
Washoe County
1895
cudmabt
DC-990005 1859-093
03/09/1993 04:38 PM

No. CR92-1048/CR92-0546

Dept. No. 5

FILED

March 9, 1993

JUD BAILEY, Clerk

By

B. Walker

Deputy Clerk

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF WASHOE.

THE STATE OF NEVADA,

Plaintiff,

v.

WILLIAM EDWARD BRANHAM,

Defendant.

LADIES AND GENTLEMEN OF THE JURY:

It is my duty as judge to instruct you in the law that applies to this case, and it is your duty as jurors to follow the law as I shall state it to you, regardless of what you may think the law is or ought to be. On the other hand, it is your exclusive province to determine the facts in the case, and to consider and weigh the evidence for that purpose. The authority thus vested in you is not an arbitrary power, but must be exercised with sincere judgment, sound discretion, and in accordance with the rules of law stated to you.

Instruction No. 1

1 If, during this trial, I have said or done anything
2 which has suggested to you that I am inclined to favor the
3 position of either party, you will not be influenced by any
4 such suggestion.

5 I have not expressed, nor intended to express, nor
6 have I intended to intimate, any opinion as to which witnesses
7 are or are not worthy of belief, what facts are or are not
8 established, or what inference should be drawn from the
9 evidence. If any expression of mine has seemed to indicate an
10 opinion relating to any of these matters, I instruct you to
11 disregard it.

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26 Instruction No. 2

1 If in these instructions, any rule, direction or idea
2 is stated in varying ways, no emphasis thereon is intended by
3 me and none must be inferred by you. For that reason, you are
4 not to single out any certain sentence, or any individual point
5 or instruction, and ignore the others, but you are to consider
6 all the instructions as a whole and to regard each in the light
7 of all the others.

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26 Instruction No. 3

1 Although you are to consider only the evidence in the
2 case in reaching a verdict, you must bring to the consideration
3 of the evidence your everyday common sense and judgment as
4 reasonable men and women. Thus, you are not limited solely to
5 what you see and hear as the witnesses testify. You may draw
6 reasonable inferences which you feel are justified by the
7 evidence, keeping in mind that such inferences should not be
8 based on speculation or guess.

9 A verdict may never be influenced by sympathy,
10 passion, prejudice, or public opinion. Your decision should be
11 the product of sincere judgment and sound discretion in
12 accordance with these rules of law.

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26 Instruction No. 4

1 In every crime there must exist a union or joint
2 operation of act and intent.

3 The burden is always upon the prosecution to prove
4 both act and intent beyond a reasonable doubt.

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26 Instruction No. 5

1 Intent may be proved by circumstantial evidence. It
2 rarely can be established by any other means. While witnesses
3 may see and hear and thus be able to give direct evidence of
4 what a defendant does or fails to do, there can be no
5 eyewitness account of a state of mind with which the acts were
6 done or omitted, but what a defendant does or fails to do may
7 indicate intent or lack of intent to commit the offense
8 charged.

9 In determining the issue as to intent, the jury is
10 entitled to consider any statements made and acts done or
11 omitted by the accused, and all facts and circumstances in
12 evidence which may aid determination of state of mind.
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26 Instruction No. 6

1 Motive is not an element of the crime charged and need
2 not be shown. However, you may consider motive as a
3 circumstance in this case. Presence of motive may tend to
4 establish guilt. Absence of motive may tend to establish
5 innocence. You will therefore give its presence or absence, as
6 the case may be, the weight to which you find it to be
7 entitled.
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Instruction No. 7

1 There are two types of evidence from which a jury may
2 properly arrive at a verdict. One is direct evidence, such as
3 the testimony of an eyewitness. The other is circumstantial
4 evidence, the proof of a chain of circumstances pointing to the
5 commission of the offense.

6 The law makes no distinction between direct and
7 circumstantial evidence, but requires that before convicting a
8 defendant, the jury be satisfied of the defendant's guilt
9 beyond a reasonable doubt from all the evidence in the case.

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26 Instruction No. 8

1 To the jury alone belongs the duty of weighing the
2 evidence and determining the credibility of the witnesses. The
3 degree of credit due a witness should be determined by his or
4 her character, conduct, manner upon the stand, fears, bias,
5 impartiality, reasonableness or unreasonableness of the
6 statements he or she makes, and the strength or weakness of his
7 or her recollections, viewed in the light of all the other
8 facts in evidence.

9 If the jury believes that any witness has willfully
10 sworn falsely, they may disregard the whole of the evidence of
11 any such witness.

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26 Instruction No. 9

1 A person is qualified to testify as an expert if they
2 have special knowledge, skill, experience, training, or
3 education sufficient to qualify them as an expert on the
4 subject to which their testimony relates.

5 Duly qualified experts may give their opinions on
6 questions in controversy at a trial. To assist you in deciding
7 such questions, you may consider the opinion with the reasons
8 given for it, if any, by the expert who gives the opinion. You
9 may also consider the qualifications and credibility of the
10 expert.

11 You are not bound to accept an expert opinion as
12 conclusive, but should give to it the weight to which you find
13 it to be entitled. You may disregard any such opinion if you
14 find it to be unreasonable.

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26 Instruction No. 10

1 Neither the prosecution nor the defense is required to
2 call as witnesses all persons who may appear to have some
3 knowledge of the matters in question in this trial.
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Instruction No. 11

1 Nothing that counsel say during the trial is evidence
2 in the case.

3 The evidence in a case consists of the testimony of
4 the witnesses and all physical or documentary evidence which
5 has been admitted.

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26 Instruction No. 12

1 It is the duty of attorneys on each side of a case to
2 object when the other side offers testimony or other evidence
3 which counsel believes is not admissible.

4 When the court has sustained an objection to a
5 question, the jury is to disregard the question and may draw no
6 inference from the wording of it or speculate as to what the
7 witness would have said if permitted to answer.

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26 Instruction No. 13

1 The penalty provided by law for the offense charged is
2 not to be considered by the jury in arriving at a verdict.
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Instruction No. 14

1 Every person charged with the commission of a crime
2 shall be presumed innocent unless the contrary is proved by
3 competent evidence beyond a reasonable doubt.

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26 Instruction No. 15

1 The burden rests upon the prosecution to establish
2 every element of the crime with which the defendant is charged,
3 and every element of the crime must be established beyond a
4 reasonable doubt.

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26 Instruction No. 16

1 A reasonable doubt is one based on reason. It is not
2 mere possible doubt, but is such a doubt as would govern or
3 control a person in the more weighty affairs of life. If the
4 minds of the jurors, after the entire comparison and considera-
5 tion of all the evidence, are in such a condition that they can
6 say they feel an abiding conviction of the truth of the charge,
7 there is not a reasonable doubt. Doubt to be reasonable, must
8 be actual, not mere possibility or speculation.
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Instruction No. 17

1 An Information is a formal method of accusing a
2 defendant of a crime. It is not evidence of any kind against
3 the accused, and does not create any presumption or permit any
4 inference of guilt.
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Instruction No. 16

1 The defendant in this matter, WILLIAM EDWARD
2 BRANHAM, is being tried upon an Information in case number
3 CR92-1048, which was filed on the 26th day of May, 1992, in
4 the Second Judicial District Court, charging the said
5 defendant, WILLIAM EDWARD BRANHAM, with:

6 MURDER, a violation of NRS 200.010 and NRS 200.030,
7 a felony, in the manner following:

8 That the said defendant on or between the 6th day
9 of February A.D. 1992, and the 9th day of February A.D.
10 1992, or thereabout, and before the filing of the
11 Information, at and within the County of Washoe, State of
12 Nevada, did willfully, unlawfully, and with malice
13 aforethought, deliberation, and premeditation, kill and
14 murder BEVERLY ANN FETHERSTON, a human being, by criminal
15 means to include but not limited to asphyxiation,
16 strangulation or suffocation, thereby inflicting mortal
17 injuries upon the said BEVERLY ANN FETHERSTON from which she
18 died on or between February 6, 1992, and February 9, 1992.

19 The defendant in this matter, WILLIAM EDWARD
20 BRANHAM, is being tried upon an Information in case number
21 CR92-0546, which was filed on the 13th day of March, 1992,
22 in the Second Judicial District Court, charging the said
23 defendant, WILLIAM EDWARD BRANHAM, with:

24 COUNT I. FORGERY, a violation of NRS 205.090, a
25 felony, in the manner following:

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1 That the said defendant on the 9th day of January
2 A.D. 1992, or thereabout, and before the filing of the
3 Information, at and within the County of Washoe, State of
4 Nevada, did willfully, unlawfully, and falsely, and with
5 intent to defraud, sign and forge a name other than his own,
6 to wit: that of BEVERLY FETHERSTON upon a check drawn upon
7 VALLEY BANK OF NEVADA, Reno Branch, dated January 9, 1992,
8 and made payable to WILLIAM EDWARD BRANHAM at VALLEY BANK OF
9 NEVADA, 201 South Wells, Reno, Washoe County, Nevada.

10 COUNT II. FORGERY, a violation of NRS 205.090, a
11 felony, in the manner following:

12 That the said defendant on the 12th day of January
13 A.D. 1992, or thereabout, and before the filing of the
14 Information, at and within the County of Washoe, State of
15 Nevada, did willfully, unlawfully, and falsely, and with
16 intent to defraud, sign and forge a name other than his own,
17 to wit: that of BEVERLY FETHERSTON upon a check drawn upon
18 VALLEY BANK OF NEVADA, Reno Branch, dated January 12, 1992,
19 and made payable to WILLIAM EDWARD BRANHAM at VALLEY BANK OF
20 NEVADA, 201 South Wells, Reno, Washoe County, Nevada.

21 COUNT III. FORGERY, a violation of NRS 205.090, a
22 felony, in the manner following:

23 That the said defendant on the 13th day of January
24 A.D. 1992, or thereabout, and before the filing of the
25 Information, at and within the County of Washoe, State of
26 Nevada, did willfully, unlawfully, and falsely, and with

1 intent to defraud, sign and forge a name other than his own,
2 to wit: that of BEVERLY FETHERSTON upon a check drawn upon
3 VALLEY BANK OF NEVADA, Reno Branch, dated January 13, 1992,
4 and made payable to WILLIAM EDWARD BRANHAM at VALLEY BANK OF
5 NEVADA, 201 South Wells, Reno, Washoe County, Nevada.

6 COUNT IV. FORGERY, a violation of NRS 205.090, a
7 felony, in the manner following:

8 That the said defendant on the 3rd day of February
9 A.D. 1992, or thereabout, and before the filing of the
10 Information, at and within the County of Washoe, State of
11 Nevada, did willfully, unlawfully, and falsely, and with
12 intent to defraud, sign and forge a name other than his own,
13 to wit: that of BEVERLY FETHERSTON upon a check drawn upon
14 VALLEY BANK OF NEVADA, Reno Branch, dated February 3, 1992,
15 and made payable to WILLIAM EDWARD BRANHAM at VALLEY BANK OF
16 NEVADA, 201 South Wells, Reno, Washoe County, Nevada.

17 COUNT V. FORGERY, a violation of NRS 205.090, a
18 felony, in the manner following:

19 That the said defendant on the 4th day of February
20 A.D. 1992, or thereabout, and before the filing of the
21 Information, at and within the County of Washoe, State of
22 Nevada, did willfully, unlawfully, and falsely, and with
23 intent to defraud, sign and forge a name other than his own,
24 to wit: that of BEVERLY FETHERSTON upon a check drawn upon
25 VALLEY BANK OF NEVADA, Reno Branch, dated February 4, 1992,

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1 and made payable to WILLIAM EDWARD BRANHAM at VALLEY BANK OF
2 NEVADA, 201 South Wells, Reno, Washoe County, Nevada.

3 COUNT VI. FORGERY, a violation of NRS 205.090, a
4 felony, in the manner following:

5 That the said defendant on the 6th day of February
6 A.D. 1992, or thereabout, and before the filing of the
7 Information, at and within the County of Washoe, State of
8 Nevada, did willfully, unlawfully, and falsely, and with
9 intent to defraud, sign and forge a name other than his own,
10 to wit: that of BEVERLY FETHERSTON upon a check drawn upon
11 VALLEY BANK OF NEVADA, Reno Branch, dated February 6, 1992,
12 and made payable to WILLIAM EDWARD BRANHAM at VALLEY BANK OF
13 NEVADA, 201 South Wells, Reno, Washoe County, Nevada.

14 COUNT VII. FORGERY, a violation of NRS 205.090, a
15 felony, in the manner following:

16 That the said defendant on the 11th day of February
17 A.D. 1992, or thereabout, and before the filing of the
18 Information, at and within the County of Washoe, State of
19 Nevada, did willfully, unlawfully, and falsely, and with
20 intent to defraud, sign and forge a name other than his own,
21 to wit: that of BEVERLY FETHERSTON upon a check drawn upon
22 VALLEY BANK OF NEVADA, Reno Branch, dated February 11, 1992,
23 and made payable to WILLIAM EDWARD BRANHAM at VALLEY BANK OF
24 NEVADA, 201 South Wells, Reno, Washoe County, Nevada.

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1 To the charge stated in the Information, in case
2 number CR92-1048, the defendant, WILLIAM EDWARD BRANHAM,
3 pled "NOT GUILTY."

4 To the charges stated in the Information, in case
5 number CR92-0546, the defendant, WILLIAM EDWARD BRANHAM,
6 pled "NOT GUILTY."

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26 Instruction No. 19

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NRS 200.010 defines murder as follows:

Murder is the unlawful killing of a human being, with malice aforethought, either express or implied. The unlawful killing may be effected by any of the various means by which death may be occasioned.

Instruction No. 20

1 Malice, express and implied, is defined as follows:

2 1. Express malice is that deliberate intention
3 unlawfully to take away the life of a fellow creature, which
4 is manifested by external circumstances capable of proof.

5 2. Malice may be implied when no considerable
6 provocation appears, or when all the circumstances of the
7 killing show an abandoned and malignant heart.

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26 Instruction No. 21

1 As it applies to this case Murder of the First Degree
2 is murder which is any kind of willful, deliberate and
3 premeditated killing.

4 Murder of the second degree is all other kinds of
5 murder.

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26 Instruction No. 22

1 The unlawful killing must be accompanied with a
2 deliberate and clear intent to take life in order to
3 constitute Murder of the First Degree. The intent to kill
4 must be the result of deliberate premeditation.

5 Premeditation is a design, a determination to kill,
6 distinctly formed in the mind at any moment before or at the
7 time of the killing.

8 Premeditation need not be for a day, an hour or even
9 a minute. It may be as instantaneous as successive thoughts
10 of the mind. For if the jury believes from the evidence that
11 the act constituting the killing has been preceded by and has
12 been the result of premeditation, no matter how rapidly the
13 premeditation is followed by the act constituting the killing,
14 it is willful, deliberate and premeditated murder.
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Instruction No. 23

1 Nevada Revised Statutes, Section 205.090, insofar as
2 applicable to this case, provides:

3 That every person who shall falsely make, alter, forge
4 or counterfeit any check with intent to damage or defraud any
5 person or persons shall be guilty of forgery.

6 It also provides that every person who shall utter,
7 publish, pass, or attempt to pass, as true and genuine, the
8 above-named false, altered, forged or counterfeited check,
9 knowing the same to be false, altered, forged, or counterfeited
10 with the intent to damage or defraud any person, persons, or
11 business shall be guilty of forgery.
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Instruction No. 24

1 In the crime of forgery there are three essential
2 elements, and to justify a finding of guilty each of those
3 elements must be established by evidence which convinces the
4 jury beyond a reasonable doubt.

5 First, some act must be done that is included among
6 those constituting forgery under the instructions previously
7 given you.

8 Secondly, the party committing that act must do so
9 with an intent to defraud.

10 Thirdly, the paper, instrument or document which is
11 the creation or the vehicle of that act and intent must be such
12 that upon its face it is capable of being used to defraud
13 persons who might act upon it as genuine or the person in whose
14 name it is forged.

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26 Instruction No. 25

1 Each count charges a separate and distinct offense.
2 You must decide each count separately on the evidence and the
3 law applicable to it, uninfluenced by your decision as to any
4 other count. The defendant may be convicted or acquitted on
5 any or all of the offenses charged. Your finding as to each
6 count must be stated in a separate verdict.
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Instruction No. 26

1 It is a constitutional right of a defendant in a criminal
2 trial that he may not be compelled to testify. Thus the
3 decision as to whether he should testify is left to the
4 defendant on the advice and counsel of his attorney. You must
5 not draw any inference of guilt from the fact that he does not
6 testify, nor should this fact be discussed by you or enter into
7 your deliberations in any way.

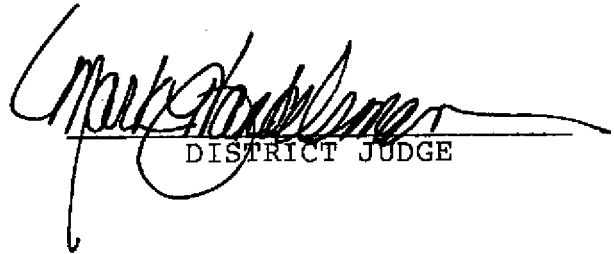
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26 Instruction No. 27

1 It is your duty as jurors to consult with one another
2 and to deliberate, with a view of reaching an agreement, if you
3 can do so without violence to your individual judgment. You
4 each must decide the case for yourself, but should do so only
5 after a consideration of the case with your fellow jurors, and
6 you should not hesitate to change an opinion when convinced
7 that it is erroneous. However, you should not be influenced to
8 vote in any way on any question submitted to you by the single
9 fact that a majority of the jurors, or any of them, favor such
10 a decision. In other words, you should not surrender your
11 honest convictions concerning the effect or weight of evidence
12 for the mere purpose of returning a verdict or solely because
13 of the opinion of the other jurors.
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Instruction No. 28

1 Upon retiring to the jury room you will select one of
2 your number to act as foreman, who will preside over your
3 deliberations and who will sign a verdict to which you agree.

4 When all twelve (12) of you have agreed upon a
5 verdict, the foreman should sign and date the same and request
6 the Bailiff to return you to court.

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9 DISTRICT JUDGE
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Instruction No. 29

CR92-1048
STATE VS WILLIAM EDWARD BRANHAM
District Court
Washoe County
NVC
DC-9900051589-008
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CJ0000077

FILED

April 14, 1993
JUDI BAILEY, Clerk

No. CR92-1048

Dept. No. 5

By B. Walker
Deputy Clerk

IN THE SECOND JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF WASHOE

STATE OF NEVADA,

Plaintiff,

vs.

WILLIAM EDWARD BRANHAM,

Defendant.

Reporter: R. Molezzo

J U D G M E N T

No sufficient cause being shown by Defendant as to why judgment should not be pronounced against him, the Court rendered judgment as follows:

That William Edward Branham is guilty of the crime of Murder Of The First Degree as charged in the Information and that he be punished by imprisonment in the Nevada State Prison for the term of Life Without The Possibility Of Parole. The Defendant is ordered to pay restitution in the amount of Two Thousand Four Hundred Fifty-Five Dollars and Ninety-Six Cents (\$2,455.96). It is further ordered that the Defendant pay the statutory Twenty-Five Dollar (\$25.00) administrative assessment fee.

Dated this 14th day of April, 1993.

[Signature]
DISTRICT JUDGE