

**IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE**

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Elizabeth A. Brown
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STATE OF NEVADA,

Plaintiff,

vs.

STEVEN FLOYD VOSS,

Defendant.

Sup. Ct. Case No. 77505

Case No. CR96-1581

Dept. 1

RECORD ON APPEAL

VOLUME 3 OF 15

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FILED

10-10-96
JUD. BAILEY, Clerk*[Signature]*
Deputy Clerk

Case No. CR96-1581

Dept. No. 10

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF WASHOE

* * *

THE STATE OF NEVADA,

Plaintiff,

v.

STEVEN FLOYD VOSS,

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.

[Signature]
DISTRICT JUDGE

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 such
4 suggestion.

5 I have not expressed, nor intended to express, nor have
6 I intended to intimate, any opinion as to which witnesses are or
7 are not worthy of belief, what facts are or are not established,
8 or what inference should be drawn from the evidence. If any
9 expression of mine has seemed to indicate an opinion relating to
10 any of these matters, I instruct you to disregard it.

1 If in these instructions, any rule, direction or idea is
2 stated in varying ways, no emphasis thereon is intended by me and
3 none must be inferred by you. For that reason, you are not to
4 single out any certain sentence, or any individual point or
5 instruction, and ignore the others, but you are to consider all
6 the instructions as a whole and to regard each in the light of
7 all the others.

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26 Instruction No. 4

1 An Information is a formal method of accusing a
2 defendant of a crime. It is not evidence of any kind against the
3 accused, and does not create any presumption or permit any
4 inference of guilt.

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26 Instruction No. 5

1 Nothing that counsel say during the trial is evidence in
2 the case.

3 The evidence in a case consists of the testimony of the
4 witnesses and all physical or documentary evidence which has been
5 admitted.

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26 Instruction No. 6

1 It is the duty of attorneys on each side of a case
2 to object when the other side offers testimony or other evidence
3 which counsel believes is not properly admissible.

4 When the court has sustained an objection to a question,
5 the jury is to disregard the question and may draw no inference
6 from the wording of it or speculate as to what the witness would
7 have said if permitted to answer.

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26 Instruction No. 7

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. 8

1 There are two types of evidence which the jury may
2 consider in this case. One is direct evidence, such as the
3 testimony of an eyewitness. The other is circumstantial
4 evidence, the proof of a chain of circumstances pointing to the
5 existence or non-existence of another circumstance.

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 beyond
9 a reasonable doubt from all the evidence in the case.

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26 Instruction No. 9

1 Every person charged with the commission of a crime
2 shall be presumed innocent unless the contrary is proven by
3 competent evidence beyond a reasonable doubt.

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26 Instruction No. 10

1 The burden rests upon the prosecution to establish every
2 element of the crime with which the defendant is charged, and
3 every element of the crime must be established beyond a
4 reasonable doubt.

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26 Instruction No. 11

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 be
8 actual, not mere possibility or speculation.

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26 Instruction No. 12

1 In every crime or public offense, there must exist a
2 union or joint operation of act and intent.

3 The burden is always upon the prosecution to prove both
4 act and intent beyond a reasonable doubt.

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Instruction No. 13

1 Each count charges a separate and distinct offense. You
2 must decide each count separately on the evidence and the law
3 applicable to it, uninfluenced by your decision as to any other
4 count. The defendant may be convicted or acquitted on any or all
5 of the offenses charged. Your finding as to each count must be
6 stated in a separate verdict.

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26 Instruction No. 14

1 The elements of County I which the State of Nevada must
2 prove beyond a reasonable doubt are that on or between June 12,
3 1996 and June 14, 1996, the defendant did:

- 4 1) willfully and unlawfully;
- 5 2) in Washoe County, State of Nevada;
- 6 3) enter an apartment at 5501 West Fourth St.;
- 7 4) with the intent to steal check #4842 in the amount
8 of \$5,026.00.

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28 Instruction No. 15

1 The mere fact that a person was in conscious possession
2 of recently stolen property is not enough to justify his or her
3 conviction of burglary. It is, however, a circumstance to be
4 considered in connection with other evidence. To warrant a
5 finding of guilty, there must be proof of other circumstances
6 tending of themselves to establish guilt.

7 In this connection you may consider the defendant's
8 conduct, his or her false or contradictory statements, if any,
9 and any other statements he or she may have made with reference
10 to the property. If a person gives a false account of how he or
11 she acquired possession of stolen property this is a circumstance
12 that tends to show guilt.

1 The elements of Count II which the State of Nevada
2 must prove beyond a reasonable doubt are that on or between
3 June 12, 1996 and June 14, 1996, the defendant did:

4 1) willfully, unlawfully and with intent to
5 defraud;

6 2) in Washoe County, State of Nevada;

7 3) utter and pass as true and genuine;

8 4) a check dated May 8, 1996, and made payable to
9 "BEVERLY BAXTER" in the amount of \$5,026.00;

10 5) knowing the same to be forged or altered.

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Instruction No. 16

1 The elements of Count III which the State must prove
2 beyond a reasonable doubt are that on or between June 12, 1996
3 and June 14, 1996, the defendant did:

4 1) willfully, unlawfully and with intent to
5 defraud;

6 2) in Washoe County, State of Nevada;

7 3) utter and attempt to pass;

8 4) a check dated June 13, 1996, and made payable to
9 "STEVEN VOSS" in the amount of \$5,000.00;

10 5) knowing the same to be forged or altered.

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Instruction No. 17

1 The elements of Count IV which the State must prove
2 beyond a reasonable doubt are that on or between June 12, 1996
3 and June 14, 1996, the defendant did:

- 4 1) willfully, unlawfully, and falsely;
- 5 2) with the intent to defraud;
- 6 3) in Washoe County, State of Nevada;
- 7 4) endorse and forge the name "B A Baxter" on a
8 check made payable to BEVERLY BAXTER and drawn
9 upon an account owned by BURGESS NORTH AMERICAN
10 MOVING AND STORAGE.

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26 Instruction No. 18

1 Appearance, contents, substance, internal patterns or
2 other distinctive characteristics are sufficient for
3 authentication when taken in conjunction with circumstances.
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28 Instruction No. 18a

Comparison by the trier of fact or by expert witnesses
with specimens which have been authenticated is sufficient for
authentication.

Instruction No. 186

1 The elements of Count V which the State must prove
2 beyond a reasonable doubt are that on or between June 12, 1996
3 and June 14, 1996, the defendant did:

- 4 1) willfully, unlawfully, and falsely;
5 2) with the intent to defraud;
6 3) in Washoe County, State of Nevada;
7 4) forge or alter a check by placing his name on
8 a check drawn upon an account owned by BEVERLY
9 A. BAXTER.

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Instructio No. 19

1 The existence of an intent to defraud is an essential
2 element of the crime of forgery.

3 An intent to defraud is an intent to deceive another
4 person for the purpose of gaining some material advantage over
5 him or her or to induce him or her to part with property or to
6 alter his or her position to his or her injury or risk, and to
7 accomplish that purpose by some false statement, false pretenses,
8 wrongful concealment or suppression of truth, or by any other
9 artifice or act fitted to deceive.

1 Forgery may be committed by altering, without authority,
2 a valid and genuine instrument, paper, or document, with intent to
3 defraud, and by either adding, erasing, or changing a material
4 part thereof, and thus causing it to appear different from what it
5 originally was intended to be, and changing its apparent legal
6 effect.

7 A material alteration of an instrument includes, but is
8 not limited to, an incomplete instrument, by completing it
9 otherwise than as authorized.

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Instruction No. 21

1 The elements of Count VI which the State must prove
2 beyond a reasonable doubt are that on or between June 12, 1996
3 and June 14, 1996, the defendant did:

- 4 1) willfully and unlawfully;
- 5 2) with the intent to permanently deprive the true
6 owner of the property;
- 7 3) in Washoe County, State of Nevada;
- 8 4) attempt to cash a check made payable to himself and
9 drawn upon the personal account of BEVERLY A.
10 BAXTER in the amount of \$5,000.00;
- 11 5) without legal authority to do so.

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26 Instruction No. 22

1 An act done with intent to commit a crime, and tending
2 but failing to accomplish it, is an attempt to commit that crime.

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Instruction No. 23

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 what
4 a defendant does or fails to do, there can be no eyewitness
5 account of a state of mind with which the acts were done or
6 omitted, but what a defendant does or fails to do may indicate
7 intent or lack of intent to commit the offense charged.

8 In determining the issue as to intent, the jury is
9 entitled to consider any statements made and acts done or omitted
10 by the accused, and all facts and circumstances in evidence which
11 may aid determination of state of mind.

1 The word "willfully" when used in criminal statutes
2 relates to an act or omission which is done intentionally,
3 deliberately, or designedly, as distinguished from an act or
4 omission done accidentally, inadvertently or innocently.
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Instruction No. 25

1 If you find that before this trial the defendant made
2 false or deliberately misleading statements concerning the charge
3 upon which he or she is now being tried, you may consider such
4 statements as a circumstance tending to prove a consciousness of
5 guilt but it is not sufficient of itself to prove guilt. The
6 weight to be given to such circumstance and its significance, if
7 any, are matters for your determination.

1 A defendant in a criminal trial has a constitutional
2 right not to be compelled to testify. No presumption of guilt
3 may be raised and no inference of any kind may be drawn from the
4 fact that the defendant has not testified.

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Instruction No. 27

1 In deciding whether or not to testify, the defendant may
2 choose to rely on the state of the evidence and upon the failure,
3 if any, of the State to prove beyond a reasonable doubt every
4 essential element of the charge against him. No lack of testimony
5 on defendant's part will make up for a failure of proof by the
6 State so as to support a finding against him on any such essential
7 element.

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Instruction No. 28

1 The testimony of one witness which you believe is
2 sufficient to prove any fact.

3 You should not decide any issue merely by counting the
4 number of witnesses who have testified on the opposing sides.

5 The final test in weighing conflicting testimony is the
6 relative convincing force of the evidence and not the relative
7 number of witnesses who have testified on different sides of an
8 issue.

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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26 Instruction No. 30

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, passion,
10 prejudice, or public opinion. Your decision should be the
11 product of sincere judgment and sound discretion in accordance
12 with these rules of law.

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 her
4 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 facts
8 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.

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 each
4 must decide the case for yourself, but should do so only after a
5 consideration of the case with your fellow jurors, and you should
6 not hesitate to change an opinion when convinced that it is
7 erroneous. However, you should not be influenced to vote in any
8 way on any question submitted to you by the single fact that a
9 majority of the jurors, or any of them, favor such a decision.
10 In other words, you should not surrender your honest convictions
11 concerning the effect or weight of evidence for the mere purpose
12 of returning a verdict or solely because of the opinion of the
13 other jurors.

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1 The defendant in this matter, STEVEN FLOYD VOSS, is
2 being tried upon an Information which was filed on the 16th day
3 of July, 1996, in the Second Judicial District Court, charging
4 the said defendant, STEVEN FLOYD VOSS, with:

5 COUNT I. BURGLARY, a violation of NRS 205.060, a
6 felony, in the manner following:

7 That the said defendant on or between the 12th day of
8 June A.D. 1996, and the 14th day of June A.D. 1996, or
9 thereabout, and before the filing of the Information, at and
10 within the County of Washoe, State of Nevada, did willfully and
11 unlawfully enter a certain apartment located at 5501 West Fourth
12 Street, apartment #1, Reno, Washoe County, Nevada, with the
13 intent then and there to steal check #4842 in the amount of
14 \$5,026.00.

15 COUNT II. UTTERING A FORGED INSTRUMENT, a violation of
16 NRS 205.090 and NRS 205.110, a felony, in the manner following:

17 That the said defendant on or between the 12th day of
18 June A.D. 1996, and the 14th day of June A.D. 1996, or
19 thereabout, and before the filing of the Information, at and
20 within the County of Washoe, State of Nevada, did willfully and
21 unlawfully, and with intent to defraud, utter and pass, as true
22 and genuine, a certain false and forged check, dated May 8, 1996,
23 in the amount of \$5,026.00, made payable to BEVERLY BAXTER, and
24 written on the account owned by BURGESS NORTH AMERICAN MOVING AND
25 STORAGE, at 593 East Prater Way, Sparks, Washoe County, Nevada,
26 knowing the same to be forged or altered.

1 COUNT III. UTTERING A FORGED INSTRUMENT, a violation
2 of NRS 205.090 and NRS 205.110, a felony, in the manner
3 following:

4 That the said defendant on or between the 12th day of
5 June A.D. 1996, and the 14th day of June A.D. 1996, or
6 thereabout, and before the filing of the Information, at and
7 within the County of Washoe, State of Nevada, did willfully and
8 unlawfully, and with intent to defraud, utter and attempt to pass
9 as true and genuine, a certain false and forged check number 563
10 drawn upon CALIFORNIA FEDERAL BANK, Sparks office, dated June 13,
11 1996, and made payable to STEVEN VOSS, at 593 East Prater Way,
12 Sparks, Washoe County, Nevada, knowing the same to be forged or
13 altered.

14 COUNT IV. FORGERY, a violation of NRS 205.090, a
15 felony, in the manner following:

16 That the said defendant on or between the 12th day of
17 June A.D. 1996, and the 14th day of June A.D. 1996, or
18 thereabout, and before the filing of the Information, at and
19 within the County of Washoe, State of Nevada, did willfully,
20 unlawfully, and falsely, and with intent to defraud, endorse and
21 forge a name other than his own, to wit: that of B. A. BAXTER,
22 upon a check drawn upon an account owned by BURGESS NORTH AMERICAN
23 MOVING AND STORAGE, dated May 8, 1996, and made payable to BEVERLY
24 BAXTER at 593 East Prater Way, Sparks, Washoe County, Nevada.

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1 COUNT V. FORGERY, a violation of NRS 205.090, a
2 felony, in the manner following:

3 That the said defendant on or between the 12th day of
4 June A.D. 1996, and the 14th day of June A.D. 1996, or
5 thereabout, and before the filing of the Information, at and
6 within the County of Washoe, State of Nevada, did willfully,
7 unlawfully, and falsely, and with intent to defraud, forge or
8 alter a check without the lawful owner's consent, to wit:
9 by placing the name of STEVEN VOSS upon a check number 563 drawn
10 upon CALIFORNIA FEDERAL BANK, Sparks, dated June 13, 1996, and
11 made payable to STEVEN VOSS at 593 East Prater Way, Washoe County,
12 Nevada.

13 COUNT VI. ATTEMPTED THEFT, a violation of NRS 193.330,
14 being an attempt to violate NRS 205.0832, a felony, in the manner
15 following:

16 That the said defendant on or between the 12th day of
17 June A.D. 1996, and the 14th day of June A.D. 1996, or
18 thereabout, and before the filing of the Information, at and
19 within the County of Washoe, State of Nevada, did willfully and
20 unlawfully attempt to control the property of BEVERLY A. BAXTER
21 with the intent to permanently deprive her of that property in
22 that said defendant attempted to cash a check written on the
23 personal account of BEVERLY A. BAXTER in an amount of \$5,000.00
24 and made payable to himself when he had no legal authority to do
25 so.

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1 To the charges stated in the Information, the
2 defendant, STEVEN FLOYD VOSS, pled "NOT GUILTY."
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Instruction No. 2

FILED

'96 OCT 17 P1:40

1 No. CR96-1581

2 Dept. No. 3

JUDITH BAILEY, CLERK

BY John Can
DEPUTY

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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

THE STATE OF NEVADA,
Plaintiff,vs.
STEVEN FLOYD VOSS,
Defendant.MOTION FOR A JUDGMENT OF
ACQUITTAL OR A NEW TRIAL

11

12 COMES NOW the Defendant, STEVEN FLOYD VOSS, by and
13 through the Washoe County Public Defender's Office, and COTTER C.
14 CONWAY, Deputy Public Defender, and hereby moves this Court for
15 the entry of an Order for a judgment of acquittal or a new trial
16 in the above-entitled matter.

17 This motion is based upon the attached Points and
18 Authorities, the attached affidavit of counsel, Nevada Revised
19 Statutes 175.381 and 176.515, and any oral or documentary evidence
20 as may be presented at or before the hearing on this matter.

21 DATED this 17th day of October, 1996.

22

MICHAEL R. SPECCHIO
Washoe County Public Defender

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24

By Cotter C. Conway
COTTER C. CONWAY
Deputy Public Defender

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POINTS AND AUTHORITIES

Pursuant to NRS 175.381, "[t]he court may, on a motion of a defendant..., which is made after the jury returns a verdict of guilty, set aside the verdict and enter a judgment of acquittal if the evidence is insufficient to sustain a conviction." In reviewing the sufficiency of the evidence, this court must consider whether the evidence was such that a rational trier of fact could find supportive of the elements of the offenses charged beyond a reasonable doubt, even after consideration in a light most favorable to the prosecution. Wright v. State, 106 Nev. 647 (1990); State v. Rhodig, 101 Nev. 608 (1985); Wilkins v. State, 96 Nev. 367 (1980).

In the instant case, a rational trier of fact could not have found the evidence supportive of the elements of the offenses charged beyond a reasonable doubt. It was established that Beverly Baxter wrote a check for \$5,000 on her account that never had a balance anywhere close to \$5,000 the day after a \$5,026 check was deposited in that account. Her knowledge that her account had sufficient funds to satisfy a check for \$5,000 cannot be supportive of the elements of Count I-Burglary, Count II-Uttering a Forged Instrument or Count IV-Forgery as charged in the Information. Mr. VOSS could not have stolen the \$5,026 check from Ms. Baxter's apartment if she knew that it was going to be deposited in her account so that she could write a check for \$5,000 on that same account.

Furthermore, Mr. VOSS could not have had the necessary

1 intent to defraud if Ms. Baxter knew that the \$5,026 check was
2 going to be deposited in her account so that she could write a
3 check for \$5,000 on that same account. In addition, the
4 established fact that Mr. VOSS deposited the \$5,026 check in Ms.
5 Baxter's account cannot be supportive of an intent to defraud. It
6 is an impossibility!

7 The prosecution did not present any evidence to support
8 beyond a reasonable doubt the essential element that Mr. VOSS was
9 without legal authority to alter the check for \$5,000 and attempt
10 to negotiate it. This element was essential to Count III-Uttering
11 a Forged Instrument, Count V-Forgery or Count VI-Attempted Theft.
12 The evidence established that the check's payee line was left
13 blank and that Mr. VOSS needed \$5,000 as a down payment for a
14 mobile home. Given the evidence presented, a rational trier of
15 fact could not have found the evidence supportive of that element
16 beyond a reasonable doubt.

17 Therefore, Mr. VOSS respectfully requests that this
18 court set aside the verdict of the jury and enter a judgment of
19 acquittal because the evidence is insufficient to sustain a
20 conviction on any of the counts.

21 Pursuant to NRS 176.515, "[t]he court may grant a new
22 trial to a defendant if required as a matter of law or on the
23 ground of newly discovered evidence." It is Mr. VOSS' contention
24 that a new trial is warranted as a matter of law based upon
25 violations of NRS 175.391 during the course of the trial.

26 NRS 175.391 provides in pertinent part that "[t]he

1 jurors sworn to try a criminal action may, at any time before the
2 submission of the case to the jury, in the discretion of the
3 court, be permitted to separate, depart for home overnight or be
4 kept in charge of a proper officer. Upon commencing deliberation,
5 the jurors shall be kept in charge of a proper officer, unless at
6 the discretion of the court they are permitted to depart for home
7 overnight. When the jurors are kept together, the officer in
8 charge shall keep the jurors in some private and convenient place
9 and separate from other persons."

During the course of the trial, jurors were permitted to leave the jury room during breaks in the proceedings. This allowed these jurors to observe witnesses who were waiting to be called to testify and to overhear conversations between trial counsel and witnesses or other members of the trial team. Moreover, during deliberations, jurors were permitted to leave the jury room to smoke a cigarette or make phone calls. This is in direct violation of NRS 175.391 and clearly prejudicial to Mr. VOSS given the irrational verdicts of the jury.

19 Therefore, Mr. VOSS respectfully requests that this
20 court grant a new trial as a matter of law because of the clear
21 violations of NRS 175.391.

22 CONCLUSION

23 For the above reasons, Mr. VOSS respectfully requests
24 that this court set aside the verdict of the jury and enter a

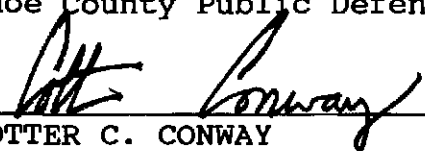
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1 judgment of acquittal. In the alternative, Mr. VOSS respectfully
2 requests that this court grant a new trial as a matter of law.

3 DATED this 17th day of October, 1996

4 MICHAEL R. SPECCHIO
5 Washoe County Public Defender

6 By 
7 COTTER C. CONWAY
8 Deputy Public Defender
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AFFIDAVIT OF COUNSEL

State of Nevada)
) ss.
 County of Washoe)

COTTER C. CONWAY, being first duly sworn, deposes and says:

1. I am a Deputy Public Defender with the Washoe County Public Defender's Office and the counsel of record herein for the above-named defendant.

2. On October 10, 1996, the defendant was found guilty by a jury of Burglary, two counts of Uttering a Forged Instrument, two counts of Forgery, and Attempted Theft.

3. I am informed and believe that jurors were permitted to leave the jury room during breaks in the proceedings.

4. I am informed and believe that, during deliberations, jurors were permitted to leave the jury room to smoke a cigarette or make phone calls.

DATED this 17th day of October, 1996

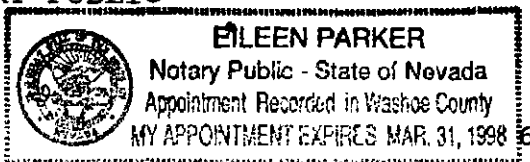
MICHAEL R. SPECCHIO
 Washoe County Public Defender

By *Cotter Conway*
 COTTER C. CONWAY
 Deputy Public Defender

SUBSCRIBED AND SWORN TO BEFORE ME,

THIS 17th DAY OF October, 1996.

Eileen Parker
 NOTARY PUBLIC



No. CR96-1581

'96 OCT 21 P3:03

Dept. No. 3**Second Judicial District Court**

State of Nevada, Washoe County

THE STATE OF NEVADA,

Plaintiff,

vs.

STEVEN VOSS,

Defendant.

SUBPOENATo: ANALYST FLOYD L. WHITING - WASHOE COUNTY SHERIFF'S OFFICE
(Name)

You are commanded to appear before the Second Judicial District Court, State of Nevada, Washoe County, at the courtroom of said court, Department 3 at Reno, Nevada, on the 7th day of October, 19 96, at 9:00a. m., to testify on the part of Defendant

Any person failing to appear may be deemed in contempt of court, and shall be liable to the party injured in the sum of \$100, and for such damages as may be sustained by him/her on account of such neglect or refusal.

Dated this 30th day of September, 19 96.

STATE OF NEVADA
COUNTY OF WASHOE

by

I received the within Subpoena on the _____ day of _____, 19____

and personally served a copy of the same upon _____

Subscribed and sworn to before me
this _____ day of _____,
19____.

Notary Public

Signature of Person Making Service

No. CR96-1581Dept. No. 3

'96 OCT 21 P3:03

Second Judicial District Court

State of Nevada, Washoe County

THE STATE OF NEVADA,

Plaintiff,

vs.

STEVEN VOSS,

Defendant.

SUBPOENATo: INVESTIGATOR WILLIAM STEVENSON - WASHOE COUNTY SHERIFF'S OFFICE
(Name)

You are commanded to appear before the Second Judicial District Court, State of Nevada, Washoe County, at the courtroom of said court, Department 3 at Reno, Nevada, on the 7th day of October, 19 96, at 9:00 a m., to testify on the part of Defendant.

Any person failing to appear may be deemed in contempt of court, and shall be liable to the party injured in the sum of \$100, and for such damages as may be sustained by him/her on account of such neglect or refusal.

Dated this 30th day of September, 19 96.

STATE OF NEVADA
COUNTY OF WASHOE

by

JUDI BAILEY

Clerk of the Court

Deputy Clerk

I received the within Subpoena on the _____ day of _____, 19____
and personally served a copy of the same upon _____

Subscribed and sworn to before me
this _____ day of _____, 19____

Signature of Person Making Service

Notary Public

No. CR96-1581

Dept. No. 3

'96 OCT 21 P3:03

Second Judicial District Court

State of Nevada, Washoe County

THE STATE OF NEVADA,

Plaintiff,

vs.

STEVEN VOSS,

Defendant.

SUBPOENA

To: DETECTIVE RICH HILL - WASHOE COUNTY SHERIFF'S OFFICE

(Name)

You are commanded to appear before the Second Judicial District Court, State of Nevada, Washoe County, at the courtroom of said court, Department 3 at Reno, Nevada, on the 7th day of October, 19 96, at 9:00 a m., to testify on the part of Defendant

Any person failing to appear may be deemed in contempt of court, and shall be liable to the party injured in the sum of \$100, and for such damages as may be sustained by him/her on account of such neglect or refusal.

Dated this 30th day of September, 19 96.

STATE OF NEVADA
COUNTY OF WASHOE

by

JUDI BAILEY

Clerk of the Court

clerk

I received the within Subpoena on the _____ day of _____, 19 _____

and personally served a copy of the same upon _____

Subscribed and sworn to before me
this _____ day of _____, 19 _____

Signature of Person Making Service

Notary Public

DUPLICATE ORIGINAL

FILED

Case No. CR96-1581

Dept. No. 3

'96 OCT 21 P3:55

JUDICIAL DISTRICT COURT

BY *S. Davis*
DEPT

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

THE STATE OF NEVADA,

Plaintiff,

vs.

OPPOSITION TO MOTION FOR
ACQUITTAL OR A NEW TRIAL

STEVEN FLOYD VOSS,

Defendant.

COMES NOW the State of Nevada, by and through RICHARD
A. GAMMICK, District Attorney, and EGAN WALKER, Deputy District
Attorney, and opposes the Defendant's Motion for a Judgment of
Acquittal or a New Trial.

This opposition is based upon the attached Points and
Authorities and all of the papers and pleadings on file with the
Court to date.

DATED this 21st day of October, 1996.

RICHARD A. GAMMICK
District Attorney

By: *E. Walker*
EGAN WALKER
Deputy District Attorney

POINTS AND AUTHORITIESI. THERE IS NO EVIDENCE OF JUROR MISCONDUCT BEFORE THIS COURT.

VOSS apparently maintains that one or more jurors were allowed to take breaks during their deliberations in order to smoke and that is a violation of NRS 175.391. He does not offer any explanation as to how such a break constitutes a violation of the statute, however, or what facts he believes support his contention. We are left to guess at what conclusion he seeks to have this Court make from his bald factual assertions. (The language of counsel's affidavit leads the reader to believe that someone other than counsel, even, made the observations alleged by VOSS.)

The State maintains that nothing in NRS 175.391 requires that jurors remain within the four walls of the jury room during the entire period of their service and/or deliberation. The language of the statute requires only that jurors be maintained in the custody of the bailiff, and that they be kept in a private place separate from contact with other persons who might deliberately influence their verdict. Nothing in the statute requires that jurors who smoke, especially when they are confined to a non-smoking building, must be kept exclusively in the company of all other jurors at all times. It is the habit and practice of all of the bailiffs in this district to make "smoke breaks," outside the actual room where deliberations are taking place, available to jurors who smoke at regular intervals throughout deliberations. (Some judge even allow and/or encourage "walk" breaks to help clear jurors heads

1 when they have been deliberating for long periods.) The jurors
2 herein were admonished at each break during the trial, and again
3 prior to formal deliberations, that they were to have no contact
4 with any person other than the bailiff regarding the case, and
5 that they were to report any such contact immediately to the
6 judge. A smoke break is not, in and of itself, any violation of
7 that admonition, especially when the gravamen of the allegation
8 is merely that a juror or jurors may have been allowed outside
9 the confines of the jury room in order to smoke. There is simply
10 no evidence that jurors in this case were not in the "custody" of
11 a bailiff during any such break, or that they in any way
12 communicated with anyone else regarding this case or their
13 deliberations.

14 VOSS also apparently maintains that juror/s were
15 allowed to make telephone calls during their deliberations.
16 Again, we are left to guess as to what conclusion he seeks to
17 have this Court draw from that factual assertion. Deliberations
18 wore into the evening on the first day, and the most reasonable
19 inference is that, if in fact any juror actually made a telephone
20 call, that juror made a telephone call regarding transportation
21 and/or to notify a family member of the status of their pending
22 arrival home. Nothing about that, if it occurred at all, would
23 in any way violate the text or the spirit of NRS 175.391.

24 VOSS also apparently maintains that allowing jurors to
25 leave the jury room during breaks in the proceedings prior to
26 deliberation is a violation of NRS 175.391. Again, he leaves to
27 our imagination the specifics of how that would in any way

1 violate the statute. Prior to deliberations, and thereafter,
2 unless a specific request is made by counsel, it is in the sound
3 discretion of the Court to allow the jurors to separate. The
4 fact that the confines of the courthouse, of necessity, allow
5 jurors to observe counsel, witnesses and court personnel outside
6 the courtroom is hardly novel to this case. The whole reason for
7 NRS 175.401, (the requirement that jurors be admonished at each
8 break), is a reflection on the reality that jurors will,
9 inevitably, hear and see things outside the courtroom which may
10 tangentially relate to what the see inside.

11 There is, physically, no way to avoid the fact that
12 jurors travel down the same corridors and use the same elevators
13 as attorneys and witnesses in our courthouse, and that jurors
14 will see attorneys conferring with members of their team,
15 witnesses and others outside the courtroom. Those parties may or
16 may not be conferring about matters involving the case, and the
17 jurors would have to consciously violate the admonition given by
18 the Court prior to each break in order to actually hear and apply
19 anything overhead outside the courtroom. The crucial inquiry is
20 whether or not jurors have been contacted by or have spoken to
21 any parties outside the courtroom for the purpose of influencing
22 their testimony. There is absolutely no evidence of that kind of
23 contact in this case, and there is, therefore, no evidence to
24 support VOSS's claim that the jury was "contaminated" in any way.

25 II. IF, ARGUENDO, THERE WAS INADVERTENT "CONTACT" BETWEEN JURORS
26 AND WITNESSES OR PARTIES, NO PREJUDICE HAS OCCURRED
SUFFICIENT TO WARRANT A NEW TRIAL.

27 Without conceding that any misconduct occurred, the
28

1 State argues that if any misconduct occurred, it did not
2 prejudice VOSS in any way. There is no doubt, let alone a
3 reasonable doubt, that leaving the deliberation room for a smoke
4 break, making a phone call regarding scheduling, or observing
5 parties outside the courtroom are not the kinds of activities
6 which "contaminate" a jury to a criminal defendant's prejudice.

7 Not every incidence of contact between
8 jurors and witnesses requires the granting of
9 a motion for a new trial. See Barker v.
10 State, 95 Nev. 309, 313, 594 P.2d 719, 722
11 (1979). The proper standard to be applied is
12 that a new trial must be granted unless it
13 appears, beyond a reasonable doubt, that no
14 prejudice has resulted. See id. The trial
15 court determines whether the litigant has
16 been prejudiced, and its judgment will not be
17 overturned unless abuse of discretion is
18 manifest. See id.

19 Roever v. State, 111 Nev. 1052 (1995).

20 In this case, the allegation is not that jurors
21 actually had contact with a witness, were approached by counsel,
22 or spoke with another party during or about deliberations; the
23 allegation is merely that they could have. That is the kind of
24 bare innuendo which is uniformly disfavored in our system of
25 justice, and which does nothing to get to the truth of any
26 situation. More importantly, it is only innuendo and does not
27 show any sort of prejudice to the Defendant. It is just as
28 likely that if they saw or heard anything, the jury saw or heard
something from the defense team, and how could the defendant be
prejudiced by that? (He, of course, offers no explanation as to
how he was prejudiced...)

 Again, at the heart of VOSS's logic must be the

1 fundamental assumption that this jury, necessarily, violated the
2 Court's admonition and did something to allow themselves to be
3 influenced by matters outside the courtroom. If they followed
4 the Court's admonition, however, as all of the evidence suggests,
5 nothing that VOSS has claimed by way of "potential" contacts
6 supplies the kind of evidence which would prove that he has been
7 prejudiced him in any way.

8 III. VOSS'S ARGUMENT REGARDING THE SUFFICIENCY OF THE EVIDENCE IS
9 NOT BORN OUT BY THE EVIDENCE ACTUALLY ADDUCED, AS OPPOSED TO
10 THE EVIDENCE HE CHOOSES TO HIGHLIGHT AND/OR BELIEVE.

11 VOSS doggedly asserts that Baxter must have intended to
12 give him her last five thousand dollars because she wrote an
13 incomplete "personal" check in that amount. Further, he
14 maintains, he could not have harbored an intent to defraud her
15 because even though he forged the endorsement on it, he actually
16 deposited the "settlement" check into Baxter's account. VOSS
17 claims in his motion, as he maintained at trial, that Baxter's
18 intent is controlled solely by her actions; that she would not
19 have written a five thousand dollar check if she did not have
20 that money in her account, and that fact alone, according to
21 VOSS, prevents a rational trier of fact from convicting him.

22 The problem for VOSS is that a rational jury is not
23 required to, and did not, agree with him. The evidence
24 established that VOSS, not Baxter, completed the personal check.
25 If Baxter wanted VOSS to have the money, (or if she wanted anyone
26 to have the money), why didn't she say so in the most fundamental
27 way, i.e. by completing the check by filling in the payee
28 portion? VOSS offered an explanation for that, but the jury was

1 free to disregard that explanation as they obviously did.

2 There was overwhelming evidence from which the jury
3 could rationally conclude that Baxter never intended to give
4 \$5,000 to VOSS or anyone else. Unfortunately for VOSS, every
5 piece of evidence except that which came from his own mouth
6 proved that Baxter would never have written a check out to him,
7 and that, whatever her reason for partially completing the check,
8 she never intended to "loan" \$5,000 to VOSS as he claims.

9 Furthermore, the jury could and did logically conclude
10 that the reason VOSS forged Baxter's signature on the settlement
11 check was so that the \$5,000 would be available for his later
12 attempted theft. VOSS argued that Baxter must have intended to
13 deposit the settlement check because she wrote the personal
14 check, but, again, VOSS misses the point. The jury was free to
15 disregard his testimony and logically conclude that depositing
16 the first check merely provided the opportunity for later theft,
17 and that Baxter knew nothing about the deposit of the first
18 check--that is why her signature is not on it. Furthermore, in
19 addition to forging Baxter's signature on the first check, and
20 lying about doing so, why didn't VOSS tell Baxter that Duc
21 Hamilton, from her own bank, wanted to speak with her before he
22 would release the funds for the first check? (VOSS had all night
23 Wednesday night and several hours Thursday morning to tell
24 Baxter, and Baxter had an opportunity to contact the bank if she
25 really wanted those monies available.) Why did VOSS tell another
26 bank employee that Baxter owed him \$5,000? (Clearly because he
27 had to have some explanation for why Baxter would supposedly give

1 him her last \$5,000, and why he, not Baxter, was pushing for
2 release of the funds.) Those questions are rhetorical, of
3 course, and the jury agreed that they are rhetorical--VOSS forged
4 Baxter's signature on the settlement check which he thieved from
5 her apartment in order to make the funds available for a later
6 deception involving the personal check. That scenario is
7 supported, not refuted by, the fact that Baxter never completed
8 the personal check, and none of the independent evidence supports
9 any intention on her part to deposit the settlement check or loan
10 \$5,000 to VOSS.

11 In the end analysis, VOSS did have a "theory" to his
12 case. The State, however, also had a "theory" which was
13 supported by all of the evidence. A rational trier of fact was
14 entitled to choose between the theories and the jury's decision
15 in this case is supported by all of the evidence presented. The
16 jury just didn't believe VOSS, and all of his anger and
17 disappointment about that fact won't change their decision.

18 CONCLUSION

19 VOSS has not produced any evidence of improper jury
20 conduct or contact during the trial or deliberation of this case.

21 Even if VOSS's allegations were true, they are not the
22 kind of contact or misconduct which support any evidence that he
23 was prejudiced thereby. This Court can logically conclude,
24 beyond a reasonable doubt, that any incidental contact or
25 "misconduct" in this case had no prejudicial impact on this
26 defendant.

27 VOSS's claims that the jurors' verdicts are not

1 supported by the evidence are made wholly in the light of a
2 completely lopsided evaluation of what the evidence actually
3 proved at trial. VOSS does not realistically or honestly
4 evaluate the state of the evidence actually presented at trial.

5 For all of the reasons stated above, the State
6 respectfully requests that VOSS's Motion for a Judgment of
7 Acquittal or a New Trial be denied.

8 RICHARD A. GAMMICK
9 District Attorney

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11 By: 
12 EGAN WALKER
13 Deputy District Attorney
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FILED

96 OCT 30 P12:04

1 Case No. CR96-1581

2 Dept. No. 3

JUDITH A. CLARK

DEPUTY

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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

THE HONORABLE DEBORAH AGOSTI, DISTRICT JUDGE

--oOo--

11 STATE OF NEVADA,

12 Plaintiff,

13 vs.

14 STEVEN FLOYD VOSS,

15 Defendant.

TRANSCRIPT OF PROCEEDINGS

MOTION FOR RELEASE ON OR

September 10th, 1996

Reno, Nevada

16 APPEARANCES:

17 For the Plaintiff:

LINDA NORDVIG
Deputy District Attorney
Washoe County Courthouse
Reno, Nevada

19 For the Defendant:

COTTER CONWAY
Deputy Public Defender
195 South Sierra
Reno, Nevada

22 The Defendant:

STEVEN FLOYD VOSS

23 Reported by:

STEPHANIE KOETTING, CSR #207, CP, RPR
Computer-Aided Transcription

24 ORIGINAL

1 RENO, NEVADA, Tuesday, September 10th, 1996, 8:45 a.m.

2 --oOo--

3
4 THE COURT: State versus Steven Floyd Voss.

5 Mr. Voss is in court with his attorney Mr. Conway.

6 Mr. Walker is here for the State.

7 This is a motion for release on own recognizance or in the
8 alternative for a bail reduction. The motion was filed
9 yesterday. Are we in a position to proceed?

10 MR. WALKER: Yes, your Honor, I believe we are.

11 THE COURT: Mr. Conway, you may commence.

12 MR. CONWAY: I would submit it on the motion and the facts
13 set forth. I would add prior to the arrest in the case there
14 was an investigation, he was well aware of it, he did not flee
15 at any time during the investigation.

16 THE COURT: Why is the bail cash only?

17 MR. CONWAY: I'd have to defer to the State on that.

18 MR. WALKER: That was set by the magistrate at the time of
19 the application for arrest. I can provide you with some
20 factual background, your Honor, which I think may help support
21 that.

22 At the time that -- well, let me back up. Mr. Voss'
23 criminal record includes a contact with DUI in Washoe County
24 earlier this year where he used his brother's identification

1 and misidentified himself and in fact came into court and
2 misidentified himself in court when he entered a plea.

3 He identified himself as his brother. I believe that has
4 subsequently been cleaned up. He has criminal contacts of
5 violence in Florida. He has outstanding warrants in California
6 for theft-related offenses.

7 At the time the arrest warrant in this case was issued, Mr.
8 Voss was the last person, of course, to be seen around the
9 victim of the theft crimes in this case. She has disappeared.
10 She has not been discovered, not heard from, not accessed her
11 bank records, et cetera. That was the factual circumstances at
12 the time that the bail was set. In addition to which, Mr. Voss
13 has --

14 THE COURT: Is he a suspect in the murder? Is there a
15 murder investigation? Do you believe that the victim has been
16 murdered?

17 MR. WALKER: Yes, there is an investigation, which is being
18 conducted as a murder investigation. A body has not been found
19 of the alleged victim. Mr. Voss is the suspect in that
20 investigation. He was the last person to have seen her alive,
21 and there is evidence that he was the last person seen around
22 her car. There's evidence that ties him to her apartment the
23 last time she was seen alive. She's not contacted any family,
24 no people at work. He was the last person to try to access

1 funds from her account, her bank account here in town, and that
2 is the substance of the criminal allegations that are currently
3 lodged against him. So he is the suspect in what we believe to
4 be her murder.

5 THE COURT: Was he known to her?

6 MR. WALKER: Yes, they were intimately related. In fact,
7 they had spent the night together the night before she
8 disappeared. There are just allegations and they're bare
9 allegations right now that Mr. Voss was seen around her
10 Thursday. She disappeared on Thursday morning or at least
11 that's the last time she was seen alive. That he tried to cash
12 a check, \$5,000.00 check on her account the following day, the
13 Friday. There are bare allegations for the purposes of the
14 bail hearing that Mr. Voss has made statements to people in the
15 past that he knows how to dispose of a body so nobody can find
16 it. That sort of thing. That is why he is the chief suspect
17 in her disappearance.

18 THE COURT: The disappearance I assume was around June
19 12th?

20 MR. WALKER: Yes, ma'am.

21 THE COURT: He hasn't yet been charged?

22 MR. WALKER: He has not.

23 THE COURT: I cannot hold him for something he hasn't been
24 charged with. Obviously, the high bail obviously reflects

1 something other than the initial investigation. What is the
2 State's position on bail?

3 MR. WALKER: I'm sorry, your Honor. What is the bail?

4 THE COURT: \$100,000.00 cash only.

5 MR. WALKER: I agree under the circumstances that is
6 excessive. I can't argue with that. I would request a cash
7 only bail in the amount of --

8 THE COURT: I don't do cash only bails unless it reflects
9 an unpaid fine. I just think that that defeats the purpose of
10 the bail system. So you tell me what you think is a proper
11 bail knowing that if he can put up collateral to please a
12 bondsman, he may bail. You tell me what you -- what the State,
13 what kind of bail would adequately satisfy the State's
14 interests from your perspective?

15 MR. WALKER: \$25,000.00, your Honor.

16 THE COURT: Now you've got something to argue from, Mr.
17 Conway.

18 MR. CONWAY: I have put forth what I believe the bail would
19 normally have been.

20 THE COURT: That was close to \$15,000.00.

21 MR. CONWAY: I took it from the Reno Justice Court, they
22 have a bail schedule, and that's how I did that. The only
23 thing I want to add, I have reviewed the discovery and it is
24 extensive, because they are investigating the disappearance of

1 the victim, and I didn't see any statements that he would be
2 able to dispose of the body. I haven't seen that and I object
3 to that as a reference.

4 THE COURT: Can you give me the particulars of that
5 comment?

6 MR. WALKER: Certainly. Larry Canfield of the Washoe
7 County Sheriff's Department has reported, I believe I have a
8 report to this, Mr. Conway may not be aware of, we have an open
9 file discovery in this case. He is welcome to come to my
10 office and has in the past to look through the files.
11 Detective Larry Canfield tells me that a canvass of local bars,
12 the victim and the victim and the defendant, a canvass of a
13 saloon, I believe on East Fourth Street, detectives spoke with
14 a bartender, who knows both Mr. Voss and, I believe, the victim
15 in this case who identified Mr. Voss, quite clearly indicated
16 that during one conversation, one time overheard this comment
17 by Mr. Voss. That is the substance of a written report.

18 THE COURT: Okay. Anything further?

19 MR. CONWAY: I don't recall it being in a report, but I'm
20 not going to belabor the point. I am not going to add anything
21 than what's in the motion.

22 THE COURT: I won't grant an own recognizance. I do agree
23 with the State. Based upon the posture, although candidly the
24 State acknowledges that Mr. Voss is a suspect currently under

1 investigation, the State does not believe there's probable
2 cause to seek his arrest and has not done so. The bail cannot
3 reflect his being held for other than the charges for which he
4 has been arrested upon which he will go to trial. He awaits
5 trial. Nevertheless, there can't be a blind eye to the
6 peculiar circumstances in this case, and I think it can be
7 taken into account in fixing a just bail.

8 I'll set bail in the amount of \$20,000.00 bondable and that
9 will be the order.

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1 STATE OF NEVADA)
2 County of Washoe) ss.

3 I, STEPHANIE KOETTING, a Certified Shorthand Reporter
4 of the Second Judicial District Court of the State of Nevada,
5 in and for the County of Washoe, do hereby certify;

6 That I was present in Department No. 3 of the
7 above-entitled Court on Tuesday, September 10th, 1996, at the
8 hour of 8:45 a.m., and took verbatim stenotype notes of the
9 proceedings had upon the motion for release on OR in the matter
10 of THE STATE OF NEVADA, Plaintiff, vs. STEVEN FLOYD VOSS,
11 Defendant, Case No. CR96-1581, and thereafter, by means of
12 computer aided transcription, transcribed them into typewriting
13 as herein appears;

14 That the foregoing transcript, consisting of pages 1
15 through 8, both inclusive, contains a full, true and complete
16 transcript of my said stenotype notes, and is a full, true and
17 correct record of the proceedings had at said time and place.

18 DATED: At Reno, Nevada, this 10th day of October, 1996.

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21 
22 STEPHANIE KOETTING, CSR #207
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24

CASE NO. CR96-1581 STATE OF NEVADA -VS- STEVEN FLOYD VOSS

DATE, JUDGE
OFFICERS OF

COURT PRESENT

APPEARANCES-HEARING

CONT'D TO

11/17/96

HONORABLE

JAMES A.

STONE

DEPT. NO. 10

J. Eyheralde
(Clerk)

R. Walker

Reporter

ENTRY OF JUDGMENT AND IMPOSITION OF SENTENCE

Deputy D.A. Dave Stanton was present for the State.

The Defendant was present with counsel, Deputy P.D.

Cotter C. Conway. William Lorang was present for

the State Dept of Parole and Probation.

Respective counsel and parties addressed the Court.

COURT ORDERED: The Defendant is sentenced to a maximum term of one hundred twenty (120) months with a minimum term of forty-eight (48) months on Count I Burglary; Count II Uttering A Forged Instrument to a term of a maximum term of forty-eight (48) months with a minimum term of sixteen (16) months, consecutive to Count I; Count III Uttering A Forged Instrument to a term of a maximum of forty-eight (48) months with a minimum term of sixteen (16) months, consecutive to Count I, II and III; Count V Forgery to a term of a maximum term of forty-eight (48) months with a minimum term of sixteen (16) months consecutive to Count's I, II, III and IV; Count VI Attempted Theft to a term maximum of forty-eight (48) months with a minimum term of sixteen (16) months, consecutive to all Counts in the Nevada State Prison, and is to pay Seven Hundred Fifty Dollars (\$750.00) attorney fees and the statutory Twenty Five Dollar (\$25.00) administrative assessment fee. The Defendant is to be given credit for one hundred thirty-seven (137) days time served. Defendant remanded to the custody of the Sheriff.

CR96-1581
STATE VS STEVEN FLOYD VOSS (1 Page
District Court 11/17/1996 01 46 PM
Washoe County

FILED

'96 NOV 21 AIO:48

1 No. CR96-1581

2 Dept. No. 3

JUDI BAILLY

BY DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

THE STATE OF NEVADA,
Plaintiff,
vs.
STEVEN FLOYD VOSS,
Defendant.

MOTION TO DISMISS

COMES NOW the Defendant, STEVEN FLOYD VOSS, by and through the Washoe County Public Defender's Office, and COTTER C. CONWAY, Deputy Public Defender, and hereby moves this Court for the entry of an Order dismissing Count VI of the Information for which Mr. VOSS was convicted on October 10, 1996.

This motion is based upon the attached Points and Authorities and any oral or documentary evidence as may be presented at or before the hearing on this matter.

DATED this 20 day of November, 1996.

MICHAEL R. SPECCHIO
Washoe County Public Defender

By

Cotter Conway
COTTER C. CONWAY
Deputy Public Defender

CR96-1581
STATE VS STEVEN FLOYD VOSS 3 Pages
District Court 11/21/1996 10:48 AM
Washoe County
2490
TIME

POINTS AND AUTHORITIES

NRS 173.125 provides in part that "[t]he prosecution is not required to elect between the different offenses or counts set forth in the indictment or information...." It was therefore permissible to try Mr. VOSS on all counts in the Information; however, if one offense is necessarily included in another, he can be convicted of only one. Keefe v. Sheriff, 93 Nev. 109, 110 (1977); Wallace v. State, 84 Nev. 532, 533 (1968); Fairman v. State, 83 Nev. 137 (1967).

In the instant case, the prosecution charged Mr. VOSS with Uttering a Forged Instrument (Count III of the Information) and Attempted Theft (Count VI of the Information) based on the following: that Mr. VOSS attempted to cash a check at the California Federal Bank made payable to "STEVEN VOSS" in the amount of \$5,000 written on the account of Beverly Baxter. Although it was established that Beverly Baxter wrote the check (except that the payee line was left blank), Mr. VOSS admitted to filling in his name on the payee line. The prosecution argued that Mr. VOSS did not have legal authority to fill in his name and attempt to cash the \$5,000 check.

Based on the facts of this case as set forth by the prosecution during the trial, the offenses of Uttering a Forged Instrument and Attempted Theft are necessarily included in each other. It was alleged that Mr. VOSS attempted to steal \$5,000 by uttering an alleged forged check. It was also alleged that Mr. VOSS uttered a forged check in order to obtain \$5,000. An act or

1 omission which is made punishable in different ways by different
2 provisions of the Nevada Revised Statutes may be punishable under
3 either of such provisions, but in no case can it be punished under
4 more than one. Fairman v. State, 83 Nev. 137, 142 (1967).

5 For the above reasons, Mr. VOSS respectfully requests
6 that this court dismiss Count VI of the Information because it is
7 necessarily included in Count III of the Information.

8 DATED this 20 day of November, 1996.

9 MICHAEL R. SPECCHIO
10 Washoe County Public Defender

11 By Cotter C. Conway
12 COTTER C. CONWAY
13 Deputy Public Defender
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FILED

11-27-96
JUD BAILEY, ClerkBy [Signature]
Deputy Clerk:

1 Case No. CR96-1581

2 Dept. No. 3

3

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

THE STATE OF NEVADA,

Plaintiff,

vs.

OPPOSITION TO MOTION
TO DISMISS

STEVEN FLOYD VOSS,

Defendant.

COMES NOW the State of Nevada, by and through RICHARD
A. GAMMICK, District Attorney, and EGAN WALKER, Deputy District
Attorney, and opposes the Defendant's Motion to Dismiss.

This motion is based upon the attached Points and
Authorities and all of the papers and pleadings on file with the
Court to date.

DATED this 27th day of November, 1996.

RICHARD A. GAMMICK
District Attorney

By: [Signature]
EGAN WALKER
Deputy District Attorney

CR96-1581
STATE VS. STEVEN FLOYD VOSS
District Court
Washoe County
DC-990026664-003
3 Pages
11/27/1996 10 12 AM
2645

POINTS AND AUTHORITIES

VOSS claims that Count III and Count VI of the Information upon which he was convicted are necessarily lesser included offenses of one another. (Motion to Dismiss, p. 2, line 6.) VOSS relies primarily upon Fairman v. State, 83 Nev. 137 (1967), for the proposition, apparently, that uttering a forged instrument is a lesser included offense of attempted theft.

In Nevada, a crime is a "lesser included offense" of another crime if the "greater" offense cannot be committed without necessarily committing the "lesser" offense by satisfying all of the elements of the "lesser" offense. Crawford v. state, 107 Nev. 345 (1991). In Fairman, supra, it was clear that possession of a controlled substance was a necessarily lesser included offense of sale of a controlled substance. One can hardly sell a controlled substance without also possessing it, so that there was both factual commonality between the crimes, and, more importantly, all of the elements of possession were satisfied during the commission of the crime of sales.

That analysis does not support the conclusion, however, that factual commonality between these charges is the same thing as legal commonality--the same acts can satisfy the elements of two completely different crimes. The analysis is not a wooden one--we do not ask the question: "Was the same act committed in each crime," but, instead, "What are the elements of the crimes and are all of the elements of one satisfied in the commission of the other under these facts."

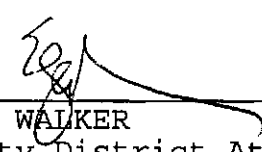
Using that analysis, it is clear that attempted theft and uttering a forged instrument are not lesser included offenses

1 of one another. For the crime of uttering a forged instrument,
2 the State must prove a forgery, knowledge of that forgery and an
3 intent to defraud. There is no commonality there with elements
4 of attempted theft. Likewise, in the crime of attempted theft
5 the state must prove some act undertaken with the intent to
6 permanently deprive the true owner of his or her property, a
7 different mental state than that necessary in the crime of
8 uttering. (The gravamen of uttering is an intent to defraud--to
9 get money or gain some material advantage from the bank on the
10 basis of the forgery, not necessarily from the true owner of the
11 account; the gravamen of attempted theft is an act tending but
12 failing to accomplish the intent to steal something directly from
13 the true owner of the property.)

14 Because the elements of Count III are not necessarily
15 satisfied by the commission of Count VI, III is not a "lesser
16 included offense" of VI, and VOSS' Motion to Dismiss is not well
17 founded. For all of the reasons stated above, therefore, the
18 State respectfully requests that the Defendant's motion be
19 denied.

20 DATED this 27th day of November, 1996.

21 RICHARD A. GAMMICK
22 District Attorney

23
24 By: 
25 EGAN WALKER
26 Deputy District Attorney
27
28

No. CR 96-1581

Dept. No. 10

FILED11-27-96
JUDI BAILEY, ClerkBy J. E. Eshenald
Deputy Clerk

IN THE SECOND JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF WASHOE

STATE OF NEVADA,

Reporter: R. Walker

Plaintiff,

vs.

J U D G M E N T

STEVEN FLOYD VOSS

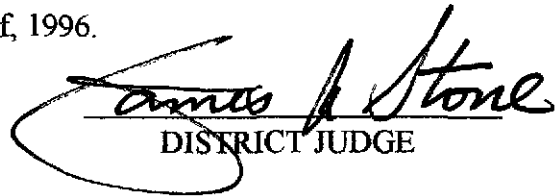
Defendant.

No sufficient cause being shown by Defendant as to why judgment should not be pronounced against him, the Court rendered judgment as follows:

That Steven Floyd Voss is guilty of the crimes as charged in the Information that he be punished by imprisonment in the Nevada State Prison for a maximum term of one hundred twenty (120) months with a minimum term of forty-eight (48) months on Count I Burglary; Count II Uttering A Forged Instrument to a term of a maximum term of forty-eight (48) months with a minimum term of sixteen (16) months, consecutive to Count I; Count III Uttering A Forged Instrument to a term of a maximum of forty-eight (48) months with a minimum term of sixteen (16) months consecutive to Count I and II; Count IV Forgery to a term of a maximum of forty-eight (48) months with a term of a minimum of sixteen (16) months, consecutive to Count I, II and III; Count V Forgery to a term of a maximum term of forty eight (48) months with a minimum

term of sixteen (16) months consecutive to Count's I, II, III and IV; Count VI Attempted Theft to a term maximum of forty-eight (48) months with a minimum term of sixteen (16) months, consecutive to all Counts, with credit for one hundred thirty-seven (137) days time served. It is further ordered that the Defendant pay Seven Hundred Fifty Dollars (\$750.00) attorney fees and the statutory administrative assessment fee of Twenty-Five Dollars (\$25.00).

Dated 27th this November day of, 1996.


DISTRICT JUDGE

'96 DEC -4 A10:07

Case No. CR96-1581

Dept. No. 10

~~JUDY BAILEY, CLERK~~

SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

THE HONORABLE JAMES A. STONE, DISTRICT JUDGE

- - 000 - -

STATE OF NEVADA,

Plaintiff,

SENTENCING

Vs.

STEVEN FLOYD VOSS,

Defendant.)

=====

TRANSCRIPT OF PROCEEDINGS

November 27, 1996

Reno, Nevada

APPEARANCES:

For the State:

DAVID STANTON
Deputy District Attorney
Washoe County Courthouse
Reno, Nevada

For the Deft:

COTTER CONWAY
Deputy Public Defender
75 Court Street
Reno, Nevada

Reported by:

RANDI LEE WALKER, CSR #137

Computer-Aided Transcription

ORIGINAL

1
2 WEDNESDAY, NOVEMBER 27, 1996, 8:30 A.M.

3 //

4 THE COURT: This is Case Number CR96-1581, the
5 State of Nevada versus Steven Floyd Voss.

6 The record should reflect the defendant is
7 present in Court with his attorney, Mr. Conway.

8 The State is represented by Mr. Stanton.

9 The Division by Mr. Lorang.

10 This is the time set for sentencing.

11 Before we do that, there has been a motion
12 filed on behalf of the defendant with which the Court
13 must deal first.

14 Do you have anything you want to add to your
15 motion, Mr. Conway?

16 MR. CONWAY: Briefly, Your Honor, I would note
17 there are actually two motions that have been filed.
18 There was a previous motion filed concerning -- asking
19 for a judgement of acquittal on some or all of the
20 counts; in addition to motion to dismiss Count 6 related
21 to Merger.

22 THE COURT: Do you have anything to add?

23 MR. CONWAY: Your Honor, the only thing I
24 would -- at this point I would just submit it with what

1 is on the brief, unless the Court has any questions
2 related to what I put forth in the motions.

3 THE COURT: Mr. Stanton?

4 MR. STANTON: Your Honor, I believe Mr. Walker
5 adequately addressed the argument relative to the
6 judgement of acquittal. That's basically an argument
7 that insufficient evidence was presented to convict on
8 all the counts.

9 I would submit it to the jury's verdict and
10 the Court's recollection of the facts and Mr. Walker's
11 opposition, which I think is clearly set forth in the
12 legal standard and the attendant facts as to each count.

13 As to the recently-filed motion to dismiss,
14 the only thing I would add to Mr. Walker's opposition
15 is: The analysis I believe the Court must undergo
16 relative to the doctrine of double jeopardy of Merger;
17 and that is that the elements are separate and distinct
18 and not by necessity lesser included. They do not merge
19 for purposes of sentencing.

20 I think Mr. Walker adequately sets forth the
21 factual basis as to why the requested count of attempted
22 -- I believe the last count, Count 6, attempted theft,
23 does not merge with either the forgery or the uttering,
24 since it's a separate and distinct act, and by necessity

1 could have been committed by one individual without
2 committing the other, which I think is the test this
3 Court has in the doctrine of Merger.

4 MR. CONWAY: Briefly with respect to what the
5 District Attorney said about the motion to dismiss. He
6 states precisely what the standard is; that necessarily
7 included act.

8 I put forth that the act of uttering a forged
9 instrument, say of \$5,000, is the same act as attempting
10 to get the \$5,000 by uttering a forged instrument. They
11 are necessarily included in each other, under these
12 facts. And that is what is supposed to be required under
13 the Merger, the statute that I set forth in the motion to
14 dismiss.

15 Your Honor, we would ask since those are the
16 same acts -- they are identical, Your Honor -- to punish
17 him for the same act twice would violate double jeopardy,
18 and we would ask the motion to dismiss be granted.

19 THE COURT: The motion for acquittal or new
20 trial is denied.

21 The Court has reviewed the motion to dismiss
22 and the opposition. The Court is of the opinion they are
23 two separate and distinct offenses, and do not merge, and
24 therefore the motion to dismiss Count 6 is also denied.

1 On October 10, 1996, the jury convicted Mr.
2 Voss on Count 1, of burglary; Counts 2 and 3 of uttering
3 a forged instrument; and Counts 4 and 5 of forgery; and
4 Count of attempted theft.

5 Judgment will enter based upon the jury's
6 verdict and the Court's rulings this morning.

7 I have received a copy of the Presentence
8 Investigation, and I've had an opportunity to read it.
9 I, of course, sat through the trial and am well familiar
10 with the facts of this case and I'm prepared to listen to
11 any arguments as regard sentencing.

12 Mr. Conway?

13 MR. CONWAY: Thank you, Your Honor. I would
14 note one correction, however, in reviewing the
15 Presentence Investigation Report with Mr. Voss last
16 night. I would note that he does not have any prior
17 felony convictions.

18 The felony that's put forth on page 3 in 1990,
19 practicing electrical contract without a license, that's
20 a misdemeanor.

21 I would note, however, it had been charged as
22 a felony larceny, and it was reduced due to the fact he
23 was practicing without a license that had expired, Your
24 Honor. However, that is a misdemeanor, not a felony.

1 Therefore, he has no prior felony
2 convictions. These are his first convictions.

3 With respect to sentencing, we're asking the
4 Court not to follow the recommendation. I think it's
5 quite clear that but for the tenor of this trial and some
6 of the outlying things, I don't think a request for any
7 prison time would have been requested.

8 However, I would note that a normal person
9 under these circumstances would probably be given the
10 grant of probation.

11 I would note for the record that the concerns
12 of the Division of Parole & Probation with respect to his
13 prior criminal history, they are all misdemeanors, as I
14 have pointed out, they also say he has a lack of
15 stability.

16 I will note, and I think it's quite clear,
17 that he was burned out of his apartment that he and his
18 mother were residing in prior to this incident.

19 He's otherwise always remained in the company
20 of his mother and resided with his mother, and has always
21 been locatable during this investigation.

22 He was never one they couldn't find. In fact
23 at one point he called them and told them where he had
24 moved to. So I think he's very stable in the community.

1 I think his criminal history speaks for itself
2 with respect to misdemeanors. Under normal circumstances
3 this would be a probationary term for a first-time felony
4 conviction.

5 If the Court is considering imposing any
6 prison time, the events of this thing were one
7 transaction. There may have been a number of crimes
8 committed during that transaction, but it's one
9 transaction. And any prison time should be minimum and
10 should run concurrent to all counts.

11 Thank you.

12 THE COURT: Mr. Stanton?

13 MR. STANTON: Well, I don't know where Mr.
14 Conway assesses that this case -- or what he bases his
15 assessment on that but for some other facts this would be
16 a probation case.

17 To begin with that analysis, page 2 of the
18 PSI, which is at this juncture uncontroverted save and
19 except for the felony conviction.

20 A review of that shows that the defendant has
21 had 12 arrests, six convictions, he has four outstanding
22 warrants from no less than three different states.

23 So his criminal record -- and now I guess
24 we're at a point where defense counsel begins to argue to

1 this Court: Well, he's got a criminal record and he's
2 wanted from three different states for four outstanding
3 warrants. But guess what, Judge,? They are only
4 misdemeanors.

5 What kind of misdemeanors are they? Because
6 the type of his conduct, the past history of the
7 defendant's I think is very important for this Court to
8 consider in his statement to the Court about the type of
9 character this man is, and the truthfulness and veracity
10 of his underlying claims to this Court, and the
11 protestations of innocence in this matter.

12 All of the offenses, save and except for the
13 first DUI in 1987 out of Wanette County, in Georgia,
14 every single offense deals with someone, particularly
15 this man, committing a fraud.

16 And yet this man wants to assert facts to this
17 Court, to take it as gospel, that he's an innocent man
18 without any attendant facts to support it.

19 He's a chronic, habitual criminal, and he's a
20 chronic and habitual, untruthful person.

21 In the PSI on page 4, we have strikingly
22 similar conduct committed by the defendant in
23 Hillsborough County in Florida in November of 1991.

24 Then we have at the bottom of page 4 a listing

1 of outstanding and undocumented criminal offenses, all
2 again have indicated a propensity to commit fraud and to
3 steal money. He was a thief. And he's been a thief for
4 over a decade and a half.

5 At the bottom, we have on page 4, receiving
6 back as early as 1979, receiving stolen property;
7 embezzlement in '81; vehicle theft; prowling in '83; and
8 spousal battery in 1990.

9 One of the things that I was waiting with
10 baited breath this morning for counsel and the defendant
11 to address is his DUI in July of 1996, in Washoe County.
12 And I did not hear any comment to the Court about that
13 offense.

14 And I think when the Court hears the attendant
15 facts of that case, you will know why you did not hear
16 anything about it.

17 That conviction was originally had under the
18 name Allen Voss, the defendant's brother. And he went
19 through the entire Court proceedings in Washoe County
20 using his brother's name, so his brother had a conviction
21 for DUI, until it was finally caught and this man was
22 properly convicted under his true and correct name.

23 That tells you the character of this man and
24 the ability for him to tell the truth. To use his own

1 brother and sustain conviction on his own brother and go
2 through the entire Court process, lying all the way.

3 Another insight into Mr. Voss is on page 7 of
4 the PSI. Not in his formal written statement to the
5 Department, but apparently in his interview with the
6 Department officials.

7 Mr. Voss has an excuse why he is convicted,
8 wrongfully so, according to him, and that is because of
9 many things. Number one, the District Attorney in this
10 case has an ego and bad blood problem between him and Mr.
11 Walker.

12 Well, last time I checked, a jury trial
13 doesn't occur where the District Attorney stands in front
14 of a jury and testifies as to what they think the
15 evidence is. And I am sure that didn't happen in this
16 courtroom.

17 He also attributes his problems to be an
18 election year. I fail to see the logic of connecting the
19 election year to his conviction.

20 THE COURT: If this case was supposed to do me
21 any good, it didn't.

22 MR. STANTON: And I think the logic doesn't
23 fall on the Court either, or at least compel the Court to
24 understand that.

1 Page 8, this is a good one. At the bottom of
2 page 8, the defendant, semi truthfully, tells the
3 Department: I have child support.

4 Well, of course the Department knows he has an
5 outstanding warrant for failing to pay child support.
6 But read his explanation. The defendant advises that
7 he's not followed through with required payments,
8 primarily due to the fact the child's mother will not
9 maintain contact with him, and will further not provide a
10 current address.

11 When is the last time this Court has ever
12 heard of a woman who needs child support, refusing to
13 give her address or location to the parent who owes
14 money? In all 50 states in the United States, payment is
15 -- payments can and usually is collected either by the
16 State Attorney General, or by the local District
17 Attorney's Office.

18 So there is absolutely no requirement
19 whatsoever for a woman, if there were some reason she did
20 not want to provide her address, and there certainly are
21 occasions where that's appropriate, but there is
22 absolutely no reason why the system cannot have a
23 location for the defendant to pay child support
24 payments.

1 And I think that statement speaks volumes of
2 Mr. Voss. And that is, frankly, Your Honor, he is a
3 chronic and habitual liar.

4 It's proven fact after fact, time after time.
5 Not only in this case, but in his criminal history and
6 his statements to the Division of Parole & Probation.

7 On page 9, his present employer -- well, I
8 know he's incarcerated, but prior to his arrest in this
9 matter and his incarceration, odd jobs, down on debts.
10 \$30,000 in debt, related to medical bills, loans,
11 foreclosures and something called legal fees.

12 All, I think, showing a pattern and a history
13 of what Mr. Voss's situation was when he decided to steal
14 money from Miss Baxter.

15 He did not have any income coming in from his
16 jobs. And he was, by his own admission, seriously in
17 debt.

18 The question, I think, as it comes to the
19 Court, contrary to Mr. Conway's's evaluation that this is
20 but for some other attendant facts, and I am not sure
21 what he's driving at, but I am sure it's probably obvious
22 to the Court, he didn't articulate what are the obvious
23 outside facts, other than the victim in this case is
24 still to this date missing.

1 A woman who was punctual socially and
2 professionally, all of a sudden vanishes from the face of
3 the earth at precisely the same time that the defendant
4 begins stealing significant quantities of money from
5 her.

6 Is that a fact that is hanging over this case?
7 Absolutely. And in my comments in just a moment, the
8 State would recommend how this Court should take that
9 fact into consideration.

10 Number one, and I think the two important
11 things that a Court appropriately addresses in sentencing
12 is the character and the history and the criminal
13 behavior of the defendant, and the attendant facts of
14 this case.

15 I have already addressed the character and the
16 criminal behavior of this defendant. While certainly
17 they are not felony convictions, what difference does it
18 make in this particular case, when you look at the
19 pattern of this man's criminal history? It runs
20 unabated, at least according to his arrest and formal
21 interaction with the system from 1980 -- actually 1979,
22 and every single year for over a decade and a half this
23 man is interacting practically with the law in a negative
24 fashion for a formal arrest or formal conviction.

1 His repeated attempts or comments to this
2 Court and to the Department, that are clearly based upon
3 the facts, lies.

4 Now the facts of this case: Should the Court,
5 when it looks at the parameters of the minimum and the
6 maximum of, say, for instance, Count 1, consider what is
7 the most aggravated burglary, and what is the most
8 mitigated burglary as far as time goes to give this
9 defendant?

10 Well, certainly we have addressed the criminal
11 history. But how about the aggravated and mitigated
12 section of the facts of this case?

13 Regardless, and putting aside the defendant's
14 criminal history and character, let's just look at the
15 facts of the crime itself, and what type of burglary does
16 this indicate to the Court as far as degree of
17 offensiveness?

18 This woman, Beverly Baxter, has vanished. The
19 evidence before this Court in the trial is that contrary
20 to what the defendant told the police, and his comments
21 in here in his written comments to the Court that he was
22 always truthful to the police -- I will get to that in a
23 moment, because he wasn't -- specifically his
24 untruthfulness to the police was when he was with Miss

1 Baxter.

2 And that's precisely at the time, as the Court
3 remembers, Mr. Voss in his pickup truck outside the ATM,
4 which is now recorded, as far as the time he was there at
5 Fourth and Keystone, 10:00 a.m., withdrawing money.

6 And the testimony was that in his truck was a
7 woman that entirely matched the description of Beverly
8 Baxter. The last time that she's seen alive, it's with
9 this man, right at the time that he is stealing money
10 from her.

11 And so when the Court considers the
12 aggravation and the facts, the State cannot present a
13 more aggravated set of thefts, cases to this Court, based
14 upon that fact alone, as to this woman, who by all the
15 testimony, was punctual both in her professional and
16 social life.

17 And this man, wanting and needing money, all
18 of a sudden gets some from the victim, who can't be found
19 anymore.

20 That is, as the State has indicated
21 previously, one of the most aggravating factors of a
22 burglary, of an uttering of a forged instrument, a
23 forgery and attempted theft.

24 In his written statement, as I know the Court

1 has read, he concludes several times that he was truthful
2 to the police.

3 Well, as the Court recollects the facts of
4 this case, he lied to the detectives about his
5 whereabouts on Thursday morning.

6 And he also, as the Court recalls, what his
7 version of events was that he told each of the bank
8 tellers when he attempted to pass this check. The
9 stories were inconsistent with one another. He didn't
10 tell Teller 1 that he had -- or didn't tell Teller 2 that
11 he had tried to attempt to pass a check to Teller 1 at a
12 different branch.

13 So for him to come in here and tell the Court,
14 that, hey, look, I'm a truthful person and I cooperated
15 with the police, is a flat out lie based upon the
16 evidence this Court heard during trial.

17 I think the process of the final DUI, using
18 his brother's name all the way through the conviction,
19 and representing to the court that he indeed is Allen
20 Voss, is once again something that if the Court hasn't
21 already viewed anything that Mr. Voss would say either by
22 himself, or through counsel to this Court, it should be
23 viewed with grave suspicion, unless there is absolute
24 facts to corroborate it.

1 And based upon all his statements and
2 allegations and his comments to the Department or
3 comments to the Court, not one of them is corroborated by
4 any independent evidence. Not one.

5 Based upon the two primary considerations from
6 the State's perspective of Mr. Voss; that is, his
7 character, his criminal history and attendant facts of
8 the instant offenses, the State's recommendation to the
9 Court is that these are all on the upper tier of
10 aggravation; therefore, the State's recommendation to the
11 Court is not only that probation is not viable, which I
12 believe my comments make obvious, but that his sentence
13 relative to Count 1 should indeed be the maximum.

14 The State would recommend to the Court that it
15 be 120 months as a maximum, 48 as the minimal. I concur
16 with the recommendation on Counts 2, 3 and 4, especially
17 relative to consecutive nature of those offenses.

18 I would recommend, however, that Count 4 and
19 5, the forgeries, because of the attendant nature and
20 elements of those counts, that that is indeed an
21 aggravated forgery, and that they should also be maximum
22 in nature.

23 My calculations show 48 months on the maximum
24 for counts 4 and 5; 19 months -- or actually I calculated

1 it at 19.2 months as the minimum on Counts 4 and 5. All
2 those to be consecutive in nature to Count 1, which the
3 State has indicated should be 120 to 48. That's the
4 recommendation from the State.

5 I have nothing further to add unless the Court
6 has specific questions.

7 Thank you, Your Honor.

8 THE COURT: Mr. Lorang, does the Division have
9 anything to add?

10 THE DIVISION: Nothing, Your Honor, except for
11 the disposition of the felony conviction. That's the
12 information we received from the Florida officials, and
13 we stand by that.

14 THE COURT: Mr. Voss, do you have anything you
15 want to say?

16 THE DEFT: I believe Mr. Conway has pretty
17 much addressed our side.

18 MR. CONWAY: I have a couple points I want to
19 address, if I may.

20 With respect to the character on record, that
21 certainly stands for what is in the Presentence Report,
22 except for what has been reported as a prior felony, that
23 we have tried to correct.

24 With respect to requesting the recommendation

1 the State requested with respect to the sentence they are
2 asking for, I would only point out the aggravated
3 circumstance that they are doing is based on speculation,
4 conjecture.

5 They are trying very hard to add a number of
6 years to this man's sentence based on something they
7 believe happened to this victim.

8 The problem is, is that if they knew that
9 happened, they would have charged. This is not the time
10 to punish him for what they think or what they speculate
11 would have happened.

12 The crime that occurred, as I pointed out, all
13 six counts relate to one transactional event. And I
14 think the most important thing to note, is even if the
15 Court doesn't find that Count 6 and I believe 3, which is
16 the uttering and attempted theft, may not fit under the
17 Merger statute, they certainly are the same event. These
18 are the same crime.

19 Your Honor, I believe that there is -- other
20 than the fact that his character may not allow him to be
21 a probationary candidate, it certainly -- there is
22 nothing in this case, this particular case, that warrants
23 anything above the minimums, or anything above running
24 them anything but concurrent.

1 And we would ask the Court to impose it in
2 that manner.

3 THE COURT: I have reviewed the Presentence
4 Investigation, and I have thought about this case a great
5 deal. All of us are human beings, and there is just no
6 way in the world that we can pretend that Miss Baxter was
7 here and that she testified. We know that's not true.

8 The last person she was seen with was Mr.
9 Voss.

10 It's says in his letter and his comments that
11 when she shows up alive, she will say that all of these
12 things are not true.

13 But to be very honest with you, I don't think
14 she's ever going to show up alive.

15 The jury listened to this case, the jury made
16 the decisions, and the jury convicted him on all six
17 counts.

18 When I look at his Presentence Investigation,
19 I see somebody who has, for the last 17 years, done
20 everything under his power to evade responsibilities for
21 his actions.

22 And his conduct, quite frankly, has been
23 escalating. When you combine that with the fact his most
24 recent encounter with the law, after this case arose, was

1 a driving-under-the-influence charge in this county.

2 And in order to evade responsibility, he lied
3 about who he was, and attempted to pass the blame off on
4 somebody else.

5 I think Mr. Voss is a menace. He's a menace
6 to society, a menace to this community. And because I
7 believe that way, I am going to sentence him as follows:

8 In addition to the \$25.00
9 administrative-assessment fee and \$750.00 in attorney's
10 fees, probation will be denied, and the defendant, Steven
11 Floyd Voss, is sentenced as follows on Count 1, burglary,
12 to a maximum term of 120 months, and a minimum parole
13 eligibility of 48 months in the Nevada Department of
14 Prisons.

15 Count 2, uttering a forged instrument, to a
16 maximum term of 48 months, and a minimum parole
17 eligibility of 16 months in the Nevada Department of
18 Prisons, consecutive to Count 1.

19 In Count 3, uttering a forged instrument, to a
20 maximum term of 48 months, with a minimum parole
21 eligibility of 16 months in the Nevada Department of
22 Prisons, consecutive to Counts 1 and 2.

23 On Count 4, to a maximum term of 48 months and
24 a minimum parole eligibility of 16 months in the Nevada

1 Department of Prisons, consecutive to Counts 1, 2 and 3.

2 On Count 5, forgery, to a maximum term of 48
3 months, and a minimum parole eligibility of 16 months in
4 the Nevada Department of Prisons, consecutive to Counts
5 1, 2, 3 and 4.

6 On Count 6, attempted theft, to a maximum term
7 of 48 months, with a minimum parole eligibility of 16
8 months in the Nevada Department of Prisons, consecutive
9 to all of the previously-entered counts.

10 With credit for 137 days time served.

11 That's the Court's order.

12 Mr. Voss, the law requires me to advise you
13 that you have the right to appeal this conviction, if you
14 chose to do so, you let Mr. Conway know and he will file
15 the proper notices.

16 You have 30 days from today's date to do
17 something.

18 THE DEFT: Yes, I'm aware of that. Thank
19 you.

20 ///////////////
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1 STATE OF NEVADA)

2) ss.

3 COUNTY OF WASHOE)

4

5 I, RANDI LEE WALKER, Official Reporter of the
6 Second Judicial District Court of the State of Nevada, in
7 and for the County of Washoe, do hereby certify:

8 That as such Reporter, I was present in
9 Department No. 10 of the above court on said date, time
10 and hour, and I then and there took verbatim stenotype
11 notes of the proceedings had and testimony given therein.

12 That the foregoing transcript is a full, true
13 and correct transcript of my said stenotype notes, so
14 taken as aforesaid.

15 That the foregoing transcript was taken down
16 under my direction and control, and to the best of my
17 knowledge skill and ability.

18 DATED: At Reno, Nevada, this 29th day of
19 November, 1996.

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RANDI LEE WALKER, CSR #137

1 Case No. CR96-1581

2 Dept. 10

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CR96-1581 DC-9500026564-012
STATE VS STEVEN FLOYD VOSS (1 Page
District Court 12/24/1996 01 17 PM
Washoe County 2515
TOME

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

THE STATE OF NEVADA,

Plaintiff,

NOTICE OF APPEAL

vs.

STEVEN FLOYD VOSS,

Defendant.

NOTICE IS HEREBY GIVEN that STEVEN FLOYD VOSS, the
defendant above named, hereby appeals to the Supreme Court of
Nevada from the order entered in this action on November 27,
1996.

DATED this 24th day of December, 1996.

MICHAEL R. SPECCHIO
Washoe County Public Defender

By:

Mary Lou Wilson
MARY LOU WILSON
Deputy Public Defender
Nevada Bar No. 03329
Washoe County Public Defender
Post Office Box 11130
Reno, Nevada 89520

1 Case No. CR96-1581

2 Dept. 10

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P1:17

BY: C. Decker
DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

THE STATE OF NEVADA,

Plaintiff,

CASE APPEAL STATEMENT

vs.

STEVEN FLOYD VOSS,

Defendant.

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1. Appellant, STEVEN FLOYD VOSS, hereby files this
Case Appeal Statement;

2. This appeal is from an Order entered on November
27, 1996, by the Honorable James Stone, District Judge;

3. The parties below consisted of (a) THE STATE OF
NEVADA, Plaintiff; and (b) STEVEN FLOYD VOSS, Defendant;

4. The parties herein consist of (a) STEVEN FLOYD
VOSS, Appellant; and (b) THE STATE OF NEVADA, Respondent;

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1 5. Counsel on appeal are:

2 MICHAEL R. SPECCHIO
3 Washoe County Public
4 Defender

 RICHARD A. GAMMICK
 Washoe County District
 Attorney

4 MARY LOU WILSON
5 Deputy Public Defender

 GARY H. HATLESTAD
 Chief Appellate Deputy

6 P.O. Box 11130
7 Reno, Nevada 89520

 P.O. Box 11130
 Reno, Nevada 89520

8 ATTORNEYS FOR APPELLANT

 ATTORNEYS FOR RESPONDENT

9 6. Appellant, STEVEN FLOYD VOSS, was represented by
10 appointed counsel in the district court;

11 7. Appellant, STEVEN FLOYD VOSS, is represented by
12 appointed counsel in this appeal;

13 8. Not applicable; and

14 9. October 10, 1996, STEVEN FLOYD VOSS was convicted
15 by a jury of all six counts charged in the Information.

16 DATED this 24th day of December, 1996.

17 MICHAEL R. SPECCHIO
18 Washoe County Public Defender

19 By: Mary Lou Wilson

20 MARY LOU WILSON
21 Deputy Public Defender
22 Nevada Bar No. 03329
23 Washoe County Public Defender
24 Post Office Box 11130
25 Reno, Nevada 89520
26

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

CASE NO. CR96-1581

DEPT. NO. 10

THE STATE OF NEVADA,

VS.

STEVEN FLOYD VOSS,

96 DEC 26 A6:59
JUDI BAILEY, CLERK
BY *[Signature]*
DEPUTY

CERTIFICATE OF CLERK

I HEREBY CERTIFY THAT THE ENCLOSED DOCUMENTS ARE CERTIFIED COPIES
OF THE ORIGINAL DOCUMENTS ON FILE WITH THE SECOND JUDICIAL DISTRICT
COURT, IN ACCORDANCE WITH REVISED N.R.A.P. RULE D(1).

DATED DEC. 26, 1996.

JUDI BAILEY,
CLERK OF THE COURT

By *[Signature]*
RUTH MORGAN
APPELLATE CLERK

CR96-1581
DC-9900026664-014
STATE VS STEVEN FLOYD VOSS (1 Page
District Court 12/26/1996 06:59 AM
Washoe County 1350
JMB

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

CASE NO. Cr96-1581DEPT. NO. 10

THE STATE OF NEVADA,

VS.

STEVEN FLOYD VOSS,

CERTIFICATE OF TRANSMITTAL

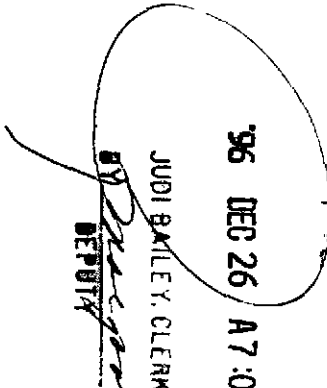
I HEREBY CERTIFY THAT THE ENCLOSED NOTICE OF APPEAL AND OTHER
REQUIRED DOCUMENTS (CERTIFIED COPIES) WERE DELIVERED TO THE SECOND
JUDICIAL DISTRICT COURT MAIL-ROOM SYSTEM FOR TRANSMITTAL TO THE
NEVADA STATE SUPREME COURT ON DEC. 26, 1996.

JUDI BAILEY, COUNTY CLERK

BY


RUTH MORGAN
APPELLATE DEPUTY

CR96-1581 DC-990026664-015
STATE VS STEVEN FLOYD VOSS (1 Page
District Court 12/26/1996 07:01 AM
Washoe County 1365
TOME

96 DEC 26 A7:01
JUDI BAILEY, CLERK
BY 
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FILED

'97 JAN -7 P2:54

JUD BAILEY, CLERK

BY

DEPUTY

1 No. CR96-1584¹⁵⁸¹

2 Dept. 10

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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

THE STATE OF NEVADA,
Plaintiff,
vs.
STEVEN FLOYD VOSS,
Defendant.

MOTION FOR TRIAL TRANSCRIPT
AT PUBLIC EXPENSE AND
SPECIFICATION OF ERROR

Defendant, STEVEN FLOYD VOSS, by and through his
counsel on appeal, moves for an Order granting Defendant
transcripts of trial at County expense for preparation of his
appeal. Notice of Appeal was filed December 31, 1996, with the
Second Judicial District Court of the State of Nevada.

Defendant has been represented by the Washoe County
Public Defender at trial, and the Public Defender has been
appointed to handle the appeal. Defendant cannot pay for the
transcript due to his indigency.

Defendant requires the trial transcript to explore
and develop the following matter as a potential issue on
appeal:

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CR96-1581 DC-9900026664-016
STATE VS STEVEN FLOYD VOSS 2 Pages
District Court 01/07/1997 02:54 PM
Washoe County 2490
TOME

1 To determine whether sufficient evidence was
2 presented to prove the elements of the offense beyond a
3 reasonable doubt.

4 DATED this 7 day of January, 1997.

5 MICHAEL R. SPECCHIO
6 Washoe County Public Defender

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8 By [Signature]
9 MARY LOU WILSON
10 Deputy Public Defender
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FILED

No. CR96-1581

'97 JAN 13 P2:43

Dept. 10

JUDI BAILEY, CLERK
 BY [Signature]
 DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
 IN AND FOR THE COUNTY OF WASHOE

THE STATE OF NEVADA,
 Plaintiff,
 vs.

ORDER

STEVEN FLOYD VOSS,
 Defendant.

The Court having reviewed the Specifications of Error
 filed by Defendant, and good cause appearing,

IT IS HEREBY ORDERED that the trial transcripts,
 exluding jury selection, be provided to the Defendant at County
 expense.

DATED this 9th day of January, 1997.

[Signature]
 DISTRICT JUDGE

CR96-1581
 DC-9900026664-017
 STATE VS STEVEN FLOYD VOSS (1 Page
 District Court 01/13/1997 02:43 PM
 Washoe County
 3370
 TIME

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Case No. CR96-1581

'97 JAN 29 A8:15

Dept. No. 10

SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

THE HONORABLE JAMES A. STONE, DISTRICT JUDGE

--oOo--

STATE OF NEVADA,

Plaintiff,

Vs.

STEVEN FLOYD VOSS,

Defendant.

JURY TRIAL
(APPEAL)

TRANSCRIPT OF PROCEEDINGS

October 7, 1996

Reno, Nevada

APPEARANCES:

For the State:

EGAN WALKER
Deputy District Attorney
Washoe County Courthouse
Reno, Nevada

For the Deft:

COTTER C. CONWAY
Deputy Public Defender
75 Court Street
Reno, Nevada

Reported by:

RANDI LEE WALKER, CSR #137

Computer-Aided Transcription

ORIGINAL

CR96-1581
DC-9900026748-061
STATE VS. STEVEN FLOYD VOSS
District Court
Washoe County
01/29/1997 08:15 AM
4185
TOMER

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1 MONDAY, OCTOBER 7, 1996, 9:00 A.M.

2 //

3 THE COURT: Motions in limine -- Do you have
4 any objection to going forward without your client?

5 MR. CONWAY: No, I don't.

6 THE COURT: We will be on the record in Case
7 CR96-1581, the State of Nevada versus Steven Floyd Voss.

8 The record should reflect that Mr. Conway is
9 present in Court representing Mr. Voss.

10 The State is represented by Mr. Walker.

11 This is the time set by the Court for hearing
12 on several Motions in Limine which were offered on behalf
13 of the defense.

14 Motion in Limine number one asks that the
15 Court not allow any testimony by hearsay statements of
16 the victim.

17 There has been an opposition filed to that as
18 well as Motion in Limine number six, which tracks Motion
19 in Limine number one.

20 We will deal with those two first. And that
21 is Motion in Limine with reference to relevant evidence.

22 You presented some interesting questions for
23 the Court. However, my research clearly indicates that
24 under the facts of this case, as I understand them to be,

1 those Motions in Limine will be denied.

2 The State will be allowed to put on hearsay
3 statements of the victim, and will be allowed to put in
4 evidence concerning those statements, and the Court makes
5 a determination at this point in time that those are in
6 fact relevant.

7 Now if something comes up, Mr. Conway, that
8 you believe is outside the scope of this Court's ruling,
9 then you certainly will have the right to object.

10 MR. CONWAY: May I ask a question?

11 THE COURT: Yes.

12 MR. CONWAY: With respect to the scope, does
13 that mean you're dealing with her then existing intent
14 concerning the use of that check, and it's limited to
15 that?

16 THE COURT: Yes, it's limited to that.

17 MR. CONWAY: With respect to the other
18 relevant evidence objected to --

19 THE COURT: If it's not relevant, I am not
20 going to let it in. It should be handled as it's
21 offered, if it's offered.

22 MR. CONWAY: That's fine, I just think there
23 are things about it, for example, about their testimony
24 they are going to introduce concerning her disappearance

1 and things that have nothing to do with the forgery.

2 THE COURT: Which are not relevant to the
3 issues in this trial.

4 MR. WALKER: To cut to the chase of Mr.
5 Conway's concern, because he and I have had some kind of
6 glancing conversations about it, I can indicate to the
7 Court that I will intend to put in evidence of her
8 disappearance insofar as it provides an opportunity for
9 the commission of the crime.

10 Under 48.045 and 48.035, there is no way to
11 get around the fact that the last person she's seen alive
12 with is the defendant.

13 THE COURT: She may still be alive; nobody
14 knows.

15 MR. WALKER: Except, Your Honor, that I think
16 the evidence will show quite clearly she left everything
17 she owned in her house: Her car, all of her money,
18 etcetera. And all I intend to do is show that the last
19 person she is seen with -- I won't even use the word
20 "alive," in light of the Court's comments -- the last
21 person she's seen with is the defendant.

22 And in fact it becomes crucial, because the
23 defendant denies tht he ever saw her after he left her
24 house Thursday morning.

1 But there is a witness who saw him getting gas
2 in a place near where he says he got money to get gas,
3 with a woman in the car, who meets the general
4 description of the victim. And I think that goes
5 directly to the credibility and veracity of his own
6 comments to the detective.

7 So I just wanted to offer to the Court that's
8 where I will be driving with that.

9 THE COURT: If he testifies, I think that's
10 relevant. If he doesn't testify --

11 MR. WALKER: His statements will come in in
12 the case, the State's case in chief. He made statements
13 to the detectives denying that he was --

14 THE COURT: So you're going to try and bring
15 this in through the testimony of the detectives?

16 MR. WALKER: Actually an eyewitness. What
17 happens, Your Honor, is this, just so you have the facts
18 in terms of highlighting it in your mind.

19 I appreciate you will make the ruling you will
20 make at the time when it becomes relevant, but the
21 allegation is: Thursday morning, either at 8:00 or 9:00,
22 and it's unclear which, because Mr. Voss indicates both;
23 he and Miss Baxter leave her residence on West Fourth
24 Street close to the same time, within minutes, 10 to 15

1 minutes of one another.

2 He is then seen on an ATM Videotape a little
3 before 10:00 at the general area of the Albertson's on
4 Keystone near West Fourth Street.

5 And when confronted with that, says: Oh,
6 yeah, now I remember I was there. Yeah, I was at the
7 ATM, but I didn't see Miss Baxter.

8 Ironically the next day her car is discovered
9 abandoned in that parking lot, and an eyewitness will
10 testify that he saw the defendant, the defendant's truck,
11 with a woman in the passenger seat at a gas station very
12 near that location.

13 When the defendant was confronted about being
14 there, he said: I had gotten money to get gas.

15 THE COURT: I will deal with that as it comes
16 up during the course of the trial.

17 MR. CONWAY: I think that's been misstated.
18 He was not confronted with that. In fact when they asked
19 him what he was doing that day, and then they told him a
20 couple things, he said: Well, I did get money at an
21 ATM.

22 They asked him if he seen her, and he said:
23 No, I haven't seen her since I left the house, the
24 apartment.

1 Whatever probative value, which I don't think
2 there is any, certainly would be a hell of a lot more
3 prejudicial to him, far beyond that, and that's the
4 problem I have with that evidence.

5 If he wants to suggest to the jury that
6 somehow he was responsible for her disappearance, and
7 therefore he's guilty of these crimes, I don't think
8 that's appropriate.

9 You do not need to know that she disappeared
10 -- other than for the purpose of saying that that's why
11 she's not testifying.

12 But the fact that he was the last person to be
13 seen alive, which I think is not proved, per se, the fact
14 he might have been the last person has nothing to do with
15 the fact that he may or may not have formed the intent to
16 defraud and obtain money in the manner that he's been
17 accused of.

18 MR. WALKER: Except as it provides an
19 opportunity to commit the crime.

20 THE COURT: I will deal with it. I didn't
21 look at it from this standpoint. I will deal with it
22 when it comes up in the trial.

23 Motion in Limine number 2, in-custody
24 defendants are never presented to the jury in garb or

1 restraints.

2 I presume they will take him up to the fourth
3 floor and dress him out. Then you can go up and come
4 down with him.

5 MR. CONWAY: Yes, Your Honor, that's just a
6 standard request.

7 THE COURT: There will be no reference to his
8 in-custody status. Although, keep in mind if he should
9 take the stand, I can't tell you how many times I have
10 had somebody, a defendant, sitting on the witness stand
11 that says: Well, gees, I'm in jail.

12 MR. CONWAY: I understand.

13 THE COURT: I don't allow improper comments
14 and arguments as to the concluded Motion in Limine number
15 4. I will try and pull you up short if it happens. I
16 don't anticipate it; you are both competent people, and I
17 don't anticipate that's going to happen.

18 All you get to argue is what is in front of
19 the jury. You're not going to get to make up evidence at
20 the end of the trial if it isn't in front of the jury,
21 and everybody knows that. I don't think anybody will try
22 to do that.

23 Number six, we have already dealt with.

24 Number 7, prior bad acts are not relevant to

1 the issues in this trial, and will not be allowed unless
2 he takes the witness stand. And I don't know if he's got
3 any prior felony convictions or not.

4 MR. WALKER: I would represent, Your Honor,
5 just so it's a non issue, as an officer of the Court I
6 would represent I do not have in my possession any
7 certified copies of judgments of convictions for any
8 felonies regarding Mr. Voss.

9 Consequently, I will be making no such
10 reference.

11 THE COURT: Prior convictions is the same as
12 we just discussed. And since there are no certified
13 copies of prior felony convictions, there are no prior
14 convictions to put in front of the jury.

15 The Supreme Court has already stated that you
16 are allowed to present your theory of the case to the
17 jury, unless it's absolutely incredible, and I have
18 allowed some pretty incredible arguments.

19 Number 10, I am not sure exactly what this is
20 getting to, but if it's something that falls within the
21 attorney/client privilege, it's not going in front of the
22 jury unless you put it there.

23 MR. CONWAY: No, I don't intend at this time
24 to call my client as a witness in this trial. Mainly

1 because there are so many statements that are going to be
2 testified to, I am just asking for the standard, that the
3 Fifth Amendment Privilege not be commented on by the
4 State.

5 THE COURT: Well, it's not. I will inform the
6 jury he has a Fifth Amendment Privilege not to testify,
7 and they can draw no inference from that.

8 MR. CONWAY: I have provided those
9 instructions to the Court.

10 THE COURT: I think it's in the State's
11 instructions as well.

12 Number 11, the jury alone decides the
13 credibility of witnesses. You certainly both can argue
14 whether or not a witness should or should not be believed
15 in your opinion. But the final decision comes from the
16 jury, not from any of us.

17 And finally, number 12, the Rule of Exclusion
18 is asked for and granted, and there will be no witnesses
19 present in the courtroom during the testimony of any
20 other witness.

21 Anything else? Mr. Walker?

22 MR. WALKER: No. Thank you. I would
23 indicate, just as an officer of the Court, Mr. Voss's
24 mother is currently in the courtroom. I am anticipating

1 that she will be in the courtroom for the balance of the
2 trial. I may indeed seek to call her in my rebuttal
3 case, depending on how things wash. I have no objection,
4 however, if she remains in the courtroom.

5 THE COURT: If she's a proposed rebuttal
6 witness, she has the right to be here. And if you call
7 her, you call her.

8 MR. CONWAY: I don't intend to call her in my
9 case in chief, so therefore I am not asking her to be
10 excused.

11 THE COURT: The Rule of Exclusion does not
12 apply.

13 MR. CONWAY: Thank you, Your Honor.

14 THE COURT: Okay. Now the witness list, so
15 that everybody understands, I am going to inform the jury
16 that these are a list of potential witnesses, not all of
17 whom will necessarily be called.

18 It may be they will be called, but it's not
19 absolutely -- I am handing to my Clerk a copy of the
20 interlineated Information, and she will read that as it's
21 been interlineated to the jury, once they have been
22 selected.

23 MR. WALKER: Thank you, Your Honor.

24 MR. CONWAY: One other minor point. Do we

1 have more evidence to be --

2 MR. WALKER: Mr. Conway is referring, Your
3 Honor -- he and I met with your clerk, who was kind
4 enough to give us some of her time on Friday and mark
5 some of the evidence in this case. I requested at that
6 time that detectives from the Washoe County Sheriff's
7 Department be available. They were unable to come on
8 Friday. I requested they come first thing this morning
9 at 8:00 o'clock, to my office, and wires got crossed,
10 they weren't here.

11 I anticipate that Detective Canfield is
12 bringing all of the evidence which was collected in this
13 investigation to Court. So at some point we will need to
14 be marking that evidence, I think that's what --

15 THE COURT: Do you want to just mark it as you
16 introduce it?

17 MR. CONWAY: I think that's fine. We have
18 marked what we could on Friday.

19 THE COURT: Okay.

20 MR. CONWAY: There are two matters. I think
21 that we're going to have competing tapes that needs to be
22 decided on which one is properly to be introduced
23 concerning the statements.

24 I made my own this weekend.

1 THE COURT: I may let them both in.

2 MR. CONWAY: Well, they are both the same
3 thing, but I am including a little more than he is, but
4 at the same time I am also keeping out things like
5 references to polygraph and other material that's not
6 permissible in the trial.

7 And those tapes are coming to me at 9:00,
8 unfortunately, because that's when they got done.

9 MR. WALKER: I would indicate if Mr. Conway
10 gives me an opportunity to view where the tapes begin and
11 end --

12 THE COURT: Are they videotapes?

13 MR. CONWAY: Yes, of the statements.

14 THE COURT: What we could do, when we break
15 for lunch, if the tapes are here, we can take a look at
16 them.

17 MR. WALKER: Likely I will stipulate, Your
18 Honor, if I am guessing his tapes are a little bit more
19 inclusive than mine -- I cut my tape shorter than he
20 wanted, and I think wanted a little more information. If
21 that's the case, likely I think we will stipulate to
22 them.

23 THE COURT: Okay.

24 MR. CONWAY: That's fine. The only other

1 thing at this time, is there is going to be an answering
2 machine tape. I do have subpoenaed William Stevenson
3 from the Washoe County Sheriff's Office, and that may be
4 unnecessary because the State informed me it will
5 stipulate to the admission of that answering machine
6 tape.

7 MR. WALKER: That's correct, Your Honor. I
8 have indicated to Mr. Conway, and I will go ahead and put
9 it on the record now, that if Mr. Conway produces any
10 evidence collected, observed, gathered as a consequence
11 of the investigation of this case, I intend to stipulate
12 to that evidence.

13 The tape is one such piece of evidence.

14 THE COURT: Okay. I have Exhibits 1 through
15 22 filed on behalf of the State; and Exhibits A and B,
16 which have previously been marked. Is there any
17 objection to any of the State's Exhibits 1 through 22?

18 MR. CONWAY: I think there may be. I did not
19 get a copy of this. I am not going to have objection to
20 Exhibit 1. Exhibit 2.

21 I have already noted the objections to 3 and 4
22 with respect to I have my own videotapes, I think are
23 more appropriate.

24 I don't know all these photographs. I am

1 going to be objecting to pictures of the car, because I
2 don't think it's relevant. I mean, there are some that
3 are not relevant pictures, and I may object to those
4 admissions on those grounds.

5 The pictures aren't in front of me, so I can't
6 judge them on that matter.

7 I will be objecting to ATM photos, that seem
8 to be 23.

9 THE COURT: All right, those I don't have on
10 my list here.

11 MR. WALKER: I have no objection, for the
12 record, Your Honor, to defense proposed A and B.

13 THE COURT: Exhibits A and B are admitted, as
14 are Exhibits 1 and 2.

15 The rest of them we will deal with as they are
16 offered.

17 MR. CONWAY: Your Honor, I have a question
18 with respect to A and B you just are admitted. I may not
19 admit Exhibit B. I just marked it because I was trying
20 to make sure when I looked through the pictures. I may
21 not offer it for admission.

22 I will offer A., yes.

23 THE COURT: A is admitted, and B we will deal
24 with.

1 (Exhibit A, marked and admitted.)

2 (Exhibit B, marked for I.D.)

3 (WHEREUPON, A RECESS WAS TAKEN.)

4 THE COURT: This is the time set for trial in
5 Case CR96-1581, the State of Nevada versus Steve Floyd
6 Voss.

7 The record should reflect that the defendant
8 is present in Court with his attorney, Mr. Conway.

9 The State is represented by Mr. Walker.

10 Are counsel ready to proceed? Mr. Conway on
11 behalf of the defendant?

12 MR. CONWAY: Yes, Your Honor.

13 THE COURT: Mr. Walker?

14 MR. WALKER: On behalf of the State, Your
15 Honor, I am prepared to proceed.

16 THE COURT: Thank you. At this time I am
17 going to ask the Clerk to call the roll of the jury
18 panel. As your name is called, if you will please answer
19 that you are here. If we mispronounce your name, and I
20 think I can promise you we will some of them, would you
21 please correct us.

22 (The Clerk called the roll of the jury panel.)

23 THE COURT: Let me introduce the attorneys
24 that will be handling this case.

1 Representing the State of Nevada is Mr. Egan
2 Walker. Mr. Walker is a deputy District Attorney. Would
3 you introduce yourself?

4 MR. WALKER: Good morning. As Judge Stone
5 indicated, I am a Deputy District Attorney employed in
6 the Washoe County District Attorney's Office. It's my
7 privilege and pleasure to represent the interests of the
8 State of Nevada in this case. Good morning.

9 THE COURT: Representing the defense is Mr.
10 Conway, Mr. Cotter Conway. And his client is Steven
11 Floyd Voss.

12 MR. CONWAY: Thank you. Ladies and gentlemen,
13 I am Cotter Conway. I work with the Washoe County Public
14 Defender's Office.

15 The gentleman seated here, also at the table,
16 is Steven Voss. And we're here on his case today.

17 Thank you.

18 THE COURT: I am Jim Stone. I am the District
19 Judge presiding over this case.

20 Mr. Voss has been charged in an Information
21 that was filed on July 16, 1996, with the following
22 charges:

23 In Count 1, burglary.

24 In Count 2, uttering a forged instrument.

1 In Count 3, uttering a forged instrument.

2 Count 4, forgery.

3 And Count 5, forgery.

4 And in Count 6, attempted theft.

5 Those of you who actually wind up being on the
6 jury, you will learn a lot more about the charges at that
7 time.

8 At this time would you all please rise and
9 raise your right hand, and the Clerk will swear you in.

10 (The Clerk swore in the entire potential jury
11 panel out in the gallery.)

12 THE COURT: Please be seated.

13 At this time I will have the Clerk call the
14 names of 12 people. The first person whose name is
15 called should take the next to the last seat in the back
16 row. We will put six of you back there, and then the
17 seventh person will take the first seat in the front
18 row.

19 Miss Clerk?

20 (The Clerk called the names of twelve
21 potential jurors.)

22 (The jury was selected.)

23 (The jury panel was sworn in to try this case
24 now pending before this Court, and a true verdict render

1 according to the evidence given, so help you God.)

2 THE COURT: Please be seated. We're going to
3 take a few minutes. I am going to send you back into the
4 jury room. There are a couple things back there I want
5 you to do.

6 First of all, there are badges back there, all
7 they say is juror. You must all put those badges on and
8 must wear them all day, even when you go to lunch.

9 One of the things that you will notice is that
10 none of us, Mr. Walker, Mr. Conway, myself or any of my
11 staff, will speak to you. Not because we don't like you,
12 but because we are going to avoid the appearance of any
13 impropriety or any impropriety itself.

14 If anyone attempts to talk to any of you, you
15 let the bailiff know, he will let me know, we will have
16 you in here to discuss that. Clear?

17 The other thing is that there are notepads and
18 pencils in there, and I allow and encourage the taking of
19 notes, and you may do so if you wish to do so. If you
20 don't wish to do so, you don't have to. So you can bring
21 them in back with you.

22 The third thing, each time I send you out of
23 the courtroom I will give you this warning. It's
24 extremely important that you pay particular attention to

1 it now, and every time I give it to you. It goes like
2 this:

3 Do not discuss this case among yourselves, and
4 do not discuss this case with anyone else. You will have
5 no discussions among yourselves until the case has been
6 submitted to the jury.

7 It's normal and natural for those of you who
8 have significant others or spouses or friends who are
9 close to you, they will want to discuss this case with
10 you while it's going on. You simply cannot do that.

11 You should not read, look at or listen to any
12 media accounts of this case, if there should be any.

13 As you have already seen, the TV cameras were
14 in here this morning, and Mr. Timco from the
15 Gazette-Journal is here, so I presume there will be
16 something in the newspaper tomorrow.

17 You may not read, you may not look at, you may
18 not listen to any media accounts of the case. If you
19 should see the newspaper, an article, skip it. If there
20 is something on the TV, turn it off. If there should be
21 something on the radio, turn it off. It's extremely
22 important.

23 We want you to be influenced by only what
24 happens here in the courtroom, and not what may happen

1 outside the courtroom. Okay? All right.

2 We're going to take a very brief recess, take
3 about 10 minutes, then come back. I have some more
4 things I need to go over with you.

5 Counsel, we will start opening statements at
6 1:30.

7 (WHEREUPON, A RECESS WAS TAKEN.)

8 THE COURT: Do counsel stipulate to the
9 presence of the jury and the alternate? Mr. Walker?

10 MR. WALKER: On behalf of the State, I
11 stipulate.

12 THE COURT: Mr. Conway?

13 MR. CONWAY: The defense stipulates.

14 THE COURT: Thank you. Ladies and Gentlemen,
15 let me offer my congratulations. You have been selected
16 and sworn as the jury to try the case of the State of
17 Nevada versus Steven Floyd Voss.

18 Mr. Voss has been charged by way of
19 Information, and that Information was filed on July 16,
20 1996, with one count of burglary, two counts of uttering
21 a forged instrument -- two counts of forgery, one count
22 of attempted theft.

23 At this time I am going to ask the Clerk to
24 read the Information to you, so you know what it is that

1 you are dealing with.

2 Miss Clerk?

3 (The Clerk read the Information to the jury.)

4

5 THE COURT: It will be your solemn
6 responsibility to determine the guilt or innocence of the
7 defendant, and your verdict must be based solely on the
8 evidence that will be presented to you in this trial, and
9 the law on which the Court will instruct you during and
10 at the close of the trial.

11 (The Court further instructed the Jury.)

12

13 (The noon recess was taken.)

14 (The following proceedings were held outside
15 the jury's presence:)

16 THE COURT: Okay, we're meeting outside the
17 presence of the jury.

18 MR. CONWAY: Thank you, Your Honor.

19 We had a number of items that were marked
20 after the last break, or during the last break. One item
21 for sure is an audio tape taken from an answering
22 machine, and I asked the State whether they would be
23 willing to stipulate to the admission of that at this
24 time so I could release William Stevenson.

1 The State informed me they are willing to
2 stipulate to its admission.

3 THE COURT: What is the exhibit number,
4 Joann?

5 MR. CONWAY: I think it's marked as a State's
6 exhibit, but --

7 THE CLERK: It's 26.

8 THE COURT: Exhibit 26? All right. You both
9 stipulate to its admissibility?

10 MR. WALKER: Correct.

11 MR. CONWAY: Correct.

12 THE COURT: Exhibit 26 is admitted.

13 (Whereupon, State's Exhibit 26 was admitted
14 into evidence.)

15 MR. CONWAY: Thank you.

16 In addition, we had tapes I think they were
17 Exhibits 3 and 4, that are currently admitted. Those
18 will be changed pursuant to stipulation to new State's 3
19 and 4.

20 THE COURT: Give them to the Clerk.

21 MR. CONWAY: I have one more correction to
22 make to it. I would be bringing them back to be marked
23 and replace the two videotapes currently in the Court's
24 possession.

1 THE COURT: Does the State stipulate to that?

2 MR. WALKER: Correct, Your Honor.

3 THE COURT: Then we will substitute Exhibits 3
4 and 4 tomorrow morning.

5 MR. CONWAY: Thank you. I think that's the
6 only preliminary matters I wanted to address to the
7 Court.

8 MR. WALKER: One last thing, Your Honor. I
9 had Detective Canfield deliver all of the evidence in
10 this case to the courtroom in the presence of Mr. Conway
11 and the Court Clerk.

12 Mr. Conway graciously agreed that the evidence
13 may remain in my office under the constructive custody of
14 Detective Canfield for the balance of the trial. All of
15 the evidence items are sealed, that is tape sealed, and
16 signed, and remain in my office for the balance of the
17 trial.

18 There is a cart load, literally, of several
19 hundred items of evidence, and we have called down the
20 ones we need.

21 MR. CONWAY: I agree. And all those have
22 remained sealed. I won't object to if they later wish to
23 introduce those, absent normal objections to their
24 relevancy.

1 THE COURT: One other thing, before we bring
2 the jury in. I have instructed the bailiff to take Mr.
3 Voss to the fourth floor from now on to dress him, and
4 you will need to go up to the fourth floor to get him at
5 the beginning of each trial day and after lunch each day.

6 MR. CONWAY: No problem.

7 THE COURT: That way I am sure that the jury
8 is not going to inadvertently see him going in and out of
9 the room down there.

10 MR. CONWAY: Thank you.

11 THE COURT: Bring them in.

12 (The Jury is present in the Courtroom for the
13 proceedings.)

14 THE COURT: Would counsel please stipulate to
15 the presence of the jury? Mr. Walker?

16 MR. WALKER: On behalf of the State, I
17 stipulate to the presence of the jury and the alternate.

18 MR. CONWAY: The defense also stipulates to
19 the presence of jury.

20 THE COURT: Thank you. Ladies and Gentlemen,
21 at this point you are going to hear the opening
22 statements of counsel, and we will start with Mr. Walker,
23 representing the State of Nevada.

24 Mr. Walker?

1 MR. WALKER: Thank you, Your Honor.

2 Mr. Voss, Mr. Conway, Your Honor, Ladies and
3 Gentlemen, good afternoon.

4 This is the State of Nevada's opening
5 statement in the case of State of Nevada versus Steven
6 Floyd Voss.

7 First and foremost let me thank you for your
8 willingness to participate in this process, to suffer
9 some frustration and disruption in your normal lives in
10 order to serve as jurors. On behalf of the State I
11 appreciate that. That's the foundation on which our
12 whole jury system is based.

13 Secondly, let me say that nothing I am
14 about to tell you is evidence of anything. It is simply
15 my best shot at giving you the high points of this case.

16 Jury trials are creatures of their own, they
17 have a life of their own. You will see this one grow
18 before your eyes over the next couple days.

19 The evidence comes out in dribs and drabs,
20 here and there on Direct and Cross Examination, on
21 Redirect and Recross Examination, and the case isn't a
22 case, it has not grown into whatever it will be until the
23 last witness has uttered the last word.

24 I would emphasize to you, what the witnesses

1 say and the evidence, the physical evidence, which is
2 admitted, is what is the evidence in this case.

3 There are 12 of you, and only one of me. At
4 the end of this case I will have the opportunity to argue
5 to you what the evidence in this case showed.

6 If my recollection about that is different
7 than yours, your recollection controls. Because, again,
8 there are 12 of you to listen to all the evidence, and
9 that's the only job you have is to listen to the
10 evidence.

11 Likewise, if I make an assertion to you about
12 what the evidence will be that doesn't come true, your
13 recollection of what the evidence actually is, controls.

14 So if, for example, I say in good faith I
15 believe this is what the evidence will show in this case,
16 and you don't see that come to fruition, your
17 recollection about what actually was proved is what
18 controls.

19 That goes for the comments and the statements
20 of both counsel.

21 With that, Ladies and Gentlemen, let me give
22 you a little bit of background and try and introduce you
23 to some of the key players in this case.

24 It's a fairly straightforward case in the

1 sense that what is really at issue is what was the intent
2 of Steven Floyd Voss when he did some things. So in that
3 sense the issue in the case is narrow, but it can be
4 complicated because there are several dates referred to
5 and a couple different checks referred to.

6 The first thing I want to do is just show you
7 a calendar. This calendar represents the month of June,
8 1996. The 1st of June was on a Saturday. The end of
9 June was actually the following weekend after the 29th.

10 You will learn through the testimony of the
11 witnesses in this case that on June 5th, 1996, Steven
12 Floyd Voss and his mother were living at the Park Vista
13 Apartments in Sparks, and that there was a fire at the
14 Park Vista Apartments, and in the course of putting the
15 fire out there was some water damage to their apartment
16 and they were forced to move the evening of the 5th,
17 morning of the -- the day of the 6th.

18 You will learn that they started to reside at
19 the Western Village Motel in Sparks, and the first night
20 or two was covered by Park Vista, and thereafter the Red
21 Cross helped them out with some housing.

22 You will learn that in the context of having
23 lost their apartment, they began to contact mobile home
24 organizations, realty organizations, to see about

1 purchasing a mobile home, because they needed to make
2 arrangements for more permanent housing.

3 You will learn that sometime early in the week
4 contact was had with a mobile home agent or agents, and
5 some negotiations were entered toward the purchase of a
6 mobile home by Mr. Voss and/or by his mother.

7 You will find out that Beverly Ann Baxter is
8 a-- or was a 52-year-old lady who has lived in the
9 Jacpine Motel, which was out on West Fourth Street for
10 about -- or had lived there for about seven months, from
11 December of '95 through June 13th, 1996, when she was
12 last seen.

13 She lived at the Jacpine Motel in a 1-room,
14 plus a bathroom, little rental unit with her small dog,
15 by herself, and that she had no family in this area.

16 You will find out, however, that she had a
17 great many friends and acquaintances, both at work and at
18 the apartment where she lived, and around her, with whom
19 she spoke quite a bit about significant events in her
20 life.

21 You will find that sometime earlier in May,
22 Mrs. Baxter had received what we will call a
23 reimbursement or a settlement check, a check from a
24 moving and storage company, which represented the

1 proceeds from the auction of everything she owned,
2 essentially.

3 She had had a storage unit in California where
4 she kept all of the belongings she had collected in her
5 life, including belongings that had once filled a house
6 which she lost to bankruptcy.

7 She became delinquent in some of her payments,
8 the storage company sold her property and sent her a
9 check for \$5,000, which was to cover or to represent, if
10 you will, the value of everything that she had lost.

11 A gentleman by the name of Tim Sturdivant,
12 will come from Utah, to tell you that he's a family
13 member of Miss Baxter's, and she was extraordinarily
14 upset when this happened.

15 In fact, he and his wife thought maybe she
16 needed to even come stay with them, that's how upset she
17 was.

18 But she had clearly, unequivocally
19 communicated to him, and he clearly, unequivocally
20 communicated to her, that she should never cash this
21 check, this reimbursement check in the amount of
22 \$5,026.00.

23 The rationale was that that would be seen as
24 accepting that as adequate to cover her loss.

1 Mr. Sturdivant will tell you he's had some
2 business law classes, that he's even been a sworn peace
3 officer in the Los Angeles area, and that he was the kind
4 of person to whom Miss Baxter turned for advice in this
5 matter.

6 He will tell you that in fact he expected her
7 to send, by facsimile, copies of invoices from the
8 storage company, and copies of sale documents from the
9 storage company to look at them, to see if he could do
10 anything or make any suggestions in terms of suing the
11 company to get more money.

12 That is important, because you will find that
13 on June 12, 1996, Steven Floyd Voss went to the
14 California Federal Bank in the Iron Horse Shopping Center
15 in Sparks, and deposited the \$5,026.00 check.

16 That at the time he deposited it, he made a
17 point of engaging the teller in a rather lengthy
18 conversation about when the funds would be available from
19 that check.

20 You will see the check. On the back of the
21 check is signed: For Deposit Only, B. A. Baxter. And
22 you will learn that Miss Baxter didn't sign that check.

23 In fact, Mr. Voss, in an interview, admits
24 finally that he signed "For Deposit Only," at least.

1 It's unclear whether he's also saying he signed the B. A.
2 Baxter or not, but you can see for yourself that they are
3 signed with the same color pen, same type of pen; clearly
4 must have been signed at the same time.

5 That happens Wednesday afternoon. That night,
6 Miss Baxter and Mr. Voss are seen together at her
7 apartment, at the Jacpine Motel. He spends the night at
8 the Jacpine Motel, and the next morning the two of them
9 are seen to leave, by the motel manager, Sandra Crumb,
10 who lives right next door to Beverly Baxter.

11 She will tell you she sees them leave maybe 10
12 or 15 minutes apart, at about 9:00 or 9:15 Thursday
13 morning.

14 That's the last time any friend or any family
15 member of Beverly Baxter has seen her.

16 Later that day, on Thursday, Mr. Voss calls
17 the California Federal Bank, talks to the manager, and/or
18 the teller that he's seen the day before, and asked
19 them: Are the funds available yet on Beverly's check?

20 He's told: No, have Beverly call us.

21 In fact, you will learn he was told that the
22 day before, have Beverly call us.

23 And that's important, because the people at
24 the California Federal Bank will tell you they remember

1 asking Mr. Voss: Do you know where she works? Do you
2 know where her friends work? And to both questions he
3 responded: No.

4 On Friday -- or pardon me, I guess I should
5 indicate on Thursday, you will learn that Miss Baxter
6 called in sick to work, that she was not seen at work,
7 and she told her bosses at work that she would be in on
8 Friday for sure.

9 On Friday she doesn't show up to work. And
10 her bosses are so concerned, because she's such a
11 dependable, reliable employee, that they go to her home,
12 and in fact they enter her apartment to see if her dog is
13 there, to see if she's there, because they are concerned
14 about her.

15 She's not there. And there is no word from
16 her about where she's gone.

17 At roughly the same time, or at least that
18 morning, Mr. Voss does two things: He goes to the
19 California Federal branch in the Iron Horse Shopping
20 Center, and tries to negotiate a \$5,000 check written on
21 Beverly Baxter's personal account.

22 It's interesting, because the check is written
23 by Beverly Baxter insofar as the date, June 13, 1996; the
24 amount, \$5,000, and it's signed by Miss Baxter.

1 But in a different color ink, in his own
2 handwriting, Mr. Voss writes in Steven Voss on the check,
3 and he attempts to negotiate this check for \$5,000.

4 The people at the bank say: No, we're not
5 going to cash this check. We need to talk to Miss
6 Baxter. Do you know where she is?

7 No, I assume she's at work.

8 He becomes quite agitated and upset. He then,
9 without ever telling anybody in any interviews, goes to
10 another branch of the California Federal Bank on South
11 Virginia, where he again tries to negotiate the check for
12 \$5,000.

13 Again he's told: No, you cannot negotiate
14 this check here. We need to speak with the owner of the
15 account.

16 Mr. Voss has heard the question -- several
17 things about banking procedure and policy, how he could
18 negotiate this check, and is told: You're not the owner
19 of the account, we can't give you any information.

20 At least twice more that day Mr. Voss goes
21 back to the California Federal branch in Sparks where he
22 talks to at least one if not two of the management staff
23 at the bank, and tries convince them to release the hold
24 on the check, on the \$5,026.00 check, and to negotiate,

1 to cash the \$5,000 check.

2 They refuse to do so repeatedly, telling him:
3 We need to speak with the owner of this account, Beverly
4 Baxter.

5 Finally, two things happen: A missing person
6 report is filed by the employers of Beverly Baxter; and
7 the people at the California Federal Bank contact the
8 police, because of their concern about what is going on
9 with Mr. Voss.

10 The two pieces of information marry up, and
11 detectives from the Washoe County Sheriff's Department go
12 out to the California Federal branch at the Iron Horse
13 Shopping Center, where they meet Mr. Voss, and they ask
14 him what is going on.

15 And they will tell you what his attitude and
16 demeanor is, how the exchange goes along. But in
17 essence, you will learn he tells them his friend, Beverly
18 Baxter, has loaned him \$5,000 as the down payment on a
19 mobile home.

20 Now that is an important piece of information,
21 you will learn. And it's important it happens at that
22 bank, because people from that bank will say that's not
23 what Mr. Voss told them.

24 What he told them was this \$5,000 was

1 repayment for a loan he had made to Miss Baxter. At any
2 rate, he says this \$5,000 check is from Miss Baxter for
3 me to make a down payment on a mobile home.

4 And the detectives, in the process of
5 questioning him, learn that Voss made a deposit of a
6 \$5,026.00 check two days before, on the 12th.

7 So they ask him: What about this deposit?
8 And his response is: Oh, yeah, I forgot about that. I
9 went to Beverly's work two days ago and got a check from
10 her, which she asked me to deposit.

11 The detectives are concerned, because when
12 they try and verify Mr. Voss's story about the down
13 payment, there is some conflicting information about how
14 much the down payment was supposed to be.

15 Mr. Voss becomes upset at some point. He
16 believes, in his statement, that one of detectives has
17 become rude to him, and leaves.

18 He departs the bank and leaves his truck at
19 the bank, and walks across McCarran Boulevard into an
20 area generally near the Outer Limits Bar, which is on the
21 east side of McCarran Boulevard, generally near the
22 Western Village, where he calls his mother to give him a
23 ride back to the Western Village two blocks away.

24 He is contacted later that evening about 9:30

1 by different detectives from the Washoe County Sheriff's
2 Department, and he and his mother are questioned about
3 what the circumstances are, and he tells a tale, gives a
4 statement about what happened, what is up with the
5 check.

6 So I have here -- he's interviewed twice on
7 Friday, the 14th, about the circumstances. At the
8 conclusion of the interview with the detectives Friday
9 night, he and his mother agree to go down to -- or to go
10 up to the Washoe County Sheriff's Department to give
11 another statement, a tape-recorded statement about what
12 is going on.

13 Interestingly, both Friday night and Saturday,
14 they are insistent that both of them be present while the
15 other is interviewed.

16 The detectives try politely to suggest to Mr.
17 Voss at one point: We want to talk with you about some
18 sensitive subject matter; for example, your sexual
19 preference with Miss Baxter. Do you really want your
20 mother sitting here when we do that? He indicates: Yes,
21 I do.

22 So you will see on the interview tape that Mr.
23 Voss and his mother are sitting next to one another while
24 he's interviewed. And he tells -- gives another

1 statement about what has happened.

2 Finally on Monday, the 17th, Mr. Voss is
3 interviewed yet again about the circumstances of him
4 trying to cash this check and get \$5,000 from the account
5 of Miss Baxter.

6 That interview doesn't end on a happy note,
7 and several inconsistencies come to light. Most notably,
8 detectives find out that Mr. Voss is seen on tape at an
9 automatic teller machine at the Bank of America in the
10 Albertson's Shopping Center at Fourth and Keystone at
11 just a little before 10:00 or thereabouts.

12 That's important, because they had
13 specifically questioned him about the sequence of events
14 and things he had done on Thursday morning after leaving,
15 ostensibly, the company of Miss Baxter.

16 What Mr. Voss finally says is: Yes, I was
17 there; yes, I did take \$40.00 out of my mother's bank
18 account for gas.

19 In addition --

20 MR. CONWAY: Your Honor, I apologize. May we
21 approach briefly?

22 (Whereupon, Counsel approached the bench.)

23 MR. WALKER: I am sorry for the delay, ladies
24 and gentlemen.

1 Thursday becomes an important day for a lot of
2 different reasons. However, what you begin to learn, as
3 you watch what I assert in good faith the facts will
4 show, is a slide over time in what Mr. Voss says was
5 really happening.

6 Again, what I say is not evidence, but I ask
7 you as the trial dribs and drabs out, and as you listen
8 to factual assertions, to bring up some red flags in your
9 mind, much like you did in voir dire, because I suggest
10 the evidence will show an interesting sequence of
11 events.

12 When Mr. Voss is questioned on the 15th and on
13 the 17th, he asserts that he deposited the settlement
14 check, not on Wednesday, but on Monday.

15 That's interesting, because the first person
16 he talked to was Detective Pappas, at the Iron Horse
17 Shopping Center branch, and he told Detective Pappas he
18 had gotten the check on Wednesday, and he had deposited
19 it on Wednesday.

20 But then by Saturday, he says: No, I got the
21 check on Monday, and I deposited the check on Monday.
22 And you will see that develop over time.

23 You will see the assertion by Mr. Voss in the
24 interview, that even though he describes her car as

1 having worn-out front tires, even though she lives in
2 modest circumstances, the evidence will show that his
3 assertion is: There was no plan to repay this \$5,000.
4 No specific circumstance; no set agreement, even.

5 You will hear him make the assertion he had a
6 conversation with a Realtor regarding increasing the down
7 payment on the mobile home from \$2400 or \$2500, to
8 \$5,000. That he had that conversation on Thursday, the
9 13th, after he got the check from Miss Baxter.

10 And that is important, as you will see later.
11 He makes statements to Detective Pappas about it, and
12 then makes statements about it in the June 15th
13 interview.

14 You will see in the interviews that nowhere
15 does Mr. Voss mention that he actually went to two
16 branches of California Federal.

17 What happens is in the first interview he
18 says: Friday morning I talked to the Realtor, we made
19 some changes about the terms of the potential loan, 15
20 years versus 10 years, versus five or six years, which
21 sounded good to me. After that I went to the bank and
22 tried to cash the check, and I dealt with the bank for a
23 long time. And I in fact had to come back at different
24 times to the bank.

1 But there is never any mention of the fact
2 that he actually went to two banks and got upset at both
3 places when they wouldn't cash the check.

4 The evidence will show that he wanted -- in
5 his own statement he says that he wanted to cash a check
6 for \$5,000, in order to get a check.

7 What he says is: I wanted to cash a check for
8 \$5,000 so I could get a cash for certified funds.

9 That will be important, because at one point
10 in the interview he says: Well, I put my own name on the
11 payee line rather than the name of the real estate
12 company or the seller of the mobile home, because Beverly
13 had left it blank, because she wasn't sure who I would
14 need to write the check to, and I just decided to get
15 cash so I could get another check.

16 In the interview on June 15th, what Mr. Voss
17 says is that he first finds out about a hold on the
18 check, and is surprised by the circumstances regarding
19 the check Friday when he goes to cash it.

20 At no time does he ever mention that he called
21 the bank on the 13th or personally deposited the check on
22 the 12th, by carrying it inside and talking to a teller
23 about when the funds would be available.

24 At one point in the interview on the 15th, he

1 says: I may have been rude to the teller. And that is
2 important, because later when he's questioned he said:
3 No, I wasn't rude. And it's unclear whether he's
4 saying: I wasn't rude to the teller, I was rude to the
5 manager. Or he's just saying: I wasn't rude.

6 But you will see the videotape and just
7 consider the red flag in your mind as the evidence goes
8 by.

9 You will see from the evidence that he says in
10 the interview, when questioned about the bank trying to
11 contact Beverly, the bank -- he says the bank tried to
12 call the number on her personal check, which is her home,
13 and got her answering machine. They didn't have her work
14 number, and I didn't have her work number.

15 That will be important, because what the bank
16 personnel will say is not only did they ask for the work
17 number, but they asked where she worked or where her
18 friends worked.

19 And you will find that he was actually at her
20 work place on Wednesday the 12th. He was physically at
21 the place where she worked, and actually was physically
22 at the place where she worked on at least one other
23 occasion, either earlier in the week or the week before.

24 He's asked an interesting question on June

1 15th. Detective Canfield will ask the question: Did she
2 fill out the deposit slip and sign the check and give it
3 to you for deposit?

4 And you will see Mr. Voss nod his head, and
5 then ask a different question, and never directly respond
6 to the question: Did she sign the check? But certainly
7 give assent to the assertion by the detective that she
8 signed the check. That happens on the 15th. Then he
9 describes how he went about doing it.

10 And recall that on the 15th he's saying he
11 actually deposited the check on Monday the 10th.

12 Mr. Voss acknowledges that Miss Baxter wanted
13 him to make some copies for her. That becomes important,
14 because according to Mr. Voss, in the interview on the
15 15th, he goes to her work Monday.

16 The purpose for that visit being to make
17 copies of papers involving this check. And what he says
18 is he had to get the papers out of her car and return the
19 papers to her car. That he did this using a spare set of
20 keys, or using her keys and she had a spare set. It's
21 not clear which, but he refers to two sets of keys.

22 Then later on, on the 17th, he acknowledges:
23 Well, when I got the check and made the deposit, I put
24 For Deposit Only on it.

1 Again, you will see the check. And you can
2 draw your own conclusions and hear testimony about
3 whether or not Miss Baxter signed that check.

4 At one point Mr. Voss, on the 15th, says:
5 Well, I've made a deposit for Miss Baxter before. And
6 that will become important, because later on in the
7 questioning he says: Well, no, maybe it wasn't that I
8 made a deposit for her before, but I cashed a check from
9 her before.

10 He says in the interview on the 15th that they
11 left her house at 8:00 a.m. on Thursday morning. And he
12 gave a written statement to Detective Pappas on the 14th,
13 saying that they left together at 8:00 a.m.

14 On the 17th he says they left at 9:00 a.m.

15 He acknowledges having worked on her car in
16 the past, and then later on in the interview you will
17 hear him say he never charged her for working on her
18 car.

19 He makes the statement: I got the paperwork
20 out of the car and returned it to the car, during the
21 interview on Saturday the 15th. But by the time of the
22 interview on Monday, the 17th, the detectives pointedly
23 start questioning him about: When was the deposit made,
24 and when did you get the keys? And they ask him again:

1 Where did you get the papers from that you were supposed
2 to make copies of?

3 And there is a pause, and he says: Out of
4 Beverly's house. So by Monday, the 17th, Mr. Voss admits
5 that he was in Miss Baxter's house.

6 You will learn Sandra Crumb, the apartment
7 manager, she will testify: Indeed, she saw Steven Floyd
8 Voss, by himself, with a large key ring, enter Beverly
9 Baxter's apartment after the noon hour on Wednesday the
10 12th, and that he was in there for about a half hour.

11 At one point you will hear Mr. Voss say Miss
12 Baxter had an extra set of keys, but I have never seen
13 them.

14 That will be important, because another
15 witness will testify -- actually several witnesses will
16 testify about Miss Baxter's intent, what her intent was
17 with regard to this check.

18 One of the important things about what her
19 intent was with regard to this check was that she never,
20 you will learn, to any friend or family member or any
21 person other, apparently, than Steven Floyd Voss, said
22 she was going to deposit this check.

23 And one co-worker remembers Miss Baxter
24 relating that Voss requested her keys, Baxter's keys at

1 one point.

2 Then Mr. Voss says what he says about: I
3 wasn't rude to the teller.

4 Later on, he acknowledges in a second
5 interview: Yes, I got the papers from Beverly's house.

6 When asked about the papers, what the papers
7 were, you will find that Mr. Voss says: Well, I am
8 really not sure, it was something to do with a
9 reimbursement.

10 Mr. Voss says in this second interview, what
11 he did was, he got these papers now on Wednesday, and
12 took them to the Long's Drugs in Sparks, where he made
13 copies of them.

14 And what he's asked: Is that when you dropped
15 the check off you deposited? He says: No, I took the
16 papers back to Beverly at that point. And then there is
17 no explanation offered for when he made the deposit of
18 the check on Wednesday.

19 As I indicated, you will hear he says he
20 didn't charge her to work on her car.

21 Then Mr. Voss is pressed about the timing and
22 the circumstances of being at the ATM on Thursday
23 morning.

24 And it's significant to the detectives,

1 because you will learn Miss Baxter's car, Friday night,
2 is found abandoned in the same parking lot where this ATM
3 is.

4 Now the evidence will show that the car is
5 found Friday night, and he was at the ATM Thursday. But
6 the reason the detectives are interested in it is
7 because, you will see it on the tape, they say they are
8 questioning Mr. Voss about a missing person report, they
9 say to him: Are you sure you didn't bump into Beverly on
10 Thursday? He says: No. I forgot about going to the ATM
11 for gas money at the same parking lot where her car was.

12 He doesn't exactly say it, but those are what
13 the facts are surrounding his statement, that I just
14 forgot about going to the ATM.

15 He will say: Well, since the fire I have been
16 running -- I have lost track of time.

17 Finally you will see the factual assertion by
18 Mr. Voss that he says he went to the ATM directly after
19 he left Beverly's, either at 8:00 o'clock or 9:00
20 o'clock. But he's unequivocal when he says I went
21 directly to the ATM after I left her house. I stopped at
22 the ATM for gas money, but I didn't see Beverly.

23 All of those factual assertions, Ladies and
24 Gentlemen, as you check them off in your mind as the

1 evidence comes out, serve, over time, to give you insight
2 into what is in the mind of Steven Floyd Voss.

3 The theme of the prosecution's case in this
4 case, and the theme of the evidence as it comes out, is
5 that fraud often has a friendly face, and it often has
6 friendly explanations.

7 But when you press it and really squeeze it,
8 the truth comes out. The truth of the matter, once all
9 the evidence is -- comes out, will show that on
10 Wednesday, June 12, 1996, Steven Floyd Voss took Beverly
11 Baxter's keys and entered her apartment and took the
12 settlement check.

13 And you will know that that is intuitively
14 sensible, because after he was at her apartment, after
15 the time he was at her apartment, one of the co-workers
16 will say during a 2:30 break she had a conversation with
17 Mr. Voss -- or with Miss Baxter, where she clearly said:
18 I am not going to deposit this check. Steve is going to
19 get me an attorney, and he needs a retainer check for the
20 attorney. A personal check for the attorney.

21 And you will find that that conversation
22 occurs at 2:30 p.m., Wednesday, after Mrs. Voss is in
23 Beverly Baxter's apartment.

24 So the evidence will show, as to Count 1, that

1 he burglarized her apartment. He entered her apartment
2 with the intent to thief the reimbursement check; that
3 he then forged the words For Deposit Only, and the
4 letters spelling the name B. A. Baxter on the back of
5 that reimbursement check, and deposited it into her
6 account at the California Federal Bank in Sparks.

7 That thereafter, on the 14th, he retrieved
8 from Miss Baxter a check, signed by Miss Baxter in the
9 amount of \$5,000, but with the payee line blank, wrote
10 his own name in, and tried repeatedly to negotiate that
11 check, in an attempt to get the money; thus satisfying
12 forgery allegations for writing his own name into the
13 payee line without authorization; uttering a forged
14 instrument for negotiating or attempting to negotiate
15 that check, and the attempt is the same thing in the
16 uttering statute; and attempted theft for trying to get
17 the \$5,000 out of the account.

18 I suggest, ladies and gentlemen, you will know
19 the truth of those allegations, because you will be able
20 to see the slide in the evidence.

21 You will be able to see that the state of the
22 evidence will be that no one in this courtroom will
23 testify that Beverly Baxter had any intention to ever
24 deposit that reimbursement check, and that Mr. Voss told

1 bank personnel nothing about the real purpose for that
2 check, or at least nothing that was consistent with his
3 later assertions.

4 So finally, also the state of the evidence
5 will show, beyond a reasonable doubt, the guilt of Steven
6 Floyd Voss as to Counts 1, 2, 3, 4, 5 and 6.

7 Thank you.

8 THE COURT: Mr. Conway?

9 MR. CONWAY: Thank you, Your Honor. The State
10 has graciously allowed me to use their calendar while
11 doing my opening statements here.

12 Mr. Walker, Your Honor, Ladies and Gentlemen
13 of the Jury, ever have one of those days where nothing
14 goes right? I think they call it Murphy's Law, where
15 anything that can go wrong, will go wrong.

16 Well, during the month of June, Steven Voss
17 and his mother had kind of one of those months, and it
18 began, much as the State has pointed out, on June 5th,
19 where there was a fire at the Park Vista Apartments in
20 Sparks. That fire began around 12:00, noon.

21 This effectively, constructively evicted his
22 mother and Steven Voss, and they were put up by first
23 Park Vista Apartments, and then by the Red Cross at the
24 Western Village.

1 Now that they were out of an apartment, they
2 had to find a new place to live. On June 10, they
3 contacted a Carol Storey. You will hear her testify in
4 this trial.

5 Carol Storey came to the Western Village, and
6 brought some videotapes that they had looked at, and they
7 picked out a couple mobile homes that they were
8 interested in.

9 And on June 11, the following day, Steven Voss
10 went down, looked at a mobile home in Sun Valley, decided
11 that was perfect for he and his mother, and they entered
12 into a negotiation.

13 Now the original negotiation was for \$2500,
14 which would be the commission fees for Instant Housing,
15 which Carol Storey works for, that's who she's a real
16 estate agent with.

17 The rest of the deal was there would be
18 nothing down to the owners of the mobile home, but they
19 would carry the remaining \$7500 at 18 percent interest.

20 That was the deal they were going to do to buy
21 this house.

22 Now we're up to June 12. We have a very
23 important day on June 12. The first thing that we will
24 hear or find out about is that the sellers requested more

1 money pursuant to negotiations with Carol Storey, that
2 resulted in the down payment that Voss and his mother
3 would have to come up with, at \$5,000.

4 Now earlier in the week, Steven Voss has a
5 friend, her name is Beverly A. Baxter, and earlier in the
6 week he began -- they had sort of an on-and-off
7 relationship. He would see her, and there might be a
8 couple weeks in between, and then he would see her
9 again. It wasn't an exclusive relationship, but it was
10 sort of an acquaintance-friendship-type situation.

11 And he met up with her on Monday the 10th.
12 You will hear testimony from Sandra Crumb, Baxter's
13 landlord, that he was visiting her both on the 10th and
14 the 11th, and also around the 12th through the 13th.

15 Now that day there were a number of things he
16 did: One, he did go to her work. And I think the
17 testimony will establish that that was around 11:30, that
18 area, just before lunch, Steven Voss had gone there to
19 see if he could have lunch with her. However, she'd had
20 an earlier lunch and wasn't available. He did talk to
21 her.

22 The evidence will later show that he also went
23 to her house. And he admits that. He went into her
24 house with some keys.

1 The evidence will also show that he was given,
2 when he was at work, a check.

3 This is the check that has been termed a
4 reimbursement check. And what I am going to ask the jury
5 to do is make a decision of what type of check it was,
6 because there will be some reference to a settlement
7 check, some reference as a reimbursement check.

8 But you will be given a packet of documents
9 from the storage company known as Burgess Moving &
10 Storage.

11 They are down in Los Angeles area or in that
12 direction, and that's where she stored all her property,
13 and that's who sent her the check. And they have sent a
14 bunch of documents that will establish what documents
15 that they sent to her concerning that check. And that
16 was indeed in the amount of \$5,026.00.

17 Now Steven Voss has told the police that he
18 took that check and deposited it. And he deposited it in
19 her branch account, the branch that she goes to, which is
20 in Sparks, of the California Federal Bank.

21 And you will hear testimony from Doug
22 Hamilton, and he's the individual who took the deposit,
23 and that it was deposited into her account.

24 In addition, you will hear statements from Mr.

1 Voss that he wrote For Deposit Only on the back of that
2 check.

3 Now after he deposited the check, he hooked up
4 again with Beverly Baxter that evening, they went out,
5 had some drinks. They came back to her place, and he
6 spent the night with her. We're now to June 13th.

7 Now in the morning, Steven Voss got up, also
8 Beverly Baxter got up, they talked a little bit about his
9 problems that he was having, with respect to trying to
10 purchase a mobile home.

11 At that time she agreed and offered to loan
12 him \$5,000. Now she wrote the date on it, which was June
13 13, 1996. She wrote \$5,000. She wrote it out: Five,
14 and spelled it out, and she signed it.

15 You will hear from Floyd Whiting, who is a
16 document analysis -- who will testify that that was
17 indeed her handwriting, and that was indeed her
18 handwriting on her check.

19 You will also hear statements from Steven Voss
20 that he did indeed go to an ATM to pick up gas money and
21 then purchased gas.

22 You will also hear testimony from Steven Voss
23 on the following day, the 14th, which was Friday, that he
24 did go to a bank, and he went to the California Federal

1 Bank, the same place that he deposited it at
2 approximately 10:00 a.m. in the morning.

3 When he was given the check, and you will hear
4 testimony about this, and also hear his statements, the
5 payee line had been left blank, because he was not
6 positive who it would have to go to. He didn't know if
7 it would have to go to Instant Housing, who was the real
8 estate broker -- because originally it was supposed to be
9 the commission fee, \$2500 commission fee.

10 He didn't know if it would have to go to the
11 seller. Now the seller was looking for some money down,
12 some money up front. And he didn't know whether or not
13 either one of those individuals would accept a check in
14 and of itself.

15 What he found out later, when he spoke with
16 Carol Storey, and she will testify she did have other
17 conversations with him, he found out he was going to need
18 either a certified check or cashier's check.

19 So he went down to the bank -- at first he
20 went at 10:00 a.m., in an effort to negotiate this check,
21 and he put his name, and he admits that, he put his name
22 on the payee line.

23 At that time they say they cannot cash it,
24 because they are concerned about two things: One, that

1 he had written his name in, and they were a little unsure
2 of that.

3 In addition, the main reason they did not cash
4 it, was because they did not believe that that was her
5 signature.

6 The reason is this, and it will be quite
7 apparent when you hear the evidence: Beverly Baxter
8 signs her name B. A. Baxter. That will be established by
9 evidence that will be admitted, and you'll see some
10 cancelled checks, and also hear the testimony of Floyd
11 Whiting.

12 But on her signature card, all of you who ever
13 have had bank accounts, you fill out a signature card
14 when you set up an account. She signed it Beverly A.
15 Baxter. So that didn't look the same. And that was, you
16 will find out, was one of the main reasons they didn't
17 cash it.

18 After that, he does go to another California
19 Federal Bank in an effort to see if they will cash it,
20 see if they will accept it. They don't.

21 He admits to the officers that he was rude.
22 He was agitated by the fact he could not get this done,
23 and that he needed to do that so he could get the down
24 payment paid, and to get the mobile home he had

1 negotiated to purchase.

2 There were various statements he made where he
3 was concerned that they were going to up the price or
4 change the terms of the agreement if he didn't get the
5 money to Instant Housing and to the owners of that mobile
6 home.

7 But the testimony will also show that when he
8 returned to the original California Federal Bank, and
9 that's the one where he made the deposit in Sparks, I
10 believe the Iron Horse Shopping Center, he was calm at
11 that point, and he went in and he spoke with Yvonne
12 Kline, who I believe the State will be calling, and he
13 tried to inform her that he believed the signature was
14 valid, that he's seen her sign her name before, and that
15 if she would check some cancelled checks, she would see
16 that. He was trying to find ways of showing this was a
17 valid check.

18 When he first went back, she informed that she
19 was going to lunch, he would have to come back. So he
20 came back a third time to that bank at 4:00 p.m., and
21 again tried to talk to them about whether it was possible
22 to get the check negotiated.

23 He does tell the story to Yvonne Kline, that
24 he needs the money for a down payment, and that the down

1 payment was in the a amount of \$5,000.

2 Now on this last visit, the police show up.
3 And it was a Dale Pappas, who is going to testify, and I
4 believe Rich Hill.

5 And they come in and question him, first about
6 the fact that they were investigating a missing person,
7 and they want to know if he knew anything.

8 They also asked him about the check. They
9 asked to see the check, and he gave them the check, and
10 they looked at it, and they made a copy of it, and gave
11 the check back to him.

12 They also asked him various questions about
13 the check, and about things, and at that time he did tell
14 them that he had made a deposit earlier that week on
15 Wednesday. He told Dale Pappas that.

16 You will also note from the evidence that
17 throughout the police officers' investigation, which
18 pretty much went through the rest of this month and
19 probably into July, Steven Voss was very cooperative. He
20 did three interviews.

21 And the State has very well put forth windows
22 where interviews were made. These two, right here, were
23 videotaped. You will see what is known as redacted
24 portions of that videotape, which means the State and I

1 have agreed to what is the relevant portions of that
2 tape, and those will be played for you.

3 You should note that the defense does not
4 dispute the events that transpired in June of 1996.
5 We're not disputing what happened and what actions Mr.
6 Voss took.

7 The only thing we're saying is the actions
8 that he took and the things he did weren't a crime. I am
9 going to ask you all listen to the evidence and testimony
10 that's introduced, regardless of who presents it, before
11 you make a decision in this case.

12 For if you do, you will reach the same
13 conclusion, that the actions that he took, which are not
14 necessarily disputed, I think the State even agrees to
15 that, they just say that he had a different intent, but
16 if you listen to all the evidence and all the testimony
17 from whoever offers it, and like I said there is close to
18 20 witnesses, you will reach the same conclusion that the
19 defense does.

20 Now I do want to point out very briefly -- the
21 State set forth a whole bunch of inconsistencies that
22 they say Steven Voss did.

23 There are two things I am going to ask: One,
24 nobody can completely tell you everything they did in a

1 particular day. Nobody can tell you exactly word for
2 word when things happened. They can't give you exact
3 times, they can't tell you everything. That's a fact of
4 life.

5 What you need to look for is material
6 inconsistencies, things that you reasonably would have
7 expected him to say.

8 The second thing I want to point out is a
9 number of the inconsistencies. I have asked the majority
10 of those inconsistencies; you will find were not
11 inconsistencies.

12 I am not going to point them out and say this
13 didn't happen, this didn't happen. That's what is going
14 to happen from the witness stand, and that's what's going
15 to happen from the evidence that's going to be introduced
16 to you.

17 I am going to ask you to listen to what the
18 officers say, listen to what the other witnesses say,
19 listen to what the tapes, that you will be given an
20 opportunity to review, and make your own decisions as to,
21 one, if there were inconsistencies, as the State has
22 outlined.

23 Two, whether they are material to establish
24 that he intended to commit a crime. Because we don't

1 dispute -- like I said, we don't dispute these actions
2 transpired.

3 If you look at what the State told you
4 happened over these two weeks, and if you look at what I
5 told you happened over the two weeks, they are
6 consistent. There is just a question as to whether his
7 actions were criminal. And I suggest they are not.

8 At the conclusion of this case, I will ask you
9 find the State has not proven its case beyond a
10 reasonable doubt. And I will request you return a
11 verdict of not guilty to all six counts.

12 Thank you.

13 THE COURT: Mr. Walker, you may call your
14 first witness.

15 MR. WALKER: I call Sandra Crumb. .

16
17
18 SANDRA CRUMB,
19 called as a witness on behalf of the State herein,
20 having been first duly sworn, was examined
21 and testified as follows:

22
23 DIRECT EXAMINATION BY MR. WALKER:

24 Q. Good afternoon. If you would, ma'am, please

1 state your full name and spell your last name for the
2 record.

3 A. Sandra Claire Crumb, C-r-u-m-b.

4 Q. Miss Crumb, where do you currently reside?

5 A. 5501 West Fourth Street.

6 Q. What is at 5501 West Fourth Street?

7 A. That's the Jacpine Motel. I own the motel,
8 and my husband and I live there.

9 Q. How many units are in the Jacpine?

10 A. Seven.

11 Q. Is your unit numbered, or do you bear the
12 residence, if you will, that's at 501 West Fourth?

13 A. My unit isn't numbered. We live there.

14 Q. Do you know a person by the name of Beverly
15 Baxter?

16 A. Yes, I do.

17 Q. When did you first meet Beverly?

18 A. First of December, 1995, she checked in and
19 rented number one, my number one unit.

20 Q. Where is unit number one with respect to your
21 own residence?

22 A. It's right next door to me. Right next door
23 to me.

24 Q. Do you have a doorway and/or a window that

1 looks onto the porch that her door opens onto?

2 A. Yes, I do. My office door looks right onto
3 it. It's glass in the front, and looks right out to the
4 front, to the porch. I can see all the way down.

5 Q. Are you able to see people coming and going
6 from her apartment?

7 A. Definitely.

8 Q. Do you have windows situated in your unit such
9 that you can see cars that come in and out of the parking
10 area to the Jacpine Motel?

11 A. Yes, I do. My living room in the front has
12 windows on all sides, big glass windows on all sides, so
13 I can see anybody who comes and goes in and out of the
14 driveway.

15 Q. When did you last see Beverly Baxter?

16 A. That would be Thursday morning, last June,
17 when she left about 9:00 o'clock -- 9:00, 9:15 in the
18 morning on Thursday, and she pulled out of the driveway
19 in her car.

20 Q. Would that be June 13, 1996, you're referring
21 to?

22 A. Yes, it would.

23 Q. Who lived in apartment number one with Beverly
24 Baxter, if anyone?

1 A. No one. Just her dog.

2 Q. What is her dog's name?

3 A. Chips.

4 Q. How did Beverly behave toward her dog, Chips?

5 A. Oh, she loved --

6 MR. CONWAY: Objection. Relevance, Your
7 Honor.

8 MR. WALKER: I can make a good-faith offer of
9 proof.

10 MR. CONWAY: Can we approach?

11 THE COURT: Overruled. I don't see that as an
12 issue here.

13 BY MR. WALKER:

14 Q. How did she behave towards her dog?

15 A. She loved the dog very much, took really good
16 care of it. The only time she left it was when she went
17 to work, and then she'd come home even at lunch and walk
18 the dog, and then she was always home right after work
19 everyday, took care of the dog.

20 She loved that dog. She took very good care
21 of it. It was an immaculate animal.

22 Q. In the 7-month period that Miss Baxter was a
23 resident at the Jacpine Motel, were you ever aware she
24 spent the night elsewhere?

1 A. No, to my knowledge she never spent the night
2 anywhere but there.

3 Q. What was your agreement with her about having
4 a pet, in the first place?

5 A. Our agreement was that she walk the dog, that
6 she wouldn't leave it unattended for long periods of
7 time, like 24 hours, a whole day or something.

8 And also that she gets the dog outside, takes
9 care of it, and mainly doesn't leave it unattended for
10 more than, you know, the normal workday, something like
11 that.

12 MR. WALKER: Miss Clerk, may I have the series
13 of photographs marked 5 through 22 for identification,
14 please?

15 For the record, Your Honor, I am displaying a
16 series of photographs numbered 12 through 22, to counsel
17 at this time.

18 BY MR. WALKER:

19 Q. Miss Crumb, I am going to hand you a series of
20 photographs that are marked on the front with evidence
21 identification stickers.

22 First, if you would, please, just take your
23 time and look at each one of those photographs to see if
24 you recognize what is depicted in that photograph. Just

1 do that to yourself.

2 A. Okay.

3 Q. Do you recognize what is depicted in each one
4 of those photographs?

5 A. Yes, each one of them.

6 Q. What is depicted generally in that series of
7 photographs?

8 A. First one is the door to number one, the porch
9 in front, and the door to number one. And then they go
10 in all through the apartment, when you go through, the
11 bathroom, the bed, all of her personal things, the
12 closets.

13 Q. Did you have occasion to enter Miss Baxter's
14 apartment sometime after June 13, 1996, the last time you
15 saw her?

16 A. On Friday when her supervisor came around and
17 was worried about her because she hadn't called in and
18 hadn't shown up for work, and he wanted me to unlock the
19 door so they could go in and we could, you know, we could
20 check the room, see if she was all right.

21 Q. Did you in fact open the room and check it
22 out?

23 A. Yes.

24 Q. Do each of those photographs fairly and

1 accurately depict the contents and condition of the room
2 as you saw it when you went in that morning?

3 Let's take them one at a time, probably
4 starting with 12.

5 A. Okay. 12, being the front door. The front
6 door, that was -- that looks the same.

7 MR. WALKER: I move 12 into evidence, Your
8 Honor.

9 MR. CONWAY: No objection.

10 THE COURT: Exhibit 12 is admitted.

11 (Whereupon, Exhibit 12 IS admitted into
12 evidence.)

13 THE COURT: Are you going to have any
14 objection to any of these?

15 MR. CONWAY: Not the 12 through 22 he's shown
16 me.

17 THE COURT: Exhibits 12 through 22 are
18 admitted.

19 (Whereupon, Exhibits 12 through 22 were
20 admitted into evidence.)

21 MR. WALKER: Great. We have now admitted all
22 these exhibit as evidence, and I will go ahead and
23 retrieve them from you.

24 Your Honor, I would like to publish these

1 exhibits to the jury, if I could, while I continue asking
2 questions.

3 THE COURT: Yes.

4 BY MR. WALKER:

5 Q. Miss Crumb, do you know a person by the name
6 of Steven Voss?

7 A. Yes.

8 Q. Is Mr. Voss here in the courtroom?

9 A. Yes, he is.

10 Q. Would you identify him and an item of clothing
11 he's wearing right now?

12 A. Right now he's wearing a gray suit and tie;
13 the blond gentleman with the blue eyes and blond
14 eyebrows.

15 Q. To my left, next to counsel here?

16 A. Yes.

17 MR. WALKER: For the record, Your Honor, she
18 has identified the defendant, Mr. Voss.

19 THE COURT: The record will so reflect.

20 BY MR. WALKER:

21 Q. When did you first meet Mr. Voss?

22 A. He used to come around and see Beverly and
23 visit, spend the night there with her, and that would
24 have been, oh, I would say a couple months before June,

1 even as early probably as February or March, something
2 like that. He would come around intermittently, not all
3 the time, but once in a while he would come around.

4 Q. When was the last time you saw Mr. Voss in or
5 around Miss Baxter's apartment?

6 A. The last time I saw him was when he was
7 leaving. He had spent the night Wednesday night, and he
8 left Thursday morning. And then right prior to that is
9 when I saw him on Wednesday while Beverly was at work, he
10 came and used a key and entered the apartment. I was
11 sitting in the office and looking straight out, and he
12 used a key and entered Beverly's apartment.

13 Q. We will get to that in just a moment. As I
14 understand it, then, the last time you saw Mr. Voss would
15 have been Thursday morning, June 13th, at about 9:15?

16 A. Yes.

17 Q. What kind of car was Mr. Voss driving on that
18 day?

19 A. The blue and white tow truck, the big blue and
20 white truck.

21 Q. Let me hand you a photograph marked as Exhibit
22 10 for identification, and ask if you recognize what is
23 contained in that photograph?

24 A. That's his truck.

1 Q. Does that photograph fairly and accurately
2 display his truck as you recollect seeing it?

3 A. Yes.

4 MR. WALKER: I'd move 10 into evidence.

5 MR. CONWAY: No objection.

6 THE COURT: Exhibit 10 is admitted.

7 (Whereupon, Exhibit 10 was admitted into
8 evidence.)

9 BY MR. WALKER:

10 Q. Have you seen Mr. Voss in or around Miss
11 Baxter's apartment at any time after June 13, 1996?

12 A. No, no.

13 Q. Do you know this lady seated in the back of
14 the courtroom behind me in the flowered dress?

15 A. No.

16 Q. Have you ever met her or seen her around Miss
17 Baxter's apartment?

18 A. No.

19 Q. What time of day was it when you saw Mr. Voss
20 enter Miss Baxter's apartment?

21 A. It was right around 12:15, about 12:00.

22 Q. And was anyone with Mr. Voss when you saw him?

23 A. No.

24 Q. Was that an unusual circumstance, in your

1 experience?

2 A. Yes, it was. In the six months she had rented
3 there, she never had anybody over there unless she was
4 there at the same time.

5 Q. Did you have a policy or a preference that you
6 expressed to Miss Baxter about the use or possession of
7 keys to the units?

8 A. Oh, definitely. I really didn't want keys
9 being made, handed out to people that didn't live in the
10 units, entering the units, without the tenant being with
11 them.

12 Q. Did you express that to Miss Baxter?

13 A. Oh, yes.

14 Q. What did you do when you saw Mr. Voss alone
15 enter Miss Baxter's apartment?

16 A. I didn't do anything. I just watched him go
17 in there, and I thought: Well this is odd. I am going
18 to have to talk to Beverly when I see her again.

19 Q. How long was he in the apartment?

20 A. Probably half an hour or so.

21 Q. When he left, did you see him carrying any
22 items or objects?

23 A. No, I didn't.

24 Q. Did you see the keys he utilized in order to

1 gain entry to the apartment?

2 A. They were -- the keys were on a big ring, a
3 big round ring. And I didn't -- I could see -- the
4 little keys that I have are just about like so big. But
5 the key ring was a big round key ring that they were on.

6 Q. Do you know, was that Miss Baxter's key ring?

7 A. I don't know. I never saw Beverly's key ring.

8 Q. So she never showed her keys to you?

9 A. No, no, I didn't know what her keys looked
10 like.

11 Q. When next did you see either Mr. Voss or Miss
12 Baxter after you saw Mr. Voss in her apartment?

13 A. The next time I saw either one of them was the
14 next morning, and he left first, and then Beverly left
15 right after him in her car. And he left about 9:00
16 o'clock, and she left about 9:15.

17 Q. Did you ever become aware of either one of
18 them returning to the apartment that evening?

19 A. No, no.

20 Q. Do you recall looking out in the parking lot
21 and seeing cars parked there that night?

22 A. No.

23 Q. Describe your relationship with Miss Baxter
24 while she lived next door to you.

1 A. She was, besides being a very good tenant,
2 which she was, she was outgoing, she was friendly, she
3 was clean, always paid her rent.

4 She was outgoing. I mean, she was friendly
5 with everybody. Kept to the same schedule all the time.
6 Her schedule didn't vary very much, you know.

7 Q. Did you ever have occasion to discuss with her
8 the subject of a reimbursement check?

9 A. Yes, I did. One day I came home, she was very
10 very upset, and she knew me well enough to where we would
11 talk quite a bit, and she came and said: I have just
12 lost everything I have.

13 And she told me that she had some things in
14 storage in California, and she was a little late with the
15 payment to the storage company and they had sold all of
16 her furniture, all of her clothes, everything she had in
17 storage there. And she was really upset about it,
18 terribly.

19 And she -- I suggested, you know, that she
20 look into it, maybe she could get some of her things back
21 or something.

22 And then the next day she had made some phone
23 calls and all that, and she said they were going to
24 reimburse her for -- they sold her things, and the amount

1 over and above which was owed them, they had to reimburse
2 that amount to her.

3 Q. What intent did she express to you with regard
4 to that check? What she was --

5 MR. CONWAY: Objection, hearsay.

6 THE COURT: Overruled.

7 MR. CONWAY: Then I would ask there be more
8 foundation as to when these statements were made, to
9 establish --

10 THE COURT: Sustained. Lay a better
11 foundation.

12 BY MR. WALKER:

13 Q. Miss Crumb, when did you first have a
14 conversation with Miss Baxter, to your recollection?

15 A. About the storage thing?

16 Q. Yes.

17 A. That would have been, oh, let's see. It would
18 have been about, I would would say, two to three weeks
19 before she disappeared.

20 Q. When was the last time you spoke with her
21 about her intention, whenever it was, with regard to this
22 check?

23 A. That would have been about two days after she
24 first found out they had sold her things. She had been

1 in contact with an attorney, and the attorney had advised
2 her when she got the check from them, to hang onto it and
3 not cash it, not do anything with it, because they were
4 going to, if she cashed that check and used it, then she
5 couldn't come back on them, you know, and try and get
6 some other kind of restitution for it.

7 Q. At any time thereafter did she discuss with
8 you changing that intention?

9 A. No, she wanted to pursue it legally, because
10 she did have -- she had those things in storage for three
11 years, and she had a check -- they had just accepted her
12 last check, and then this other payment was just like a
13 couple days late or something, and the attorney she spoke
14 with felt she really had been wronged there, and so did
15 she, and she wanted to hang on to the check and pursue it
16 legally.

17 Q. Describe, if you will, Miss Baxter's
18 possessions. We can see some of the possessions in the
19 photographs, but describe the kind of possessions she
20 had.

21 A. She had all her personal clothes, like
22 cosmetics, clothes that she would wear to work, clothes
23 she wore everyday.

24 She wore pierced earrings all the time. She

1 was really color coordinated, she'd wear an outfit and
2 she had a pair of earrings to go with it. So she had a
3 lot of clothes. She had a tall jewelry case, and it was
4 filled with -- each tray was filled with pierced earrings
5 for every day of the year.

6 She had some personal pictures she had of her
7 home in California. Personal things, as far as --
8 nothing, you know, other than what you would need for
9 like if everything else was in storage, you know.

10 Q. Did she have any expensive or extravagant
11 items?

12 A. I would not say so, no. Cosmetics are kind of
13 expensive but, you know, I mean as far as --

14 Q. I honestly would not know.

15 A. Well, they are.

16 Q. Thank you. Let me ask this: What happened to
17 all of her things after June 14, 1996?

18 A. The detectives came out and everybody went
19 over the room, looked at the room, and then put an
20 evidence tag on the room, and then Microflex paid her
21 rent for a month, and the room just stayed locked up with
22 everything in it, as she left it.

23 Q. Did anyone other than detectives ever enter
24 that room?

1 A. No, no.

2 Q. Did anyone ever come to claim her personal
3 items?

4 A. Yes, her son, Ron Baxter, came a month later.
5 And he came and packed up her things.

6 Q. What happened to her dog?

7 A. Her dog is with another one of her boyfriends
8 that she had. It was a boyfriend she was seeing all the
9 time at that time. He was spending every weekend over
10 there, and he came around as soon as he heard that she
11 had disappeared, he came around asking about what
12 happened.

13 And I was taking care of Chips there for a
14 couple of days, and he said he would take him and take
15 care of him. And that's where he is.

16 Q. Do you recall, did you ever see Mr. Voss at
17 Miss Baxter's residence on Monday the 10th or Tuesday the
18 11th of June?

19 A. Yes, I did. After she got home from work, he
20 came around and was talking to her on both those days,
21 yes.

22 Q. Do you recall how long he was there on either
23 one or both those days?

24 A. Probably about maybe an hour, both times.

1 Q. Do you know what the subject or topic of
2 conversation was between them at --

3 A. No, no, I don't. I could see them out there
4 on the porch. I don't know what they were talking about.

5 Q. They were sitting on the porch, I take it kind
6 of in the breezeway?

7 A. Yes, sitting. There is a terrace out there on
8 the porch, and they didn't go inside right away. You
9 know, he hadn't been around for a while, and --

10 Q. What time was it on Friday when you went into
11 Miss Baxter's apartment?

12 A. Probably 8:00 o'clock in the morning, Friday
13 morning.

14 Q. At that time do you recall -- we see an
15 answering machine in one of the photographs we have.
16 Were there any messages on the answering machine at that
17 time?

18 A. Yes, there was.

19 Q. Who were the messages from at 8:00 o'clock?

20 A. At 8:00 o'clock -- now when they played -- Ed
21 and the other lady from the bank, when they played the
22 messages, when they started playing the messages, I was
23 out on the porch; okay?

24 There was messages on there, and Ed came out

1 and said: There is one from the bank, there is one from
2 Gary, her boyfriend there, and there was one from Steven
3 Voss.

4 Q. That was at 8:00 o'clock Friday morning?

5 A. Yes.

6 Q. Do you remember listening, actually listening
7 to those messages?

8 A. No, they told me what was on those messages.

9 Q. Did you thereafter ever listen to the
10 messages?

11 A. No.

12 Q. When was the next time you went into Miss
13 Baxter's apartment, if at all?

14 A. Later on we went in there and got the dog, you
15 know, got the dog out of there, and then we just -- it
16 wasn't very much later after that, probably noon or so,
17 got the dog fed and watered, put him back in there and
18 locked the room back up again.

19 I think it was probably about 1:00 o'clock, I
20 unlocked the room again, and that was when the police
21 first came around, probably about 1:00 o'clock Friday
22 afternoon.

23 Q. Finally, what kind of car did Miss Baxter
24 drive?

1 A. She drove a gray two-door, I think like a
2 Buick Skylark, gray two-door car with kind of a burgundy
3 interior.

4 Q. I'm going to show you a series of photographs
5 marked Exhibits 7, 8 and 9 for identification, ask if you
6 recognize what is depicted in those photographs.

7 A. That's Beverly's car.

8 Q. Do those photographs all fairly and accurately
9 depict Beverly's car as you recall it appearing?

10 A. Yes. That's her license number, and that's
11 her car.

12 MR. WALKER: I move 7, 8 and 9 into evidence.

13 MR. CONWAY: No objection.

14 THE COURT: Exhibits 7, 8 and 9 are admitted.

15 (Whereupon, Exhibits 7, 8 and 9 were admitted
16 into evidence.)

17 MR. WALKER: Your Honor, can I publish these?
18 I have no further questions of this witness.

19 THE COURT: Yes.

20 Mr. Conway?

21 MR. CONWAY: Thank you, Your Honor.

22

23

24

1 CROSS EXAMINATION BY MR. CONWAY:

2 Q. Miss Crumb, when was the last time you saw --
3 when was the first time, I guess in June, that you saw
4 Steven Voss?

5 A. First time would have been Monday, that Monday
6 right before the 13th.

7 Q. That would have been the 10th?

8 A. Yes.

9 Q. I'm going to refer your attention to this
10 calendar that's written up by the State, which I think
11 fairly depicts the month of June, 1996.

12 Can you read that from there?

13 A. Can I read it? Yes.

14 Q. Just do it so that if you have question about
15 the dates, we can refer to that; okay?

16 A. Okay.

17 Q. You saw him on the 10th?

18 A. Yes, in the afternoon after work, after she
19 got home from work.

20 Q. Did you see him on the 11th?

21 A. Yes, he was around after she came home from
22 work too.

23 Q. You also saw him on the 12th?

24 A. Yes, that was the date.

1 Q. On a couple occasions?

2 A. Yes, on the 12th.

3 Q. Now you were earlier describing the Jacpine
4 Motel, and stated you have your residence, which has a
5 window that looks out onto the street side of West
6 Fourth?

7 A. Right.

8 Q. And you can see people coming and going? Is
9 that where the driveway is?

10 A. Yes.

11 Q. Is there a driveway on the other side too of
12 the Jacpine Motel?

13 A. That's the only entrance.

14 Q. Now you stated the first time you saw Steven
15 Voss on June 12, was at approximately 12:15 when he came
16 and went into Beverly Baxter's residence?

17 A. Right.

18 Q. Where did he park his car at that time?

19 A. Right out in front. He always used to park,
20 you know, in front, the truck in front there.

21 Q. In front of her residence or --

22 A. In front of my residence.

23 Q. Right in front of those windows?

24 A. Right, that's Fourth Street right in front

1 there.

2 Q. Had you seen Beverly Baxter prior to that?

3 A. She left for work that morning, I noticed her
4 driving out, you know, and that was the same time she
5 always went to work, so, you know.

6 Q. What time would that have been?

7 A. Right about quarter after 7:00, something like
8 that.

9 Q. The next person you saw was Steven Voss, isn't
10 that correct?

11 A. Yes.

12 Q. When you went into unit one, did he let the
13 dog out, Chips?

14 A. No.

15 Q. You didn't see the dog come out?

16 A. No.

17 Q. Now how many keys do you normally give to a
18 tenant?

19 A. Just one.

20 Q. You express to each tenant that they are the
21 only ones to use that key; isn't that correct?

22 A. Yes, yes.

23 Q. So it's your testimony when you say Steven
24 Voss enter her apartment, you found that to be very

1 strange and concerning?

2 A. Oh, definitely, yes.

3 Q. But you did not talk to him?

4 A. No, Beverly had always been so responsible in
5 that area, and that was something I thought I would just
6 talk to her personally about.

7 Q. But you never talked to Beverly?

8 A. I never saw Beverly again until she was coming
9 in and going out and, you know, I didn't have a chance to
10 talk to her.

11 Q. Did you see her that evening, the evening of
12 the 12th?

13 A. Yes, I saw her come back, and they both spent
14 the night there Wednesday night.

15 Q. Did you see her having a conversation with
16 Gary Plank that evening?

17 A. They were -- they went in the apartment, you
18 know, and you can't hear, unless it's very loud, what is
19 going on over there.

20 Q. Do you recall what time that was?

21 A. I would say probably around 9:00 o'clock,
22 something like that.

23 Q. In the evening?

24 A. Yes.

1 Q. And you didn't go over and talk to her about
2 Steven Voss coming to her apartment?

3 A. I didn't want to do it while he was still
4 there. I wanted to just --

5 Q. You mean while Gary Plank was there?

6 A. No, Steven was there that night, Wednesday
7 night, Steven spent the night there. That was Wednesday
8 on the 12th.

9 Q. So you didn't see Gary Plank at the residence
10 on the 12th?

11 A. No, Gary had not been around there since the
12 weekend. He only spent like Friday, Saturday and Sunday
13 there, and then he would leave Monday morning.

14 Q. Now you testified that Miss Baxter was very
15 responsible?

16 A. Yes.

17 Q. Always paid her rent on time?

18 A. Yes.

19 Q. Checks never bounced?

20 A. I only take cash. I don't take checks out
21 there; that never bounces.

22 Q. She always had her money?

23 A. Yes, she always paid on time, paid by the
24 month. She was never late.

1 Q. Did she always deliver you that money, or ever
2 send anyone else to deliver the money?

3 A. Oh, always she paid me directly. She wouldn't
4 do that, like give somebody else that and say go pay my
5 rent; she would do it herself.

6 Q. Now refer your attention to the check. Ever
7 seen that check?

8 A. No.

9 Q. Going to show you what has been marked State's
10 Exhibit 1 and 2 for identification. Just want you to
11 look at it first. You're probably not going to recognize
12 these things, but I do want -- At this time, Your Honor,
13 I believe the State and defense are going to stipulate to
14 State's 1 and 2.

15 THE COURT: I believe that was done. Exhibits
16 1 and 2 are admitted.

17 BY MR. CONWAY:

18 Q. Have you had a chance to review these two
19 documents?

20 For the record, State's 1 is what?

21 A. It's a check.

22 Q. Ever seen this check before today?

23 A. No.

24 Q. For the record, State's 2 is a packet of

1 documents. I want to refer your attention to page 3,
2 just counting right through. What is that?

3 A. A copy of the check, and it is --

4 Q. Is that a letter?

5 A. Yes.

6 Q. Who is that letter from?

7 A. It's from the moving and storage, Burgess of
8 North America.

9 Q. Ever seen that letter before?

10 A. No.

11 Q. When was the first time you talked to Beverly
12 Baxter about her storage unit and the fact that the items
13 had been sold?

14 A. About three weeks before she disappeared.

15 Q. So that would have been the end of May?

16 A. I would say it was more like the end of May.
17 Would have only been about two weeks, so it would have
18 been about, you know, a week closer into the month of
19 May.

20 You know, I know exactly when it was, because
21 Beverly's birthday -- it was the day before her birthday.

22 Q. Do you recall when Beverly Baxter's birthday
23 is?

24 A. Like in the middle of May. She had her 50th

1 birthday. And it was the day before her birthday, and
2 that's one of the reasons she was crying, she said: It's
3 some birthday present.

4 Q. That's when she first found out that the money
5 -- that the property had been sold?

6 A. Right.

7 Q. At that time she was quite upset?

8 A. Very upset.

9 Q. Did that conversation at that time include a
10 conversation that she had spoken to an attorney?

11 A. No, that was the day that she knew this had
12 happened, and it was in the next couple of days that she
13 got legal counsel, and also talked to the storage company
14 itself, and then they told her they were going to give
15 her reimbursement.

16 Q. So they hadn't sent her the reimbursement?

17 A. No, not at that time.

18 Q. Did you note what the dates were of both this
19 letter and this check?

20 A. No.

21 Q. These have been admitted. Would you note what
22 you observed as the dates of that check?

23 A. It's 5-8.

24 Q. May 8th; is that correct?

1 A. Yes.

2 Q. Again referring your attention to page 3, what
3 is the date of that letter?

4 A. That's May 8th.

5 Q. I think you said you had two conversations
6 about this incident. When was the second one?

7 A. The second one would have been -- I would say
8 it was just about five days after she was crying on the
9 porch and everything.

10 Q. Still in May?

11 A. Yes, still in May, and she had called the
12 storage company and all that, and she found out she was
13 going to get reimbursed, and she had talked to an
14 attorney, and the attorney had advised her when she did
15 get the check, not to cash it, to keep it in her
16 possession, and they were going to use it to pursue the
17 matter further with the storage company.

18 Q. Now you had an interview with the police in
19 this case, isn't that correct?

20 A. Yes.

21 Q. Do you recall when that interview was?

22 A. That was the day that it was -- they talked to
23 me first on Friday, on the 14th, and then they came back
24 Sunday in the afternoon, and they did a taped interview

1 with me.

2 Q. So that would have been June 16?

3 A. That would have been on the 16th.

4 Q. Do you recall telling them about what Beverly
5 Baxter had told you?

6 A. Yes.

7 Q. Do you remember telling them that Beverly
8 Baxter had talked to some lawyer somewhere, and the
9 lawyer advised her not to cash the check, and she said
10 that she wasn't going to, she was just going to hang onto
11 this check, because she didn't want -- she wanted to
12 pursue this through the lawyer a little bit about why her
13 things were sold?

14 A. Yes.

15 Q. That was your statement?

16 A. Yes.

17 Q. You recall making that statement?

18 A. Yes.

19 Q. You hadn't talked about this check with her
20 since that date toward the end of May?

21 A. No.

22 Q. Again, when you first talked to her, she was
23 quite upset about them selling her furniture, isn't that
24 correct?

1 A. Oh, definitely.

2 Q. The fact that you believe that it was toward
3 the middle of May you talked to her -- you do admit,
4 though, it appears that the check was sent to her on May
5 8?

6 A. Yes.

7 Q. Now the next time -- referring your attention
8 to the morning of June 13. Is your testimony that you
9 saw Steven Voss leave the apartment at what time?

10 A. 9:00 o'clock.

11 Q. Now in your experience with Beverly Baxter,
12 does she normally leave that late?

13 A. No, usually she leaves by about quarter after
14 7:00 to go to work on a weekday, you know.

15 Q. You're sure that was at 9:00 a.m?

16 A. Right.

17 Q. Now your testimony is that Beverly Baxter left
18 the residence at approximately 9:15 a.m?

19 A. Yes.

20 Q. So a good 15 minutes after Steven Voss had
21 left?

22 A. Yes.

23 MR. CONWAY: Nothing further.

24 THE COURT: Mr. Walker?

1 MR. WALKER: Thank you, Your Honor.

2 REDIRECT EXAMINATION BY MR. WALKER:

3 Q. May I first retrieve the photographs which I
4 believe -- Miss Crumb, you made an interesting comment.
5 You recollected a conversation about the last three weeks
6 prior to the time you saw her. That would be roughly the
7 30th or 31 days in May, are there?

8 A. Yes.

9 Q. The 30th, or a week earlier than that?

10 A. That would have been a week earlier than that,
11 yes.

12 Q. The 23rd?

13 A. Yes.

14 Q. I want to show you a little document from this
15 packet. That says 5-23, Beverly Baxter, bill of sale, ad
16 in paper, notice of sale, auction, company name.

17 A. Yes.

18 Q. Did Beverly have a post office box?

19 A. I think she did. She never got any mail there
20 at the motel, so she must have had a PO box someplace.

21 Q. So on there is also a P.O. Box 5861, Sparks,
22 Nevada, 89432?

23 A. Uh-huh.

24 Q. Would May 23rd then comport with your

1 recollection about having a conversation with her a
2 second time about having been in contact with the storage
3 company?

4 A. Yes, it would.

5 Q. Do you know what the purpose for that contact
6 was that day with the storage company?

7 A. She had -- that was when they had told her
8 that they were going to send that money.

9 Q. Are you sure it was the May 23rd date, or
10 maybe sooner? Because we do have a check dated May 8th,
11 with a letter dated May 8th.

12 A. Yes. But I think that's, as I recall, that is
13 when she talked to me, would have been like right around
14 the 23rd of May when she said that, you know, she had
15 been in contact with them, they were going to send her
16 the money.

17 Q. Do you recall in your conversations with her
18 regarding this reimbursement check and her intent about
19 it, her ever saying she was requesting documents from the
20 storage company?

21 A. She said that she was going to get documents
22 from them. She wanted -- she said that the lawyer she
23 had talked to had requested itemization of all that, so
24 that he had something to work with, you know, so she

1 requested everything be itemized, that they were
2 accountable for everything that they did there.

3 Q. Would that recollection you have about
4 documents comport with this list, bill of sale, ad in
5 paper, copies of notice of sale info, auction, company
6 name?

7 A. Oh, yeah, that's what she needed.

8 Q. So it would appear from your recollection, as
9 late as May 23rd she was requesting documents?

10 A. Yes.

11 Q. State's 19 is a note or is a picture of a
12 phone. That's Beverly's phone?

13 A. Yes.

14 Q. These are some notes next to her phone?

15 A. Yes.

16 Q. Do you recollect seeing those there Friday
17 morning?

18 A. Friday morning when we were in there?

19 Q. Yes.

20 A. That looks exactly what everything -- she had
21 her phone there -- she always had all her papers there.

22 Q. Next to this note there is something that says
23 call Charley, 5-23-96, at 4:10; will give the request to
24 Tim?

1 A. Yes.

2 Q. And the letter to Miss Baxter is signed by a
3 Tim Sturdivant?

4 A. Yes, right.

5 MR. CONWAY: Objection, Your Honor. I think
6 that misstates -- I don't think it's on purpose, but Tim
7 Sturdivant or Tim Burgess?

8 MR. WALKER: Sorry, it is Tim Burgess, not Tim
9 -- Tim Burgess is the owner of the company. Tim
10 Sturdivant is her family member. Thank you.

11 No further questions.

12 THE COURT: Mr. Conway?

13 MR. CONWAY: Just briefly.

14 RE CROSS EXAMINATION BY MR. CONWAY:

15 Q. So as your testimony states, that at least two
16 weeks prior when you had spoken to her, she was
17 investigating whether she was entitled to more money;
18 isn't that correct?

19 A. Yes, she was. She wanted the documentation.
20 She wanted to know exactly what they had done. And she
21 wasn't so concerned about getting money and everything.

22 In fact when she found out she was going to
23 get that money, it didn't even phase her. It was like
24 she didn't care about the money, she wanted some justice

1 for them selling her stuff out from underneath her like
2 that.

3 Q. The question was: As far as you know, she was
4 investigating whether or not they had done something
5 wrong, whether they owed more money, on at least two
6 weeks prior to the last time you saw her?

7 A. Yes.

8 Q. Now the week prior to that, which would be
9 three weeks prior to, she was quite upset because they
10 had sold her furniture; correct?

11 A. Yes.

12 Q. And that was because she had made a late
13 payment; is that correct?

14 A. She had made a payment -- it was -- she had
15 made the payment; it hadn't gotten in there on time, and
16 that was what happened.

17 Q. And after, I guess we decided it's the 30th of
18 May, you had not had any conversations about the check
19 with Beverly Baxter; isn't that correct?

20 A. No.

21 MR. CONWAY: Nothing further, Your Honor.

22 THE COURT: We will take a recess, come back
23 at 3:30.

24 While you are in recess, don't discuss this

1 case among yourselves; do not discuss this case with
2 anyone else.

3 Don't form any conclusions about the case
4 until it's been submitted to you as a jury.

5 You should not read, look at or listen to any
6 media of the case, if there should be any.

7 With that, we will be in recess until 3:30.

8 (WHEREUPON, A RECESS WAS TAKEN.)

9 (The following proceedings were held outside
10 the presence of the jury:)

11 THE COURT: The record should reflect we are
12 meeting outside the presence of the jury.

13 It's my understanding that the defense has an
14 objection to the next witness that the State intends to
15 call.

16 MR. CONWAY: That's correct.

17 The State has informed me they intend to call
18 Miss Andrew for three areas of examination, in that two
19 of which we do not object to, and one is that he was
20 present at her place of work at a particular time on
21 Wednesday the 12th. No objection to that.

22 Two, that he asked for Beverly Baxter when he
23 went to the door. We have no objection to that.

24 What we object to is there will be testimony

1 concerning an apparent argument, at least that's how it
2 will be phrased, and basically from what I understand,
3 from what she said at the preliminary hearing, was that
4 she went by, she heard their voices raised, she didn't
5 hear anything, and that's the extent of it.

6 I would object to that, because I don't know
7 what relevance it has to the issues at hand. She doesn't
8 even know what they were talking about.

9 And second of all, I think any probative value
10 it would have would substantially be outweighed by its
11 prejudicial value, with respect to making it sound like
12 he got into an argument with her.

13 I just don't think it's appropriate.

14 THE COURT: Is this at her place of employment
15 or home?

16 MR. CONWAY: Employment.

17 THE COURT: Mr. Walker?

18 MR. WALKER: Thank you, Your Honor. As you
19 know now after my opening statement is out, the
20 allegation is that this conversation occurred Wednesday,
21 June 12, 1996 at between 11:30 and 12:00 at Miss Baxter's
22 place of employment.

23 The three assertions, if you will, are that
24 Mr. Voss came about 11:30 to 12:00, that he had a

1 discussion with Beverly after he asked to talk to her,
2 and I'm not -- I can't make a good-faith representation
3 that he asked Miss Andrews, but all I can tell you is in
4 her statement to the detectives she said the following:

5 He asked for Bev, and Bev came outside and was
6 talking to him. She will make whatever representation
7 she makes about who he asked, but I think I can plumb
8 into that how she knows who he asked.

9 That's relevant, because on the tape Mr. Voss
10 claims that a black man came out and asked him if he
11 could help, and that's how he got in contact with Miss
12 Baxter; that's number one.

13 The final assertion is that the prejudicial
14 effect, the fact they got in an argument, outweighs the
15 probative value. But Mr. Conway doesn't tell us how it
16 outweighs the probative value.

17 I believe in good faith, what he means, is
18 that tends to show that in the vernacular, Mr. Voss --
19 and I don't intend to offer it for that matter at all.

20 Mr. Voss does make several assertions about
21 which day it was that he went to Miss Baxter's work and
22 got the check. And he claims his confusion is because
23 there was a lot going on that week.

24 And I guess my point is: If you go to

1 somebody's work and you have a heated discussion, which
2 is at most I think how you can describe this, not even an
3 argument, you would tend to remember that. And therefore
4 that tends to dispute his claim that he doesn't remember
5 what day it was.

6 You will also note that this discussion of
7 course occurs before he then takes her check and deposits
8 it.

9 THE COURT: Mr. Conway, anything further?

10 MR. CONWAY: Briefly. I think the
11 characterization that this was a heated discussion is
12 another problem.

13 I mean, she testified at the preliminary
14 hearing that the voices raised, but she didn't hear what
15 they said, and she walked away.

16 I don't see how this has any relevance. I
17 think that if it does, even a little bit, it can be
18 substantially outweighed by any prejudicial value they
19 can infer from that evidence.

20 THE COURT: Here's what I will do. I am going
21 to allow the testimony; however, I am going to give the
22 jury a limited instruction that this is only to show why
23 she recalls the particular date, and for no other
24 purpose.

1 MR. CONWAY: I agree with that, Your Honor.

2 THE COURT: Is that fair?

3 MR. WALKER: No problem, Your Honor.

4 THE COURT: Please bring them in.

5 (The jury is present in the Courtroom for the
6 proceedings.)

7 THE COURT: Counsel stipulate to the presence
8 of the Jury? Mr. Walker?

9 MR. WALKER: On behalf of the State, Your
10 Honor, I stipulate to the presence of the jury and the
11 alternate.

12 THE COURT: Mr. Conway?

13 MR. CONWAY: Yes, Your Honor.

14 THE COURT: Mr. Walker, please call your next
15 witness.

16 MR. WALKER: Thank you, Your Honor. I'd call
17 Claudette Andrews.

18
19 CLAUDETTE ANDREWS,
20 called as a witness on behalf of the State herein,
21 having been first duly sworn, was examined
22 and testified as follows:
23

24 DIRECT EXAMINATION BY MR. WALKER:

1 Q. If you would, please state your name and spell
2 your full name.

3 A. Claudette Andrews. First name is
4 C-l-a-u-d-e-t-t-e. Andrews is A-n-d-r-e-w-s.

5 Q. Miss Andrews, where do you currently reside?

6 A. Microflex Medical Corporation.

7 Q. That's where you work?

8 A. Yes.

9 Q. How long have you worked there?

10 A. About nine months.

11 Q. Do you know a person by the name of Beverly
12 Baxter?

13 A. Yes, I do.

14 Q. Did Miss Baxter also work at Microflex?

15 A. Yes.

16 Q. How did you first meet Beverly Baxter?

17 A. She worked in what was data processing, and I
18 take my orders over to that department, and she was one
19 of the people that picked up the orders.

20 Q. Did you have friendly conversations with Miss
21 Baxter on occasion?

22 A. Yes, every now and then.

23 Q. Was there a copy machine near Miss Baxter's
24 desk?

1 A. There was a machine, but it was where I used
2 to pick up my orders. Not a copy machine, it's like a
3 printer.

4 Q. In addition to that printer, was there a copy
5 machine near Miss Baxter's desk?

6 A. Yeah, a little ways.

7 Q. A few feet away?

8 A. Yes.

9 THE COURT: Excuse me. Can you all hear her
10 okay?

11

12 BY MR. WALKER:

13 Q. Do you remember that there was some commotion,
14 if you will, at Microflex on Friday, June 14th, 1996,
15 because Beverly was missing?

16 A. Yes.

17 Q. When was the last time you had seen her prior
18 to Friday?

19 A. The last time I saw Beverly was Wednesday, I
20 would say, around -- not sure exactly what the time was,
21 but I know it was Wednesday.

22 Q. All right. Let's jump back and forward a
23 little bit, maybe help jog your memory. Did you have
24 occasion to give a tape-recorded statement to the

1 detectives in this case on June 17, 1996?

2 A. Yes.

3 Q. If I offer you a copy of that statement, would
4 it help refresh your recollection about what time it was
5 that you saw Beverly?

6 A. Sure.

7 Q. I am going to show you page 3 of the
8 transcript of that statement, at line 20 here. Just read
9 it to yourself. There is an indication of you making an
10 answer as to the time. See that?

11 A. Oh, yes, sir.

12 Q. Do you remember what time it was that you saw
13 Miss Baxter?

14 A. Yes, it was around 11:30 or so, because I was
15 just coming back from my first break.

16 Q. What time did you usually take your first
17 break?

18 A. Anywhere from around from 11:00 to 11:30,
19 between that time.

20 Q. What was your usual workday? What hours of
21 the day do you usually work?

22 A. I used to work from 8:00 o'clock to 4:30.

23 Q. Do you know what hours of the day Miss Baxter
24 worked?

1 A. I am not really sure.

2 Q. Fair enough. You recollect then you got to
3 take your first break, and you were coming back from your
4 first break, as I understand it?

5 A. Yes.

6 Q. Where did you see Miss Baxter at?

7 A. At 11:30, I saw Beverly, she was -- we were
8 passing each other. She was going to the door, and I was
9 coming back from a break, and we were passing each other
10 at the back door.

11 Q. Do you know why Beverly was heading outside?

12 A. She had a visitor.

13 Q. How do you know she had a visitor?

14 A. Because when I was standing at the door, this
15 gentleman asked for Beverly.

16 Q. When you say this gentleman, please describe
17 what the gentleman is wearing right now.

18 A. He has on like a grayish black suit.

19 Q. Next to the gentleman to my left that I have
20 my hand on his shoulder?

21 A. Yes.

22 MR. WALKER: For the record, Your Honor, she's
23 identified the defendant, Mr. Voss.

24 THE COURT: The record will so reflect.

1 BY MR. WALKER:

2 Q. Did he ask you to see Beverly?

3 A. No, I don't believe so, I believe it was
4 somebody else.

5 Q. Do you remember who?

6 A. No, sir, I don't.

7 Q. How do you know he asked to see Beverly?

8 A. Because Beverly went to the door to see him.

9 Q. So you surmised from what you saw happening?

10 A. Yes.

11 Q. Did you see a blue and white truck?

12 A. Yes, sir, I did.

13 Q. Was that out in the parking lot?

14 A. Yes, sir.

15 Q. What happened when you and Beverly passed one
16 another?

17 A. I was standing at the machine picking up my
18 orders, where it's right in front of Beverly's desk
19 there, and him and Beverly were standing at the doorway
20 talking.

21 Q. Was he inside the Microflex building?

22 A. No, sir, he wasn't.

23 Q. Where was he at?

24 A. He was on the outside of the door.

1 Q. So on a porch?

2 A. Yes.

3 Q. Was Beverly inside or outside?

4 A. I think she was kind of in the doorway there.

5 Q. Could you hear what they were saying?

6 A. No, sir.

7 Q. What happened after they talked?

8 A. Beverly came back in. And I had taken some
9 orders back to her supervisor, Ed, and when I was coming
10 back this way, Beverly was coming around the corner, and
11 she seemed to be upset, kind of agitated, and she threw
12 her hands up and --

13 Q. For the record, the witness has her hands up
14 in the air, about shoulder height, and shoulder width,
15 about?

16 A. She seemed to be fairly -- not -- upset, you
17 know, kind of like.

18 Q. Do you know what she was upset about or
19 anything?

20 A. No, sir, I don't.

21 MR. WALKER: Nothing further.

22 THE COURT: Mr. Conway?

23 MR. CONWAY: Thank you, Your Honor.

24 CROSS EXAMINATION BY MR. CONWAY:

1 Q. You testified that you saw Beverly between
2 11:30 and 12:00 noon; is that correct?

3 A. Yes, sir.

4 Q. And you also saw Steven Voss at that time,
5 isn't that correct?

6 A. Yes, sir.

7 Q. But you at no time heard anything about what
8 they were having a conversation about?

9 A. No, sir.

10 Q. Never talked to her about that conversation?

11 A. No, sir.

12 MR. CONWAY: Nothing further.

13 THE COURT: Anything further, Mr. Walker?

14 MR. WALKER: Nothing further at this time,
15 Your Honor.

16 THE COURT: Thank you. You may be excused.

17 (The Witness Was Excused.)

18 MR. WALKER: State calls Linda Weeks, Your
19 Honor.

20

21

22

23

24

LINDA WEEKS,

1 called as a witness on behalf of the State herein,
2 having been first duly sworn, was examined
3 and testified as follows:
4

5 DIRECT EXAMINATION BY MR. WALKER:

6 Q. If you would, ma'am, please state your full
7 name and spell your last name for the record.

8 A. Linda Weeks, W-e-e-k-s.

9 Q. Ma'am, where do you currently reside?

10 A. 169 Ledfield in Reno.

11 Q. How long have you lived here in Reno?

12 A. I think 13 years.

13 Q. At one time in the year past, did you have
14 occasion to work at Microflex Corporation here in Reno?

15 A. Yes.

16 Q. Where is Microflex located?

17 A. 127 Woodland.

18 Q. Generally what part of town is that in?

19 A. Near Mogul, is all I can tell you.

20 Q. It's out west?

21 A. Yes.

22 Q. Out on West Fourth Street?

23 A. Yes.

24 Q. Do you know a person by the name of Beverly

1 Baxter?

2 A. Yes, I do.

3 Q. How do you know Miss Baxter?

4 A. I worked with her for eight months at
5 Microflex.

6 Q. Did you have occasion to ever room with her,
7 live with her in the past?

8 A. Yes, I roomed with her for three weeks in San
9 Francisco.

10 Q. How did you two have occasion to room together
11 in San Francisco?

12 A. My supervisor called me down there and asked
13 me if I would move in with her for the three weeks.

14 Q. Describe your relationship with Miss Baxter
15 over time.

16 A. I would say we were good friends, because we
17 did a lot of things together. We went shopping, we went
18 to dinner.

19 Q. How often did you go to dinner?

20 A. Maybe twice a month.

21 Q. When was the last time you saw Beverly Baxter?

22 A. That would be June 12, Wednesday.

23 Q. A Wednesday?

24 A. Yes.

1 Q. What time of day was it when you last saw her?

2 A. I think it was 4:30 in the afternoon.

3 Q. Did you have any plans with Miss Baxter in the
4 near future after June 12?

5 A. Yes, I did.

6 Q. What were those plans?

7 A. She was going to come over and look at a day
8 bed I had that she wanted to buy for her room at the
9 motel, because she wanted to get rid of her bed.

10 Q. What was the nature of your contact with her
11 at 4:30 on June 12?

12 A. We probably just said good-bye, see you
13 tomorrow.

14 Q. What hours of the day did Miss Baxter usually
15 work?

16 A. She worked from 7:30 to 4:00 or 4:30 -- I
17 think it was 4:30, yes.

18 Q. Was she also leaving then at 4:30, or do you
19 recall?

20 A. I recall now that she left at 4:30, and I left
21 at 4:45.

22 Q. She actually left first?

23 A. Yes.

24 Q. Where was your desk, if you will, in relation

1 to Miss Baxter's desk in the building that's Microflex
2 Corporation?

3 A. Across the room.

4 Q. It's an open room, is it, without walls?

5 A. No, it's not.

6 Q. Are there dividers?

7 A. Yes.

8 Q. Is there a copy machine near where Beverly's
9 desk was?

10 A. Yes, a little bit to the left of her desk.

11 Q. How many feet away, would you say?

12 A. Three.

13 Q. Prior to 4:30 p.m on June 12, 1996, did you
14 have occasion to talk with Beverly anytime earlier that
15 evening?

16 A. I am sorry?

17 Q. Did you talk with her specifically at 2:30?

18 A. Well, yes, on our break at 2:30.

19 Q. Was it normally your habit and practice to
20 speak with her at 2:30?

21 A. Yes, I always went in to the break room to
22 talk to her.

23 Q. During that break at 2:30, did you discuss
24 with her her intention regarding the reimbursement check?

1 A. I can't specifically say if I talked to her
2 that day about the check. But previously I had talked to
3 her about the check.

4 Q. In the past, have you testified that in fact
5 it was that day? I mean, this has gone on for a while.

6 A. I think I testified that I talked to her on
7 Sunday about the check.

8 Q. Well, we will get to that in a minute, and I
9 will help you perhaps refresh your recollection. But at
10 any rate, do you recollect talking in general with Miss
11 Baxter about her intention regarding a reimbursement
12 check?

13 A. Yes.

14 Q. How many times did you discuss that matter
15 with her?

16 A. Many many many times.

17 Q. Can you give the jury a number of times?

18 A. It was maybe on a daily basis we talked about
19 it.

20 Q. At any time in all of your discussions with
21 Miss Baxter, did she change her stated intention about
22 what she was going to do with that check?

23 A. No, she decided she was not going to cash the
24 check.

1 Q. At any time did she ever express to you any
2 intention to do anything with that check other than hold
3 onto it?

4 A. No.

5 Q. Did she ever equivocate about that? Do you
6 know what I mean? Waffle at all, or seem unsure of that?

7 A. No.

8 Q. Do you ever recall Miss Baxter mentioning an
9 attorney with regard to the check?

10 A. Yes.

11 Q. Specifically what did she tell you about an
12 attorney and her intent regarding the check?

13 A. She told me that she had found an attorney in
14 California that told her that she needed to call the
15 storage unit and get information about where they had
16 placed the ad that they were going to sell her stuff, and
17 then she was supposed to get all this information
18 gathered and then call the attorney back.

19 Q. When was the last time you specifically right
20 now, at any rate, remember having that discussion with
21 her about the attorney?

22 A. That would have been on Sunday.

23 Q. When you say Sunday, you're referring to
24 Sunday the 9th of June?

1 A. Yes.

2 Q. Now do you recall giving a statement to
3 detectives in this case on June 17, 1996?

4 A. Yes.

5 Q. Where were you at when you gave that
6 statement, do you recall?

7 A. I was at Microflex.

8 Q. What was the circumstance? How did it come
9 about that you were going to give that statement?

10 A. What do you mean? I don't understand.

11 Q. How did you meet with the detectives?

12 A. They came there to Microflex. We had gone to
13 her room on Wednesday -- I am sorry, Friday at noon,
14 because Beverly had not shown up for work that day, and I
15 went into her room, and I turned on her recorder, and I
16 had heard messages on there from the bank, and then there
17 was a message on there from Steve.

18 And I got worried and I said -- I told Ed Park
19 that we need to call the Sheriff's Department.

20 Q. Now during the interview on Monday the 17th,
21 do you recall telling the detectives that you took your
22 afternoon break together with her at 2:30, and she told
23 you something at that time about her life?

24 A. I can't remember.

1 Q. If I showed you a transcript, a copy of that
2 interview, would it help refresh your recollection about
3 that?

4 A. Yes.

5 Q. I am going to show you page 2. Why don't you
6 go ahead and read from line six through, roughly, line
7 20. Just read that to yourself, please, not out loud.

8 A. You want me to read this?

9 Q. Just to yourself, yes, just to refresh your
10 recollection.

11 A. Okay.

12 Q. Now do you recall what you said on the 17th?

13 A. Yes, I do.

14 Q. What did you say?

15 A. Beverly had told me that she had -- Steve had
16 found an attorney for her, and that she was supposed to
17 gather up all the storage papers and get them together
18 for Steve, and that she was to give him a check for a
19 dollar for a retainer fee.

20 Q. A personal check of her own?

21 A. Yes.

22 Q. If I understand correctly, that conversation
23 was at 2:30 on the 12th?

24 A. Yes.

1 Q. That was at work?

2 A. That was at work, yes.

3 Q. And you recollect conversations regarding that
4 specific intent on almost a daily basis previously?

5 A. Yes.

6 Q. When was the first time you talked with her
7 about what she was going to do with this check or
8 anything about the check, for that matter?

9 A. I don't know what date it was that we talked.

10 Q. What was her attitude and demeanor? How did
11 she act when she first told you about it?

12 A. About the check she received?

13 Q. Yes. Well, about the check, what it
14 represented.

15 A. When I first found out that she had lost all
16 her stuff in storage, she was devastated. She just broke
17 down.

18 Q. Now you have indicated that you went over to
19 her apartment on the 14th. Did you see Miss Baxter at
20 any time on the 13th?

21 A. No.

22 Q. What did you do on the 14th? What is the
23 first thing you recollect doing with reference to Miss
24 Baxter?

1 A. She usually got to work at 7:15. She didn't
2 show up. 7:30 I got worried because she hadn't called,
3 so I went over to Ed Park, which is my supervisor, and
4 told him that Beverly wasn't there yet, we need to do
5 something.

6 So at 8:00 o'clock he went over there to her
7 room, and she was not there.

8 Q. When did you personally go to her room?

9 A. At noon on Friday.

10 Q. Who did you go with?

11 A. Ed Park, which is my supervisor, and Sophia
12 and Joyce.

13 Q. Which day was it that you had plans with Miss
14 Baxter for her to look at your day bed?

15 A. That weekend.

16 Q. That would have been the 15th and 16th?

17 A. Yes.

18 Q. Did you ever have any contact with her after
19 June 12?

20 A. No, none.

21 MR. WALKER: No further questions, Your Honor.

22 THE COURT: Mr. Conway?

23 MR. CONWAY: Thank you, Your Honor.

24

1 CROSS EXAMINATION BY MR. CONWAY:

2 Q. When did you first speak with Miss Baxter
3 about the check or about the sale of her property?

4 A. I think it was April 3rd, was the day she
5 found out that her stuff had been sold.

6 Q. What was the date again?

7 A. April 3rd.

8 Q. Did she talk to you about that?

9 A. Yes.

10 Q. At that time you stated she was devastated
11 about the loss?

12 A. Yes.

13 Q. When did she talk to you -- when was the first
14 time she talked to you about that she had received the
15 check?

16 A. I don't know what date that was.

17 Q. She ever show you the check?

18 A. No.

19 Q. She ever show you any of the documentation or
20 paperwork related to the check?

21 A. No.

22 Q. Now you stated that you saw Beverly Baxter on
23 the afternoon of the 12th at 2:30?

24 A. That's correct.

1 Q. Do you recall what her demeanor was at that
2 time?

3 A. She seemed to be okay.

4 Q. Do you recall testifying at the preliminary
5 hearing?

6 A. Yes.

7 Q. And do you recall me asking that same
8 question?

9 A. Yes.

10 Q. Do you recall what your response was on that
11 date?

12 A. I think it was -- I am not positive what I
13 said.

14 Q. If I stated that your response was that she
15 was in a good mood, would that be correct?

16 A. That would be correct.

17 Q. And at that time, that was 2:30 on June 12th?

18 A. That's correct.

19 Q. Now you have stated that your first
20 conversation with her about the check was on April 3rd,
21 that you had --

22 A. Excuse me, not the check.

23 Q. I am sorry, about the loss?

24 A. Right.

1 Q. And at that time she was devastated; is that
2 correct?

3 A. Right.

4 Q. Understandably so?

5 A. Uh-huh.

6 Q. You also had a conversation with her sometime
7 later, and you don't recall the date, when she received
8 the check?

9 A. No, I don't remember what date that was.

10 Q. But you have never seen the check?

11 A. No.

12 Q. Now you stated the last time you had a
13 conversation with her about the check, would that have
14 been on June 9th of 1996?

15 A. Right.

16 Q. You talked about the check on that date?

17 A. Oh, yes.

18 Q. Now you also testified that she had intended
19 to send some papers to an attorney just prior to her --
20 around the time of the 12th of June?

21 A. She had contacted an attorney.

22 Q. Did she give you a name of an attorney?

23 A. No, she did not. I'm sorry, she probably did
24 but I can't remember what it was.

1 Q. Did she indicate -- I guess she indicated to
2 you she had spoken to an attorney?

3 A. Yes.

4 Q. So I assume she would have gotten the
5 attorney's name?

6 A. Yes.

7 Q. Then she was to write a retainer check in the
8 amount of one dollar to give to this attorney; correct?

9 A. I think I got the attorneys confused. She had
10 found an attorney herself prior to June 12th.

11 Q. Did she find another attorney after -- she
12 found an attorney, one attorney?

13 A. One attorney herself.

14 Q. Did she also find another attorney through
15 someone else?

16 A. Yes.

17 Q. Did she mention his name?

18 A. No.

19 Q. Did she indicate she had spoken with that
20 attorney?

21 A. No.

22 Q. Did she indicate she was going to send papers
23 to that attorney, to the second attorney?

24 A. Yes, that she was going to make copies.

1 Q. Did she indicate she was going to give him a
2 retainer check for one dollar?

3 A. That's what I understood she was going to do.

4 MR. CONWAY: Nothing further.

5 REDIRECT EXAMINATION BY MR. WALKER:

6 Q. Who found the second attorney, according to
7 Beverly?

8 A. Steven did.

9 Q. Mr. Voss?

10 A. Right.

11 Q. That's what she said, was he found an attorney
12 and Mr. Voss needed a retainer check?

13 A. That's correct.

14 MR. WALKER: Nothing further.

15 THE COURT: Mr. Conway?

16 MR. CONWAY: Nothing further.

17 THE COURT: Thank you, Miss Weeks, you may
18 step down.

19 (The Witness Was Excused.)

20 MR. WALKER: I call Sophia Pantoja.
21
22
23
24