

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

Electronically Filed
Jan 25 2019 11:19 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

STATE OF NEVADA,

Plaintiff,

vs.

STEVEN FLOYD VOSS,

Defendant.

Sup. Ct. Case No. 77505

Case No. CR96-1581

Dept. 1

RECORD ON APPEAL

VOLUME 5 OF 15

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1 Q. What is the corporation's name?

2 A. Microflex Medical Corporation.

3 Q. Just briefly, what is Microflex? Where is it
4 located?

5 A. It's located here in Reno, Nevada, and makes
6 and manufactures and produces latex gloves.

7 Q. Do you know a person by the name of Beverly
8 Baxter who was at one time employed at Microflex?

9 A. Yes, I do.

10 Q. How long did you know Beverly?

11 A. I knew Beverly since December of last year.

12 Q. Driving right to the heart of it, do you
13 recollect receiving a telephone call from Beverly in the
14 morning hours of June 13, 1996, a sick call?

15 A. Yes, I do.

16 Q. What time was it, what do you recollect?

17 A. She called me right before her 8:00 a.m.
18 starting time, and she told me she wouldn't be coming to
19 work that day. She felt maybe she had some sort of
20 food-borne illness, and she would try and come in later.
21 And if she didn't come in later, she would come in the
22 next day.

23 Q. Was it your understanding she was going to
24 come in later on Thursday?

1 A. She had a very strange sound to her voice, and
2 she said she was going to try and make it in later in the
3 day, if she could.

4 Q. Just to drive to the heart of it, as I
5 understand your testimony, your understanding was that
6 meant later on Thursday?

7 A. Exactly, exactly, later on Thursday.

8 Q. Had she done that sort of thing in the past,
9 called in for half day as opposed to a whole day, do you
10 recall?

11 A. No, actually Beverly called in maybe one other
12 time before that. But, no, she had never done that
13 before.

14 MR. WALKER: No further questions.

15 THE COURT: Mr. Conway?

16 CROSS EXAMINATION BY MR. CONWAY:

17 Q. When she called in just before 8:00 a.m. on
18 Thursday, June 13, that was to tell you that she felt she
19 either had the flu or had eaten something and something
20 was bothering her; correct?

21 A. That's correct.

22 Q. When she stated she was going to come in,
23 might come in later that day, that was if she felt
24 better; isn't that correct?

1 A. Yes.

2 MR. CONWAY: Nothing further.

3 MR. WALKER: Nothing further.

4 THE COURT: Thank you. You may be excused.

5 (The witness was excused.)

6 MR. WALKER: Call Ron Baxter, Your Honor.

7

8

RON BAXTER,

9

called as a witness on behalf of the State herein,

10

having been first duly sworn, was examined

11

and testified as follows:

12

13

DIRECT EXAMINATION BY MR. WALKER:

14

Q. Good morning, sir.

15

A. Good morning.

16

Q. Please, if you would, state your full name and

17

spell your last name for the record.

18

A. Ronald Dean Baxter, B-a-x-t-e-r.

19

Q. Mr. Baxter, where do you currently live?

20

A. Lincoln, Nebraska.

21

Q. How long have you lived in Lincoln?

22

A. Three and a half years.

23

Q. Mr. Baxter, are you related to a person by the

24

name of Beverly Baxter?

1 A. She's my mother.

2 Q. How old is your mother, or how old would she
3 be today?

4 A. Fifty.

5 Q. When was the last time you spoke with your
6 mother?

7 A. I would say beginning of June, possibly end of
8 May.

9 Q. Of this year?

10 A. Yes.

11 Q. So that would be 1996?

12 A. Yes.

13 Q. We have heard a lot of testimony about a lot
14 of facts involving this case, Mr. Baxter. To drive to
15 the heart of the questions I have for you: Ultimately
16 did you have occasion to collect your mother's personal
17 effects from her apartment here in Reno some time in late
18 June, early July, 1996?

19 A. Yes, I did, put them in storage out here in
20 Reno.

21 Q. When you collected your mother's personal
22 effects, did you find any extra keys?

23 A. I did find a door key that was never used.

24 Q. How do you know it was never used?

1 A. It was still in the original packaging
2 material.

3 Q. Was that a door key for what?

4 A. It was a General Motors car -- I don't know if
5 it was hers or not, but it was a General Motors car.

6 Q. She had a Somerset?

7 A. Yes.

8 Q. Is that a General Motors make, to your
9 knowledge?

10 A. Yes.

11 Q. What was your mother's habits in respect to
12 her main keys?

13 A. She never left them alone, always carried them
14 with her in her purse or around her wrist or --

15 Q. How would she put them around her wrist?

16 A. A big brass ring about three, four inches in
17 diameter.

18 Q. What would she do with that ring?

19 A. Put it around her wrist sometimes, or throw it
20 in her purse. Never left it.

21 Q. How frequently did you have contact with your
22 mother early this year?

23 A. At least once a week.

24 Q. By telephone, usually?

1 A. Yes.

2 Q. Where did your mother move from when she came
3 to Reno?

4 A. From Lincoln, with me.

5 Q. She was living with you?

6 A. Yes, she was.

7 Q. And she moved directly to Reno?

8 A. Yes.

9 Q. At any time early this year, and specifically
10 at any time prior to the last time you spoke to her or
11 the last time you spoke to her, did she ever express an
12 intent to you to loan money to anyone?

13 A. No.

14 MR. WALKER: No further questions.

15 THE COURT: Mr. Conway?

16 CROSS EXAMINATION BY MR. CONWAY:

17 Q. With respect to the key ring that you were
18 talking about, you said it's a big brass key ring?

19 A. Yes, brass type material, yes.

20 Q. It's big enough, I assume, to go around her
21 wrist?

22 A. Yes.

23 Q. And that's so she doesn't lose them and
24 doesn't put them down somewhere where she can't find

1 them?

2 A. Pretty much, yes.

3 Q. How old are you, sir?

4 A. 31.

5 Q. And during your lifetime, as far as you know,
6 that's the way your mother dealt with her keys so she
7 would not lose them?

8 A. Probably had a key ring for, I would say,
9 about 20 years.

10 Q. And she had no other set of keys; is that
11 correct?

12 A. As far as my knowledge, no.

13 Q. But you did find another key that had not been
14 used, but it was for a General Motors car?

15 A. Yes.

16 Q. It was probably a spare, or what do you think
17 it was for?

18 A. Possibly a spare, yes.

19 MR. CONWAY: Nothing further.

20 THE COURT: Mr. Walker?

21 MR. WALKER: No further questions, Your Honor.

22 THE COURT: Thank you, Mr. Baxter, you may
23 step down.

24 (The witness was excused.)

1 THE COURT: Mr. Walker?

2 MR. WALKER: That's the State's case in chief.

3 MR. CONWAY: I scheduled my witnesses for
4 1:30.

5 THE COURT: The jury will appreciate the
6 time. We're going to send you back, ask you be back at
7 1:30.

8 This trial will be over today, and it will
9 belong to you some time later this afternoon.

10 While you are in recess, do not discuss this
11 case among yourselves, and do not discuss it with anyone
12 else.

13 Don't form any conclusions about this case
14 until it's been submitted to you as a jury.

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

17 With that, you may be excused, and we will see
18 you at 1:30.

19 Counsel, I would suggest that we settle jury
20 instructions now. I will meet you across the street.

21 (WHEREUPON, A RECESS WAS TAKEN.)

22 (The jury is present in the Courtroom for the
23 proceedings.)

24 THE COURT: Will Counsel stipulate to the

1 presence of the Jury? Mr. Walker?

2 MR. WALKER: Yes, Your Honor, on behalf of the
3 State, I stipulate to the presence of the jury and the
4 alternate.

5 THE COURT: Mr. Conway?

6 MR. CONWAY: The defense also stipulates to
7 the presence of the jury and the alternate.

8 THE COURT: Thank you. Mr. Conway, you may
9 call your first witness, please.

10 MR. CONWAY: Thank you. The defense calls
11 Floyd I. Whiting.

12
13 FLOYD WHITING,
14 called as a witness on behalf of the Defense herein,
15 having been first duly sworn, was examined
16 and testified as follows:

17
18 DIRECT EXAMINATION BY MR. CONWAY:

19 Q. Mr. Whiting, good afternoon. State your full
20 name for the record and spell your last name, please.

21 A. Yes. My name is Floyd Whiting. Last name is
22 W-h-i-t-i-n-g.

23 Q. And what is your current employment?

24 A. I am employed as a forensic document examiner

1 with the Washoe County Sheriff's Department Crime Lab.

2 Q. How long have you held that position?

3 A. I have been in this position for 17 years.

4 Q. And what kind of training have you received in
5 regards to document examination?

6 MR. WALKER: Your Honor, it would be my
7 pleasure to stipulate to the qualifications of Mr.
8 Whiting to testify as an expert as to questioning
9 documents. He's qualified in many District Courts, that
10 I am aware of.

11 THE COURT: This one in particular.

12 MR. CONWAY: I have no objection to that
13 either.

14 THE COURT: Thank you. Proceed with your
15 questioning.

16 MR. CONWAY: Thank you.

17 BY MR. CONWAY:

18 Q. During the course of your duties, Mr.
19 Whiting,, were you requested to examine a check numbered
20 563, in this case, State versus Steven Voss?

21 A. Yes, I was.

22 Q. Let me show you what has been marked State's
23 Exhibit 29.

24 This is the envelope it came in. That's the

1 exhibit. Can you identify that exhibit?

2 A. Yes. I have a photocopy of this exhibit in my
3 report.

4 Q. Is that the check number 563 that you were
5 asked to examine?

6 A. Yes, it is.

7 Q. As a result of your examination, were you able
8 to come to any conclusions concerning the validity of the
9 writing on the front of that check?

10 A. Yes, I did. The check itself is made out to
11 Steven Voss for the amount of \$5,000, and it's signed
12 with the authorizing signature of B. A. Baxter.

13 I did an examination of the handwriting. I
14 compared the writing that was present on this with known
15 samples of handwriting, and hand printing, because of the
16 Steven Voss that's printed on this, of Beverly Baxter
17 that was submitted to me. And I did arrive at a
18 conclusion based on that examination.

19 Q. I understand that you have some exhibits --
20 that's why we have this whole thing set up here. I want
21 to show you Defendant's Exhibit E, F. and G., and have
22 you identify those first, if you recognize these
23 exhibits.

24 A. Yes, these exhibits, E, F and G, are exhibits

1 I prepared from the evidence that was submitted to the
2 laboratory for the purpose of demonstrating to the jury
3 the reason that I arrived at the conclusions that I have
4 expressed here, that I anticipate expressing here.

5 Q. Which of those exhibits applies to the check
6 number 563?

7 A. That would be Exhibit E.

8 Q. If you would step down from the witness box,
9 you can approach this overhead viewer.

10 MR. WALKER: Your Honor, I believe Mr. Whiting
11 is going to display those exhibits via overhead copy, if
12 you will, of E, F, G. I stipulate to the admission of E,
13 F, G, and the publication of copies of E, F, G via
14 overhead.

15 THE COURT: The Exhibits E, F and G are
16 admitted. And detective, if you will step down there.

17 (Whereupon, Exhibits E, F and G were admitted
18 into evidence.)

19 BY MR. CONWAY:

20 Q. At this time we're dealing with which exhibit
21 again?

22 A. This is Exhibit E.

23 Q. Why don't you publish that to the jury by
24 putting it on the overhead?

1 THE COURT: Can everybody see that all right?

2 BY MR. CONWAY:

3 Q. Now what do we see on the top line that's
4 represented by check 563?

5 A. The top line that's exhibited here is the
6 authorizing signature that came off of check 563. This
7 is the signature that I did a comparison with the known
8 samples of -- I had 10 additional checks from the account
9 of Beverly Baxter that was submitted containing known
10 handwriting of hers, and I used those as samples of her
11 writing for a comparison against the writing on the
12 questioned check.

13 Q. Those cancelled checks were submitted to you
14 by officers of the Washoe County Sheriff's Office?

15 A. That's correct.

16 Q. I am going to show you State's Exhibit 28.
17 Can you stay right there? Just see if you can identify
18 those checks in that exhibit.

19 First, can you identify what is in that
20 exhibit, in that packet?

21 A. Yes, the packet itself has an evidence form on
22 the jacket, and my name is present on there when I
23 checked this out of the evidence room to do the
24 examination.

1 Q. Do you recognize what is in that packet?

2 A. Inside are a series of checks, and my initials
3 are on the back of these checks where I placed it when I
4 did the examination of the checks.

5 These are the ones I was talking about that
6 were submitted as known comparison standards, which I
7 used for comparison against the questioned check.

8 Q. Now these, you state known signature, you put
9 down four. Did you choose randomly some checks with
10 signatures on them?

11 A. Yes. Rather than to put all the signatures
12 present on here, they pretty much fell in the same
13 category, and the features that were present that were
14 characteristic of her writing style, were present on all
15 of them, so I just selected four of them to demonstrate
16 to the group here the characteristics that were present
17 in arriving at the conclusion.

18 Q. Now based on your comparison, similar to what
19 you have presented here, you reached a conclusion as to
20 the validity of that?

21 A. Yes.

22 Q. Show you what has been marked Defendant's
23 Exhibit A. for identification at this point.

24 A. Yes, this is a copy of the report that I

1 prepared at the conclusion of my work on this case.

2 Q. Is that your signature at the bottom?

3 A. Yes.

4 MR. CONWAY: I move for the admission of
5 Exhibit A.

6 MR. WALKER: No objection.

7 THE COURT: Exhibit A is admitted.

8 (Whereupon, Exhibit A was admitted into
9 evidence.)

10 BY MR. CONWAY:

11 Q. Could you then go over how you reached your --
12 what was your conclusion, exactly?

13 A. My conclusion was that the authorizing
14 signature of the name B. A. Baxter on check number 563,
15 which was submitted as the check in question, it was the
16 disputed check, was written by the same person who had
17 written all these other ones. That person had been
18 purported to be Beverly Baxter.

19 So essentially my conclusion was Beverly
20 Baxter did sign the name B. A. Baxter on that check.

21 Q. Now did you reach a conclusion as to other
22 writing on check number 563 in addition to the
23 signature.

24 A. Yes, in addition to the signature, I also

1 concluded that the 5,000, for the dollar amount, was
2 written by Beverly Baxter.

3 Q. What about the date?

4 A. The date appeared comparable to the writing
5 style that she had, but with the numbers and the lack of
6 -- enough uniqueness to those numbers to be able to
7 exclude somebody else, I wasn't absolutely certain. But
8 I was -- I feel it probably was her. There was nothing
9 to indicate it was anybody other than her that wrote
10 that.

11 Q. When you testified a few minutes ago about the
12 5,000, are you talking about the written out five
13 thousand, or the numbers?

14 A. I mean the written portion, where she used
15 cursive handwriting of the words five thousand.

16 Q. Again, your conclusion at that time was that
17 that was indeed in her handwriting, the five thousand,
18 written out?

19 A. That's correct. Do you wish for me to quickly
20 demonstrate some of the features --

21 Q. Yes, why don't you show how you made the
22 comparisons and reached your conclusion, so the jury can
23 understand how you do that.

24 A. The process of doing a comparison of

1 handwriting consists of having the samples of a person's
2 known writing, just like the other forensic sciences, you
3 have to have known material to compare the questioned
4 material against. In this case it's handwriting, rather
5 than comparing the results of a drug analysis or
6 something like that. But the principles are applied in
7 the same manner.

8 And these are just a representative example of
9 the four signatures that were taken from those known
10 signatures of Beverly Baxter.

11 This is the questioned signature. When you
12 look at this, the first thing that's important is to look
13 at the quality of the writing. Are there a lot of
14 unexpected hesitations? Are there a lot of shakiness to
15 the writing? Tremor that might be present? The person
16 is writing it very slowly? Are there characteristics in
17 here that just jump at you that don't match what we have
18 down there?

19 If we don't have those, then it's necessary to
20 go to a comparison of a letter by letter, and comparing
21 connecting strokes or portions to see if they still match
22 up.

23 I will quickly point out some of the
24 features. This is freely-written, so that it doesn't

1 look like somebody was trying to draw another person's
2 writing.

3 If you try to draw somebody else's signature
4 and do it very slowly, then you're not going to be able
5 to make the movement as quickly and smoothly as
6 represented here.

7 I look for the placement of the initial stroke
8 of the letter is like on the B., starts up -- partway
9 up. We call that the staff of the letter, dropped down
10 and forms the curve. The curve is always smooth. I look
11 for proportions, to see if the upper loop is about
12 equivalent to the lower on all of these, whether periods
13 are present or not.

14 Now every person has a range of variation.
15 You probably know from own experience, when you sign your
16 name, you will have a little bit of difference. So we
17 have to incorporate those differences into the question
18 to see whether it falls within that range.

19 When I did that comparison, I did find this
20 fit within the range. And also it had enough uniqueness
21 I could identify it as having come from one person rather
22 than from somebody else.

23 So some of the other features we look for,
24 there is a pen lift between the "x" and the "t." We see

1 that's constantly there. It's probably harder for you to
2 see here, but it was present on this one.

3 The "t" itself is about the same height as the
4 "B," the "a," and the "B" here. The proportions are
5 very consistent all the way through..

6 The letter forms themselves, the "a" starts
7 with a little curve at the base of the "a," and we have
8 that curve here.

9 Then when the letter is completed, there tends
10 to be a pen drag as it comes across here. That was
11 probably executed as the individual went to make the
12 cross bar that was present there.

13 As we continue through the rest of these, we
14 see that some of her cross bars on the "t" tend to point
15 down. Some of them are just almost flat.

16 And then the width varies sometimes a short
17 width here, or a little bit longer down here. But it
18 still fits within the pattern.

19 Then we get to the final "er," and we can find
20 that this stroke from the "t" and this one here, tend to
21 come down towards the baseline about an equivalent
22 amount. But as we get to the "e," we don't have that
23 drop back down to the baseline. It almost looks like a
24 "w" here. And then the final stroke curves back toward

1 the "t."

2 We can see here it's a little harder to see,
3 but the same type of writing was present there. And it
4 appeared that the same hand movement was used in all
5 these. And the minor variations that were present, were
6 just a normal variation you would expect.

7 But based on those features, I did conclude
8 this was the signature of this individual.

9 Q. Did you make any conclusions as to the type of
10 pen used on the questioned signature and the type of pen
11 used on the signature on the known signatures?

12 A. I don't recall. I think it was a ballpoint
13 pen. A ballpoint pen will leave a groove that's present
14 in the ink line, and then there is also small striations
15 as the ball rotates and picks up the ink from the
16 housing, it will leave striations that are present.

17 And I don't recall right now whether that was
18 the case or not. But I do believe it was a ballpoint
19 pen.

20 Q. On all the signatures that are presently being
21 displayed?

22 A. I believe so.

23 MR. CONWAY: At this time, Your Honor, I think
24 E has already been moved in. If I may publish E and A to

1 the jury.

2 THE COURT: Okay.

3 BY MR. CONWAY:

4 Q. I have a couple questions about Exhibit A
5 again. Did you make any other examinations of the
6 questioned check?

7 A. Yes, I did. The payee's name on the check was
8 Steven Voss, and it was in a blue ink, whereas the other
9 writing was in a black ink.

10 I also placed the check under a special
11 lighting system I have in the laboratory that will often
12 distinguish between types of ink.

13 And I did have a pen that was submitted to see
14 whether it was the source of the blue ink.

15 And the examination revealed that ink did not
16 come from the pen that was submitted at the same time.

17 And then a final examination I performed was
18 to use another instrument that I have in the laboratory,
19 to determine whether there were any type of indentations
20 that might have been left on the check that might not
21 have been visible to the naked eye. I did not detect
22 anything of significance in doing that.

23 Q. Did you also have an opportunity to examine a
24 check from Burgess North American Moving & Storage?

1 A. Yes, I did.

2 Q. I will show you right now State's Exhibit 1,
3 and I'd ask if you can identify that?

4 A. Yes, this is a check that I received for
5 examination. I have my initials on the back, and a copy
6 of this in my lab report.

7 Q. And based on your examination, did you reach a
8 conclusion as to that signature?

9 A. This check is written to Beverly Baxter, which
10 is typewriting, and it's signed with a name that appears
11 to be Tom Burgess.

12 At the time this was submitted to me, there
13 was no question as to who might have been the author of
14 the Tom Burgess check, so I did not concern myself with
15 that.

16 On the back of the check, we have the words
17 For Deposit Only that are printed there, and then the
18 signature B. A. Baxter. Now I was asked to do a
19 comparison of that writing, which I did do.

20 Q. Do you recall if you were able to conclude
21 that that endorsement was definitely not her signature?

22 A. My conclusion was that it is probable that
23 that endorsement was not written by Beverly Baxter.

24 Q. I am going to return to you Defendant's

1 Exhibit F and G. You have already talked about E. Are
2 either one of those used in your evaluation of the
3 Burgess North American check?

4 A. Yes, both of these do represent portions of
5 the back of the check. One of them contains the entire
6 statement For Deposit Only, B. A. Baxter. And then some
7 known printing of Beverly Baxter that I had available.
8 And it also includes the B. A. Baxter signature from the
9 previous check, that I have just testified to, which is
10 check number 563.

11 The other exhibit is just the B. A. Baxter,
12 that was the endorsement on the check which was check
13 number 4842 from Burgess North American.

14 And then I used that in comparison against the
15 known comparison standards that I had used previously for
16 the other B. A. Baxter writing.

17 Q. And did you prepare your conclusions in a
18 written form?

19 A. Yes, I did.

20 Q. I want to show you what has been marked
21 Defendant's Exhibit D, and ask if you could identify
22 that?

23 A. Yes, this Exhibit D is a copy of my lab
24 report, which reports the conclusions I reached after I

1 performed this last examination.

2 Q. And your conclusion was that it was probable
3 that it was not her signature; is that correct?

4 A. That's correct.

5 Q. Is it possible to be definite in these
6 evaluations?

7 A. It's possible to be definite. In this case I
8 did not have sufficient material present for me to be
9 able to arrive at a positive conclusion. But in some
10 instances it is possible to arrive at a definite
11 conclusion.

12 Q. Why don't you approach, again step down from
13 the witness stand, and approach here, and show to the
14 jury how you examined these signatures. Which exhibit is
15 this we're looking at?

16 A. This is Exhibit F. And Exhibit F consists of
17 the B. A. Baxter signature, which was the authorizing
18 signature on check number 563, which I have just
19 testified to that I concluded was the signature of
20 Beverly Baxter.

21 The second exhibit that's present at the top
22 of the check where I have the questioned signatures, is
23 the statement For Deposit Only, and then words B. A.
24 Baxter.

1 And this is the questioned endorsement on the
2 check from the Burgess North American check that was
3 issued.

4 And then below that I have some printed
5 writing that was submitted to me as being the known
6 printing of Beverly Baxter.

7 And what I arrived at, after I did a
8 comparison, and I followed the same procedures as I
9 explained to you on the last illustration of the other
10 printing, was that it's probable that the For Deposit
11 Only printing on this check was not written by the person
12 who had done the printing down here.

13 These came from some employment applications
14 that were available from Beverly Baxter.

15 But -- and also it's probable that the B. A.
16 Baxter endorsement that's present on the back of that
17 check, was also not written by her.

18 And if you wish, I can go through a discussion
19 on this.

20 Q. Let's look at the other exhibit, that deals
21 just with her signature, so we can show that to the
22 jury.

23 A. This would be a representation of Exhibit G,
24 and this is essentially the same set of comparison

1 standards that I had on the previous check that I
2 described to you. And this is the questioned -- just the
3 endorsement, without the words For Deposit Only.

4 And again, my conclusions, I stated, was that
5 I concluded it's probable that this signature was not
6 written by the same person as the signature submitted as
7 known comparison standards.

8 Q. Were you able to reach a conclusion as to
9 whether or not the signatures in the known samples were
10 written in different type of pen than the signature in
11 the questioned signature?

12 A. Yes. Even from where you sit in the jury
13 there, I am sure you can see this is a much thicker line
14 of drawing on the B. A. Baxter at the top.

15 These were the signatures that were written
16 with a ballpoint pen, and this was written in some type
17 of a fluid ink, like -- well, I doubt if it was a roller
18 ball, more likely it was a fiber-tipped type of pen, and
19 that deposits a much -- it has a fluid ink instead of a
20 glyco-based ink like you have in a ballpoint pen.

21 And also it's a much wider line, so that you
22 don't see the individual detail as you look through this
23 portion of the signature here.

24 You can see it's blended together. You really

1 can't separate out the characteristics as you can on --

2 Q. Were you ever submitted any samples that were
3 -- I assume when you say fiber-tipped, that's what we
4 call felt-tipped?

5 A. Yes.

6 Q. Were you submitted any samples that were in
7 felt-tip?

8 A. You mean an actual pen for comparison?

9 Q. Sorry, no, were you ever submitted a known
10 sample of a signature that was in felt?

11 A. No, I was not.

12 Q. Now I believe that in your conclusions on the
13 check number 563, the account of B. A. Baxter check, that
14 you reached a conclusion -- Strike that.

15 Are there any things that may cause the
16 writing to differ in some respects from a known writing,
17 but still been that of the writer?

18 A. Yes, there are a variety of things that can
19 interfere with the similarity in the writing. The
20 writing surface can be a factor. The pen itself, if it's
21 not depositing the ink properly, you might get breaks
22 present in it.

23 The condition of the writer may vary. For
24 example, if a person writes their name when they're

1 sober, it may not look the same as they write it if
2 they're under the influence of drugs or alcohol.

3 Or if they have had a stroke or something like
4 this, it can influence the ability to reproduce the image
5 they have. Very often the image may be the same in their
6 mental comprehension of what they are trying to
7 reproduce, but their ability to execute that may not be
8 the same.

9 So the surface of the writing, the pen, the
10 condition of the individual, all can be factors. And
11 even disguise can be successful in preventing a person
12 from identifying. Many times characteristics are present
13 in disguise, but that's not always the case.

14 Q. How about the speed in which --

15 A. Yes, that's a factor also. .

16 Q. Did you also mention that the type of pen that
17 you used?

18 A. Yes.

19 Q. You can be seated again.

20 MR. CONWAY: At this time, Your Honor, I move
21 for admission of State's Exhibit -- Defendant's Exhibit
22 D., if it's not been done already.

23 MR. WALKER: No objection.

24 THE COURT: Exhibit D is admitted.

1 (Whereupon, Exhibit D was admitted into
2 evidence.)

3 MR. CONWAY: With that, I have no further
4 questions at this time.

5 THE COURT: Mr. Walker?

6 MR. WALKER: Thank you, Your Honor.

7 DIRECT EXAMINATION BY MR. WALKER:

8 Q. Mr. Whiting, if you would, could you please
9 step up to the overhead here? And I would like to direct
10 a series of questions to you about this exhibit, if I
11 might.

12 I believe it's in Defense Exhibit D, which the
13 jury has now seen, you indicate it's probable -- or it's
14 your opinion somebody was trying to simulate the
15 signatures of Beverly A. Baxter. Do I understand that
16 correctly?

17 A. Yes, that was my conclusion, that this appears
18 to be what I call a simulation, or an attempt to make the
19 writing appear the same as the known writing of the
20 person that was the victim of this.

21 Q. What specifically do you see in this
22 signature? If you can use this exhibit or one of the
23 other exhibits would be helpful, please identify for the
24 jury what you see in the shape, form, content, etcetera,

1 of the writing which leads you to believe it's possible
2 it's a simulation.

3 A. As we look at this signature, you can
4 immediately see, we only have one other signature to
5 compare against here. But in a minute I will put the
6 other one up so we can get a more complete examination.

7 But you can see that this is written with a
8 much heavier pen line. We don't have the detail. We're
9 able to determine a lot of the characteristics that are
10 present there.

11 Now this in itself obviously does not mean we
12 have a simulation, but if a person is knowledgeable about
13 doing this sort of thing, it is a technique that's very
14 effective, because it is harder to do an analysis of
15 this, and conclusions are often less complete than they
16 would be otherwise. So we do have a different kind of a
17 pen.

18 It does appear perhaps the writing speed is
19 somewhat slower on this also, because we can see some
20 sharp angled changes compared to what we have on the
21 comparison standards.

22 But the reason I have got this exhibit
23 prepared is to show that on both the For Deposit Only,
24 which is the printing on here, and on B. A. Baxter, I was

1 concluding it's probable that neither one was written by
2 Beverly Baxter. I did not identify the person who did
3 write those. I had no other samples for comparison other
4 than Beverly Baxter's. And even if I had, I probably
5 wouldn't have been successful.

6 If this simulated signature was a simulation
7 of another person's writing, that individual who would do
8 the simulation usually does not impart their own
9 characteristics into the sample of their writing.

10 What they are trying to do is draw the letter
11 forms that they're looking at, and in the process of
12 doing that, it doesn't reveal what their writing
13 characteristics are like, it's more of a drawing rather
14 than a natural writing.

15 For Deposit Only, it's possible I might have
16 had some success, but I didn't have samples to compare.
17 So the only thing I could do is compare this against the
18 known writing of Beverly Baxter.

19 And there are still characteristics up here
20 that don't match her writing. There's also some that do
21 look similar to hers. The shape of the "d," where it's
22 longer at the base than it is at the top.

23 We have a sample -- you can see that's
24 somewhat characteristic of the style of "d" she has

1 here. The "p" is very similar to the way she makes
2 hers. The "N," which is a capital "N," internally in a
3 word, is comparable to the style "N" she has that we can
4 see here, though the angle might vary a little bit.

5 But other features in this writing did not
6 match her writing. For example, even if we start with
7 the letter "f," you will find that the second extension
8 off the "f," is about half way from the top, about half
9 the distance from the top and bottom. You look at the
10 samples of "fs" she has here, you can see she tends to
11 place them much closer to the top rather than mid-staff,
12 as we have up here.

13 Also, these extensions appear to be longer
14 than what she does hers. Hers are fairly short. Again,
15 that's a variable characteristic. So we have some
16 difference in that.

17 The style of this "R," it's hard to actually
18 make it out, but you can see this very long extension, it
19 comes back down to the baseline, and then extends out
20 along the baseline.

21 And we can see on the samples of capital "R,"
22 that we have here and here, this is not represented in
23 her writing. It does not mean that maybe with a larger
24 sample we might have found that, but with the samples I

1 had available I did not find that. But these curve
2 around through the oval part of the "R," and then drop
3 down.

4 Also as we look at various letters in here,
5 she had some interesting characteristics that she did not
6 ever use normal lower case "e" in any of the samples of
7 printing that I saw. We always have this bleak-shaped
8 "e," and in every example that was present, that was the
9 style that was used.

10 Whereas you look up here, we see this is a
11 normal lower case "e." So there is a difference there.

12 We have a proportion of an "o" to and "s"
13 here, where the "s" is considerably larger than the "o."
14 I didn't have too many samples of those, but here in
15 supervisor and again in supervisor, you can see they were
16 equivalent to each other, rather than being markedly
17 dissimilar. So that was another factor that was
18 different.

19 The "t" cross bar is about in the middle of
20 what we call the down stroke, the staff of the letter,
21 and the cross bar is in about the middle of that, whereas
22 she tends to place hers much higher off of the -- further
23 from the baseline in the samples she made.

24 As we go through the rest of this, usually she

1 didn't use lower case "l" internally, though sometimes
2 she did.

3 We find in her name Beverly, she used lower
4 case "l." But most of the time it was like this, with
5 capital "L" even in internally, just as we have with
6 capital "F." So this would be a factor that could go
7 either way.

8 And the "Y" was a curve and then a down
9 stroke. It was a single movement of the hand, it was not
10 one stroke and the pen was lifted, and another stroke is
11 made. In all the samples I had of her "Y" were two
12 strokes. We didn't have a rounded trough at the base
13 here; but, rather, one stroke, and then another one to
14 complete that.

15 Also, this capital "R" we have here, was
16 capitalized in this printing. But in her printing, she
17 never used a capital "R" internally. She would at the
18 beginning of a word, but never internally, as we have
19 here or here or here.

20 Combining all those, I felt that it is
21 probable that she had not done it. There wasn't enough
22 evidence there for me to say with certainty this was not
23 her writing, but I feel the factors lean away from the
24 style of writing she used, and I don't believe she did do

1 this. But my conclusion was it's probable that printing
2 was not hers.

3 Now if we go onto the B. A. Baxter, I did the
4 same type of comparison with that, to determine whether
5 she had written that lettering on there.

6 I will get it where everyone can see. The
7 same type of analysis goes into an examination of this
8 sort. Initially as I pointed out, we have a different
9 pen that was used here, very thick pen. So we don't have
10 a good detail there.

11 Some of the features that do come out
12 immediately, in her capital "B," in the first letter she
13 uses, I am not sure you can see it from where you are,
14 but it's present in all of her known checks, she starts
15 the stroke about the midlevel of what becomes the "B,"
16 and then drops down to the baseline and curves back
17 around, forming the curved parts of that letter.

18 Here the pen was started at the bottom, so
19 it's a different hand movement, and then went up rather
20 than staring at the top and dropping down.

21 You can tell it started there by the thickness
22 of the ink right here. When a fluid type of ink is first
23 placed on the paper, and you probably noticed this
24 yourselves, it tends to spread out, and then after the

1 execution of the rest of the writing, then it makes a
2 smoother line.

3 So we can see she started here. And I believe
4 she started at the base here -- or the person that wrote
5 this, started at the base here, even though this is a
6 little bit thicker line there. We have a dissimilarity
7 there.

8 We go into the "B," and as I pointed out to
9 you before, we've got some changes in angle. If you do a
10 line along here, it tends to go up, and then it kind of
11 curves rather than just being a rounded, smooth stroke.
12 All of her "Bs," her genuine writing, she's very
13 rounded. You can see on both the top and bottom, there
14 is never any angle that's created by the movement of the
15 pen. It continuously flows.

16 Also, as we come down towards the base of
17 this, you will notice that the line where we reached the
18 lowest point of this structure is very close to where the
19 staff of the letter is located, whereas on her known
20 writing, the lowest point is quite a ways from the staff;
21 much bigger distance here, than there is from here to
22 here.

23 And also this lowest point here tends to be
24 fairly equivalent in depth to the "B." It varies

1 somewhat. And again, this is a natural variation, but
2 most of the time you find they are almost the same. Here
3 and here, and here and here, come about the same
4 distance. Down here it drops way below before it curves
5 back up.

6 The period that's present is a strange
7 formation, more like a "c." We did not have any samples
8 in her known writing of that style of a period.

9 The "a" has kind of superficial similarity to
10 the style she has, where the first leg of the "a" is
11 longer than the second, we have that same kind of a curve
12 here also.

13 But when she completed her writing, she went
14 back through the middle part of the "a," as I stated
15 before, probably so she had her pen in position to make
16 that cross bar there.

17 If you look here, you see the pen actually
18 goes in the opposite direction from what we have here.
19 There's always a drag mark on her "A's." Here we don't
20 have the drag mark, but it does not curve in the opposite
21 direction.

22 It appeared to me there was no cross bar in
23 here at all. Again, because of the thickness of the
24 line, I am not certain of that, but I don't believe there

1 was a cross bar there.

2 Continuing onto the other features, again this
3 "B" is more equivalent to this one, than it is to the
4 style that she uses. I couldn't do much with the detail
5 in here, because it's so badly mixed together, just not
6 enough neatness or separation of the letter forms to be
7 able to determine much from that.

8 But if we look at the "t" and then the "er,"
9 then I can separate that and find differences between
10 this and this.

11 And her writing we have a pen lift before the
12 "t" where the "x" is completed and then the "t" is
13 formed. I can't tell if there is one in here. So again,
14 I lose some of the features that I am looking for to be
15 able to identify or exclude.

16 But if you look at the lower part of the "t,"
17 you will find the stroke that forms the "t" as it goes
18 into the letter, then comes back down. And in the sample
19 we have in question, the first stroke is much lower than
20 the connecting stroke to the "e."

21 So we have a lower part here, and higher part
22 here. In her writing, when she signs her name, those two
23 are almost the same height above the baseline. This one
24 is a little longer here, but very similar to each other.

1 And then it's after she forms this stroke that the "e"
2 itself connecting to the "r" is way above the baseline.

3 So we have the same apparent attempt to create
4 the look of what we have here, but it was done one
5 movement sooner, which would not be characteristic of a
6 person if they were writing their signature naturally.

7 So the "er" here, we also find on the "r,"
8 there is a long stroke that extends out from the end of
9 the name; whereas in her writing she tends to curve back
10 up. And sometimes we have a very small curve as we have
11 here; sometimes much larger.

12 But you can see in each instance, even when
13 it's longer, there is always an oval shape, and then it
14 curves back rather than extending off to the side.

15 Based on all those characteristics, I did feel
16 there was sufficient dissimilarity from her writing,
17 including differences in the movement of the hand, to
18 conclude that it is probable that she had not signed this
19 name here, which would be Beverly Baxter, as she had
20 signed these.

21 Q. Detective Whiting, when you make your expert
22 judgment that it's probable that Beverly Baxter did not
23 sign this line, and it's probable that Beverly Baxter did
24 not sign this line, did you do that with the knowledge

1 that Mr. Voss has admitted signing For Deposit Only?

2 A. I do each of them as a complete examination,
3 independent of any information that may be given to me.
4 Because in many instances a person will say, for example,
5 that a collection of known signatures are all written by
6 the same person, and then I examine those, and I find
7 some of those don't simply fit in there. So I have to do
8 a complete examination.

9 In this case I don't recall that I had even
10 been informed whether anybody might have admitted to
11 doing any of these.

12 I was asked to see whether I could identify
13 these as being written by Beverly Baxter.

14 Q. In fact, do you recall who personally
15 delivered check number 4842 to you?

16 A. Yes, you did.

17 Q. These two lines are written in the same color
18 ink, are they not?

19 A. Yes.

20 Q. Do they appear to be written by the same pen,
21 at least superficially? Can you tell that or --

22 A. Really I could not answer that. The thickness
23 of the line is comparable. The color of the ink was
24 comparable. But other than that, I didn't do a complete

1 analysis of the ink to see whether it was by the same pen
2 or not.

3 Q. On one of the defense exhibits, I think there
4 is an indication that detectives collected a blue pen
5 from a certain location, and then asked you to compare
6 the ink in that blue pen to the ink that wrote the name
7 Steven Voss.

8 How many blue pen manufacturers are there, do
9 you know?

10 A. Oh, there are a very large number. Many of
11 the pens are actually written by two or three companies,
12 like Bic, for example, is one of the largest
13 manufacturers in the United States, and make a huge
14 number of these. But there are several others that also
15 manufacture the pens.

16 Q. How many different brands or makes or whatever
17 of blue ink are there?

18 A. There is a huge number, again, of different
19 varieties of ink out on the market.

20 Q. Please resume your seat.

21 I believe these are your demonstrative
22 exhibits, are they not?

23 A. That's correct.

24 Q. Detective Whiting, it's my understanding that

1 the samples of writing, known writing that you used of
2 Miss Baxter, include predominantly writing that's in
3 cursive, do they not?

4 A. No, that wasn't the case. The writing on the
5 checks was in cursive, the ones I used for analysis of
6 her signatures. But I did have a lot of printing that
7 was present on the application that was submitted. So I
8 would not say it was predominantly cursive.

9 Q. Did you also have what appeared to be a
10 correspondence type letter to a person named Ken?

11 A. Yes, I did.

12 Q. What kind of writing was that in?

13 A. It was cursive.

14 Q. The writing that was on the checks, the
15 cancelled checks, the known checks of Beverly A. Baxter,
16 did you find any printing on any of those checks?

17 A. On the known checks? I don't recall. I would
18 actually have to look at the checks to recall whether
19 there was or not.

20 Q. Sure.

21 I am handing you what has been marked as
22 State's Exhibit 28.

23 A. No, on these samples that I have here, it's
24 all cursive writing.

1 Q. Do you see any endorsements on any of those
2 checks?

3 A. There is a stamped endorsement present. There
4 is a written endorsement on this one, the only one that's
5 cursive writing as an endorsement. The rest are stamped.

6 Q. At least insofar as the sample of checks
7 collected from her residence, we don't have examples of
8 her printing on her checks?

9 A. That's correct.

10 MR. WALKER: Nothing further.

11 THE COURT: Mr. Conway?

12 MR. CONWAY: Nothing further of this witness.

13 THE COURT: Thank you, you may be excused.

14 (The Witness Was Excused.)

15 THE COURT: You may call your next witness.

16 MR. CONWAY: Defense calls Carol Ann Story.

17
18 CAROL ANN STORY,
19 called as a witness on behalf of the Defense herein,
20 having been first duly sworn, was examined
21 and testified as follows:
22
23
24

1 DIRECT EXAMINATION BY MR. CONWAY:

2 Q. Good afternoon. State your full name and
3 spell your last name.

4 A. Carol Ann Story, S-t-o-r-y.

5 Q. Where do you currently reside?

6 A. 9215 Ogden Trail Drive in Sparks, Nevada.

7 Q. How are you currently employed?

8 A. Through Instant Housing as a sales
9 representative.

10 Q. What is Instant Housing?

11 A. We sell mobile homes and real estate.

12 Q. Where is Instant Housing located?

13 A. 5150 Sun Valley Boulevard in Sun Valley.

14 Q. And how long have you worked at Instant
15 Housing?

16 A. Seven months.

17 Q. Were you working there back in June of this
18 year?

19 A. Yes, I was.

20 Q. Did you have the occasion to meet a gentleman
21 by the name of Steven Voss?

22 A. Yes, I did.

23 Q. Did you also meet a woman by the name of Mary
24 Duplin, sitting in the front row?

1 A. Yes.

2 Q. And how did you come about meeting them?

3 A. Mary called into the office, I took the
4 upcall, and she needed a home, so we proceeded from
5 there.

6 Q. Do you recall what date that was?

7 A. It had to be on a Monday. It was the day
8 before I drew up the contract.

9 Q. Do you recall whether that would have been
10 June 10th?

11 A. It was June 10th.

12 Q. When did you first meet with Steven Voss
13 and/or Mary Duplin?

14 A. That night, the night of June 10th, I went to
15 their hotel room, because I have one of those new cameras
16 that has a four-inch screen on it, and I take movies of a
17 lot of the listings, and I told them that I would bring
18 it by the hotel room and let them preview it. And if
19 they were interested, that I would take them out and show
20 them the homes.

21 Q. Did they become interested in any of the
22 videos that you showed them?

23 A. Yes. Well, they said that they would like to
24 see the home, but Mary said she couldn't go because -- to

1 look, because she was working to, like, 7:00, 8:00
2 o'clock at night, she had been working overtime, and it
3 was okay for her son to go, because he knew basically
4 what she liked, and that she would go by his decision as
5 to whatever he would choose for her home.

6 Q. What day did you show Steven Voss some mobile
7 homes?

8 A. The very next day, Tuesday, the 11th of June.

9 Q. And did Mr. Voss find a home that he felt was
10 suitable?

11 A. Yes, he did.

12 Q. What address would that have been?

13 A. It's on Ninth Street. It is in the file, but
14 I don't remember the number. In Sun Valley.

15 Q. Sun Valley?

16 A. Sun Valley.

17 Q. Were you able to enter into an agreement with
18 the help of Steven Voss concerning the purchase of that
19 mobile home?

20 A. Yes, after talking to his mother on the phone
21 about it, yes.

22 Q. What were the terms, as you understood it at
23 that time, on June 11, for the purchase of that mobile
24 home?

1 A. Well, we had a new agent in the office that
2 drew up a contract, and he did not make the contract real
3 clear, so it looked like it was -- the people needed to
4 net \$9,000 or \$10,000, and they were going to do an owner
5 carry on it, and our usual commission is \$2500.

6 So on that particular day, under those
7 circumstances, we drew up the contract, hopefully to put
8 \$2500 down, initially. But before a close, which --

9 Q. What were the terms of the deal, I guess, on
10 Tuesday, June 11?

11 A. The terms?

12 Q. Of the purchase.

13 A. Okay. It was that the people were going to
14 carry back paper for \$10,000, and we needed \$2500 down
15 from Mary.

16 Q. So Mary and/or her son were to come up with
17 \$2500 for the commission of the fees?

18 A. They were going to try.

19 Q. Were you given any money by Steven Voss on
20 June 11?

21 A. \$120.00 in cash.

22 Q. What was that for?

23 A. It was a hundred dollars in earnest money and
24 \$20.00 for a title fee, just to show that it was -- you

1 know, that they were serious about purchasing the home,
2 we always have to get something down.

3 Q. So they had to come up with an additional
4 \$2400 at that time; correct?

5 A. No, not at that time.

6 Q. I mean at the time the agreement was entered
7 into, before they could purchase it, they would have to
8 come up with \$2400; right?

9 A. Right.

10 Q. Did you have an opportunity to see Mary Duplin
11 later that evening?

12 A. Yes, I did.

13 Q. Where did you see her?

14 A. At Western Village.

15 Q. And did you have a conversation at that time?

16 A. Yes, I did.

17 Q. I don't want you to tell us what the
18 conversation was, but what was your understanding after
19 the conversation? Did you offer to do anything at that
20 time?

21 A. Yes, I did. I offered to possibly lend them
22 some money, because Mary wasn't sure if she could come up
23 with the full down, and I offered to help, which I do
24 with more than one of my clients, I have done that.

1 Q. Now did you find out something the following
2 morning of June 12th?

3 A. Yes, I did. I found out that the people that
4 were selling their home actually wanted more. They
5 wanted cash, and therefore the only way we could
6 consummate the deal was to at least get \$5,000 from Mary.

7 Q. You found that out on June 12th?

8 A. That would have been Wednesday, yes.

9 Q. When did you impart that to either Mary Duplin
10 or Steven Voss?

11 A. It was -- I had called Steven, I believe it
12 was -- I know it had to be Thursday, because it was the
13 morning after I found out what the people were going to
14 do.

15 And I called at the hotel room at 8:30 a.m.,
16 and Steven answered the phone, and we spoke for a while.

17 The reason I know what time it was, was
18 because I was concerned about calling them too early,
19 waking anybody else up, and I also wanted to get to the
20 office by 9:00, so I took notes of what time it was.

21 Q. Now on June 14, did you have an occasion to
22 talk to Detective Dale Pappas?

23 A. Yes, a sergeant called me at work, asked me if
24 I knew Beverly Baxter or Steven Voss.

1 Q. Did you inform them you were aware of a Steven
2 Voss?

3 A. I had to think for a minute, but, yes, I
4 remember it was Steven Voss, yes.

5 Q. At that time, did Sergeant Dale Pappas inform
6 you he understood there was a down payment of \$5,000
7 needed on a mobile home?

8 A. That particular day I talked to him?

9 Q. On June 14.

10 A. No, he just asked if I knew Beverly Baxter or
11 Steven Voss.

12 Q. Did he ask you anything about the transaction?

13 A. Not that I can recall. I mean, if he did I
14 can't remember.

15 Q. Let me ask you this: If you did discuss the
16 transaction with him, would you have discussed the
17 transaction that happened on June 11th, or would you have
18 discussed with him the transaction as it had been changed
19 by June 12?

20 A. When I spoke with him, I asked him why he was
21 asking me these questions -- I am sorry, I have to kind
22 of back up -- and he just said that Steven had tried to
23 cash a check, and that this woman was reported missing.
24 I don't recall discussing anything beyond that.

1 Q. That's okay. See if I can help you.

2 A. On that particular day.

3 Q. Do you recall speaking with an investigator
4 from my office by the name of Larry Carlson?

5 A. Yes, Larry.

6 Q. Do you recall telling him that you explained
7 the entire transaction to Dale Pappas when he called on
8 the 14th of June?

9 A. It wasn't Dale Pappas I explained it all to,
10 it was Detective Hill.

11 Q. Okay. So you never spoke to Dale Pappas about
12 the entire transaction?

13 A. No, he just asked me if I knew Beverly Baxter
14 and Steven Voss, and I asked him why -- first of all, why
15 are you asking me these questions? How do I know that
16 you are a detective? He gave me a number and everything,
17 and he said there is something about a check and somebody
18 reported missing. But we did not at that time discuss
19 terms of a contract or anything. That was done with
20 Detective Hill.

21 Q. So if you had been asked -- is it your
22 testimony Dale Pappas never asked you the terms of that
23 agreement?

24 A. That's right, I don't remember talking to him

1 about that.

2 Q. But had he, would you have told him --

3 A. 5,000, immediately.

4 MR. CONWAY: Nothing further.

5 THE COURT: Mr. Walker?

6 CROSS EXAMINATION BY MR. WALKER:

7 Q. Miss Story, good afternoon. You and I have
8 never met, have we?

9 A. No.

10 Q. In fact you have never called the police in
11 this case or contacted the police in any way, have you?

12 A. No.

13 Q. You are friends, as I understand it, with Mary
14 Duplin?

15 A. No, I am not friends.

16 Q. Have you expressed a like or, you know,
17 understandable --

18 A. She's a nice lady. I like most of my
19 clients.

20 Q. There you go, that was my question. Do I
21 understand your company stood to make \$2500 on a \$12,500
22 sale?

23 A. That's exactly -- No. If it were a -- if it
24 were a \$12,500 sale, we would have made \$2500. But the

1 fact remains, is that was not the way it could possibly
2 turn out. It had to be at least a \$15,000 sale with
3 \$5,000 down; \$2500 to our company, and \$2500 to the
4 buyers.

5 Q. Do I understand then the answer to my question
6 is that if it had been a \$15,000 sale, you would have
7 made \$2,500?

8 A. That's exactly right.

9 Q. That's five percent -- or actually closer to
10 seven or eight, almost 10 percent?

11 A. Yes, which is our average sale.

12 Q. So you legitimately, in a legitimate business,
13 stood to make quite a bit of money from this sale?

14 A. If you consider \$2500 quite a bit.

15 Q. It's a lot to me.

16 A. Yes.

17 Q. And it's fair to say you wanted the sale to go
18 through, legitimately, as a business person?

19 A. Sure, sure.

20 Q. In fact you ran a credit check on Mrs. Duplin
21 and realized it was going to have to be owner-carried
22 financed?

23 A. Exactly right.

24 Q. In other words, a lending institution would

1 likely not lend her or her son money?

2 A. Exactly. Her son was not the one that was
3 trying to purchase the home, anyway.

4 Q. It was just Mary, really?

5 A. It was Mary.

6 Q. In fact, their financial straits were such
7 that you even considered loaning them back the
8 commission?

9 A. Exactly.

10 Q. So they were having a tough time making \$2500,
11 even?

12 A. Mary had some money that was supposed to be
13 coming from some kind of workmen's comp.

14 Q. Didn't appear, though, did it?

15 A. And then she was working on trying to maybe
16 get that money sooner, so --

17 Q. Miss Story, I'm sorry to interrupt, but that
18 money didn't appear, did it?

19 A. No, because all this other stuff happened.

20 Q. And they were having difficulty making even
21 \$2500?

22 A. As I was to understand at that particular
23 time.

24 Q. Okay. So \$5,000 was quite a shock, I am sure?

1 A. Well, when you double the down payment on
2 something, yeah, it usually would appear that way.

3 Q. And that was going to create a significant
4 problem, I am sure, for Miss Duplin and Mr. Voss?

5 A. I don't know. I don't know.

6 Q. Now you recall investigators contacting you
7 and asking you to give you -- give them, excuse me, a
8 tape-recorded statement on July 13th, 1996? Do you
9 recall that?

10 A. If that was Mr. Hill? Yes.

11 Q. Do you recall three times during that
12 statement telling them that you contacted him on
13 Wednesday?

14 A. I thought that it was probably Wednesday, but
15 then -- because I had down on my calendar, I had written
16 on top, on the 13th, that that was the day that Baxter
17 was missing.

18 But I recall why I did that. I had gone back
19 to my calendar, and in fact I was just reviewing all this
20 in my mind since I have been talking to everybody and
21 trying to recap everything. I had gone back to my
22 calendar and marked it on my calendar way after the
23 fact. I mean, it was probably about a month ago I marked
24 it on my calendar. It wasn't like I marked it that day.

1 Q. Right. I don't think you knew the day she
2 became missing, I am not implying that.

3 A. No.

4 Q. I guess my question still remains, though: At
5 least as of July, it was possible in your mind that you
6 called Mr. Voss Wednesday morning to let him know that
7 the deposit, or the down payment was going to be \$5,000?

8 A. You're saying July. You mean June?

9 Q. I mean July, when you gave the tape-recorded
10 statement.

11 A. Say that again. When I gave a tape-recorded
12 statement, I what?

13 Q. This happened in June.

14 A. Yes.

15 Q. Miss Baxter came up missing, and police
16 investigation occurred beginning June 14th.

17 A. Okay.

18 Q. July, in the middle of July, you made a
19 tape-recorded statement.

20 A. Right.

21 Q. During that statement, three times you said
22 this happened on Wednesday. "This," meaning you calling
23 Mr. Voss, and telling him: Hey, the down payment has
24 changed.

1 A. Yeah, during that period of time -- What is
2 your name again? *

3 Q. Egan Walker, ma'am.

4 A. Mr. Walker, during that period of time, I had
5 it in my mind that it was on that specific day, on --

6 Q. Is that a yes?

7 A. Well, at that time, yes, during that period of
8 time, yes.

9 Q. I know you want to explain it, and I will give
10 you a chance in a minute. But that's a yes?

11 A. Yes.

12 Q. Now you also said at that time: Well, it
13 could have been Thursday as well. Do you recall that?

14 A. I was trying to figure out if it was Wednesday
15 or Thursday.

16 Q. Okay. Now before you get to your explanation,
17 would it help to you know there are witnesses who claim
18 that Mr. Voss was someplace else completely at 8:30 on
19 Thursday morning? I mean on the other side of Reno?

20 | A. Well, I am just -- I don't know what to say.

21 Q. Let me help you this way:

22 In addition to witnesses who say they saw Mr.
23 Voss with Miss Baxter, Thursday morning, as late as 9:00
24 o'clock, we have a picture of Mr. Voss at an ATM machine

1 Thursday morning at 9:57, at the corner of Keystone and
2 Fourth.

3 A. Okay.

4 Q. Does that cause you to change at all your
5 confidence in your recollection that you called him
6 Thursday morning?

7 A. Well, it's would have to.

8 Q. It would, wouldn't it?

9 A. Yes.

10 Q. And that's fair. I mean, I couldn't tell you
11 where I was Wednesday morning, June 12th.

12 A. Right.

13 Q. Do you recall talking with my investigator,
14 Mike Nevell, the other night?

15 A. Yes.

16 Q. I think it was Monday night.

17 A. Right.

18 Q. Do you recall detailing to him a conversation
19 you had with Mr. Voss on the 17th of June?

20 A. Yes, that was Monday, I believe.

21 Q. What do you remember Mr. Voss telling you on
22 the 17th of June about Miss Baxter, and the last time he
23 had seen her?

24 A. Well, I read some of the documentation that

1 Mr. Nevell put down, and I found that there was -- there
2 is a discrepancy in there.

3 Q. So you read Mr. Nevell's report to me, which I
4 gave Mr. Conway?

5 A. I just read it before coming in here earlier,
6 and there was a discrepancy in there.

7 Q. So what you're telling me is you disagree with
8 what Mr. Nevell says he heard?

9 A. Part of what he said.

10 Q. Have you given me a copy of your real estate
11 file?

12 A. My real estate file is with --

13 Q. What counsel is handing to me now? Have you
14 ever given this to the police?

15 A. No. They never asked me for it.

16 Q. You were so upset in this case one time,
17 though, you called Mrs. Duplin, didn't you, because you
18 thought an injustice was being done?

19 A. I had heard from some friends that they said
20 -- I read about your case in the newspaper, and it said
21 that they were saying that there was only \$2500 involved,
22 according to the real estate agent, which I am not even a
23 licensed real estate agent, that there was \$2500
24 involved.

1 And I thought: That's not right, there was
2 \$5,000 involved. Why would the paper put that?

3 So I called and I did talk to Mary, and I
4 said: If you need any proof that it was \$5,000, I will
5 go forward, because I'm a person that I can't sit back,
6 knowing that the newspaper is saying a lie --

7 Q. There is a contract in your file right here,
8 that says: Cash as agreed, down payment, \$2,400.

9 A. As of that date, that was the understanding.
10 There is also --

11 Q. Thank you, that answers my question.

12 Did you ever feel compelled to go to the
13 police or District Attorney's Office and say: Hey, gees,
14 you might be in error, based on what you thought the
15 paper had printed?

16 A. No. After I found out what the paper had
17 printed, I just called Mary, and she said she would tell
18 the defense attorney about it, and if -- I said if
19 anybody needed me, I would be available. I did not go to
20 the police.

21 Q. Let's get back to my question now that you
22 didn't really want to answer. And that is: What did Mr.
23 Voss tell you June 17th about when the last time was that
24 he saw Beverly Baxter?

1 A. See, that's where the report was wrong from
2 Mr. Nevell. I never said that he said that he saw her at
3 all.

4 Q. Let me interrupt you for a moment. I need you
5 to answer my question, okay? And then I will let you
6 explain, if you need to.

7 What do you recall, irrespective of what you
8 think Mr. Nevell said or his report says, what do you
9 recall?

10 A. I recall speaking to him and asking him if
11 they found her at all, because I wanted to know if he
12 still had -- the people selling their home were under the
13 impression that they had a deal pending, and I needed to
14 find out if there was still a deal pending, maybe she
15 showed up over the weekend.

16 He said he had been trying to call her several
17 times, and that she still was not answering the phone,
18 and that he was still hoping she would return. But as of
19 yet there was nothing -- that he did not hear from her,
20 he was not he getting any response from calling, and he
21 did not know where she was still.

22 Q. Now what is it that you think Mr. Nevell got
23 wrong?

24 A. In the report he said that I said that Steven

1 had seen her the night before she was missing. And I
2 never said that Steven told me that he saw her. He did
3 not tell me he saw her.

4 Q. He spent the night with her.

5 A. Well, I didn't know about that.

6 Q. Well, why was this such an important
7 discrepancy to you?

8 A. Because I don't like people putting things
9 down that I didn't say.

10 Q. But didn't what you really said to Mr. Nevell,
11 is what Steven told you was that he was supposed to see
12 her the night before, but she had a beef with somebody
13 else, and so he never got to see her?

14 A. What he told me was that I guess -- it's my
15 understanding he had spoken to her, whether in person or
16 on the phone, I have no idea, and that she had to go to
17 help out a friend that was in trouble.

18 Q. And wasn't it your understanding that
19 consequently he never got to see her, because she had to
20 go help somebody else out?

21 A. I never gave it anymore thought.

22 Q. But wasn't that your understanding of what he
23 was telling you, was that he never got to see her because
24 she had to go see somebody else?

1 A. I can't really honestly answer that. I mean
2 -- I don't think I gave it a whole lot of thought. You
3 can assume a lot of things, I guess. I did not even give
4 it anymore thought. It was just that she -- he told me
5 that she was supposed to -- that some friend was in some
6 kind of trouble, and that she had to be with the friend.

7 MR. WALKER: May I have Exhibit 29, Miss
8 Clerk?

9 This has been admitted as an exhibit.

10 BY MR. WALKER:

11 Q. Have you ever seen this before?

12 A. No, I have not.

13 Q. That's a check that Mr. Voss tried to cash on
14 Friday, June 14th, on the account of Beverly Baxter. Did
15 he tell you anything about that?

16 A. I spoke -- when I had spoke to Steven at one
17 time, and he said that he had filled his name in on a
18 check that -- and got in trouble for it, and I don't
19 remember what day that was specifically he told me -- and
20 he said the reason that she wrote him the check and left
21 the payee open on there, was because he wasn't sure
22 whether it was supposed to be written to Instant Housing
23 direct, or if we could take, like, a check to Instant
24 Housing, or if we needed a cashier's check. So he took a

1 check that was left open, and he wrote his name on it and
2 got in trouble for it.

3 Q. According to the terms of the contract, who
4 was he supposed to pay?

5 A. There was no terms in the contract as to who
6 he was supposed to pay. I mean, if he had a check and it
7 was written into his account, he could have come in with
8 a cashier's check or money order, cash, written out to
9 Instant Housing. It would not have been to a private
10 party.

11 If we take a check from anybody in our office,
12 it's always written to Instant Housing. And so
13 therefore, you know --

14 Q. And you said something interesting just now.
15 You said if he had a check on his own account you would
16 have taken it?

17 A. If it was written to Instant Housing.

18 Q. Sure.

19 A. I could take a personal check. I take
20 personal checks. All we do is call the bank and verify
21 funds are in there. A lot of times people give us a
22 money order or give us --

23 Q. So it didn't have to be in a particular form,
24 did it?

1 A. Not necessarily, no.

2 Q. He could have walked in with \$5,000 cash?

3 A. Sure.

4 Q. Cash works real well, doesn't it?

5 A. It works better than anything else.

6 Q. Now if Beverly Baxter had walked in and given
7 you this check with Instant Housing on it, signed Beverly
8 Baxter, would that have done Steven Voss or Mary Duplin
9 any good?

10 A. No.

11 Q. Why not?

12 A. It's a second-party check.

13 Q. Yes. And maybe if Beverly Baxter wanted to
14 buy a mobile home, it would have done some good; right?

15 A. If she herself was buying it, then she came in
16 with a check and she was the purchaser, we had an
17 agreement, she gave me her check, of course.

18 Q. It doesn't do Steven Voss or Mary Duplin a
19 darn bit of good, does it?

20 A. Well, we could not have accepted that check
21 from them, because it's second party. So in that case,
22 no.

23 Q. All right. Now you talked to Mr. Voss and his
24 mother quite a bit in the days and few weeks following

1 your conversation with the police; correct?

2 A. I did not speak with Steven quite a bit. I
3 was in communication somewhat with Mary, to see how
4 things were progressing, to see if that lady returned, to
5 see if she still wanted to buy a home. I am a very
6 aggressive salesperson.

7 Q. But I don't understand. You said something --
8 you talked with Mr. Voss on the 17th, which was the
9 following Monday.

10 A. Right.

11 Q. And you talked to him that weekend, didn't
12 you?

13 A. No.

14 Q. Was it his mom you talked to then or --

15 A. I believe so. I cannot really truly
16 remember. I really don't remember.

17 Q. Now a minute ago you were really worried that
18 I would be upset about the fact that you had written
19 Baxter's disappearance down on your desk calendar, the
20 date of her disappearance.

21 Why were you worried about that?

22 A. Because of the report that Mr. -- that I read
23 prior to coming in that Mr. Nevell wrote.

24 Q. Well what happened, wasn't it, he called you

1 up and said: What do you know? And you said: Let me
2 look at my calendar, and that will help refresh the date
3 of the morning I called Steven. Right?

4 A. No. He was sitting there in my office when I
5 was looking through my calendar.

6 Q. But you were looking through your calendar to
7 try and refresh your recollection about which morning it
8 was that you called Steven; right?

9 A. Right.

10 Q. And you happened to see that, gosh, you had
11 written in on the 13th, the day Beverly disappeared?

12 A. Right.

13 Q. And do you know why you did that?

14 A. I told you earlier, you probably forgot now,
15 that it was after the fact that I went back and wrote
16 down Beverly Baxter's disappearance, because I figured I
17 was probably going to be involved in this in some form,
18 and I should be documenting something. I documented that
19 on my calendar way after the fact. It was probably just
20 a few weeks ago that I wrote it on there.

21 Q. Who told you that was the day she disappeared?

22 A. Because to my recollection I was thinking
23 that's the day that the -- that the sergeant had called
24 me. But then when I flipped the calendar over to the

1 14th, I had: Sergeant called me.

2 I never knew anything about Beverly Baxter,
3 her disappearance or anything, until the sergeant called
4 me and told me.

5 Q. I am confused, and I'm sorry. You had written
6 on the 13th, Beverly Baxter disappears; right?

7 A. I did not write it there on the 13th. I wrote
8 it on the calendar that said the 13th, but I didn't write
9 it on that date, on that particular day.

10 Q. I know you didn't write it on the 13th, but
11 you did write in your own calendar, on the calendar paper
12 that says June 13, she disappeared?

13 A. Right.

14 Q. And you also wrote: Sergeant calls me, on the
15 next day, a different place on the calendar?

16 A. Right.

17 Q. And you say the paper slipped?

18 A. No, you don't understand. On the 14th I wrote
19 down: Received call from sergeant.

20 But then, after the fact, after like about
21 four, five weeks ago, I thought I should document things,
22 and I flipped to the 13th and I put down Beverly Baxter
23 disappeared.

24 Q. And you did that because somebody told you

1 that; right?

2 A. No, I did it on my own. I -- and I have
3 documentation; some in my computer.

4 Q. How did you come up with the 13th, though?

5 A. I don't know. I was off a day. That's why I
6 was concerned, I thought: Did I talk to Steven the
7 morning of Wednesday or Thursday? And I was confused
8 about the two days. I could not remember which day I had
9 spoken to him. And I thought to myself it probably was
10 Thursday, because I didn't talk to the clients. I was
11 trying to recall in my mind what day I spoke to the
12 clients and what day they said that they needed \$2500,
13 and we had to come up with the full \$5,000. I was just
14 confused on a day.

15 Q. Is it fair to say -- I accept completely what
16 you're saying about your explanation. I don't
17 understand, but that's okay.

18 A. I'm Italian.

19 Q. Is it fair to say you have this problem with
20 fair amount, about transposing dates? Understandably.
21 Whether it was Wednesday morning or Thursday morning you
22 called, whether it was Thursday she disappeared or Friday
23 or Thursday the detective called you, or Friday the
24 detective called you. I mean, you've done that --

1 A. Yes, I was confused. I was off a day, as far
2 as which -- I kept thinking in my mind she disappeared on
3 a Thursday.

4 Q. So it's entirely possible that you called
5 Steven Voss, Wednesday, June 12th?

6 A. Yes, it's possible.

7 Q. And told him you need to come up with five
8 grand?

9 A. It is very possible.

10 MR. WALKER: Thank you. No further questions.

11 THE COURT: Mr. Conway?

12 MR. CONWAY: Thank you, Your Honor.

13 REDIRECT EXAMINATION BY MR. CONWAY:

14 Q. There was a question from the State concerning
15 who you contacted. You did contact the defense; is that
16 correct? You contacted me at one point, did you not?

17 A. I -- well, I -- I contacted you at one point?
18 I think I did call you one day. I don't know, I get --

19 Q. What was the reason that you felt it necessary
20 to contact my office?

21 A. Oh, okay. That's because after I talked to
22 Mary, somebody called me from your office, and I was just
23 returning the call.

24 Q. Why did you call Mary? What was the reason

1 you called Mary back sometime around the preliminary
2 hearing?

3 A. Mary had called me at one time and said:
4 Thank you for trying to get us a home.

5 Q. Scratch that. You have to stay focused. I
6 know you're a little nervous and confused about dates and
7 times, but do you recall either reading or having someone
8 read you a newspaper article about the preliminary
9 hearing?

10 A. I was told about it.

11 Q. Was there something about what you were told
12 that prompted you to call Mary Duplin?

13 A. Exactly.

14 Q. What was that?

15 A. That was that the paper said that the real
16 estate agent said that there was only \$2500 needed to buy
17 the home. And it was \$5,000, and not \$2500.

18 Q. Was there ever a time that you told either
19 Detective Pappas or Detective Hill that it was \$2500 at
20 the time on June 14th?

21 A. No, no.

22 Q. You would have told them what, if they'd asked
23 you?

24 A. Five thousand.

1 Q. Did you ever voice this concern to Mike Nevell
2 prior to -- on Monday of this week?

3 A. No.

4 Q. So you never told him that you had been in
5 touch with Mary Duplin because of this concern about the
6 \$2500 as opposed to 5,000?

7 A. Yes, I did tell -- I told him the other night
8 when he came to the office a couple days ago.

9 Q. And did he at that time explain to you that
10 that must have been the media's fault?

11 A. Yes, basically. A lot of time people from the
12 media will only sit in on partial meetings and then they
13 don't stay for the whole thing, and they always have
14 misinformation in the paper. The papers don't give
15 proper information.

16 Q. And that was his explanation as to why you had
17 heard they said it was \$2500?

18 A. That could have very well been the case.

19 Q. Now there was reference made to State's
20 Exhibit 29. Again, you hadn't seen that?

21 A. No.

22 Q. But if you had received this check with
23 Instant Housing written on it, you could not have
24 accepted that?

1 A. That's correct.

2 Q. That's the policy of Instant Housing, is it
3 not?

4 A. Well, yes.

5 Q. But had Steven Voss cashed this and brought
6 you \$5,000, I am assuming you could have accepted that?

7 A. Of course.

8 Q. If he had brought you a cashier's check, you
9 could have accepted that?

10 A. Of course.

11 Q. Or a certified check, you could have accepted
12 that?

13 A. Of course.

14 MR. CONWAY: Nothing further.

15 THE COURT: Mr. Walker?

16 RECROSS EXAMINATION BY MR. WALKER:

17 Q. Miss Story, would it be a fair thing to say
18 that you were as clear with Detectives Hill and Pappas
19 when they contacted you, as you have been here today
20 about what this sequence of events was?

21 A. Probably I am a little bit more clear right
22 now, because I found a little bit of documentation that I
23 have in my computer that I wasn't aware of. I unloaded
24 some of my files onto a disk, and I put a disk in the

1 other day, and found a file on it where it showed I had
2 spoken to Steven on the 17th, which I had really not
3 recalled when I spoke with Pappas or Hill, at that time,
4 and I just had a little bit more to remember by.

5 Q. So it's fair to say that you were perhaps more
6 confused with them -- in other words, they could have
7 been confused about what you said, because it came out in
8 a confusing way?

9 A. I don't see where the confusion would be
10 except that on the day, the specific day that I was
11 probably off one day, trying to figure out which day did
12 I speak with -- what morning did I speak with Steven.

13 I thought that if there was anything that I
14 had done, and I knew, and not to protect him, or to go
15 for him or against him, but just the truth -- I am a
16 person that believes in telling truth. You know, I don't
17 lie. And I could not recall in my brain, I don't know if
18 it's age or what, but I could not recall right at that
19 specific time which exact morning I spoke with him.

20 Q. There is no contract in that file that I could
21 see, and I haven't been given a chance to really look at
22 it, but there is no contract in that file, no \$5,000
23 written up, is there?

24 A. No.

1 Q. The only one that's written is the one for
2 \$2500?

3 A. That's right.

4 Q. Were you concerned about Miss Baxter?

5 A. Pardon? Concerned about her? ...

6 Q. Yes.

7 A. I don't know anything about --

8 MR. CONWAY: Objection.

9 THE COURT: Sustained.

10 MR. WALKER: Nothing further.

11 THE COURT: Thank you. You may be excused.

12 (The Witness Was Excused.)

13 MR. CONWAY: At this time the defense rests,

14 Your Honor.

15 MR. WALKER: I have no rebuttal witnesses,

16 Your Honor.

17 THE COURT: All right, we're going to take a
18 25-minute recess, and we're going to come back and I will
19 read the jury instructions and then listen to closing
20 arguments of the lawyers.

21 I would suggest, Mr. Clifford, it would be
22 well to get a menu over here so they can look at it for
23 dinner.

24 While in recess, for the last time, do not

1 discuss this case among yourselves, and do not discuss it
2 with anyone else.

3 Don't form any conclusions about this 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 accounts of this case, if there should be any.

7 With that, we will be in recess until 3:25.

8 (WHEREUPON, A RECESS WAS TAKEN.)

9 (The following proceedings were held outside
10 the presence of the jury:)

11 MR. WALKER: I appreciate the opportunity to
12 meet outside the presence of the jury.

13 I would request that the Court canvass Mr.
14 Voss directly as to his decision to testify or not to
15 testify.

16 THE COURT: That was my intention. The
17 Supreme Court has told me I have to do that.

18 Mr. Voss, you understand that you have a
19 constitutional right to testify if you choose to do so?

20 THE DEFT: Yes, sir.

21 THE COURT: Do you also understand that you
22 have a constitutional right not to testify if you choose
23 to do so?

24 THE DEFT: Yes, sir.

1 THE COURT: Do you understand that you will do
2 that after consultation with your attorney?

3 THE DEFT: Yes, sir.

4 THE COURT: Have you consulted with him; is
5 that correct?

6 THE DEFT: Yes, sir.

7 THE COURT: You do not wish to testify in this
8 trial?

9 THE DEFT: I have been advised not to. Yes,
10 sir.

11 THE COURT: I will be instructing the jury
12 that they may draw no inference from the fact you have
13 not testified in this trial.

14 THE DEFT: Yes, sir.

15 THE COURT: All right. Thank you. Please
16 bring them in.

17 (The jury is present in the Courtroom for the
18 proceedings.)

19 THE COURT: Will counsel stipulate to the
20 presence of the Jury? Mr. Walker?

21 MR. WALKER: On behalf of the State, Your
22 Honor, I stipulate to the presence of the jury and the
23 alternate.

24 THE COURT: Thank you.

1 Mr. Conway?

2 MR. CONWAY: Your Honor, on behalf of the
3 defense, we also stipulate to the presence of the jury
4 and the alternate.

5 THE COURT: Thank you.

6 Ladies and Gentlemen, you have heard
7 two-thirds of the speech, and in a few minutes you will
8 heard the final third.

9 Before we do that, it's necessary that I give
10 you the law that you must apply to the facts as you find
11 them to be.

12 You must apply this law as I give it to you
13 even if you don't agree with it, as I explained to you
14 earlier.

15 I will be reading these instructions to you
16 for a couple of reasons: Number one; I want to make sure
17 we don't miss something; number two, I haven't memorized
18 them.

19 So if you will please pay attention, we will
20 go through these.

21 (The Judge read the law and the jury
22 instructions to the jury.)

23 THE COURT: Mr. Walker?

24 MR. WALKER: Thank you. Mr. Voss, Mr. Conway,

1 Your Honor. Good afternoon, ladies and gentlemen.

2 Thank you on behalf of the State of Nevada and
3 on behalf of counsel for your time and attention to
4 details in this matter.

5 I have observed all of you taking notes,
6 paying attention to the testimony of all of the
7 witnesses. And on behalf of all of us, I thank you for
8 that duty.

9 Preliminarily, you know a couple of things in
10 this case. Number one, you know that my anatomy is
11 pretty bad, even though I am a registered nurse, because
12 I don't know the difference between my hand and Mr.
13 Conway's shoulder.

14 You also know my math is not the best, because
15 \$2500 is a whole lot more than five percent of \$12,000.

16 But, more importantly than all of that, you
17 also know, I submit to you, beyond a reasonable doubt,
18 that Steven Floyd Voss is guilty of six felonies:
19 Burglary, forgery, uttering a forged instrument and
20 attempted theft.

21 And I will try and argue to you why. You will
22 recall in my opening statement I offered the observation
23 that fraud sometimes has a friendly face, or fraud can
24 sometimes be friendly.

1 Of course I meant that as a figure of speech.
2 Because this fraud wasn't friendly at all, but it clearly
3 was fraud.

4 As I indicated to you, one of the jury
5 instructions that you have and that you heard Judge Stone
6 read, and one that is important, is a jury instruction
7 that tells you that you bring to the consideration of
8 these facts and this evidence your common sense, your
9 common experiences as human beings, your common
10 understanding.

11 And perhaps the most saline thing I can say
12 is: Based on your own common sense and your own common
13 understanding, do you know anyone who would give Steven
14 Voss \$5,000 and never make any agreement for repayment?
15 Particularly this \$5,000. Because, recall, it wasn't the
16 money that was such an issue, it was what the money
17 represented that was such an issue.

18 And why in this case would no one, not one
19 single person, other than Steven Floyd Voss, say that
20 Beverly Baxter had any intent but to cash or to keep this
21 check? Or at most, give it over as a retainer to an
22 attorney, at the very most.

23 Often the very best way common sense and
24 common experience teaches you to tell or to hide the

1 truth, is with a smile, and the offer of enough facts,
2 enough pieces so that seen from a distance you get a
3 fairly good picture of what might be reality.

4 But when you actually get down to the
5 nitty-gritty and you start taking apart the pieces of
6 that statement, and discover that indeed it was not just
7 inconsistent, but flat wrong, consciously misleading,
8 then you have a key to where the truth really lies.

9 When the detectives started pulling on the
10 loose ends of Mr. Voss's story, rather than coming into a
11 knot, as you would expect inconsistent, but honest
12 statements to be, his story unravels completely, it comes
13 completely apart. And that too is a key to understanding
14 what is true in this case. Because a smart fraud, covers
15 his tracks just enough so that on the surface it looks
16 like everything is okay.

17 Mr. Voss had a motive to commit these crimes.
18 He lost his house, he was paying for the rent at the
19 Western Village, and the rent in two storage facilities,
20 without a job himself, or at least current employment,
21 and a difficult financial situation.

22 And you know that through his own witness, who
23 told you they could not even qualify for a loan on the
24 mobile home. They could not even come up -- I don't mean

1 that pejoratively; I couldn't come up with \$2500 today to
2 buy a house.

3 But the fact of the matter is, their financial
4 situation was such they could not come up with a \$2500
5 down payment, let alone a \$5,000 down payment.

6 So there was a clear motive here to get this
7 money. And you get clues about that motive all along in
8 the case; when you hear and see how Mr. Voss acted, and
9 the actions he did or did not take.

10 He had an opportunity to commit this crime.
11 While he did not want to talk about it, he did not want
12 to admit it, he had Beverly Baxter's keys, and I submit
13 there was only evidence there was only ever one set of
14 keys.

15 And why you know that is her own son, when he
16 went through her property, found the only spare key she
17 had to the car, which was a door key, that you would
18 expect.

19 He had the keys, he was in her apartment for
20 half an hour. A half an hour while she was gone. He had
21 every opportunity to get the check, which he must have
22 found out about the same way everybody else found out
23 about it, because Beverly talked about it, told people,
24 everyone how upset she was about it.

1 So he knew about the check, he knew it was an
2 opportunity. He had a half hour to get it. He also had
3 half an hour to look through all her cancelled checks and
4 see how she signs her name. How else would he have known
5 to tell the tellers:

6 She always signs her name -- look at her
7 cancelled checks. She always signs her name B. A.
8 Baxter. How else would he know that, unless, of course,
9 in the process during that 30 minutes of finding the
10 checks, the reimbursement check, State's Exhibit 1, he
11 also could see how she signs her name, and then take the
12 time to forge it. As Mr. Whiting told you: Take the
13 time to consciously deceive with a signature.

14 Consider Mr. Voss's attitude and demeanor when
15 the frayed ends are pulled, or pressure is applied to get
16 details, to get consistent details about the story.

17 Mr. Voss was not concerned about this friend,
18 who had just loaned him \$5,000; he was concerned about
19 getting his story straight with his mother.

20 And how do you know that? When he was asked:
21 Will you come down and give us a statement? No. He was
22 asked that by Detective Pappas. Nope.

23 I will let you look in my truck. I am not
24 going to be honest with you, that I have some hesitance

1 about it. You know that from his statement on the tape.
2 But, no, I am not going to come down and give a
3 tape-recorded statement.

4 When the detectives come later that night:
5 Your friend is missing, we know you need this \$5,000, and
6 if you legitimately got this \$5,000 from her, help us
7 out, give us a tape-recorded statement about what is
8 going on.

9 No, I am too tired. I am too tired. I will
10 come down tomorrow.

11 He comes down the next day and insists that
12 his mother be present during the interview of both of
13 them.

14 Consider using your fundamental common sense.
15 The truth of this -- the answer, what must be obviously
16 the answer to this question: Why would Beverly Baxter
17 ask Steven Voss to copy the paperwork involving the
18 storage reimbursement? Why would she ask him to copy
19 that paperwork and then give him the check?

20 I mean, if the purpose of copying the
21 paperwork is to send it to an attorney, to get more
22 money, that clearly was her purpose, why would she also
23 give him the check, which clearly everyone had told her
24 if she cashed would be accepting it. There is no way

1 fundamentally to get around that.

2 All of the inconsistencies that I indicated
3 were present in my opening statement came to pass. And I
4 submit they were major inconsistencies. Not minor
5 inconsistencies, major inconsistencies.

6 When Mr. Voss was taken by surprise by
7 Detective Pappas at the bank on the 14th, he wrote out a
8 statement in which he said nothing about depositing the
9 check.

10 He said: I spent the night with Beverly
11 Wednesday night. Thursday morning I got the check from
12 her because we had been discussing that night -- and
13 that's what the statement says, the discussion was that
14 night, not before -- because we had been discussing that
15 night my need for a down payment. She gave me a check.
16 We left at 8:00 o'clock together.

17 When Detective Pappas confronts him, surprises
18 him: Hey, what about this deposit you made at the bank?
19 Mr. Voss is not unintelligent. He knows Mr. Pappas must
20 have talked to the bank personnel, must know the dates of
21 the deposit. So he says: Yeah, I got a check which I
22 deposited from her on the 12th. I got it from her at
23 work.

24 That's the extent of his comment. There is a

1 disagreement between the two men, Mr. Voss wordlessly
2 walks away.

3 But on the 15th, in the presence of his
4 mother, when his story is straight, sits down and says:
5 No, I got it on Monday, I think. I got it on Monday and
6 I deposited it on Monday. And he says it several times,
7 not just once.

8 I mean, the detectives make a point of asking
9 him on Monday: Was this Monday? Yeah, it was Monday.

10 However, by the time we get to the 17th, and
11 the detectives ask again: When did you deposit? Well,
12 Monday, maybe Tuesday.

13 Well, let me help you out, Mr. Voss. You
14 borrowed some keys, didn't you? And there is a long
15 pause. Yep, I did. What did you do with those keys?
16 There is a long pause. I got the papers. And where did
17 you get the papers from? There is a long pause.
18 Beverly's house.

19 And now the jig is up. Now he knows they
20 know; somebody saw him go into her apartment. They know
21 his story ain't straight.

22 And you see it in his body language, you see
23 it in his demeanor, and you see it in his responses.

24 So by the 17th, they get him back to saying:

1 Yeah, okay, I got the check on Wednesday. And he never
2 says what the circumstances are.

3 Detective Canfield asks him: Well, how did
4 you get the check? I didn't get the check. She gave it
5 to me. But nothing else. Nothing about she gave it to
6 me at work, or she gave it to me that night, or that
7 morning, or where else.

8 No details. Nothing to grab hold of. Nothing
9 that a person who legitimately was in possession of this
10 check, who legitimately wanted to buy a mobile home with
11 it, would say: Gees, she gave me the check, I think it
12 was on Wednesday. I was at her work, said: Hey, why
13 don't you deposit this check for me?

14 And recall, Detective Canfield even on the
15 first interview says: Did she make out the deposit slip
16 and sign the check?

17 And as I indicated, Mr. Voss nods his head and
18 asks another question, and gives clear assent to the
19 assertion that she signed the check.

20 Well, of course by Monday that all changes
21 again. No, I put For Deposit Only on there.

22 And you know he signed B. A. Baxter, there is
23 just no doubt about who signed that on there. He never
24 clearly says that, but he clearly says: I put For

1 Deposit Only on there.

2 And it would straight common sense be
3 unreasonable to come to the conclusion that anybody but
4 Steven Floyd Voss put B. A. Baxter on there. And you
5 have to ask why.

6 There was no discussion. This \$5,000 that had
7 her so distraught that Tim Sturdavant was going to have
8 her move to Utah, she gave on a wing and a prayer to Mr.
9 Voss, according to his assertions. Just gave it to him.
10 No real plan to pay it back, no real discussion about
11 it. Here's my last \$5,000 that represents everything I
12 own in life. You can have it.

13 And his description of their relationship is
14 they are friends. They have a sexual relationship, and
15 there's nothing wrong with that, but they are just
16 friends. I mean they weren't even boyfriend/girlfriend
17 when he was asked to describe it; they are friends.

18 Conversation with the Realtor was Thursday
19 night. Thursday night, he says he had the conversation
20 with the Realtor.

21 Well, even Miss Story says it was either
22 Thursday morning or Wednesday morning. And, boy, you
23 know it was Wednesday morning, don't you, after she's
24 done testifying.

1 You know, innocent misrecollections happen. I
2 don't think Miss Story is trying to misrepresent anything
3 about it, but you know she called Mr. Voss Wednesday
4 morning, because he wasn't at his apartment Thursday
5 morning. He wasn't anywhere near the Western Village...

6 So why, you must ask, would Mr. Voss
7 misrepresent the obvious so continuously? And the only
8 logical answer, only common-sense answer, is that he is
9 not being truthful. He clearly thieved this check.

10 He never mentions the trip to California
11 Federal in Reno. Never ever tells anyone: Yeah, I also
12 went to Cal Fed., at the other branch, to see if they
13 would cash it too.

14 And why not? Because it doesn't fit the story
15 he gives, the tale he tells. The first time he tells the
16 story, is: The first time I went to the bank was Friday
17 morning. And the bank I went to was California Federal
18 in Sparks.

19 And he never says I also went to California
20 Federal on South Virginia, because I wanted to go
21 wherever they would cash the darn thing.

22 He wanted to cash the check to get a check.
23 Well, Carol Story said she would take anything; I think
24 that's pretty clear; clearly her motivation to make that

1 \$2500. That's legal, legitimate, and it's a lot of
2 money.

3 And she never said anybody told him it had to
4 be a certified check or cashier's check or a check-check
5 or anything else. That 5,000 bucks would have been just
6 fine.

7 So when he says: I had to cash this check to
8 get a certified check, that's nonsense. It does not make
9 sense. Doesn't make sense. Common understanding doesn't
10 fit with what Miss Story testified about.

11 I know you all listened closely to the tape.
12 And in the tape he says he first finds out about the hold
13 Friday morning. Clearly says that's the first time I
14 found out about the hold, early on.

15 Well, we know that's not true. I mean, that's
16 not true at all, because Duc Hamilton gave him his
17 business card Wednesday afternoon, said: Have her call
18 me. And this hold is going to be on here two days.

19 Then he called the next day to confirm whether
20 or not the hold was on it. And then he went to the bank
21 on Friday. The story is unraveling badly now, very
22 badly.

23 I may have been rude. And then later on, when
24 the detective says: Why would you have been rude to the

1 teller? No, I wasn't rude; no, no, no, no, no. I wasn't
2 rude.

3 But he just said he was rude. I may have been
4 rude.

5 I didn't know Bev's work number. I think
6 that's truthful. I'm guessing he probably didn't know
7 off the top of his head Beverly's work number. But, my
8 gosh, according to the uncontroverted testimony of her
9 workmates, particularly Sophia Pantoja, he was there
10 Monday, he was there Tuesday, he was there Wednesday, and
11 maybe even he was around there Thursday. We will talk
12 about that later. But three days in a row he's at her
13 work. At least this week alone.

14 And recall, the bank ladies say: We asked
15 him, where does she work? You might expect somebody
16 wouldn't know a friend's work number. Can you tell me?
17 Does Microflex Corporation ring a bell? It's in the
18 phone book. Is it there? Well of course not, because he
19 didn't want them to call. He didn't want anybody to call
20 Beverly Baxter. Because he had no right to have this
21 check.

22 He acknowledges that she signs the check, as I
23 indicated, and then by the second interview he says: No,
24 I put Deposit Only on there. Says she had me copy the

1 papers for her. But he never fundamentally addresses the
2 issues -- even acknowledges he knows it's a reimbursement
3 check and that she has an attorney. But he never
4 acknowledges or even makes a comment about why everyone
5 else on earth who knows Beverly Baxter would know about
6 her desire and intent not to cash this check, and claims
7 to not know anything about it.

8 He says I've made a deposit before, in the
9 first interview, or the first time. And then by the end,
10 the slide finally gets down to the fact: Well, I may
11 have cashed a check before.

12 And you now know that that check was a \$200.00
13 check for auto repairs that Beverly wrote to him in
14 February.

15 And that's important, because on the videotape
16 he says: Well I never charged her for the repairs.

17 Well, maybe he didn't charge her for the labor
18 and charged her for the parts or whatever else, but he
19 sure didn't tell the detectives she had written him a
20 \$200.00 check three months before. And that that's how
21 he knew where her bank was.

22 He acknowledges he worked on her car. But
23 interestingly, when the detectives want to put him in her
24 car, what does the inside of her car look like? What

1 color is it? What's the interior like?

2 Well, I don't know, I haven't been in there
3 very much.

4 Boy, he doesn't want to be inside that car.

5 I got the paperwork out of the car and
6 returned it to the car. He clearly, unequivocally says
7 that the first time. Out of the car, back to the car.

8 In fact he goes so far as to say, when asked
9 about the keys: I never went anywhere else.

10 The first time they ask him about the keys:
11 Yes, I got the keys from the car, never went anywhere
12 else with those keys.

13 Because he's counting on the fact if he gives
14 enough of the truth, the real truth won't come out;
15 somebody didn't see him, or they won't have recognized
16 him or they won't having around in the middle of day on
17 Wednesday when he's seen.

18 Got the paperwork out of the car. She had an
19 extra set of keys, but I've never seen them.

20 Well, then now did you know she had an extra
21 set of keys?

22 Then he says: Oh, yeah, got the papers from
23 Beverly's house.

24 I thought this was one of the more interesting

1 comments. Finally when he acknowledges it was on
2 Wednesday, he said: I made the copies at Long's Drugs in
3 Sparks near where I live. But I didn't deposit the check
4 there. No, no, no.

5 I was all the way out in Sparks with her
6 papers that I made copies of, and I came all the way back
7 to Reno, dropped the papers off in her car -- no, now in
8 her house. But that's not when I deposited the check.

9 Then he never says when he did deposit the
10 check on Wednesday. Copies had something to do with
11 reimbursement, but I really don't know what it was. I
12 didn't charge her to work on her car.

13 The ATM photographs are really a killer. I
14 mean, they really physically, unequivocally, not a
15 witness who is subject to mistake, put him at the ATM at
16 Fourth and Keystone at 10:00, few minutes before 10:00
17 a.m, Thursday morning. There is no way to get around
18 that.

19 And what does he say about that? Well, when
20 he finally acknowledges he was there; gosh, he remembers
21 going to Sinbad Hot Dogs, to the post office, to his
22 apartment, to drop keys off at the old apartment where he
23 used to live. When he finally remembers he went to the
24 ATM to get gas, his comment is: I went there directly

1 after I left Beverly's house. Directly after I left
2 Beverly's house.

3 And what do you find out? That morning,
4 10:00, 10:30, Vern Woodard sees Steven Voss in his truck
5 with a woman in the passenger seat. And then, you know,
6 the story is completely unraveled. It's completely
7 unraveled.

8 And the detectives do everything but tell him
9 all the facts that of course he would need to know to put
10 the story together completely. Because they say: Gees,
11 you know, you must have bumped into Beverly. You had to
12 see her there.

13 Now that assumes, of course, that what they
14 did Thursday morning was leave, have breakfast at the
15 Coffee Grinder or something else that morning, which
16 clearly, you know, that would make common sense that they
17 did that.

18 She's called in sick to work, she ain't going
19 to work, they are going to have breakfast. They're both
20 a little bit hung over. And what do you know, if her car
21 isn't found there by an honest, hard-working detective at
22 2:30 in the morning, Saturday morning, who on a hunch
23 goes to that location and there is her car, 50 feet, he
24 says, from the automatic-teller machine.

1 So you know that they were together Thursday
2 morning. Why is that important? Because it gave Steven
3 Floyd Voss the opportunity to commit this crime.

4 How do you know it gave him the opportunity to
5 commit the crime? Because if he wanted to get that check
6 legitimately cashed, if Exhibit 29, the \$5,000 check, was
7 his lawfully, and she wanted him to have that \$5,000, why
8 the heck didn't he just take her to the bank? The bank
9 opens at 9:00. She's sitting in his car. There is a
10 bank on South Virginia. Why the heck didn't he just take
11 her there?

12 Or if that wasn't Beverly Baxter -- I mean
13 maybe it could have been another woman. Of course when
14 offered -- the ability to explain it in the videotape,
15 there is no explanation, of course, because he doesn't
16 want anybody to know there was a woman with him. But
17 even if it wasn't Miss Baxter, why when they left at 9:00
18 o'clock that morning, why when they left at 9:00 o'clock,
19 which is when the bank opens, and he knows she's not at
20 work, why didn't he just give her Mr. Hamilton's card and
21 say: Call the bank up so I can clear that up and can go
22 get that mobile home?

23 Back up even further: They are together all
24 night Wednesday night. Why didn't he tell her Wednesday

1 night: Call the bank. I need the money, call the bank.
2 Just call the bank for me.

3 There was very nearly 12 to 18 hours in which
4 to talk to her about it. And apparently that never
5 happened. I mean, not just apparently, that clearly
6 never happened.

7 Use your common sense and examine Mr. Voss's
8 comments during the interview. Mr. Voss, are you an
9 honest person? I am pretty honest.

10 Now, my goodness, this is the second time
11 you're being interviewed about the alleged disappearance
12 of a woman who supposedly gave you \$5,000, and you're
13 going to tell the detectives: I am pretty honest.

14 In the interview he makes an extraordinary,
15 fascinating statement. He says: Don't you understand,
16 detective -- words to this effect -- don't you
17 understand, that if I did it, wouldn't you expect I'd
18 have written out a very detailed statement?

19 And that's an extraordinary comment. What
20 sort of person in an instant frame of mind would offer
21 that sort of comment at all?

22 I don't know where she is; let's go find her;
23 let's go see; let's go do something. No.

24 Don't you think if I did it I would have given

1 a detailed statement?

2 Isn't what he's trying to do is to push them
3 away from the examination? Isn't he trying to say the
4 reason I am giving you the points along a possible line,
5 are because I want you to draw certain conclusions. I
6 mean, it was Monday, she wanted to help me out, and I
7 needed a check. And he gives enough of the points along
8 the line so that theoretically you can go from A to B.

9 But then people find out there is all sorts of
10 other points out here. It was actually Wednesday; seen
11 with her Thursday morning; he's cashing a check to get a
12 check when that isn't a requirement.

13 Wednesday morning he gets a motive to steal
14 this \$5,000, and suddenly you realize that really all the
15 connections are like this: (Indicating.)

16 And Mr. Voss's explanation for that is: If I
17 did it, don't you think I would have written it out or
18 have done a detailed statement?

19 There are some fundamental mistakes, I assert
20 to you, that the logical deductions about Mr. Voss's
21 intent lead you to conclude:

22 Number one, he saw a single, unattached woman
23 with no apparent family in the area; what he thought was
24 few friends, so there would be few people to complain

1 when he stole her money.

2 That makes sense, doesn't it? Because
3 consider what -- the information he would have had about
4 her. She lives a mile, mile and a half from where she
5 works, in a more rural area of town, there's no obvious
6 family around, she lives in a one-room apartment with her
7 dog.

8 There's not going to be anybody around to
9 complain about this crime other than Beverly Baxter. Not
10 going to be a possibility. He assumes she was an easy
11 mark, because there would be no problem.

12 He didn't know, or he didn't understand or did
13 not really think about what the \$5,000 meant. He thought
14 this was -- \$5,000 to him, meant the same thing to
15 Beverly Baxter.

16 The point he missed, or the facts he didn't
17 have, was the money wasn't the issue with her, it was
18 what the \$5,000 represented to her that was the undoing
19 of Steven Floyd Voss.

20 He didn't count on the fact that this was
21 someone who talked with every person in her life about
22 what she intended to do with that check.

23 She didn't just tell her family, she did not
24 just tell her close friends; everybody who was around her

1 knew what she intended to do.

2 And that's fairly unusual. I mean, giving Mr.
3 Voss again credit for intelligence, it's unusual. It
4 would be -- if you were inclined to steal some monies, it
5 would be sort of a logical deduction to assume that they
6 might not talk about that, because it was an embarrassing
7 subject and it represented embarrassing facts in her
8 life, that she had a bankruptcy, that she may have gotten
9 behind in some of her payments that led to the for-sale
10 of her property.

11 You might logically assume someone might not
12 talk a lot about that. She talked to every person in her
13 life about it.

14 He didn't count on the bank personnel doing
15 their job. He didn't count on Mr. Hamilton saying: No,
16 I've got to talk to her; here's my card.

17 He didn't count on Miss Campanelli doing the
18 same thing.

19 Didn't count on the bank manager doing the
20 same thing.

21 He didn't count on them remembering. He hoped
22 that over time there would be some time before the
23 discovery of this, and over time that this dot and this
24 dot and this dot, the things he claimed would tend to

1 blur, to conform generally to the reality that people
2 might recollect.

3 He didn't count on all the other recollections
4 which happened. He also didn't count on the police doing
5 their job. He didn't count on the detective, an honest,
6 hard-working detective going out at 2:00 o'clock in the
7 morning and finding the victim's car. Just didn't count
8 on that.

9 And the connection that her car would be near
10 the automatic-teller machine, which would give the time
11 reference, the irrevocable time reverence, that would
12 completely unravel this whole story.

13 Finally, I suggest he did not realize that the
14 story regarding her keys, papers being in her car,
15 etcetera, would be so easily taken apart.

16 I mean, it's a reasonable thing to assert most
17 people have spare keys, or that that's at least a
18 possibility, a reasonable doubt. That's a logical thing
19 if you're in a guilty frame of mind to assert. Because
20 chances are, either the person does have spare keys, or
21 people will believe they have spare keys.

22 You don't count on the fact that the person's
23 son will come from Nebraska and say: When I went through
24 her supplies, I found the spare key. I found it.

1 Questions to ask yourself which reveal the
2 truth:

3 Again, what person do you know who would give
4 their last \$5,000, and this \$5,000, to anybody on a wing
5 and a prayer? Especially after they had just suffered a
6 bankruptcy, just had the difficulties they had had and
7 made the expressions they did?

8 If she got off everyday at 4:30, why was Mr.
9 Voss telling the people that he had to have it, that
10 there wasn't time? The bank was opened until 5:30 on
11 Friday.

12 Why was he saying there is no time when she
13 gets off work for us to take care of this? He was saying
14 it because it's not true. He was really in a hurry to
15 get that money. He had to know that contacting her at
16 work would lead to discovery, and that's why he said I
17 don't know what the number is, I don't know where it is,
18 she's going to be angry, just do it.

19 Why did the phone messages on her answering
20 machine say: Hey, Bev, this is Steve, call me. I am
21 having a problem -- there is one phone message I think is
22 early in the recording, that does say: I am having a
23 problem with your bank. But it says call me. I am
24 having a problem with your bank, call me.

1 Not: Hey, give Tanya a call at the bank,
2 we're having a problem with the check, had a great time
3 the other night, whatever else; see you.

4 Not: Gees, I don't know what the problem is,
5 can you -- when you come home at lunch can you give me a
6 call? I am having a problem with the bank, call me.

7 Then every phone -- recorded conversation from
8 Mr. Voss after this: This is Steve, call me. This is
9 Steve, call me.

10 Why did he need to know whether a check was
11 going to bounce on Friday? I mean, if it legitimately
12 happened that she gave him the check so the funds would
13 be available as he said, why would he assume the check
14 might bounce?

15 Well, because that's not true. And that
16 answer is: He had to cover his tracks from Wednesday and
17 Thursday.

18 When he was talking to the detectives and he
19 said I asked about the check clearing on Friday, it was
20 because he was covering his tracks from two days before.

21 He knew that there was a possibility people
22 might say somebody checked on the availability of these
23 funds. So he said I checked on the availability of these
24 funds on Friday, because I didn't want her check to

1 bounce.

2 Well, her check wouldn't bounce if you had
3 legitimately deposited the \$5,000 reimbursement check for
4 the reasons you say you did.

5 There is all sorts of slide there. It's
6 fairly subtle, but it's not far under the surface.

7 In the end, ladies and gentlemen, a reasonable
8 doubt is one based on reason; it's not mere possible
9 doubt, but is such a doubt as would govern or control a
10 person in the more weighty affairs of life.

11 If the minds of the jurors after the entire
12 comparison and consideration of all the evidence are in
13 such a condition they can say they feel an abiding
14 conviction of the truth of the charge, there is not a
15 reasonable doubt. Doubt to be reasonable must be actual,
16 not mere possibility or speculation.

17 If you find before this trial the defendant
18 made false or deliberately misleading statements
19 concerning the charge or charges upon which he or she is
20 now being tried, you may consider such statements as a
21 circumstance tending to prove a consciousness of guilt.
22 But it is not sufficient in itself to prove guilt. The
23 weight is yours to decide.

24 Ladies and gentlemen, when you consider the

1 statements of Steven Floyd Voss, when you consider the
2 testimony of the percipient witnesses who saw his comings
3 and goings from her house, from her cars, you will know
4 beyond all doubt that on Wednesday, June 12, 1996, Steven
5 Floyd Voss got her keys from her car, after her lunch
6 hour was over, went to her apartment, spent a half hour
7 rifling in her drawers, and got the reimbursement check,
8 which he knew about, because she was talking to
9 everybody, and saw how she signs, how she endorses, if
10 you will, her checks, her cancelled checks, went to the
11 bank, the Iron Horse Shopping Center in Sparks, deposited
12 that check after forging the words For Deposit Only and
13 the name B. A. Baxter on the check, and asked them: Can
14 I get this money?

15 Called the next day and tried to get it, and
16 tried to cash a \$5,000 check against it on Friday.
17 Thereby committing six felonies.

18 Thank you.

19 THE COURT: Mr. Conway?

20 MR. CONWAY: Mr. Walker, Your Honor, members
21 of jury. First I too would like to thank you for your
22 participation in this matter.

23 It is a civic duty, and it's one that that of
24 our community takes seriously. Because without your

1 sacrifices that you do make, we would not have a jury
2 system present to handle these matters.

3 I also would like to thank you, and appreciate
4 your attention to all the evidence prepared over the
5 three days of trial we have had here..

6 And I am going to ask that you continue to
7 remain focused for just a little while longer in this
8 case.

9 What I am going to ask to you focus on are
10 facts.

11 This case has been presented to you, and when
12 the judge read to you the jury instructions, the first
13 thing he read to you was what has been listed as jury
14 instruction number 2, which deals with what we're here
15 today for.

16 Those are the six counts that were set forth
17 in the Information.

18 We have burglary, the two utterings, two
19 forgeries and attempted theft. But we must remain
20 focused on the facts presented from the witness stand and
21 the documentation.

22 Soon you will be allowed of course to leave
23 the courtroom and begin your deliberations. When you
24 leave the courtroom, you will be allowed to take the jury

1 instructions the judge already informed you about that,
2 because they are quite wordy; your recollection of the
3 testimony; and the physical evidence that was presented.
4 And most of all, your common sense.

5 And it's all of this that when you weigh it
6 together, that will convince you that the State has not
7 proven Steven Voss guilty beyond a reasonable doubt of
8 any of the charges set forth in that Information.

9 Now I want to start with discussing what
10 reasonable doubt is, just briefly. The definition was
11 read to you as instruction number 12. I am not going to
12 read it to you again; Mr. Walker just read it to you as
13 he concluded his argument.

14 But basically let me put it this way, about
15 how that instruction works. Normally when we make our
16 day-to-day decisions, we try to decide what is probably
17 right, what is more likely the best decision to make in
18 our lifetime.

19 And when we do this we weigh things, we
20 consider a few of our options. And whichever way it
21 goes, becomes probably the best decision we can make, and
22 that's what we do in our normal day activities.

23 This is how we would determine what we're
24 going to have to eat, what we're going to wear, what

1 route we all took to Court today.

2 MR. WALKER: I very much hate doing this, Your
3 Honor, but comment by counsel, qualifying, quantifying,
4 explaining reasonable doubt --

5 MR. CONWAY: Actually, Your Honor, this
6 argument is not quantifying reasonable doubt. I have a
7 right to argue what the instructions say, and that's what
8 I am doing. I am not sitting here saying different
9 levels of what reasonable doubt is, I'm just trying to
10 explain to them how to interrupt that, which I think is
11 allowed.

12 THE COURT: The jury will be allowed to read
13 the reasonable doubt instruction. It's very clear as to
14 what it intends.

15 MR. CONWAY: Thank you. Basically what I was
16 saying was those things that we discussed, what we're
17 going to wear and the route we're going to take; of
18 course those aren't the weighty decisions we make in our
19 lifetime. And that would not of course be what we're
20 considering proof beyond a reasonable doubt.

21 So if you ask yourself what would be proof
22 beyond a reasonable doubt, what are the more weighty
23 affairs of life, such as a criminal trial, I would
24 suggest to you that these types of decisions would

1 involve such things as elective surgery, buying a house,
2 changing careers, such matters that would require you to
3 get as much information as possible, so you can be fully
4 informed before you make such an important decision.

5 That's the burden the State has to meet in
6 this particular case.

7 So now what is the evidence? What is the
8 facts that have been given to you in this case To prove
9 that Steven Voss committed any of the charges that have
10 been stated in the Information?

11 In essence, what would be helpful to you in
12 making this decision?

13 I told you -- I referred you to instruction
14 number 2, which sets forth the six counts. I will note
15 that what they really involve, though, is the six counts
16 involve two checks. Let's call the first one the Burgess
17 check, the moving and storage company, and that check was
18 in the amount of \$5,026.00. And there are three counts
19 involved in that, and that's that the burglary, one
20 uttering, one forgery.

21 We also have what we will call the Baxter
22 check, and that involves also uttering, forgery and
23 attempted theft. There are really two checks. We do one
24 transaction at a time, and we will figure this out.

1 Instruction number 11 tells us that the burden
2 rests upon the prosecution to establish every element of
3 the crime with which the defendant is charged, and every
4 element of crime must be established beyond a reasonable
5 doubt.

6 And I want to bring that to your attention for
7 the following reason, because I'm going to show you the
8 counts are listed out in what the elements are. And I
9 want you to recall that although when I point to facts
10 that establish the opposite, I'm not required to prove
11 that beyond a reasonable doubt. I don't have to prove
12 the opposite of what the element is.

13 Lets begin with the beginning, as to burglary,
14 Count 1, instruction number 15, lists these are the
15 elements that have to be established.

16 So we look at this. This, of course, involves
17 the Burgess check, as I told you before. The elements
18 are: One, willfully, unlawfully.

19 Two, in Washoe County, State of Nevada. And
20 of course that happened, we're not going to deny that, I
21 am not going to tell you -- you've got to put them all to
22 these elements; clearly that happened.

23 And also: Enter an apartment at 5501 West
24 Fourth Street -- actually Apartment Number 1. That

1 happened.

2 I would also suggest he willfully entered that
3 apartment, no doubt about that.

4 Here's the issue right here: And one minor
5 issue, I will briefly address that, is the unlawfully.
6 Unlawfully would basically mean, of course, no
7 permission.

8 If we look at the facts established from the
9 witness stand, by the testimony and evidence introduced
10 at this trial, one can conclude Mr. Voss did have
11 permission to enter the apartment at approximately
12 12:15.

13 And this is why: Sandra Crumb is the
14 landlord. She testified that at approximately 12:15
15 Steven Voss drove up right in front of her residence,
16 parked his car.

17 She testified that he had a brass key ring
18 with keys on it. She said she saw that, and that's what
19 he used to enter the apartment.

20 She testified that she only gives one key to
21 every tenant. And interestingly, she testifies she
22 thought it was unusual someone entered the apartment, but
23 she never went and talked to that individual. She never
24 went to him: What are you doing? Don't go in there.

1 And certainly hindsight is 20/20. Of course
2 now it's strange to her. And of course now she's trying
3 to say: Well, I wanted to talk to him.

4 But the point is, it wasn't unusual. She had
5 seen Steven Voss there all week... She testified that he's
6 been there since Monday, on and off. And of course he
7 spent Wednesday night there, by all accounts.

8 Now there are a couple things that also
9 conclude that he had permission to enter the apartment.
10 One, he was at her place of work at approximately 11:30.
11 Claudette Andrews testified that he had been there and
12 had spoken to her, because he asked to speak with her.
13 And in fact at one point she was standing there when they
14 were conversing, and then she walked away to give them
15 privacy.

16 Another important thing to note is the
17 testimony of Ron Baxter. Now the State points to that to
18 say there were no spare keys. But it's an important
19 thing to note: Ron Baxter confirms there is a brass key
20 ring that Beverly Baxter uses, and she uses that because
21 it's long enough to fit over her wrist so she doesn't
22 lose her keys.

23 That means the only way that those keys could
24 have gotten to Steven Voss is with her permission, and

1 that's clear. From Ron Baxter's own testimony, his mom
2 always did it that way so she would not lose the keys.

3 Now the more important element is the fourth
4 element: With the intent to steal the check.

5 In order to decide whether or not what the
6 intent of -- was present when Steven Voss entered the
7 apartment, there is a few things we have to consider:
8 One is, certainly he was saying that the reason he went
9 in there was to get copies of -- to get documents that he
10 was going to make copies of. We don't have to worry
11 about that, because there is a much more important thing
12 that should be noticed:

13 One, Sandra Crumb says when he left, he didn't
14 have anything in his hands to remove. But the more
15 important thing here is: We know what Miss Baxter's
16 intent was with respect to that check. We do.

17 And the reason is this: We know that she
18 intended to deposit that check for the following reason:
19 We know that Miss Baxter wrote a check for \$5,000.

20 We know that, because Floyd Whiting testified
21 that that was his conclusion, that that check was written
22 in her handwriting, and she wrote the \$5,000 part.

23 And she wrote that check on an account that
24 has never had a balance anywhere close to \$5,000.

1 All the bank employees that I asked, a number
2 of them, and not all of them knew the account, but the
3 ones that had drawn it up on their computer, what did
4 they testify to? They said it had an average balance of
5 \$200.00. Nowhere near \$5,000.

6 The only way that she would have written a
7 \$5,000 check, is if she knew she was going to have \$5,000
8 in that account.

9 Let's not worry why she wrote the check just
10 yet. That's the second check at this point. Let's just
11 deal with the Burgess' check. Because we have to
12 consider each count separately.

13 So ladies and gentlemen, she was well aware
14 that she had given Steven Voss that check to deposit,
15 because the only reason she would have written that check
16 for \$5,000, regardless of who she was going to give that
17 to, was if she knew that there was -- that amount being
18 deposited in her account.

19 We also know something very important, because
20 I asked most of the witnesses another question: Was
21 Beverly Baxter a responsible individual? Sandra Crumb
22 testified that she was. In fact she always pays her rent
23 on time.

24 Tim Sturdavant, Miss Baxter's nephew, said she

1 was very responsible with her finances, from the time
2 he's known her. And obviously he's probably known her
3 most of his life, since they are related.

4 And Ed Park got up on the stand, and he was
5 Beverly Baxter's supervisor, and he said she was
6 dependable, responsible, an outstanding employee with an
7 accounting background, and from the work she had done at
8 the office, his conclusion was that she would be
9 outstanding with her finances.

10 This is not a person who would write a check
11 on an account that never had \$5,000 in it. The only
12 reason she wrote that check is because she knew that
13 check was being deposited.

14 If she knew that check was being deposited, he
15 couldn't have had the intent to steal, because she knew
16 he had that check, and probably gave it to him when he
17 visited her at work at 11:30, according to Claudette
18 Andrews.

19 There's no way that element can be established
20 in any way, shape or form. In order for that, you would
21 have to assume she did not know about the check. And she
22 did, because she wrote, the next day, a check in her own
23 handwriting,, as Floyd Whiting told you, a \$5,000 check.

24 Let's move to Count 2, Count 4. Count 2 is

1 the uttering of the Burgess' check. Still on the
2 Burgess' check at this point.

3 Consider Count 2, first the elements there.
4 We have willfully, unlawfully, with the intent to
5 defraud, in Washoe County, State of Nevada. And of
6 course number two is always satisfied in this case.
7 Utter and pass as true and genuine, a check dated May
8 8th, 1996, and made payable to Beverly Baxter, in the
9 amount of \$5,026.00. That's the Burgess' check. Knowing
10 the same to be forged or altered.

11 Now the first thing I want to address here is,
12 first of all, the main issue here is what his intent
13 was. We have always talked about. Whether he had the
14 intent to defraud.

15 Now a number of witnesses testified as to
16 Beverly Baxter's intent concerning that check. I want to
17 address that briefly.

18 The problem with testifying about someone's
19 statements that they had made in the past, is that we
20 don't all know the circumstances that existed when those
21 statements were made.

22 We know a few things. We know she was
23 extremely upset, I think rightfully so, all her
24 belongings were sold. And we know that she wanted

1 justice. I think in the words of most people -- the
2 money wasn't the issue. She wanted to know why these
3 people had sold her stuff. And she made these statements
4 to these individuals.

5 But what did not she do? She never showed any
6 of these witnesses the check or any of the paperwork
7 associated with this.

8 And I don't deny she made those statement at
9 all. I think she probably did. The problem is, is that
10 one thing we all know as circumstances change, situations
11 change.

12 And they certainly did in this case, because
13 we know she intended to deposit that check. And again
14 how to we know? Because she wrote a \$5,000 check on an
15 account that never had a balance close to \$5,000.

16 So we will get past that, and let's move to
17 the most important part of this particular count, is with
18 intent to defraud. That's what we have to decide.

19 Now all of the bank employees that testified,
20 they all establish that the check, deposited by Steven
21 Voss, was deposited into her account, at her branch of
22 California Federal Bank.

23 We also know from Steven Voss's own words,
24 that he's the one who wrote the words For Deposit Only on

1 the back of the check.

2 Now it's interesting, when I questioned Duc
3 Hamilton about what he has to do, the procedure of
4 accepting a deposit, he stated he's not even required to
5 check the signature for deposit...

6 And on some -- I think on some Redirect
7 Examination by the State, he says he doesn't even require
8 a signature. Why is that on a deposit? Because, ladies
9 and gentlemen, they are just depositing it. They are
10 putting it into this person's account whose written on
11 the thing.

12 There is no intent to defraud. How can you
13 defraud someone if you are depositing money in their
14 account?

15 I think another important thing, and I will
16 belabor this point, I apologize, but I think it's very
17 important. I think it's also clear from the facts in
18 this case that Miss Baxter knew that this check had been
19 deposited. For the same reason I keep saying: She wrote
20 a check for \$5,000.

21 And when we look at the testimony of Floyd
22 Whiting, and you also have a number of cancelled checks,
23 and there is an instruction in here which allows you to
24 compare those checks too, you will see that that check

1 that she wrote was valid and genuine.

2 That's going to become important when we
3 consider the Baxter check, and whether or not it's been
4 altered.

5 So based on those two things; one, he
6 deposited in her account; and two, that she clearly knew
7 about it. There is no intent to defraud. It was her
8 intent to deposit it. He was just doing her a favor.

9 I think another important thing -- I am going
10 to go back briefly on the issue about her prior intent in
11 her investigation. There was clear evidence that she, on
12 approximately May 23rd, had called Tim Burgess, and
13 that's his first name, he's the one that owns the moving
14 and storage company. She calls him and asks for certain
15 paperwork. So she was investigating it.

16 When Detective Richard Hill talked about doing
17 a search of her residence, he found documents in the
18 trash related to the Burgess storage, and things that she
19 was paying. And it was close to the time that many of
20 the witnesses testified when they sold the furniture.

21 If those papers were so important to her, why
22 did she throw them away? Because she was now depositing
23 the check. She had accepted what had happened at that
24 point. The circumstances had changed.

1 So with respect to the Burgess' check, Counts
2 1, 2 and 4, he's not guilty. The State has not proven
3 beyond a reasonable doubt the most important elements.

4 With intent to defraud. Now I didn't show you
5 this. Here's Count 4. I want to go over this, because
6 in Count 4 there is with intent to defraud. Important
7 element. And the intent to defraud has not been proved.

8 There is more than a reasonable doubt in this
9 case concerning the intent to defraud. Because we know
10 she knew that check was deposited. We also know he
11 deposited that in her account.

12 How can you intend to defraud? Ask yourself
13 that question.

14 Let's move on to the Baxter check. I said
15 there were two checks, so let's move on to the Baxter
16 check. We will begin with Count 3, instruction number
17 17, and also instruction number 19, because we will also
18 deal with Count 5, which is the forgery, because they are
19 interconnected.

20 Again, this is similar to Count 2, willfully
21 and unlawfully, and with intent to defraud, in Washoe
22 County, State of Nevada, utter and attempt to pass, this
23 time a check dated June 13, 1996, made payable to Steven
24 Voss in the amount of \$5,000 -- that's the Baxter check

1 -- knowing the same to be forged or altered.

2 And very quickly I will move to five, so you
3 can see that. There is Count 5, willfully, unlawfully
4 and falsely, with intent to defraud, in Washoe County,
5 State of Nevada, forge or alter a check by placing his
6 name on a check drawn upon an account owned by Beverly
7 Baxter.

8 Now here, the intent to defraud is not the
9 important element we're going to discuss. We're going to
10 discuss what a material alteration is. Instruction
11 number 21 states as follows: Forgery may be committed by
12 altering, without authority, a valid and genuine
13 instrument, paper or document, with intent to defraud,
14 and by either adding, erasing, or changing a material
15 part thereof, and thus causing it to appear different
16 from what it originally was intended to be, and changing
17 its apparent legal effect.

18 Now the next paragraph is important. A
19 material alteration of an instrument includes, but is not
20 limited to: An incomplete instrument, by completing it
21 otherwise than as authorized.

22 All right. Floyd Whiting, his testimony is
23 very important in this case. He testified about Exhibit
24 A -- I am sorry, testified about the Baxter check, which

1 I think was Exhibit 29.

2 THE COURT: That's correct.

3 MR. CONWAY: Thank you, Your Honor. And also
4 very important, we submitted Exhibit A, which was Floyd
5 Whiting's report. That report clearly and definitely
6 establishes that that check is valid and genuine.

7 It's written in her handwriting for \$5,000,
8 it's signed by her, and it's dated by her. It also
9 establishes that the check was an incomplete instrument,
10 because he did some other tests on it, and he didn't find
11 any weird indentations. The report, and you can also see
12 the check, there was nothing where it was scratched out
13 or anything like this, or erased, another name erased or
14 something to that effect. It's clear that Miss Baxter
15 left the payee line blank.

16 Now if you don't believe Floyd Whiting, which
17 I don't see why you wouldn't, I think the State even
18 agrees with him. But if you don't, you have the
19 cancelled checks, and you can compare her signatures and
20 the cancelled checks, similar to how Floyd Whiting did
21 it, and make your own conclusions that that's a true and
22 genuine document.

23 So the question comes down. The first line of
24 this says: Forgery may be committed by altering without

1 authority. And it can include an incomplete instrument
2 by completing it otherwise than as authorized.

3 So that's the issue. Was he authorized to
4 fill his name in on that blank payee line? That's the
5 whole issue. We know it's a true and genuine document.
6 We have to determine whether or not this was a document
7 that he was not authorized to complete. That's what the
8 State has to prove, that he did not have authority.

9 Now when considering what the State's theory
10 of this case is, it's a little confusing, because I don't
11 think the State has ever given you an actual theory as to
12 why that check was written. And that's a question you
13 have to ask yourself.

14 They want you to ask: Why would she give it
15 to him? But I think a more important question is why did
16 she write that check? Someone was supposed to get it.
17 Regardless of whether it's Steven Voss or not, someone
18 was supposed to get that check. That's clear. Because
19 it was written in her handwriting. We know that.

20 There seems to be some hints, however, that
21 that check was for an attorney, a retainer of some sort.
22 Problemly in the right-about amount for an attorney,
23 \$5,000.

24 But is that reasonable? If her agreement or

1 her arrangement was with an attorney; okay? Let's say
2 that we have -- that's Beverly Baxter, there is an
3 attorney, who we've never heard a name of, and they have
4 an agreement; all right?

5 If that check was intended for an attorney,
6 most people who hire an attorney, know who the attorney
7 is, and they are going to put it in the payee line. They
8 are not going to leave it blank, and they are not going
9 to give it to someone who has no reason to have the
10 check.

11 Why would she give a blank check that she
12 knows who is for an attorney, to Steve Voss, who has
13 nothing to do with this? That's unreasonable. That
14 theory does not work.

15 In addition, if it was intended to pay some
16 other bill or some other debt that Beverly Baxter wanted
17 to pay, she would have known who to fill it in for. She
18 would not have left that payee line blank. That's
19 unreasonable.

20 Clearly what Steven Voss's theory on this case
21 is, is as follows: That it was for a down payment on a
22 mobile home.

23 So we draw that, we have Beverly Baxter here,
24 and Steve Voss here, and we say it's a loan for a down

1 payment. Regardless of what Steven Voss does with this
2 check, if he gave it to Instant Housing, which we know he
3 actually could not. I think the State at one point in
4 its argument states that why didn't they just give it to
5 -- just give it to Carol Story, if that was his
6 intention? She would have accepted anything.

7 But she said, quite frankly, she said: I
8 would not accept that check, because that's not one of
9 the people purchasing the check. (Sic.)

10 So he had to negotiate it in some extent in
11 order to give her the money. Whether he cashed it by
12 cashier's check, whether he cashed it and give her the
13 cash itself, or whether he gets a certified check, he had
14 to do something, because she wasn't going to take that
15 check. She testified to that fully. So that check could
16 not have been negotiated to Instant Housing.

17 But at the time, he did not know that when he
18 first got the check. That's why he left it blank. He
19 didn't know whether he was going to give it to Instant
20 Housing. He couldn't, so that's why he wanted to get a
21 cashier's check. He didn't know if he was going to give
22 it to the owner. He didn't know.

23 And it's reasonable, because regardless of who
24 he gives it to, who has to pay the money back? Steven

1 Voss.

2 Let's say he gave it to Instant Housing, say
3 they accept it. Does it matter? Are they going to pay
4 Beverly Baxter back? No, Steven Voss is. So it's
5 reasonable she left it blank when she gave it to him,
6 because her agreement is with him.

7 What he does with that money, if he cashed it,
8 put it in the center of the room and burned it up, he
9 still owes her \$5,000. It doesn't matter what he does
10 with it.

11 It's reasonable she left that blank because
12 it's a loan to him, and he does what he has to do with
13 that.

14 Now the understanding between them was that
15 was going to be for a down payment, and he clearly was
16 intending to do that, and he wanted to do it by 5:00 p.m.
17 that day, because he didn't want the deal to break.

18 Ladies and gentlemen, in conclusion on that,
19 Steven Voss was authorized to fill in his name. In
20 essence, was authorized to alter the check. Because it
21 was an alteration.

22 But it's only a material alteration if he
23 completes that incomplete instrument other than as
24 authorized.

1 The State has given you absolutely nothing to
2 suggest that he was not authorized. They have given you
3 nothing that's reasonable, nothing that can prove beyond
4 a reasonable doubt that he was not authorized.

5 Yet Steven Voss has presented you that he was
6 trying to purchase a mobile home in the amount of \$5,000
7 down payment. And it's reasonable to assume when she
8 gave him that check, which was a loan, that she would
9 leave that blank. That story makes sense. This one does
10 not.

11 You hire an attorney, ladies and gentlemen,
12 there's no way you are just going to give a blank check
13 to anybody. You will put the attorney's name in, at
14 least, or give it to the attorney directly.

15 We have one more count to discuss. That, of
16 course, is Count 6. And you will notice the attempted
17 theft, Count 6, instruction number 22, notice right here,
18 number five: Without legal authority to do so.

19 So really it's a very similar analysis as the
20 two counts, forgery and uttering, involving the Baxter
21 check. We have to make almost the same decision. The
22 State must prove to you beyond a reasonable doubt that he
23 did not have legal authority to negotiate this check and
24 attempt to cash it. That's -- right there, it's the same

1 element, and it's the same set of theory that are
2 presented to you.

3 I told you at the beginning of my argument ---
4 I am almost done -- is that I want you to remain focused
5 on the facts. And I put forth the facts for you, the
6 facts that came off that witness stand, the facts that
7 were introduced as evidence. I have given you the facts.

8 The State focused its whole argument on
9 possible inconsistencies of Steven Voss during his
10 interviews.

11 There are a few things that you have to note
12 on that. First of all, he cooperated. He gave them two
13 interviews -- actually three.

14 On the first night when they came by on the
15 14th of June, they came by, he invited them into his room
16 at the Western Village, he spoke with them at that time.

17 Now it's 10:30 at night, he was tired. I
18 don't think that's unreasonable; so he schedules a taped
19 interview for the following day at 12:00, noon. He goes
20 in, he's early, he's on time.

21 He also gives another statement on the 17th,
22 which was Monday. And after they had served him with
23 seizure warrants, where he had to give blood samples and
24 hair samples and all this other stuff, which has got to

1 be pretty invasive, he still sits down and talks to them
2 again.

3 And in all those statements he never changed
4 his story. He never changed his detail that he told the
5 police.

6 Now the State sits there and says: Well, he
7 didn't volunteer things quick enough. He didn't
8 volunteer them.

9 Yet the State also turns around and
10 acknowledges people have trouble recollecting things, and
11 defends the witnesses that testified on the stand.

12 Isn't Mr. Voss entitled to the same
13 consideration?

14 I think what is more important, you have to
15 find out moments where Steven Voss changed his story,
16 changed important details, or tells them something they
17 find out later to be false.

18 And you look at the tapes, recollect in your
19 mind what the testimony was, you will never find one
20 thing that was false.

21 The only thing that they can point to is the
22 Monday/Wednesday thing. And there are two things I want
23 to point out about that:

24 One, that was clearly a result of confusion,

1 concern. There were things that were going on. He had
2 trouble recollecting. But I want to note one thing: He
3 always said he did the same things. He said that was --
4 the same day he deposited the check, went to Beverly's
5 house, went to Sinbad's. All these things that he did on
6 that day, on that day, whether it be Monday or Wednesday,
7 he always said the same thing.

8 And the point is: When he first was
9 interviewed he said it was Wednesday. He forgot. That's
10 pure and simple. But he never said he didn't do certain
11 things. He just got the days confused.

12 In fact when he was -- when the officers were
13 asking him, they would say: Was it Monday, was it
14 Monday? He would go: I believe it was Monday.

15 No one ever said: Could it have been
16 Wednesday? Until the second interview. He just doesn't
17 know. And he stated that the reason he didn't know, of
18 course, was he had been running around because of the
19 fire and other things, and the days just moved together.

20 But the point is, that when he describes that
21 particular day, the day that he deposited the check, he
22 said -- he gives them the same details every time. He
23 was always consistent with that point. He just got the
24 days mixed up, and that's normal. Even the State agrees,

1 they said that about some of the witnesses; they said
2 people have trouble recollecting, they don't remember
3 everything.

4 And that's the only thing that he was
5 inconsistent about. The rest of it was consistent.. The
6 rest of it was never changed. And the rest of it, there
7 was nothing they ever took from him and found out he was
8 lying to them.

9 Now that's important, because there are things
10 that the State has said and testified to that weren't
11 true. Dale Pappas gets on the stand and says he spoke
12 with Carol Story, and she told him it was \$2500. Went to
13 him and said: You're lying, it wasn't \$5,000, it was
14 \$2500. Absolute lie.

15 Because if he had spoken to her -- and she
16 does not recollect speaking to him -- but if he did, she
17 would have told him it was \$5,000. She's never changed
18 on that. That's a lie.

19 Larry Canfield tells Tim Sturdivant, the
20 nephew of Beverly Baxter, that he has photographs at an
21 ATM, and in the picture there is Beverly Baxter, and
22 behind him, a man. Tim Sturdivant said I didn't remember
23 it being Steven Voss, but it was a man.

24 That's clearly wrong. And that's not

1 inconsistent. Larry Canfield denied that and said:
2 Well, I probably said something about a car, or probably
3 said somewhere in the same vicinity.

4 But Tim Sturdivant has no reason to come in
5 here and lie for me, lie for Steven Voss. He's here on
6 behalf of Beverly Baxter.

7 Yet when I asked him that question, he said:
8 Yes, that's what the cops told me. Cops told me they had
9 pictures. That's a lie. And they stand there and say
10 well, this and that, and then they attack apparent
11 inconsistencies, which there aren't.

12 If you watch this carefully, if you look at
13 them, he's telling a story, he's not changing his story,
14 he's not changing any detail.

15 He's told them -- none of the details he's
16 told them have turned out to be lies, but they are just
17 not to the State's satisfaction.

18 And because the State doesn't have the facts,
19 they want to bloody his nose and say: See, he did it.
20 Because he didn't give the best story possible. And
21 that's wrong. That's not why we convict people. We
22 convict people because of facts and because each of the
23 elements set forth in each count is proven beyond a
24 reasonable doubt. And if you cannot do that, he's not

1 guilty.

2 Ladies and gentlemen, I thank you again, and I
3 am going to ask that you return verdicts on all six
4 counts, burglary, the two counts of uttering, the two
5 counts of forgery, and the attempted theft, and return
6 verdicts of not guilty, because that's what the facts
7 tell us.

8 Thank you.

9 THE COURT: Before Mr. Walker starts, why
10 don't you all stand up and stretch yourselves for just a
11 minute.

12 MR. WALKER: Thank you, Your Honor.

13 That's the word "why." Did we watch the same
14 tapes? Why did Mr. Voss say: I got the papers out of
15 the car? And then why did Mr. Voss say: I got the
16 papers out of the house?

17 I can buy I got the papers on Monday versus I
18 got the papers on Wednesday, if he hadn't already said I
19 got the papers on Wednesday.

20 In other words, if he hadn't already told
21 Pappas: Yeah, I got the papers Wednesday, and then says
22 he just got confused about which day it was, I could buy
23 that.

24 But when he already acknowledged which day it

1 was, and then made up this story about which day it was
2 to start covering his tracks, then the whys don't add
3 up.

4 And to show you that, whether it appears like
5 it or not, and sometimes I think I fail in this, we do
6 try to anticipate legitimate and lawful arguments which
7 Mr. Conway made. But here in the outline of my
8 surrebuttal close, I have the answer to the question.

9 Mr. Conway says: Well, if she meant to give
10 it as a retainer, how come it doesn't connect from
11 Beverly Baxter to Steven Voss?

12 And the answer is because -- or from Beverly
13 Baxter to the attorney? And the answer is: Because
14 there were two attorneys.

15 Remember on Cross Examination with Miss Week,
16 she said there were two attorneys. Beverly mentioned an
17 attorney, and Steve mentioned an attorney. So the
18 connection is like this. (Indicating.)

19 Here's Mr. Voss, here's Miss Baxter, and
20 here's the attorney. Remember, two people said he wanted
21 a retainer check. He wanted a check in her personal
22 account to give to an attorney, because he got her an
23 attorney.

24 So she gave him a check for \$5,000 for a

1 retainer, and he put his own name on it and tried cashing
2 it. That's what happened. It's pretty much as simple as
3 that.

4 And why do you know that? You know that,
5 ladies and gentlemen of the jury, because that answer is
6 the only answer to "why" that unifies all the facts.
7 It's the only one that makes sense; the only thing that
8 offers an explanation to you for why he misrepresented
9 getting the papers out of the house, versus getting the
10 papers out of the car.

11 Her having spare keys, yet him using her main
12 set of keys. Common sense tells you if you're going to
13 give somebody a set of keys to work on your car, which is
14 what Miss Pantoja said Miss Baxter said about leaving the
15 keys in her car, common sense tells you: If you have two
16 sets of keys, you are going to give your spare car keys
17 to the guy working on your car, not give him your house
18 keys.

19 We know there weren't two sets of keys, there
20 was one. He got them out of her car, because he was
21 supposed to work on the car. He went in her house and
22 stole her check.

23 Now Mr. Conway makes what on the surface is a
24 good point: Why would she write a \$5,000 check? Well

1 there are one of two answers:

2 She had to do it under duress, or it was a
3 retainer. And you know the funny thing, either one of
4 those answers why; either one of those does.

5 You can be unconvinced about which reason it
6 was, and still say beyond a reasonable doubt that he
7 didn't have permission to get \$5,000 from her. Because
8 he didn't. That's why he lied about it.

9 I suggest what happened is this: Mr. Voss
10 convinced Beverly Baxter he had an attorney who would
11 help her. All of her friends report that repeatedly. He
12 took the reimbursement check out of her apartment, forged
13 her name on the back. Why else would he have to forge
14 her name? I mean, even applying the defense's argument
15 that she wanted to deposit that check, if she wanted to
16 deposit that check, why didn't she just put her name on
17 it and say: Here's my check, here's a deposit slip, take
18 it to the bank?

19 There is no way to reconcile that. You just
20 can't get around that fact. If she had written B. A.
21 Baxter on State's Exhibit 1, we would not be here, I
22 agree with that. But that's kind of the key to the whole
23 thing, isn't it? She didn't write that on there.

24 I agree that the intent to defraud is the

1 theme to all six counts. We know it's there, because she
2 did not write B. A. Baxter.

3 He convinced her to give him a blank check the
4 next day to use as a retainer, which could be given to an
5 attorney on a later date in order to finance her plight.

6 And, boy, that's the only thing that unifies
7 all the facts, because that's the only thing that squares
8 with what Tim Sturdivant says.

9 Tim Sturdivant made it clear. He said: Don't
10 under any circumstances cash that check unless on the
11 advice of counsel, and/or unless you need a retainer.

12 So he found the key, literally, the key to her
13 apartment, and the key to get the check. He then forged
14 his name, Steven Voss, and that's the alteration, Steven
15 Voss, the words, and he cashed the check.

16 Just briefly, giving him the keys to her
17 apartment -- Mr. Conway says because he had the keys, it
18 meant she meant for him to have the keys, which is a
19 total logical argument. It says because of the fact is,
20 it is, without reference to anything else.

21 The problem is giving him the keys is against
22 the policy, against what she told him to do, against what
23 Miss Baxter's habit was, against what she told her
24 friends she was going to do with respect to the keys.

1 Why did he have to go to Spaks to make copies?
2 She had a copy machine five feet from her desk. I mean,
3 what sense does that make? Really, seriously, what sense
4 does it make? He had to go all the way to Sparks to make
5 copies, when she had a copy machine five feet from her
6 desk?

7 What is the justice? That was an interesting
8 word. Where is the intent to defraud? Common sense
9 tells you that Mr. Voss is smart enough to know that he
10 cannot just steal that check and go negotiate it, because
11 he ain't Beverly Baxter. He's got to put the money
12 someplace where he can steal it from. And the someplace
13 that it's easy to put, is her account, especially when
14 you have access to her checks. So he puts it someplace
15 where he can get it, and then he goes about trying to get
16 it.

17 Mr. Conway says: What about the documents in
18 the trash? And I'd say just about the same thing. What
19 about the documents in the trash?

20 And remember, I said, you know, maybe it was
21 there Thursday. Well, documents in the trash Thursday?
22 Who had the keys? That's not one of elements of the
23 crime, but it's an intriguing fact. Maybe they were in
24 the trash because she was going through them the day

1 before or two days before, getting the packet together to
2 send it to Tim Sturdivant; that would make sense too.

3 Sorting the wheat from the chaff, real quick
4 and real recent in time, getting the packet to together,
5 and the extra documents you don't need go to the trash?

6 What evidence is there that 5:00 p.m. would be
7 a deal breaker? Mr. Conway says he was in a hurry
8 because he had to get it before 5:00, because that would
9 be a deal breaker. What evidence is there that that
10 would be a deal breaker?

11 I mean, if there is one thing clear from Carol
12 Story, she wanted that 2500 bucks. I don't think it
13 would have mattered to her whether it was 5:00 p.m on
14 Friday, or 9:00 a.m. Monday morning, or when it was; nor
15 do I think it would have mattered from the people who
16 were going to get \$10,000 or \$12,000 at 18 percent
17 interest, to use counsel's argument from his opening
18 statement. I mean, there is no evidence timing was going
19 to be a deal breaker.

20 Mr. Conway attacks Mr. Pappas and calls him a
21 liar. And that just doesn't fit, and it's not fair.

22 Was Detective Pappas confused or was Carol
23 Story confused? I asked the question: Were you as clear
24 to Detective Pappas as you were here today?

1 He also attacks Detective Canfield and says
2 Detective Canfield told a lie, says Beverly was in the
3 photograph.

4 Well maybe, just maybe, do you suppose
5 Detective Canfield said: Yeah, we've have got the guy at
6 the automatic-teller machine that's 50 feet from where
7 her car was found, and her car would be right behind him
8 in the photograph? And that what Tim Sturdivant
9 remembers, is they said they got the guy on tape, or they
10 got her on tape, one of the two things?

11 I mean, is that really that farfetched. Does
12 anybody have to be a liar for that? I suggest not.

13 In the end, ladies and gentlemen, and I will
14 be through, the unifying theme in this case, the reason I
15 said use your common sense, and that the only issue is
16 his intent, is because of why, and the answers to why.

17 You know he stole that check and wanted that
18 \$5,000. And you know it, because he was all over the
19 place when he was pressed about it.

20 I don't mean this in a demeaning way at all,
21 but I really wonder if Mr. Conway and I watched the same
22 tape when he says there are no inconsistencies. That's a
23 pretty bold comment when you have got a guy saying I got
24 papers out of the car, I got them out of the house, there

1 were two sets of keys, but I only had one, but I never
2 saw the others. There is stuff all over the place on
3 those videotapes.

4 In the end, ladies and gentlemen, I suggest
5 there is no doubt about the proof of the elements of
6 these six crimes.

7 Thank you.

8 THE COURT: Would you move this easel out of
9 the way, please?

10 Miss Clerk, would you swear in Deputy Clifford
11 to take charge of the jury?

12 (The Clerk swore in two Washoe County Deputies
13 to take charge of the jury.)

14 THE COURT: Mr. Reynolds, we will be kept here
15 in the courtroom. You won't be in the jury room while
16 the other 12 are deliberating.

17 THE ALTERNATE JUROR: I can't leave, huh?

18 THE COURT: No, you can't.

19 THE ALTERNATE JUROR: Can I use the phone?

20 THE COURT: Oh, yes. We will take care of
21 that in a few minutes.

22 For the rest of you, they will escort you to
23 the jury room. And I have been telling you for three
24 days that you cannot talk about this case, and I now tell

1 you just exactly the opposite.

2 We expect you to go into the jury room and
3 deliberate with each other with a view towards reaching a
4 verdict on all six of the counts. You must reach a
5 separate verdict on each count.

6 When you have done so, if you will let the
7 deputies know, they will let us know, and we will all
8 come back and hear what you have to say.

9 It's my policy to not keep you past 9:00
10 o'clock in the evening. This is a complex case with a
11 lot of charges, and it may be that you wish to go past
12 9:00 o'clock.

13 If you wish to do so, I will let you do that.
14 If you wish to come back tomorrow morning, I will let you
15 do that as well. So we will decide at 9:00 o'clock what
16 it is you want to do, if you haven't already reached a
17 verdict; okay?

18 We will be in recess. Counsel, make sure
19 Joann knows how to get ahold of you, and we will see
20 everyone whenever.

21 (WHEREUPON, A RECESS WAS TAKEN.)

22 (The following day, a verdict of guilty was rendered.)
23
24

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 26th day of
19 January, 1997.

20

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23

24



RANDI LEE WALKER, CSR #137

FILED

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J. GUNN / 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, STATE OF NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

MOTION TO RELEASE
EVIDENCE

STEVEN FLOYD VOSS,

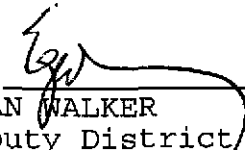
Defendant.

COMES NOW the State of Nevada, by and through RICHARD A. GAMMICK, District Attorney, and EGAN WALKER, Deputy District Attorney, and moves this Court for an order releasing all items of evidence utilized in the jury trial in the above-entitled matter to the custody of an agent of the Sheriff of Washoe County to be used in the further prosecution of the above-named defendant.

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

DATED this 22nd day of August, 1997.

RICHARD A. GAMMICK
District Attorney

By: 
EGAN WALKER
Deputy District Attorney

CR96-1581
STATE VS STEVEN FLOYD VOSS
District Court
Washoe County
DC-9900026664-018
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I. Facts/Argument

On October 10, 1996, Steven Floyd Voss was convicted, in the above-captioned case, of six felony counts of burglary, uttering a forged instrument (2 counts), forgery (2 counts), and attempted theft. The primary victim of Voss' actions was a single woman, Beverly Baxter, who disappeared during a three day period in August of 1996, which coincided with the timing of Voss' criminal actions. (The uttering and forgery counts involve activities on the victim's bank account; the burglary was committed at the victim's residence.) Witnesses testified that the last time Baxter was seen alive she was, or had recently been, in the company of Voss.

Beverly Baxter's remains were discovered in a remote area of Nevada County, California, on April 26, 1997. Forensic experts have concluded that Baxter's remains show evidence of multiple injuries to her ribs and to her skull.

The Washoe County District Attorney intends to prosecute Steven Floyd Voss for the murder and kidnapping of Beverly Baxter, and the items admitted into evidence in this case are necessary to accomplish that goal.

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II. Conclusion

The State respectfully requests that this Court enter an order releasing the evidence currently held by the Clerk of the Court over to the custody of an agent of the Washoe County Sheriff's Department for use in the prosecution of the defendant for the crimes of kidnapping and murder.

DATED this 22nd day of August, 1997.

RICHARD A. GAMMICK
District Attorney

By: EGAN WALKER
Deputy District Attorney

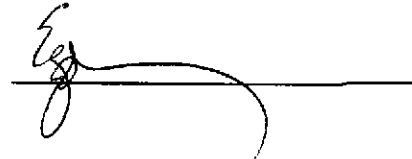
CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of August, 1997,
I hand delivered a copy of the foregoing MOTION TO RELEASE
EVIDENCE to:

Cotter Conway

Deputy Public Defender

Washoe County Public Defender's Office



1 Case No. CR96-1581

2 Dept. No. 10

FILED

'97 AUG 26 10:25

JUDITH BAILEY, CLERK

81 DEPUTY

3 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE, STATE OF NEVADA

THE STATE OF NEVADA,

Plaintiff,

11 vs.

ORDER

12 STEVEN FLOYD VOSS,

13 Defendant.

14
15 It is hereby ordered that the evidence currently
16 maintained by by the Clerk of this Court in the above-entitled
17 case be released to the custody of an agent of the Washoe County
18 Sheriff's Department.

19 DATED this 26 day of August, 1997.

20
21 
DISTRICT JUDGE

No. CR96-1581Dept. No. 10

FILED

'97 AUG 27 A9:31

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.

STEVEN FLOYD VOSS,

Defendant.

RECEIPT

RECEIVED FROM THE CLERK OF THE COURT, THE FOLLOWING:

ALL EXHIBITS RELEASED TO THE WASHOE COUNTY SHERIFF'S OFFICE TO BE
USED AT GRAND JURY PROCEEDINGS...ABOVE RELEASED PER MOTION AND COURT ORDER...
AFFIDAVITSTATE OF NEVADA }
COUNTY OF WASHOE } ss.

_____, first being duly sworn, deposes and says that:

I am lawfully entitled to possession of the above listed exhibit(s) and do hereby acknowledge receipt of the same.

Subscribed and sworn to before me this

27 day of Aug. 19 97DET. Larry Campbell #88JUDI BAILEY
CLERK OF THE COURT

By

[Signature]
Deputy ClerkCR96-1581
DC-990002664-020
STATE VS STEVEN FLOYD VOSS (1 Page)
District Court 08/27/1997 09:31 AM
Washoe County 3735
JME

No. CR96-1581Dept. No. 10

FILED

'97 AUG 28 10:34

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.

STEVEN FLOYD VOSS

Defendant.

RECEIPT

DET. LARRY CANFIELD
RECEIVED FROM ~~THE CLERK OF THE COURT~~, THE FOLLOWING:

ALL EXHIBITS RELEASED TO WASHOE COUNTY SHERIFF'S OFFICE AFTER
GRAND JURY PROCEEDINGS...

AFFIDAVIT

STATE OF NEVADA }
COUNTY OF WASHOE } ss.

_____, first being duly sworn, deposes and says that:

I am lawfully entitled to possession of the above listed exhibit(s) and do hereby acknowledge receipt of the same.

Subscribed and sworn to before me this

28 day of Aug 19 97

JUDI BAILEY
CLERK OF THE COURT

By

[Signature]
Deputy Clerk

CR96-1581
STATE VS. STEVEN FLOYD VOSS (1 Page
District Court 08/28/1997 10:34 AM
Washoe County 3735
TOWER

FILED

98 APR 30 P2:02

Case No. CR96-1581

Dept. 3

JUD. BAILEY, CLERK
BY [Signature]
DEPUTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF Washoe County

THE STATE OF NEVADA,
Plaintiff,MOTION TO SET ASIDE VERDICT

vs.

STEVEN FLOYD VOSS,
Defendant.


COMES NOW the Defendant, STEVEN FLOYD VOSS, by and through the Washoe County Public Defender's Office, MAIZIE PUSICH, Chief Deputy Public Defender, and COTTER C. CONWAY, Deputy Public Defender, and hereby moves this Court for the entry of an Order setting aside the verdict in the above entitled matter and dismissing the charges or, in the alternative, setting a new trial; and for other appropriate sanctions. Defendant moves for such findings and sanctions based on the State's failure to provide material evidence which the State was aware existed and had an exculpatory value before the trial in the above entitled matter.

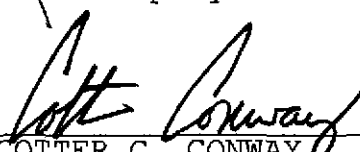
The instant motion is based on the attached Points and Authorities, the court files herein, including the reporters' transcripts of all previous proceedings herein, and

1 any oral or documentary evidence as may be presented at the
2 hearing on this matter.

3 DATED this 30th day of April, 1998.

4
5 MICHAEL R. SPECCHIO
Washoe County Public Defender

6
7 By 
8 MAIZIE PUSICH
Chief Deputy Public Defender

9
10 By 
11 COTTER C. CONWAY
Deputy Public Defender

POINTS AND AUTHORITIES

1
2 On October 10, 1996, Defendant STEVEN FLOYD VOSS was
3 convicted of six felonies charged herein by way of an
4 Information filed on July 16, 1996. The charges dealt with the
5 circumstances surrounding a \$5,000 check written on the account
6 of Beverly Ann Baxter that Mr. Voss was attempting to cash.
7 Subsequent to the trial, Ms. Baxter's body was found. As a
8 result, Mr. Voss was charged by way of an Indictment filed on
9 August 27, 1997, in CR97-2077, with Murder with the Use of a
10 Deadly Weapon and Kidnapping in the First Degree.

11 On or about December 23, 1997, Deputy District
12 Attorney Thomas E. Vilorio disclosed a Secret Witness report
13 dated June 19, 1996. The report referred to a telephone call
14 from Edward Anthony Vilardi, a security guard with Pinkerton
15 Security. He reported that he had seen Beverly Ann Baxter on
16 June 13, 1996 at 10:30 p.m. She was sitting on the driver's
17 side of a full size pickup truck. He specifically described a
18 truck different from the distinctive truck belonging to Mr.
19 Voss at the time. There was also a male in the passenger seat
20 but Mr. Vilardi could not identify him. Mr. Vilardi told them
21 to move their truck given that they were not parked in a
22 particularly safe place. Mr. Vilardi filed an incident report
23 (which included the truck's license plate) with his employer.
24 The Secret Witness report was never disclosed to the defense
25 prior to December 23, 1997.
26

1 This evidence would have been significant to the
2 defense given the testimony of Vernon Woodard. He testified at
3 the trial that he had seen a woman meeting the description of
4 Beverly Ann Baxter with Mr. Voss on June 13, 1996 at 10:00 a.m.
5 at the Winner's Corner gas station at Fourth and Keystone in
6 Reno. (Trial Transcript of October 8, 1996 at pp. 63-67).
7 Deputy District Attorney Egan Walker proceeded to argue at
8 trial that this was the last time Beverly Ann Baxter was seen
9 which provided Mr. Voss with the opportunity to commit the
10 crimes for which he was charged. (Trial Transcript of October
11 7, 1996 at p. 5:4-12).

12 It should be noted that Deputy District Attorney Egan
13 Walker also used the testimony of Vernon Woodard at the Grand
14 Jury proceedings to establish the opportunity for Mr. Voss to
15 have committed the crimes charged in CR97-2077. At no time
16 during the trial in the instant case nor during the Grand Jury
17 proceedings in CR97-2077 did Mr. Walker present any testimony
18 that Beverly Ann Baxter may have been seen alive as much as
19 twelve hours after Mr. Woodard had seen her.

20 After the Secret Witness report was disclosed, Larry
21 Carlson, an investigator for the Washoe County Public
22 Defender's Office, contacted Mr. Vilardi to verify his story.
23 He not only verified his story but stated that he would have
24 willingly testified at the trial if he had been asked. In fact,
25 he had made approximately 20 phone calls to various agencies,
26 including the Reno Police Department, in an effort to tell

1 someone his story. No one would listen. Finally, Mr. Carlson
2 attempted to obtain a copy of the incident report filed by Mr.
3 Vilardi. However, Pinkerton Security has since lost that
4 incident report.

5 It should be noted that a Stipulation and Order Re:
6 Discovery was filed on July 19, 1996 at the arraignment in the
7 above-entitled case. The trial court signed the order directing
8 that full discovery take place pursuant to trial counsels'
9 stipulation.

10 ARGUMENT

11
12 THE VERDICT OF THE JURY MUST BE SET ASIDE AND ALL OF
13 THE CHARGES MUST BE DISMISSED BECAUSE THE STATE
14 FAILED TO DISCLOSE MATERIAL EXCULPATORY EVIDENCE
15 WHICH WOULD HAVE CLEARLY PLAYED A SIGNIFICANT ROLE IN
16 THE DEFENSE TO THESE CHARGES, THE VALUE OF WHICH WAS
17 KNOWN BY THE STATE BEFORE TRIAL.

18 The independent state and federal constitutional
19 guarantees to due process of law (Article I, section 8 of the
20 Nevada Constitution; Fifth and Fourteenth Amendments to the
21 United States Constitution) require, even in the absence of a
22 specific request, that the prosecution has an affirmative duty
23 to disclose to the defense "evidence favorable to an accused
24 when that evidence is material either to guilt or to
25 punishment." Jimenez v. State, 112 Nev. 610, 617 (1996); Kyles
26 v. Whitley, ___ U.S. ___ ; 115 S.Ct. 1555, 1565 (1995); Roberts
v. State, 110 Nev.1121, 1127 (1994); Brady v. Maryland, 373
U.S. 83, 87, 83 S.Ct. 1194, 1196 (1963).

1 In United States v. Bagley, 473 U.S. 667, 105 S.Ct.
2 3375 (1985), the United States Supreme Court held that
3 favorable evidence is material, and constitutional error
4 results from its suppression by the State, "if there is a
5 reasonable probability that, had the evidence been disclosed to
6 the defense, the result of the proceeding would have been
7 different." Id. at 682. This does not require a demonstration
8 by a preponderance that disclosure of the suppressed evidence
9 would have resulted ultimately in the defendant's acquittal.
10 Kyles, at 1566.

11 Instead, a "reasonable probability" of a different
12 result is shown when the State's evidentiary suppression
13 "undermines confidence in the outcome of the trial." Bagley, at
14 678.

15 In the case at hand, it is clear that the evidence
16 was manifestly expected to play a significant role in the
17 defense herein and that such significance was apparent to the
18 State before the evidence was suppressed. Indeed, defense
19 counsel had objected to the testimony of Mr. Woodard as
20 irrelevant. However, the State vehemently argued that the
21 testimony was relevant to show an opportunity to commit the
22 crimes for which he was charged. Thus, it was of paramount
23 importance to know of other witnesses who had seen Beverly Ann
24 Baxter alive at least twelve hours after she was allegedly seen
25 by Mr. Woodard and the State certainly knew of such
26 significance.

1 In fact, the testimony of Mr. Woodard had a
2 significant effect at sentencing in this case. Prior to
3 pronouncing the sentence, Judge James Stone stated that "the
4 last person she was seen with was Mr. Voss." (Sentencing
5 Transcript p. 20:8-9). He then proceeded to give the defendant
6 the maximum sentence.

7 Furthermore, the conduct of the State and its agents
8 has resulted in the loss of the incident report filed by Mr.
9 Vilardi. Had the defense been able to obtain a copy of that
10 incident report, it would have led to the owner of the pickup
11 truck that Beverly Ann Baxter was seen sitting in. The defense
12 could have used such information to challenge the methods and
13 reliability of the police investigation and to identify other
14 possible suspects. See Jimenez, supra, at 618.

15 Therefore, the State's failure to disclose the Secret
16 Witness report violated defendant's constitutional rights to
17 due process of law and sanctions are required.

18 The State may argue that the defense never made a
19 specific request before trial in regard to the Secret Witness
20 report. However, given the fact that full discovery had been
21 ordered by the trial court, defense counsel had no reason to
22 anticipate that other reports existed that were not made
23 available. In addition, defense counsel attempted to exclude
24 the testimony of Mr. Woodard but was thwarted by the State's
25 argument that the testimony was relevant. Certainly any
26 information that Beverly Ann Baxter was seen after 10:00 a.m.

1 on June 13, 1996 would also be relevant and should have been
2 made available to the defense.

3 The combination of these factors amounts to the
4 functional equivalent of a specific request for the Secret
5 Witness report from the State. See Jimenez, supra, at 617.

6 The State may also argue that its failure to disclose
7 the Secret Witness report was inadvertent. However, the State's
8 motive or reason for withholding exculpatory evidence is
9 immaterial. Wallace v. State, 88 Nev. 549, 551 (1972). Even if
10 the detectives withheld their reports without the State's
11 knowledge, the State is charged with constructive knowledge and
12 possession of evidence withheld by other state agents, such as
13 law enforcement officers. See Jimenez, supra, at 618.

14 Thus, the violations of the defendant's rights to due
15 process of law require that the verdicts of jury in the above
16 entitled case be set aside and that the allegations be
17 dismissed. In the alternative, the denial of the defendant's
18 rights to due process requires the specific finding that the
19 defendant be entitled to a new sentencing (as evidenced by
20 Judge Stone's comment); that the State not be permitted to
21 refer to the convictions in this case during the murder
22 prosecution in CR97-2077; that the State not be permitted to
23 introduce the testimony of Vernon Woodard during the murder
24 prosecution in CR97-2077; that the Kidnapping charge in CR97-
25 2077 be dismissed (in light of the State's failure to introduce
26

1 the testimony of Edward Vilardi at the Grand Jury proceeding);
2 and any other sanctions the Court may deem necessary.

3 CONCLUSION:

4 The State's failure to disclose the Secret Witness
5 report has violated defendant's independent state and federal
6 constitutional rights to due process of law, requiring
7 dismissal of the allegations.

8 DATED this 30th day of April, 1998.

9
10 Respectfully submitted,

11 MICHAEL R. SPECHIO
12 Washoe County Public Defender

13
14 By 
15 MARZIE PUSICH
16 Chief Deputy Public Defender

17
18 By 
19 COTTER C. CONWAY
20 Deputy Public Defender

FILED

Case No. CR96-1581

'98 MAY 11 P4:47

Dept. No. 3

JUDGE BAILEY, CLERK

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.

OPPOSITION TO MOTION
TO SET ASIDE VERDICT

STEVEN FLOYD VOSS,


Defendant.

COMES NOW the State of Nevada by and through EGAN
WALKER, Deputy District Attorney, and opposes the Defendant's,
(hereinafter "VOSS"), Motion to Set Aside Verdict in the above-
entitled case.

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 11th day of May, 1998.

RICHARD A. GAMMICK
District Attorney

By: 
EGAN WALKER
Deputy District Attorney

I.

FACTS

In addition to those facts offered by VOSS in his motion, the State offers the following facts for this Court's consideration:

On September 25, 1996, Deputy Public Defender Cotter Conway filed a pre-trial motion entitled "Defendant's Motions in Limine." Therein, the defense argued that the testimony of several witnesses should be excluded. (Among them were Teri Villaverde, Kelly Whitesell and Vernon Woodard--all witnesses who could testify about seeing VOSS, Baxter or VOSS and Baxter around the time of Baxter's disappearance.) The defense argued at that time, and again during hearings on the motion on the first day of trial, that evidence regarding the "disappearance" of Beverly Baxter was irrelevant to the charges lodged against VOSS. (Transcript of proceedings, October 7, 1996, p. 4) It was during that argument, outside the presence of the jury, that the State offered the comment that VOSS was the last person to see Baxter alive.

At the trial in front of the jury, however, the defense lodged objections regarding testimony or evidence referencing the disappearance of Beverly Baxter. In fact during the trial, Judge Stone admonished the jury that no one knew, at that time, whether Beverly Baxter was alive or dead, and that they were to draw no inference from her disappearance against Mr. Voss. In that context, Judge Stone even commented, outside the presence of the jury, that no one could tell him with a straight face that Baxter

1 was dead or alive.

2 The defense "theory of the case" was that VOSS had
3 Baxter's permission to negotiate checks against her account. The
4 defense did not concede, or even mention the possibility, that
5 Baxter had fallen victim to foul play, or that she was in any way
6 missing because of criminal action.

7 Even in closing arguments, no reference was made by
8 either party to Baxter's disappearance, and the State
9 specifically argued that the jury should infer VOSS's criminal
10 intent, without reference to Baxter's disappearance, from the
11 multitude of inconsistent statements that VOSS had given to
12 detectives.

13 II.

14 ARGUMENT

15 A. THE STATE FAILED TO DISCLOSE A SECRET WITNESS REPORT TO THE
16 DEFENSE AT VOSS'S FIRST TRIAL

17 For reasons unknown to this writer, a Secret Witness
18 report memorializing a conversation with Edward Vilardi soon
19 after Beverly Baxter's disappearance was not forwarded from the
20 Sheriff's Department to the District Attorney's Office for
21 inclusion in the discovery provided to VOSS prior to his first
22 trial.

23 Usual discovery requests were made, prior to that
24 trial, to Detective Larry Canfield asking him to provide any and
25 all reports and information in this case. All of those items
26 which were received from Detective Canfield were forwarded
27 through discovery prior to trial.

1 After VOSS was indicted on murder charges, a request
2 was made through the investigative division of the District
3 Attorney's office to engage in a "file comparison" to assure that
4 the District Attorney's office was in possession of all reports
5 and information also in the possession of the Sheriff's
6 department. That request was consistent with the policy of the
7 DA's office to engage in page by page file comparisons in
8 homicide cases.

9 As a result of that comparison on December 23, 1997,
10 the Secret Witness memo from a conversation with Edward Vilardi
11 was discovered. Detective Canfield indicates that he had
12 unintentionally failed to forward that memo to the DA's office
13 during the first case.

14 Clearly that memo was appropriate for discovery, and
15 the memo should have been provided to the defense in the first
16 VOSS case.

17 B. THE PREVIOUS CONVICTIONS SHOULD NOT BE SET ASIDE BECAUSE
18 EVIDENCE CONTAINED IN THE UNDISCLOSED SECRET WITNESS REPORT
19 WAS NOT MATERIAL, AND ITS OMISSION DOES NOT CALL INTO
20 QUESTION THE VALIDITY OF THE PRIOR VERDICTS

21 Assuming for the moment that the evidence which was not
22 provided in the prior case was "exculpatory," (e.g. favorable to
23 the defense), pursuant to Brady and its progeny, we must next
24 examine whether or not the evidence was also material to VOSS's
25 defense. Favorable evidence is "material," and constitutional
26 error results from its suppression by the government, if, had the
27 evidence been disclosed to the defense, the result of the
28 proceeding would have been different. United States v. Bagley,

1 473 U.S. 667, 682, 105 S.Ct. 3375, 3383 (1985). Under Bagley,
2 there are four aspects to evaluate in determining materiality:

3 (1) a "reasonable probability" of a different outcome;

4 (2) an affirmative answer to the question: "does the
5 favorable evidence which was suppressed put the whole of the case
6 in such a different light as to undermine confidence in the
7 verdict;"

8 (3) harmless error analysis does not apply;

9 (4) all of the suppressed evidence is considered as a
10 whole, and not in piecemeal fashion.

11 In this case, VOSS argues in conclusory fashion that
12 Vilardi's testimony was so material as to require reversal of his
13 conviction for non-disclosure of his statements. He does not
14 explain how Vilardi's testimony "fit" within his defense, the
15 theory of the prosecution, or how the outcome of VOSS's
16 conviction is called into question by the new evidence.

17 The essence of the State's case was VOSS's material,
18 repeated and contradictory statements to police agents about his
19 activities involving Baxter's property. Those misstatements
20 revealed his intent to defraud, and it was those misstatements,
21 especially in light of eyewitness testimony about his actions,
22 that led to his conviction.

23 Vilardi's testimony would have been, taken at face
24 value, that at 10:30 p.m. on Thursday June 13, 1996, he saw
25 Baxter sitting in a vehicle behind the Paradox nightclub in the
26 Keystone shopping center, that the vehicle roughly matches the
27 description of VOSS's vehicle, (a full-size, flatbed truck); and

1 that Baxter was arguing with a white male occupant, (whom he
2 cannot identify further). Vilardi's report of those observations
3 came six days after they were made, and were offered as a
4 consequence of press coverage announcing Baxter's disappearance.
5 As far as this writer is aware, Vilardi has never met any of the
6 other witnesses, VOSS, or Baxter, and he had nothing to do with
7 any of the transactions which form the basis for VOSS's
8 conviction.

9 Nonetheless, VOSS argues that her "sighting" twelve
10 hours later would necessarily refute the State's argument that
11 VOSS had an opportunity to commit the crimes for which he was
12 convicted. That argument is problematic because the
13 "opportunity" the State made reference to in argument and
14 presentation to the jury was the opportunity to communicate to
15 Baxter her need to contact the bank, not the opportunity afforded
16 by killing her. (The State refuted VOSS's claim that Baxter
17 loaned him the money by proving that VOSS did not, even when
18 uniquely in the position to do so, ask Baxter to talk to the bank
19 authorities.) The State did not charge VOSS with murder before
20 the discovery of Baxter's body, and the State did not argue to
21 the jury that VOSS had killed Baxter; let alone that VOSS killed
22 Baxter at any particular time.

23 In the end, it was VOSS's very inconsistent statements
24 in police interviews about his whereabouts and activities the day
25 before, (Wednesday), the day Baxter called in sick to work
26 (Thursday), and the day after (Friday), that sealed his
27 conviction. In fact, VOSS never mentioned to detectives at all
28

1 that anyone was in his car Thursday morning, nor did he offer any
2 explanation as to why, Thursday morning, he did nothing to enlist
3 Baxter's help to negotiate the checks that he alleges represented
4 a loan to him of \$5,000. (Despite specific requests the day
5 before by bank personnel that he contact Baxter and ask her to
6 contact them.)

7 The heart of the State's case, as it was presented to
8 the jury, was not an emphasis on Baxter's disappearance, it was
9 an emphasis on VOSS's statements in light of the known sequence
10 of events undertaken by VOSS. A potential sighting of Baxter on
11 Thursday night does nothing to refute, let alone call into
12 question, the insights into VOSS's intent offered by his
13 misstatements to police.

14 C. NONE OF THE REMAINING REQUESTS FOR RELIEF ARE RATIONALLY
15 RELATED TO THE DISCOVERY VIOLATION

16 Addressing the balance of VOSS's prayers for relief,
17 the State simply notes that a discovery violation in one case
18 does not equate to a sanction in a second case involving
19 subsequent, although related, misconduct. VOSS does not support
20 his requests with legal authority for such a sanction, and those
21 requests appear to be in the nature of a shopping list of
22 proposals.

23 If, of course, this Court sets aside VOSS's conviction
24 in this case, there would be no conviction to reference. If this
25 Court does not set aside the conviction, it is a settled matter,
26 no more or less final than any other case which is the subject of
27 appellate attack. Beyond that remedy, none of the others

1 requested is supported by legal precedent or logical reasoning.

2 III.

3 CONCLUSION

4 The State failed to disclose evidence in the nature of
5 a secret witness report which was in the constructive possession
6 of the District Attorney's office. That evidence could,
7 conceivably, be seen as exculpatory to VOSS. Whether exculpatory
8 or not, however, the evidence was not material to an affirmative
9 defense by VOSS, or to refute the case presented against VOSS by
10 the State. Nothing about the evidence calls into question, in a
11 fundamental sense, the outcome of VOSS's previous trial, and
12 there is not reason to set aside the unanimous verdicts in that
13 case.

14 For all of the reasons stated above, the State
15 respectfully requests that the Defendant's Motion be denied.

16 DATED this 11th day of May, 1998.

17 RICHARD A. GAMMICK
18 District Attorney

19
20
21 By: Egan Walker
22 EGAN WALKER
23 District Attorney
24
25
26
27
28

FILED

98 MAY 18 P1:22

JUDI BAILEY, CLERK

BY [Signature] DEPUTY

1 Case No. CR96-1581

2 Dept. 3

3

DC-9900026664-024
 STATE VS STEVEN FLOYD VOSS 4 Pages
 District Court 05/18/1998 01:22 PM
 Washoe County 3795

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

THE STATE OF NEVADA,
 Plaintiff,
 vs.

REPLY TO MOTION TO
SET ASIDE VERDICT

11 STEVEN FLOYD VOSS,
 Defendant.

12 _____/

13 In its Opposition, the State argues that the
 14 testimony of Edward Vilardi was not material to the defense and
 15 could not reasonably be taken to put the whole case in such a
 16 different light as to undermine confidence in the verdict.
 17 However, the State failed to consider three important aspects
 18 of the trial.

19 First, the testimony of Edward Vilardi was material
 20 to the defense because the evidence against Mr. Voss was
 21 circumstantial and the credibility of the detectives who
 22 testified at the trial was impeachable to the extent that the
 23 defense could have used the undisclosed information to
 24 challenge the methods and reliability of the police
 25 investigation. See Jimenez v. State, 112 Nev. 610 (1996). The
 26 defense was never allowed that opportunity.

1 Second, the State acknowledges that Judge Stone was
2 required to admonish the jury that they were to draw no
3 inference from her disappearance against Mr. Voss. This would
4 have been unnecessary had any testimony been presented that
5 Beverly Ann Baxter may have been seen alive with another
6 individual as much as twelve hours after Vernon Woodard had
7 seen her with Mr. Voss.

8 Finally, the testimony of Mr. Woodard had a
9 significant effect at sentencing in this case. Prior to
10 pronouncing the sentence, Judge James Stone stated that "the
11 last person she was seen with was Mr. Voss." (Sentencing
12 Transcript p. 20:8-9). He then proceeded to give the defendant
13 the maximum sentence. Given Judge Stone's conclusion, it is
14 conceivable that the jury reached the same conclusion during
15 their deliberations.

16 Therefore, the State's failure to disclose the Secret
17 Witness report violated defendant's constitutional rights to
18 due process of law and sanctions are required.

19 If this Court does not set aside the verdicts of jury
20 in the above entitled case and dismiss the charges, then it
21 could (short of a dismissal) preclude the State from referring
22 to the convictions during the murder prosecution in CR97-2077;
23 and/or preclude the State from introducing the testimony of
24 Vernon Woodard during the murder prosecution in CR97-2077.

25 In addition, short of a dismissal, the defendant
26 should be entitled to a new sentencing given Judge Stone's

1 comment. The United States Supreme Court has expressly held
2 that where a defendant is sentenced on the basis of materially
3 untrue assumptions concerning his criminal record, "[the]
4 result, whether caused by carelessness or design, is
5 inconsistent with due process of law." State v. District Court,
6 100 Nev. 90, 96 (1984) [citing Townsend v. Burke, 334 U.S. 736,
7 741, 68 S.Ct. 1252 (1948)].

8 When this potential due process violation is
9 considered in conjunction with the district court's inherent
10 authority to correct sentences founded on mistakes which work
11 to the extreme detriment of the defendant, See Warden v.
12 Peters, 83 Nev. 298 (1967), it is equally clear that the
13 district court has authority to correct or modify a sentence
14 which is the result of the sentencing judge's perception of
15 inaccurate or false information. State v. District Court, 100
16 Nev. 90, 97 (1984).

17 In the instant case, the sentence imposed rested on a
18 foundation which was materially untrue (i.e. the last person
19 the victim was seen with was Mr. Voss) given the information
20 provided by Edward Vilardi. Thus, this Court has the power to
21 correct or modify the sentence.

22 ///

23 ///

24 ///

25 ///

26 ///

CONCLUSION:

The State's failure to disclose the Secret Witness report has violated defendant's independent state and federal constitutional rights to due process of law.

DATED this 18th day of May, 1998.

Respectfully submitted,

MICHAEL R. SPECHIO
Washoe County Public Defender

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

By Maizie W. Pusich
MAIZIE PUSICH
Chief Deputy Public Defender

CASE NO. CR96-1581

STATE OF NEVADA VS. STEVEN FLOYD VOSS

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES-HEARING

CONTINUED TO

05/20/98

HONORABLE

DEBORAH A.

AGOSTI

DEPT. NO. 3

C. McMahon

(Clerk)

D. Davidson

(Reporter)

MOTION TO SET ASIDE JURY VERDICT

Deputy District Attorney Egan Walker was present on behalf of the State. The Defendant was not present but represented by Deputy Public Defenders Maizie Pusich and Cotter Conway. Barbara Jewett was present on behalf of the Division of Parole and Probation.

Counsel Pusich for the Defendant addressed the Court advising that the Defendant had not been transported by NSP and moved for a continuance. Counsel for the State addressed the Court indicating he would contact NSP to confirm transport for tomorrow; Counsel Pusich will do the same. Counsel Pusich also addressed the Court with concerns over access to the Defendant for the State further addressed the Court advising that investigative reports provided to the Defense involve additional prior bad acts, but the State will not refer to those in opening argument (in the companion case CR97-2077 set for trial 5/26/98) until the Court has made its ruling.

COURT ORDERED: Matter continued until tomorrow. Defendant to remain in the County Jail over the weekend pending trial.

05/21/98

8:30 a.m.

Cont'd Motion

To Set Aside

Jury Verdict

CR96-1581
STATE VS. STEVEN FLOYD VOSS
District Court
Washoe County
DC-9900026626-012
{ 1 Page
05/20/1998 01:46 PM
MTN

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

DATE, JUDGE
OFFICERS OF

COURT PRESENT

APPEARANCES-HEARING

CONT'D TO

5/21/98

MOTION TO SET ASIDE JURY VERDICT

HONORABLE

Deputy District Attorney Egan Walker represented the State.

DEBORAH A.

Defendant was present with counsel, Deputy Public Defender Cotter C.

AGOSTI

Conway and Deputy Public Defender Maizie Pusich. Erin Gallagher was

DEPT. NO. 3

present on behalf of the Division of Parole and Probation.

B. Walker

Deputy Public Defender Conway addressed the Court regarding the testimony of Edward Vilardi stating it was material to the defense because the evidence against Defendant Voss was circumstantial and the credibility of the detectives who testified at the trial was impeachable to the extent that the defense could have used the undisclosed information to challenge the methods of the police investigation and argued in support; response and argument by Deputy District Attorney Walker.

(Clerk)

COURT ORDERED: State's failure to produce information violates the discovery rules and took the matter under advisement. The State will not be permitted to refer to prior convictions.

D. Davidson

Defendant is to be maintained in custody at the Washoe County Jail until and through his trial on May 26, 1998.

(Reporter)

CR96-1581
STATE VS. STEVEN FLOYD VOSS (1 Page)
District Court 05/21/1998 01:41 PM
Washoe County
MIN

FILED

Case No. CR96-1581 and CR97-2077

Dept. No. 3

JUN 16 1998

JUD BAILEY, CLERK

By: *McM*

DEPUTY

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--

STATE OF NEVADA,

Plaintiff,

vs.

STEVEN FLOYD VOSS,

Defendant.

) TRANSCRIPT OF PROCEEDINGS

) Motion To Set Aside
) Jury Verdict

) May 20, 1998

) Reno, Nevada

APPEARANCES:

For the Plaintiff:

EGAN WALKER, ESQ.
Deputy District Attorney
Washoe County Courthouse
Reno, Nevada

For the Defendant:

COTTER CONWAY, ESQ.
MAIZIE PUSICH, ESQ.
Deputy Public Defenders
One South Sierra
Reno, Nevada

The Defendant:

(Not present)

Reported by:

DONNA DAVIDSON, CCR #318, RPR
Computer-Aided Transcription

ORIGINAL

1 RENO, NEVADA, Wednesday, May 20, 1998, 10:31 a.m.

2 --oOo--

3 THE COURT: We'll proceed next with State versus
4 Steven Floyd Voss.

5 Mr. Voss is --

6 MR. CONWAY: They did not transport him.

7 THE COURT: Not transported.

8 MR. CONWAY: Even though this was set in open court,
9 so --

10 THE COURT: Well, now, we've known all morning. Has
11 anybody made a call to get him here?

12 THE BAILIFF: They said they couldn't get him here,
13 your Honor, in time.

14 THE COURT: Why?

15 THE BAILIFF: That is what they said. That's what
16 they told us.

17 THE COURT: Well, who is "they"?

18 THE BAILIFF: The prison.

19 THE COURT: Well, this is great.

20 MS. PUSICH: Your Honor, we had a request of the
21 Court before this happened, and it may actually work out well
22 all the way around, we do think that in light of the
23 seriousness of the charge against him and the nature of the
24 motion that's pending, he should be here. We would ask that

1 this be reset tomorrow or the next day.

2 THE COURT: I'm not here Friday. Tomorrow I'm in a
3 trial.

4 MS. PUSICH: Then perhaps, your Honor, we could do
5 this Tuesday morning.

6 The other request we had was if the prison could be
7 instructed to make him available to us through the weekend. He
8 is presently in their Unit 13, which is the maximum security at
9 the Nevada State Prison, Carson City; and although they let us
10 see him, our access to him is extremely limited.

11 THE COURT: Okay. I'll order that he be here
12 tomorrow morning. We've got to hear this tomorrow. I'm not
13 doing it Tuesday morning. I'm very, very displeased that the
14 prison does not have him here today.

15 I don't know who's going to do the order, who's
16 going to talk to him, but I want him tomorrow morning. You can
17 also prepare an order that he remains here in the county jail
18 pending the trial so that you have him over the weekend and for
19 trial; otherwise, I foresee nothing but difficulty.

20 MR. WALKER: Your Honor, I'll put it on the record, I
21 know that counsel for the defense will probably contact the
22 prison. I will, likewise, on behalf of the State, contact the
23 prison to confirm that is he is transported tomorrow.

24 THE COURT: Here's the deal. How much time do you

1 think is going to be required for this hearing tomorrow?

2 MR. CONWAY: I don't think it will be much at all.
3 I'm going to probably submit on the first part of it and wait
4 for the State's response, because I have obviously filed a
5 reply and made my position quite clear.

6 THE COURT: Okay. I have 12 arraignments. I have a
7 9:30 motion to suppress. I have trial at ten o'clock. I've
8 got a sentencing at 1:30. My calendar is very, very, very
9 tight tomorrow, which is adding to my irritation at the prison
10 for their failure to bring him here today. But we'll deal with
11 it. This case deserves the priority, if we're all going to be
12 in a position to have our questions answered before trial,
13 which commences on Tuesday morning. I think that's the goal
14 that we all share.

15 So I'll set it for 8:30 tomorrow morning.

16 Who is going to take responsibility to see to it that
17 the prison transports him?

18 MS. PUSICH: I will, your Honor.

19 MR. WALKER: And I will follow up on that as well.

20 THE COURT: You know, I think that's a real good
21 idea. I hate to sound jaded, but sometimes the prison hears it
22 a little better from the State than they do from the defense.
23 And I don't want him not here tomorrow.

24 MS. PUSICH: We agree, your Honor.

1 MR. WALKER: Your Honor, may I give the Court notice
2 now of a procedural or timing issue, which I think the Court
3 will need to decide sometime next week.

4 Yesterday I provided to the defense copies of
5 investigative memorandums from Mr. Neville, which would, if I
6 was allowed to call those witnesses, necessitate another bad
7 act hearing.

8 I would represent to the Court that I have had no
9 intention and have no intention now to make a reference to that
10 in opening statement or if and until the Court decides that
11 issue, but I wanted the Court to have notice of that as soon as
12 I knew about it.

13 THE COURT: Thank you. I appreciate it.

14 Counsel approach the bench.

15 (There was an off-the-record discussion at the
16 bench.)

17 THE COURT: Okay. It looks like there's not
18 anything else that we can do at this time, due to the absence
19 of Mr. Voss, but we will hear this tomorrow morning, at 8:30.

20 And I have indicated to counsel at the bench my
21 concerns that the case proceed expeditiously, professionally,
22 without any sacrifice, of course, to good quality
23 representation of the State's interests and the defendant's
24 interests by counsel. But I do have the issue of the need for

1 this case to conclude by the 5th. Counsel are of the view that
2 the 2nd or 3rd is when it should conclude. But I've indicated
3 to you what my schedule is, and I appreciate your willingness
4 to discuss that matter with me.

5 Other than that, we'll see you tomorrow morning.

6 MS. PUSICH: Thank you, your Honor.

7 MR. CONWAY: Thank you, your Honor.

8 MR. WALKER: Thank you, your Honor.

9 THE COURT: And we'll be in recess.

10 (Proceedings concluded.)

11 --oOo--

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

3 I, DONNA DAVIDSON, a Certified Shorthand Reporter of
4 the Second Judicial District Court of the State of Nevada, in
5 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 Wednesday, May 20, 1998, at the hour of
8 10:31 a.m., and took verbatim stenotype notes of the
9 proceedings had upon the Motion To Set Aside Jury Verdict in
10 the matter of THE STATE OF NEVADA, Plaintiff, vs. STEVEN FLOYD
11 VOSS, Defendant, Case No. CR96-1581 and CR97-2077 and
12 thereafter, by means of computer aided transcription,
13 transcribed them into typewriting as herein appears;

14 That the foregoing transcript, consisting of pages 1
15 through 7, 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 15th day of June, 1998.

19

20


DONNA DAVIDSON, CCR #318

21

22

23

24

FILED

1 Case No. CR96-1581 and CR97-2077

JUN 18 1998

2 Dept. No. 3

JUDI BAILEY, CLERK

By: S. Howells
DEPUTY

3

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--

STATE OF NEVADA,

) TRANSCRIPT OF PROCEEDINGS

Plaintiff,

) Motion To Set Aside
) Jury Verdict

vs.

) May 21, 1998

STEVEN FLOYD VOSS,

) Reno, Nevada

Defendant.

)

14 APPEARANCES:

15 For the Plaintiff:

EGAN WALKER, ESQ.
Deputy District Attorney
Washoe County Courthouse
Reno, Nevada

17 For the Defendant:

COTTER CONWAY, ESQ.
MAIZIE PUSICH, ESQ.
Deputy Public Defenders
One South Sierra
Reno, Nevada

20 The Defendant:

(Not present)

23 Reported by:

DONNA DAVIDSON, CCR #318, RPR
Computer-Aided Transcription

24

ORIGINAL

1 RENO, NEVADA, Thursday, May 21, 1998, 9:25 a.m.

2 --oOo--

3 THE COURT: State versus Steven Floyd Voss. Is he
4 here?

5 MS. PUSICH: Yes. And he has been placed in county
6 custody, your Honor.

7 THE COURT: Okay. Good. This is the time and place
8 set for a couple of matters. One is a motion to set aside jury
9 verdict in CR96-1581, State versus Steven Floyd Voss, who is
10 present in custody, with his attorneys, Ms. Pusich and Mr.
11 Conway.

12 And Mr. Walker is here for the State.

13 Also in CR97-2077, in which he is charged with murder
14 with the use of a deadly weapon and kidnapping in the first
15 degree, we have a status, I believe, motion to confirm trial
16 for Tuesday. And the defendant is now present.

17 Are we ready to proceed?

18 MR. CONWAY: Defense is ready, your Honor.

19 MR. WALKER: Yes, your Honor.

20 THE COURT: Thank you. You may commence on the
21 motion.

22 MR. CONWAY: Thank you, your Honor. First thing I
23 would like to say is although I agree with the State with
24 respect to the fact that the evidence that we want to

1 introduce, the testimony -- the testimony of Edward Villardi
2 that we did not receive prior to the original trial certainly
3 would not go against the State's theory of the case. The State
4 misses the point when it refers to the case of Jiminez v.
5 State, 112 Nev. 610, which I cite in my reply.

6 That is really our point. Certainly had we had that
7 evidence, we could have impeached the detectives and the
8 officers that worked on that case as to what leads they
9 followed up in their investigation. And certainly this piece
10 of evidence was never followed up on, this piece of evidence
11 was never even given to us to follow up on until almost two
12 years after the original trial. That in Jiminez v. State
13 refers to the fact that that is one thing that that evidence
14 could have been used for.

15 In Jiminez v. State a very similar set of
16 circumstances, however it was a murder case, where that was a
17 possible suspect, but it also pointed out that they could have
18 also been used under Kyles v. Whitley to impeach the officer's
19 testimony to the extent that we could have used that to
20 challenge the methods and reliability of their investigation.

21 And that becomes very important, especially since
22 that case was circumstantial, and certainly would have been
23 something that we could have used to follow up on their
24 investigation.

1 In addition, I point out two other reasons in the
2 reply, just briefly, that certainly state that during the trial
3 it was clear that that issue of her disappearance, although I
4 agree the State made efforts to keep that out, was something
5 that was of concern to the Court and was of concern, obviously,
6 to the jury, and that is why they're required admonishments.
7 And also, the final point I wanted to make is that I believe
8 that regardless of what the Court's decision as to the trial
9 itself, I think that it's clear that the sentencing was
10 tainted, to some extent, by Judge Stone's conclusions, based on
11 the fact that all he knew was that Vernon Woodard had seen Mr.
12 Voss with who he believed to be the victim in this case, and
13 made the conclusion that that was the last person seen alive
14 with her.

15 And that is of concern, because certainly he turned
16 around right afterwards, and it's quite clear in the transcript
17 of the sentencing, and sentenced him to the maximum sentence on
18 each count to run consecutive. And I think that, therefore,
19 given the cases cited at the end of that, the reply, with
20 respect to State v. District Court, that he would be entitled,
21 if anything, to a resentencing based on the State's failure to
22 produce that evidence in a timely manner prior to trial. Thank
23 you.

24 THE COURT: Thank you.

1 Mr. Walker?

2 MR. WALKER: Thank you, your Honor. First, your
3 Honor, I would note if the Court were to have any question or
4 if counsel were to have any question, Detective Larry Canfield
5 is present in court. He was the chief investigating officer in
6 the prior case.

7 Secondarily, your Honor, I wanted to offer a comment
8 about the disparity in the law, if you will, between specific
9 requests and general requests for discovery. My personal
10 opinion is that that is of little import.

11 I would expect that the Public Defender's Office had
12 every reason to expect that had I known about this report it
13 would be forwarded. So I think you should treat this under the
14 specific request standard as it is announced by the Nevada
15 Supreme Court, because otherwise, the reciprocal discovery
16 orders that the courts enter have very little meaning. In
17 other words, why would I, as a prosecutor, in good faith, be
18 able to expect that the defense has to specifically request,
19 well, if you have this kind of evidence, give it to me; if you
20 have this kind of evidence, give it to me, in a situation where
21 there's already been reciprocal discovery order.

22 So I think that the appropriate standard is the -- if
23 you will, the more stringent standard that the court announced
24 or enunciated in Jiminez. There is helpful language in

1 Jiminez, which actually makes reference to Roberts v. State, a
2 1994 Nevada case. And the language is that a specific -- if
3 after specific request material evidence is withheld, and it is
4 material if there exists a reasonable possibility that the
5 claimed evidence would have affected the judgment of the trier
6 of the fact and thus the outcome of trial.

7 In Roberts -- and then they quote, or they cite to
8 Roberts. In Roberts what the Nevada Supreme Court said was,
9 like the New Jersey court, we construe this language not to
10 have been a holding or firm command but instead a reflection of
11 the concern underlying the Brady holding that there exist more
12 than, quote, the mere possibility that the undisclosed
13 information might have helped the defense. There must be a
14 real possibility that the evidence would have affected the
15 result.

16 I suggest that's dispositive of this case. I suggest
17 what you will discover, your Honor, when you hear the testimony
18 of Mr. Villardi, is that the evidence that he gives, the nature
19 of the background of that evidence, his personal demeanor and
20 character, will be that this evidence will not be as damaging
21 as the defense would hope for.

22 The unfortunate thing, and this is the fault of the
23 State, and I don't mean to dance around that issue, is that
24 that fact, what I'm asserting regarding Mr. Villardi's

1 credibility, what he actually says, and what meaning, if any,
2 it has to this case, was not fleshed out before. It has been
3 fleshed out now, and I suggest would be fleshed out at trial.

4 And I think the challenge for you is what remedy or
5 sanction is necessary for that failure to produce on behalf of
6 the State.

7 I would urge, however, that really what the defense
8 is asserting is simply that there's a mere possibility, and no
9 more. Because Mr. Villardi will not be a credible witness.
10 And the information he gives and the factual circumstances of
11 this case will neither rule Mr. Voss out, nor rule Mr. Voss in
12 as a suspect or someone who saw Mrs. Baxter or even establish
13 that he saw Mrs. Baxter on June 13; Thursday, June 13th.

14 Therefore, your Honor, I suggest that while it is
15 wrong that the evidence was not provided to the defense, and as
16 I indicated in my motion, those are for reasons beyond my
17 personal understanding, nonetheless, the remedy is not set
18 aside the verdict in the other case or to affect the verdict in
19 the other case, or to choose from the shopping list, as it
20 were, of potential sanctions, which include keeping the truth
21 out, i.e., the objections of Vernon Woodard earlier in the day,
22 or allowing the State not to refer to a settled conviction.

23 For those reasons, your Honor, I ask that the motion
24 be denied.

1 MR. CONWAY: In reply, your Honor, I mean, I think
2 one of the sad things is it's somewhat true that the effect of
3 Mr. Villardi's testimony may not be as strong, and the reason
4 being is that it was not followed up at that time. And that's
5 the tough part.

6 In speaking with him, a lot of the things that he's
7 told me is that -- as I recall, he goes, "I think this is what
8 I remember seeing," because it's been two years, and no one
9 followed up on that. And we, as the defense, were not given
10 that opportunity.

11 However, the things that he saw and the fact that now
12 his report -- he had a handwritten -- or a written report that
13 he filed with his employer, being a security guard he details
14 all things and contacts, that report is gone. I mean, we've
15 really been denied something. We don't know how powerful that
16 testimony would have been at the original trial.

17 And I think that's important to note the materiality
18 there. Because either had that been followed up by the State's
19 agents, the police officers involved in the investigation, or
20 had we been allowed that opportunity if that report had been
21 given to us in a timely manner, I think it would have been very
22 strong.

23 It's tough to say something strong when a guy is
24 trying to remember two years ago something that he witnessed.

1 But he clearly witnessed certain evidence that we would have
2 liked to put before the Court, before the jury, and ask the
3 detectives why they didn't follow up on this, what happened
4 with this lead. And I think that's what makes it material.

5 THE COURT: Okay. Here's what I think. I think the
6 State's failure to produce this information, this evidence, was
7 wrong and violated the discovery rules. I'm not in a position
8 to evaluate at this time whether or not the outcome of the
9 previous trial was tainted or unreliable because of the failure
10 to produce, because I haven't heard the witness.

11 So what I intend to do is this: I'm not going to
12 make a decision today on whether or not that verdict should be
13 set aside in the context of this trial. I expect this witness
14 will be called and will be permitted to testify, and I can
15 judge this witness at that time.

16 I will order that the State not be permitted during
17 the course of the trial to refer to these convictions, because
18 these convictions may not stand.

19 I'm not going to prohibit the State from calling the
20 other witness, Woodard, I think. In fairness, we're just going
21 to put it all in front of the jury, and we're not going to talk
22 about a past conviction, which may be questionable, to result
23 in the failure of the State to provide timely discovery; but as
24 to whether or not that verdict is going to be set aside, it may

1 not be set aside.

2 Lack of memory isn't the only reason that makes a
3 witness unreliable, and if it's just simply lack of memory due
4 to the passage of time, which is perhaps the State's fault for
5 not providing timely discovery, that enters to your benefit.
6 But if the witness has other indicia of unreliability,
7 according to the way we always examine any witness's demeanor
8 to determine the truthfulness of the testimony, I figure it's
9 what I would call a flaky witness, then the State is not going
10 to have those convictions set aside.

11 But we can't decide that until I hear this witness.
12 And the only time left to hear this witness is at trial.

13 So you don't get the prior convictions. You do get
14 all the witnesses you want to present. This isn't set aside
15 yet. It may never be set aside. But it might be. That's the
16 best I can do.

17 Now, what about the case for trial? Are we
18 confirming at this point?

19 MR. CONWAY: At this point, your Honor, we are
20 confirming for trial. I will note that there are negotiations
21 currently. They're not directly with me, right now. I think
22 they're between Mr. Walker and Steven Gregory of my office.
23 And I believe those negotiations are still ongoing. I don't
24 know how long they're going to be left open, but we will

1 certainly advise the Court immediately upon knowing where they
2 stand. But at this point, we are prepared to go forward on the
3 26th with the trial.

4 THE COURT: Okay.

5 MR. WALKER: So that it's in the record, and I think
6 Mr. Conway gently and eloquently kind of probes this, I would
7 leave the negotiations open until Friday, at five. The State
8 is prepared to proceed, and the State is preparing for trial,
9 and I think we should stay in that footing. But so that
10 counsel knows, I'll leave the offer open until five on Friday.

11 THE COURT: Here's what I think we ought to do,
12 then. I won't be here tomorrow. If the negotiations close
13 tomorrow successfully, I think that an effort should be made to
14 bring the matter before a judge other than myself so that the
15 negotiations can be fulfilled. If they happen at all. So I
16 think that's the first line of attack.

17 And I think it would be a good idea for all of us to
18 check and see which judges may be around tomorrow and expect to
19 be here until five o'clock. Judge Breen ordinarily is here and
20 is here quite late. I'll check with him and let him know
21 what's going on.

22 We always have to have plan B, though, because plan A
23 doesn't always work. If for some reason extenuating
24 circumstances occur which require the negotiations to be

1 extended into the weekend, and it's a possibility that that
2 could happen, it's happened in many cases, what I would like to
3 do is order the jury at 10:30 and order this case stat'd here
4 in court at 8:30, which gives us a short amount of time, not a
5 great amount of time, within which to resolve the case if
6 negotiations close on Monday morning in that way.

7 But I hate to bring the jury in at 1:30, because I'm
8 cognizant that there are time limitations involved in this
9 case, and in order to give this case the full amount of time
10 that it deserves, I think that kind of delay is right.

11 So I'll ask that the clerk now inform the jury
12 commissioner that the jury -- and I've asked for a panel of
13 70. Does everyone agree that that's an adequate number?

14 MR. WALKER: Yes, your Honor.

15 MR. CONWAY: Yes, that is adequate, your Honor.

16 THE COURT: I almost felt that the 60 would do it,
17 but with the no-shows that we've been getting, I'm a little
18 nervous about going that low, because each side does get eight
19 peremptory challenges in this case.

20 Does anyone think we could do it with less than 60,
21 or we all think 70 is smart?

22 MS. PUSICH: Your Honor, I would prefer 70. Because
23 we are following a three-day weekend, we may have more no-shows
24 than we normally do.

1 MR. WALKER: I agree, your Honor. And, likewise, I
2 think it would be prudent in this case to seat two, or possibly
3 even three alternates.

4 THE COURT: With a two-week trial scheduled in mind,
5 I think you're right. So, okay, we'll keep it at 70. Will 70
6 be enough? I think so.

7 MR. WALKER: Yes.

8 MR. CONWAY: Yes.

9 THE COURT: Okay. We'll ask that they come at 10:30
10 rather than at the earlier time, and order all of you to be
11 here, and that Mr. Voss be present as well, at 8:30 on Monday
12 morning, if there hasn't been a conclusion of the case on
13 Friday.

14 And I'd like to do that anyway, just so that if
15 there's anything further that we need to stat, any last minute
16 motions in limine, any anything, we can do it then without
17 disruption to the time that the jury will just be sitting and
18 waiting. That will probably work out very well.

19 Counsel approach the bench just real briefly.

20 (There was an off-the-record discussion at the
21 bench.)

22 THE COURT: I've conferred with counsel at the bench
23 about the issue of two remaining trials on my calendar and
24 whether or not if there's going to be a resolution of this

1 case, if it would be forthcoming today, since I have a 1:25
2 telephone conference with the attorneys on the civil case.
3 I'll just do the best I can on that one.

4 I don't mean to rush the State or the defense in the
5 negotiations that they might be considering at this point,
6 because this is an extremely serious case. I'll just deal with
7 the civil matter as best I can.

8 Is there anything further with respect to this case
9 that we can manage this morning?

10 MR. WALKER: Not at this time, your Honor.

11 MR. CONWAY: Not at this time, your Honor.

12 THE COURT: Okay. That will be the order.

13 MR. CONWAY: Thank you.

14 (Proceedings concluded.)

15 --oOo--
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1 STATE OF NEVADA)
) ss.
2 County of Washoe)

3 I, DONNA DAVIDSON, a Certified Shorthand Reporter of
4 the Second Judicial District Court of the State of Nevada, in
5 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 Thursday, May 21, 1998, at the hour of
8 9:25 a.m., and took verbatim stenotype notes of the proceedings
9 had upon the Motion To Set Aside Jury Verdict in the matter of
10 THE STATE OF NEVADA, Plaintiff, vs. STEVEN FLOYD VOSS,
11 Defendant, Case No. CR96-1581 and CR97-2077 and thereafter, by
12 means of computer aided transcription, transcribed them into
13 typewriting as herein appears;

14 That the foregoing transcript, consisting of pages 1
15 through 15, 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 15th day of June, 1998.

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DONNA DAVIDSON, CCR #318

IN THE SUPREME COURT OF THE STATE OF NEVADA

'99 APR -8 P12:45

STEVEN FLOYD VOSS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 29783

AM. JEFFERY CLERK
BY *[Signature]*
DEPUTY

District Court Case No. CR961581

CLERK'S CERTIFICATE

STATE OF NEVADA, ss.

I, Janette M. Bloom, the duly appointed and qualified Clerk of the Supreme Court of the State of Nevada, do hereby certify that the following is a full, true and correct copy of the Judgment in this matter.

JUDGMENT

The court being fully advised in the premises and the law, it is now ordered, adjudged and decreed as follows: "ORDER this appeal dismissed."

Judgment, as quoted above, entered this 11th day of March, 1999.



IN WITNESS WHEREOF, I have subscribed my name and affixed the seal of the Supreme Court at my Office in Carson City, Nevada, this 6th day of April, 1999.

Janette M. Bloom, Supreme Court Clerk

By:

[Signature]

Chief Deputy Clerk

jw

FILED

IN THE SUPREME COURT OF THE STATE OF NEVADA

'99 APR -8 P12:45

STEVEN FLOYD VOSS,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

AMY HARVEY, CLERK
BY *[Signature]*
DEPUTY

No. 29783

District Court Case No. CR961581

REMITTITUR

TO: Honorable Amy Harvey, Washoe County Clerk

Pursuant to the rules of this court, enclosed are the following:

Certified copy of Judgment and copy of Order.

Receipt for Remittitur.

DATE: April 6, 1999

Janette Bloom, Clerk of Court

By: *[Signature]*

Chief Deputy Clerk

cc: Hon. Steven P. Elliott, District Judge
Hon. Frankie Sue Del Papa, Attorney General
Hon. Richard A. Gammick, District Attorney
Michael R. Specchio, Public Defender

RECEIPT FOR REMITTITUR

Received of Janette M. Bloom, Clerk of the Supreme Court of the State of Nevada, the
REMITTITUR issued in the above-entitled Cause, on *April 8, 1999*

[Signature]
County Clerk

jw

CR96-1581
DC-9900032664-028
STATE VS. STEVEN FLOYD VOSS (1 Page)
District Court 04/08/1999 12:45 PM
Washoe County
10:45

FILED

IN THE SUPREME COURT OF THE STATE OF NEVADA

STEVEN FLOYD VOSS, ^{AMY HARVEY, CLERK}
BY *[Signature]*

No. 29783

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

FILED

MAR 11 1999

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
DEPUTY CLERKORDER DISMISSING APPEAL

This is an appeal from a judgment of conviction, pursuant to a jury verdict, of one count of burglary, one count of attempted theft, two counts of uttering a forged instrument, and two counts of forgery. The district court sentenced appellant Steven Floyd Voss to serve forty-eight to 120 months in prison for the burglary count and sixteen to forty-eight months in prison for each of the other five counts, all terms to be served consecutively.

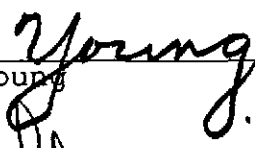
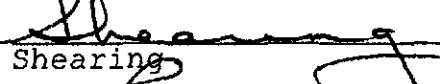
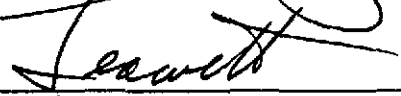
Voss first contends that the evidence presented at trial was insufficient to support the jury's findings of guilt. Our review of the record on appeal, however, reveals sufficient evidence to establish guilt beyond a reasonable doubt as determined by a rational trier of fact. See Wilkins v. State, 96 Nev. 367, 609 P.2d 309 (1980). In particular, we note that the evidence overwhelmingly demonstrated that the victim, Beverly Baxter, did not give Voss permission to enter her apartment, had no intent to deposit a \$5,026.00 check she had received, and had no intent to write a \$5,000.00 personal check to Voss. The jury could reasonably infer from the evidence presented that Voss deposited Baxter's check without her consent in order to withdraw funds from her account against her wishes. The jury determines the weight and credibility to give conflicting testimony, and the jury's verdict will not be disturbed on appeal where, as here, sufficient evidence supports the verdict. Bolden v. State, 97 Nev. 71, 624 P.2d 20 (1981).

Voss next contends that under the facts of this case attempted theft is a lesser included offense of uttering a

CR96-1581
DC-990002664-029
STATE VS STEVEN FLOYD VOSS 2 Pages
District Court 04/08/1999 12:45 PM
Washoe County 2855
JME

forged instrument and therefore the district court erred by denying his motion to dismiss the attempted theft count. This contention has no merit. The crime of uttering a forged instrument requires the person to utter, offer, dispose of, or put off as true any forged writing, knowing that writing to be forged and with intent to defraud. NRS 205.110. The crime of attempted theft requires the person to attempt to "[c]ontrol any property of another person with the intent to deprive that person of the property." NRS 205.0832(1); see also NRS 193.330(1) (defining an attempt crime). In this case, Voss presented Baxter's forged personal check to the bank knowing it was forged and with intent to defraud. He also controlled Baxter's personal check with intent to deprive her of \$5,000.00. Voss fails to show how attempted theft is a lesser included offense of uttering a forged instrument. They are two separate crimes, and Voss's actions fulfill the elements of both. Accordingly, we

ORDER this appeal dismissed.

	J.
Young	
	J.
Shearing	
	J.
Leavitt	

cc: Hon. Steven P. Elliott, District Judge
 Hon. Frankie Sue Del Papa, Attorney General
 Hon. Richard A. Gammick, District Attorney
 Michael A. Specchio, Public Defender
 Amy Harvey, Clerk

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES-HEARING

CONTINUED TO

6/8/01
HON. STEVEN
ELLIOTT
DEPT. NO. 10
L. Lopez
(Clerk)
D. Vieira
(Reporter)

EVIDENTIARY HEARING

Petitioner present with counsel, Scott Edwards.
Deputy D.A. Gary Hatlestad represented the State.
Counsel for Petitioner addressed the Court and invoked the rule
of exclusion; SO ORDERED.
Respective counsel presented opening statements.
The following witnesses were called by counsel for Petitioner,
sworn, testified and cross-examined:

Steven Floyd Voss
Mary Duplin
Gary Clifford

The following witnesses were called by counsel for State, sworn,
testified and cross-examined:

Stacey Hill
Larry Canfield
John Yarhan
Cotter Conway

Closing arguments were waived by respective counsel.
The Court addressed Petitioner's claims and stated findings as
follows:

Regarding Petitioner's claim that prospective jurors were
exposed to Petitioner in prison clothing and/or during in-custody
transportation, the Court finds no credibility to Petitioner's
testimony and indicated that no corroborating testimony existed.
COURT ORDERED: The Petition is hereby denied as to this
claim.

Regarding Petitioner's claim of ineffective assistance of counsel
at trial, the Court finds that no credible evidence exists to
support this claim.

COURT ORDERED: The Petition is hereby denied as to this
claim.

Regarding Petitioner's claim that the State failed to properly
disclose Edward Villardi's witness statement, the Court finds that
the State did fail to properly disclose said information. The

CR96-1581
STATE VS. STEVEN FLOYD VOSS
District Court
Washoe County
DC-9900026626-005
Page
06/08/2001 01:38 PM
MIN

DATE, JUDGE
OFFICERS OF
COURT PRESENT

APPEARANCES-HEARING

CONTINUED TO

6/8/01
HON. STEVEN
ELLIOTT
DEPT. NO. 10
L. Lopez
(Clerk)
D. Vieira
(Reporter)

EVIDENTIARY HEARING (cont'd.)

Court does not find that the witness's statement would have impacted the issue of guilt; however, the Court does find that by the State not properly disclosing Edward Villardi's testimony, the State may have impassioned the sentencing court to impose a more severe sentence than which may have been rendered if that court had knowledge of said information.

COURT ORDERED: The Petition is hereby granted as to this claim insofar as it relates to sentencing. The Petitioner shall receive a new sentencing hearing.

The Court directed counsel for State to prepare appropriate findings of fact, conclusions of law and order in accordance with the Court's rulings herein.

Counsel for State expressed concerns with the Court's ruling and how said ruling was reached; further discussion between the Court and counsel for State. Counsel for State discussed the reliance by the sentencing court on the Pre-Sentence Investigation Report as well as the Petitioner's criminal history. The Court confirmed said ruling.

Petitioner remanded to the custody of the Sheriff.

ORIGINAL

02 OCT 22 PM 4:05

RONALD A. LONGTIN, JR.

BY DEPUTY

1 CODE
 Richard A. Gammick
 2 #001510
 P.O. Box 30083
 3 Reno, NV 89520-3083
 (775) 328-3200
 Attorney for Plaintiff

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

* * *

STEVEN FLOYD VOSS,

Petitioner,

v.

Case No. CR96-1581

THE STATE OF NEVADA,

Dept. No. 3

Respondent.

OPPOSITION TO MOTION FOR PARTIAL STAY OF EXECUTION OF SENTENCE

COMES NOW, the State of Nevada, by and through RICHARD
 A. GAMMICK, District Attorney of Washoe County, and KARL S. HALL,
 Chief Deputy District Attorney, and opposes the Defendant's
 Motion for a Stay of the Execution of Sentence with respect to

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1 the \$25.00 Administrative Assessment Fee and the \$750.00
2 assessment for attorney's fees. This Opposition is based upon
3 the attached Points and Authorities.

4 DATED this 22 day of October, 2002.

5 RICHARD A. GAMMICK
6 District Attorney
7 Washoe County, Nevada

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9 By 

KARL S. HALL

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10 Chief Deputy District Attorney
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1 POINTS AND AUTHORITIES

2 The Defendant, Petition, STEVEN FLOYD VOSS, is
3 currently an inmate in the Nevada State Prison after being
4 convicted of charges involving Burglary, Uttering Forged
5 Instruments, Forgery and Theft. The checks the Defendant is
6 convicted falsifying and passing belonged to a woman who was
7 killed shortly before the Defendant committed the crimes
8 referenced hereinabove.

9 The Defendant now is requesting a partial stay of the
10 execution of sentence with respect to the Administrative
11 Assessment Fee and assessment of an attorney's fee. The
12 Defendant fails to cite any relevant authority in support of his
13 Motion. Therefore, the Defendant's Motion should be denied. In
14 fact, discretion to stay criminal proceedings is restricted. See
15 NRS 177.095, et. seq. The relevant sections provide as follows:
16 NRS 177.095 a sentence of death shall be stayed on appeal; NRS
17 177.015 a sentence of imprisonment shall be stayed on appeal if
18 the defendant is admitted to bail; NRS 177.115 a sentence to pay
19 a fine may be stayed on appeal; and NRS 177.125 an order placing

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1 a defendant on probation may be stayed on appeal. There is no
2 statutory authority granting this Court jurisdiction to grant a
3 stay of execution in this matter. Therefore, Petitioner's Motion
4 should be denied.

5 Dated this 22 day of October, 2002.

6 RICHARD A. GAMMICK
7 District Attorney
8 Washoe County, Nevada

9
10 By Karl S. Hall
11 KARL S. HALL
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13 Chief Deputy District Attorney
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10175815

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of the Washoe County District Attorney's Office and that, on this date, I deposited for mailing at Reno, Washoe County, Nevada, a true copy of the foregoing document, addressed to:

Steven Floyd Voss #52094
Nevada State Prison
P.O. Box 607
Carson City, NV 89702

DATED this 22 day of October, 2002.

Renny Rasmussen

ORIGINAL FILED

02 OCT 22 PM 4:05

RONALD A. LONGTIN, JR.

BY
DEPUTY

1 CODE
 Richard A. Gammick
 2 #001510
 P.O. Box 30083
 Reno, NV 89520-3083
 (775) 328-3200
 Attorney for Plaintiff

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

* * *

STEVEN FLOYD VOSS,

Petitioner,

v.

Case No. CR96-1581

THE STATE OF NEVADA,

Dept. No. 10

Respondent.

OPPOSITION TO DEFENDANT'S MOTION TO PRODUCE SPECIFICALLY
 REQUESTED DISCOVERY INFORMATION

COMES NOW, the State of Nevada, by and through RICHARD
 A. GAMMICK, District Attorney of Washoe County, and KARL S. HALL,
 Chief Deputy District Attorney, and opposes the Defendant's
 Motion to Produce Specifically Requested Discovery Information.

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1 This Opposition is based upon the attached Points and Authorities
2 and all other pleadings and papers on file herein.

3 Dated this 22 day of October, 2002.

4 RICHARD A. GAMMICK
5 District Attorney
6 Washoe County, Nevada


7
8 By Karl S. Hall
9 KARL S. HALL
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Chief Deputy District Attorney

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1 In conclusion, the Defendant's request for additional
2 discovery be provided at this late date should be denied based
3 upon lack of any evidence that the information is exculpatory or
4 in any way tends to prove the Defendant's innocence.

5 DATED this 22 day of October, 2002.

6 RICHARD A. GAMMICK
7 District Attorney
8 Washoe County, Nevada

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10 By 
11 KARL S. HALL
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13 Chief Deputy District Attorney
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10171585

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of the Washoe County District Attorney's Office and that, on this date, I deposited for mailing at Reno, Washoe County, Nevada, a true copy of the foregoing document, addressed to:

Steven Floyd Voss #52094
Nevada State Prison
P.O. Box 607
Carson City, NV 89702

DATED this 22 day of October, 2002.

Penny Prasmussen

FILED

NOV 14 PM 2:07

RONALD A. MARTIN, JR.

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

STEVEN FLOYD VOSS,

Case No. CR96-1581

PETITIONER,

Dept. No. 10

VS.

STATE OF NEVADA,

RESPONDENT,

11 PETITIONERS RESPONSE TO RESPONDENTS OPOSITION TO MOTION

12 FOR PARTIAL STAY OF EXECUTION OF SENTENCE

13 COMES NOW, petitioner, STEVEN FLOYD VOSS, and responds
 14 and answers the respondents opposition to motion for partial
 15 stay of execution of sentence.

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CR96-1581
 DC-9900026702-026
 STATE VS. STEVEN FLOYD VOSS 5 Pages
 District Court 11/04/2002 02:07 PM
 Washoe County 3880

OVERVIEW OF RESPONDENTS OPPOSITION

The respondent, The State Of Nevada, in thier opposition to the instant motion allege that petitioner STEVEN FLOYD VOSS, fails to cite any relevant authority in support of his motion and concludes that therefor, "the motion should be denied", and that discretion to stay criminal proceedings is restricted. Thus, there is no statutory authority granting this court jurisdiction in this matter.

PETITIONERS RESPONSE, POINTS AND AUTHORITIES

To start, respondent has not cited any applicable authority which would preclude this court from considering the instant motion. This honorable court does infact have authority to stay the imposition of sentence in the instant case. The very authority which the respondent cites NRS 177.115 to support it's opposition is inpart the same authority which provides this court jurisdiction in this matter. The instant petition is on appeal from the partial denial entered by this court. Further, pursuant to an agreement entered into at the states request. The court ordered resentencing proceeding necessitated by this courts grant of writ of habeas corpus has been postponed indefinitely pending the final outcome of all applicable appeals. Because this Court has granted petitioner's writ of habeas corpus (post conviction) this Court does infact have full authority and jurisdiction, and complete discretion regarding sentencing matters. Further, petitioner has asserted that the imposition

1 of financial assessments at this time pose undue hardship upon
2 him and that same hardship tends to deny him his independent
3 state and federal constitutional guarantees of Due Process Of
4 Law. As required by (Article I, Section 8 of The Nevada State
5 Constitution; Fifth and Fourteenth Amendments to the United
6 States Constitution). Because, petitioner is indigent and he
7 has NO income what so ever other than the meager assistance
8 he receives from his family. Which is intended for use for
9 petitioners Medical / Health Care needs and co-payments, and
10 for necessary legal supplies and materials. It is clear that
11 petitioners instant motion and the relief requested therein
12 are based upon state and federal constitutional authority.
13 Additionally, petitioner fully intends to argue against
14 imposition of assessments for Attorney Fees at re-sentencing
15 proceedings in the instant case.

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17 CONCLUSION
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19 Based upon the extreme financial hardship the Court Ordered
20 Assessments pose to petitioner and the affect which imposition
21 of Financial Assessments pose upon petitioners ability to aquire
22 necessary legal supplies and materials. Which in turn places
23 petitioners , Due Process Rights, at RISK! Petitioner
24 respectfully request that this Court GRANT the instant motion
25 at this time. Further, due to the severity of the current
26 sentence wrongfully imposed by District Court Judge, James
27 Stone, when he relied atleast inpart upon Highly Suspect And
28 Impalpable Information when determining sentence. Aswell as the

1 amount of time which has already been served on that sentence.
2 Petitioner, prays that this Honorable Court will indulge his
3 compassionate request and GRANT his Motion For Partial Temporary
4 Stay In Execution Of Sentence.

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DATED, this _____ day of _____ 2002.

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STEVEN FLOYD VOSS,

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PETITIONER,

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CERTIFICATE OF SERVICE BY MAIL

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I, STEVEN FLOYD VOSS, hereby certify pursuant to N.R.C.P.

5 (b), that on this _____ day of _____ 2002.

I, mailed a true and correct copy of the forgoing motion for
partial stay of execution of sentence, addressed to:

RICHARD A. GAMICK
WASHOE COUNTY DISTRICT ATTORNEY
POST OFFICE BOX 11130
RENO, NEVADA 89520

FRANKIE SUE DEL PAPA
NEVADA ATTORNEY GENERAL
100 NORTH CARSON STREET
CARSON CITY, NEVADA 89702

DATED, this _____ day of _____ 2002.

STEVEN FLOYD VOSS,
Petitioner,

ORIGINAL

FILED

✓ 1 3370

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APR 25 2003

RONALD A. LONGSTIN, JR., CLERK

By: S. Satter
DEPUTY

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

STEPHEN FLOYD VOSS,

Petitioner,

Case No. CR96-1581

vs.

Dept. No. 10

THE STATE OF NEVADA,

Respondent.

ORDER REQUESTING INMATE FINANCIAL CERTIFICATE

Petitioner presents the Court with his Motion for Leave to Proceed in Forma Pauperis.

In paragraph 3 of his Motion to Proceed in Forma Pauperis, Petitioner states that he has an inmate savings account. However, Petitioner failed to file his Inmate Financial Certificate with the Court certifying these claims.

The Court hereby directs Petitioner to supplement the record and file his Inmate Financial Certificate. Upon filing of said Certificate, the Motion for Leave to Proceed in Forma Pauperis must be re-submitted for the Court's decision.

Dated this 25 day of April, 2003.

by Peter A. Hardesty
JAMES W. HARDESTY
DISTRICT JUDGE

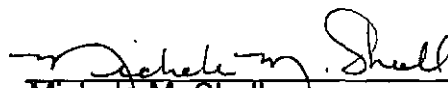
CR96-1581
STATE VS. STEVEN FLOYD VOSS 2 Pages
District Court 04/25/2003 02:57 PM
Washoe County 3370

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Second Judicial District Court, in and for the County of Washoe; and that on this 28th day of April, 2003, I deposited in the County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, a true and correct copy of the attached document addressed as follows:

Steven Floyd Voss, #52094
Ely State Prison
P. O. Box 1989
Ely, Nevada 89301

Deputy Appellate District Attorney
WASHOE COUNTY DISTRICT
ATTORNEY'S OFFICE
(via interoffice mail)


Michele M. Shull
Administrative Assistant